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CLIENT BRIEFING

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Ramsay is applied by the FTT in *The Vaccine Research Limited Partnership* case in favour of the taxpayers with the result that the licence fee payments were not treated as income because the licence fee financing arrangements were circular and self-cancelling. The Court of Appeal in *WTGIL* decides the service of providing and fitting 'black box' devices performed by the insurance intermediary was part of the single exempt supply of insurance intermediary services. HMRC publishes updated guidance on Condition C (the contribution condition) of the salaried member rules; and sets out its compliance approach on Condition B (the significant influence condition) pending the outcome of the application for permission to appeal to the Supreme Court in *BlueCrest*.

The *Vaccine Research Limited Partnership*: application of *Ramsay*

It is unusual in a tax avoidance case for a taxpayer to rely on *Ramsay* and win but that is what happened in *The Vaccine Research Limited Partnership and P Vaughan v HMRC* [2025] UKFTT 402 TC (TVRLP). The fundamental issue before the First-tier Tribunal (FTT) was whether licence fees receivable by a partnership as part of a circular, tax-driven funding arrangement were 'income'. If they were income, the next question was whether the income was taxable under ITTOIA s 683 (annual payments) or ITTOIA s 687 (income not otherwise charged). The FTT concluded the payments were not income and so neither taxing provision could apply.

The tax scheme itself had been the subject of earlier appeals focused on whether the partnership was trading and the quantum of qualifying expenditure incurred by it but the appeals had not considered whether the licence fees received by the partnership as part of the scheme were taxable and this became the subject of the current appeal before the FTT. The earlier appeals resulted in only a small proportion of the intended sideways loss relief being available to the individual partners.

Although in the earlier appeals the taxpayers had sought to characterise the licence fees as trading income (to show the partnership was trading), a case management decision allowed the current arguments to be run even though contrary to that earlier position.

Single, composite transaction or separate transactions?

When applying the legislation construed purposively to the facts viewed realistically, why do the courts sometimes look at transactions that are part of a wider scheme as a single composite transaction but at other times look at transactions individually to determine the tax consequences? Is there method to this distinction? Recent case law shows us that some statutory provisions require the focus to be on a particular transaction, and others may require focus on the overall economic outcome of a series of commercially linked transactions. The pattern in recent cases is that the question of whether something is income in the first place appears to fall into the latter category but once it has been established there is income, the provision imposing the income tax charge may require a change of focus to zoom in on a particular transaction rather than looking at the scheme overall.

In *TVRLP*, the taxpayers argued that, applying *Ramsay*, on a 'realistic view of the facts' the licence fees represent a circular flow of funds which does not answer to the description of 'income' for the purposes of the statutory provisions. Most of the funds that were borrowed and contributed to the partnership as capital by the individual partners were used to pay for the licence fees which were then used to repay the full capital and interest payments incurred by each partner on their borrowings.

HMRC sought to rely on the cases of *Good* [2023] EWCA Civ 114 and *Khan* [2021] EWCA Civ 624 where the Court of Appeal decided that the statutory question of whether a person is the person 'entitled to' or 'receiving' income for the purposes of ITTOIA s 385 and s 611 does not require consideration of the economic outcome of a linked series of transactions or for the relevant person to be in control over the relevant income. In both *Good* and *Khan*, however, it was common ground that the relevant payments were 'income' in the first place and the relevant question was who was entitled to or receiving the income.

On the statutory question of whether something is 'income', the FTT looked to the Court of Appeal's decision in *BlueCrest* [2023] EWCA Civ 1481. Although *Ramsay* was not mentioned specifically by Sir Launcelot Henderson who gave the lead judgment in that case, the FTT found his approach 'seems consistent with the second step of the *Ramsay* approach which is to ascertain the facts in the light of the statutory question'. In *BlueCrest*, in determining whether certain 'partner incentivisation plans' (PIPs) were 'income', the Court of Appeal found it necessary to examine the PIP arrangements in their entirety, including their economic effect. The Court of Appeal concluded on a 'realistic view taken of the scheme as a whole' that the payments were income notwithstanding the legal terms of the documents. This is the approach the FTT followed here.

Applying the basic 'fruit and branch' analogy, there is no fruit for the individual partners because the licence fee arrangements formed a circular, self-cancelling scheme. The FTT agreed with Counsel for the taxpayers that in this part of the scheme 'nothing has really happened – money had been borrowed and that money is passed back to repay the borrowing'.

The nature of 'miscellaneous income' is going to be determined by the Supreme Court in the *HFFX* case in the next few months and so the legal position as set out in TVRLP may change again after that.

What about B. Lynch?

The success for the taxpayers in *TVRLP* relying on *Ramsay* to prevent an income tax charge on one element of a failed tax avoidance scheme can be contrasted with the unfavourable outcome for the taxpayer in *B. Lynch* [2025] UKFTT TC 300, another FTT decision released shortly before *TVLRP*. Mr Lynch was a partner in a partnership that had participated in a mass-marketed avoidance scheme to create an allowable tax loss without a corresponding taxable gain. The parties agreed the scheme had failed on *Ramsay* grounds to create the intended tax loss but HMRC had assessed the taxpayer to a dry tax charge on discounts and premiums received by the partnership as part of the scheme. The taxpayer argued that *Ramsay* should also apply to prevent the dry tax charge but the FTT agreed with HMRC that the taxing provision (ITTOIA s 381) was transaction-specific rather than requiring a holistic view of the whole arrangements. This can be distinguished from *TVRLP* because in *Lynch* it seemed to be a given that the relevant discounts were either income or capital and once the FTT had decided they were taxable as income, the relevant taxing provision, like in *Good* and *Khan*, required a transaction-specific view of the facts, not a holistic one.

