

### **Key points**

- State of play of active Tribunal case
- Possible overpayment relief claim case
- Settled cases
- Challenges to current HMRC calculator

### **State of play of active Tribunal case TC/2020/04234**

This appeal involves a difference in the calculation of TSR in the year of death (2017-18) of £44,000. On 1 March 2021 HMRC Solicitors Office made an application to extend the deadline for submitting their statement of case from 14 March to 15 May 2021 to give them time to review their TSR policy.

The HMRC statement of case duly arrived on 14 May 2021 and contained nothing to persuade me to settle or withdraw.

The Tribunal service has now asked for dates availability for a hearing sometime between 25 October 2021 and 18 February 2022.

### **Possible overpayment relief claim case**

I have been approached by a taxpayer with over £55,000 at stake in respect of a chargeable event gain arising in 2017-18. The original tax calculation was made by HMRC in July 2018 and an overpayment relief claim was made in May 2020. This is an eminently suitable case on which to challenge HMRC's position that the "practice generally prevailing" defence applied up until the *Silver* judgment was delivered on 18 April 2019.

### **Settled cases (1)**

A taxpayer who first contacted me in June 2019 has obtained a repayment of over £15,000 on behalf of his wife.

This was a 2017-18 case in which the taxpayer wrote to HMRC in January 2019 asking for the liability to be recalculated. I argued that the taxpayer's correspondence should be treated as an amendment to the 2017-18 assessment and that HMRC were out of time to open an enquiry and should therefore process the amendment as requested. After protracted correspondence and the lodging of an appeal to the Tribunal HMRC accepted the amended tax calculation in May 2021 and requested the Tribunal to close the case file.

This case demonstrates how important the “process” followed can be in achieving the right outcome for the taxpayer.

I have also been sent the below extract from an HMRC letter:

**Thank you for your letter dated 28 December 2020 and I apologise for the late reply.**

**Your 2018 original self-assessment calculation that we issued was inaccurate as our system did not calculate the right amount of tax when the return was processed.**

**HMRC has a responsibility to calculate the correct liability for our customers. You were therefore issued with a corrected tax calculation.**

**However, it has now been established that we acted outside the legal 9 month timeframe (Section 9ZB TMA1970) to correct your self-assessment return and issue a revised calculation. We have therefore reinstated the original charge.**

**The enclosed statement reflects the action taken on your SA record**

I suspect that there are very many cases where HMRC have not followed the correct procedures ...

#### **Settled cases (2)**

In a second case involving a 2017-18 deceased estate the agent filed the tax return in May 2018. In October 2018 the agent challenged the HMRC tax calculation.

The amount at stake was over £30,000.

In March 2019 opened an enquiry and then issued a closure notice confirming the original calculation. The agent then asked for the enquiry to remain open pending the appeal in *Silver*. Eventually a further closure notice was issued and appealed in November 2020. The agent accepted HMRC's offer of review and in March 2021 the review officer wrote upholding HMRC's original calculation. The agent submitted an appeal to the Tribunal and in May 2021 the Tribunal issued the usual direction requiring HMRC to deliver a statement of case within 60 days.

40 days later HMRC Solicitors Office notified the Tribunal that they did not wish to defend the matter and they withdrew from the appeal.

This case demonstrates that when challenged HMRC will eventually concede that the *Silver* judgment must be applied to open cases for 2017-18 (and I would also say for earlier years) and not just for 2018-19 and 2019-20.

### **Settled cases (3)**

In a third case involving a 2017-18 calculation the HMRC officer eventually agreed to refund over £4,000. Bizarrely the refund was calculated by working out tax on total income including the full gain while correctly restricting the personal allowance and then on total income again including the full gain but without restricting the personal allowance. The difference in these two amounts was then refunded (it happened to be about £200 more than if the correct TSR had been calculated!).

**This case demonstrates that even now some HMRC officers have no idea how to perform the top slicing relief calculation!**

### **Challenges to current HMRC calculator**

The three examples that I sent to HMRC in which I identified errors in the current HMRC calculator for 2020-21 have been rejected by HMRC. I continue to maintain that I am right and HMRC are wrong in these three cases (see my April 2021 update).