WTGIL: scope of insurance intermediary exemption

The Court of Appeal in *WTGIL Limited v HMRC* [2025] EWCA Civ 399 had to consider the tax treatment of the provision and fitting of 'black boxes' in vehicles by an insurance intermediary, ISL, which was required for specialised insurance of young drivers which ISL arranged. The device monitors and reports to the insurer and the driver on their driving. ISL claimed that the provision and fitting of the devices were taxable supplies made by it to the policyholders and that input tax of around £2 million on the purchase price of the devices and the fitting costs over a four-year period should be recoverable. The Court of Appeal held that ISL could not recover VAT for providing and fitting the black box devices because this was part of the single exempt supply of insurance intermediary services.

This case makes it clear that the need to 'strictly construe' exemptions from VAT does not mean they should be 'restrictively construed'. Exemptions should not be construed in such a way as to deprive them of their intended effect so it is necessary to start with the intended effect. The Court of Appeal decided that the intended effect of the relevant exemption is the extension of the basic exemption for 'insurance and reinsurance transactions' to 'related services performed by insurance brokers and insurance agents'. The Court of Appeal pragmatically concluded that the services of providing and fitting the devices were performed by ISL as an 'integral and indispensable' element of the relevant insurance transactions and it would be artificial and unrealistic to exclude them. The overall picture was a single, exempt supply of insurance intermediary services.

When considering the tripartite nature of the contractual arrangements between the policyholders, the insurance intermediary and the insurers, the Court of Appeal referred to the FTT's finding that 'the policyholders saw the policy as a single transaction with a single premium'. The Court of Appeal considered that the services were also provided to the insurers and were so provided by ISL acting in an intermediary capacity and to conclude the same services provided to the policyholders were not provided in an intermediary capacity would be artificial.

Salaried member rules: updated HMRC guidance and HMRC's compliance approach

Revised HMRC guidance on Condition C

HMRC has published revised guidance in the Partnership Manual on the salaried member rules at ITTOIA ss 863A to 863G. These rules are intended to apply where a member of an LLP has the characteristics of an employee rather than a self-employed partner. For the rules to apply, all of conditions A to C must be met; so for the rules not to apply, you must fail one of the conditions. You also need watch out for the targeted anti-avoidance rule (TAAR) which applies to ignore arrangements if the main purpose, or one of the main purposes, of the arrangements is to secure that the salaried member rules do not apply.

To fail Condition C (the contribution condition), the partner must make a partnership contribution of 25% or more of the 'disguised salary' expected to be payable to the partner in respect of their performance during the year. It is common practice to make additional contributions to stay outside the salaried member rules in response to rising compensation. Before a change in guidance in February 2024, HMRC did not apply the TAAR in s 863G to additional contributions made under Condition C but according to the February 2024 guidance top-up arrangements would be ineffective to ensure members of an LLP remain outside the salaried member rules.

PM259200 has now been updated and no longer suggests that top-up arrangements are generally caught by the TAAR. Instead, HMRC will assess on a case-by-case basis whether a top-up is 'a genuine contribution made by the individual to the LLP, intended to be enduring and giving rise to real risk' and so not caught by the TAAR. 'Real risk' requires that the individual is 'personally at actual risk of losing the contribution (whether funded out of their own money or a loan) in the event that the LLP makes a loss or becomes insolvent, rather than asking whether the LLP itself is really at risk of making a loss. There is a helpful clarification that a well-capitalised LLP, with low practical risk of insolvency, will not prevent the contribution giving rise to real risk for the individual.

The revised guidance states HMRC will also consider how the contribution is used by the LLP in determining whether it is genuine and giving rise to real risk. If the contribution is not intended to provide funding which is available for use by the LLP, for example, because it is ringfenced for the benefit of the members or is part of a circular arrangement where the money makes its way back to the members, this will be an indication it is not a genuine contribution or a real risk. A well-capitalised LLP may not have a requirement for the additional capital before the contribution was made but so long as there is evidence it is available for use by the LLP it should not mean HMRC would consider the contribution not genuine or at real risk.

PM259310 has been updated to clarify that it should not trigger the TAAR if contributions have been financed through a bank loan and the LLP pays interest on behalf of the members out of their profit shares.

HMRC's compliance approach following BlueCrest

Condition B is that the mutual rights and duties of the members of the LLP, and of the partnership and its members, do not give the member significant influence over the affairs of the partnership. The Court of Appeal in *BlueCrest* [2025] EWCA Civ 23 concluded that 'significant influence over the affairs of the partnership' does not include 'de facto influence' outside the terms of the partnership agreement and statutory framework, contrary to HMRC's acceptance at the FTT and Upper Tribunal that it did include such de facto influence. A permission to appeal application has been made to the Supreme Court and the CIOT has published a *notice* on HMRC's compliance approach whilst *BlueCrest* remains in the higher courts. It is understood that HMRC has been contacting LLPs with open compliance checks in respect of the salaried member rules and advises LLPs with concerns about the impact of the decision to discuss this with their Customer Compliance Manager.

What to look out for:

- On 10 or 11 June, the Court of Appeal is scheduled to hear the appeal in *Haworth v HMRC* on the place of effective management test for trustees in the UK/Mauritius double tax treaty.
- 21 May is the closing date for the consultation on the better use of new and improved third party data.
- The consultation on a permanent regime to replace the energy profits levy closes on 28 May.

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