

20 July 2022

A round-up of recent issues

Tax update

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1. General

1.1 Net zero tax review expected in 2023

The Treasury has been asked to consider reviewing how the tax system can best support the transition to net zero carbon emissions.

In its annual report to Parliament, the Climate Change Committee has asked for the Treasury to build on the recent net zero review and consider a net zero tax review to establish how the tax system can best support the transition to net zero. This would include identifying areas where low carbon technologies are unfairly penalised, and looking at sharing consumer savings from low carbon technologies.

The review would be scheduled for 2023, with a consultation next year.

www.icaew.com/insights/tax-news/2022/Jul-2022/Net-Zero-Tax-Review-expected-in-2023

1.2 Information notices varied on appeal

The FTT has significantly narrowed the scope of two information notices, finding that HMRC did not reasonably require full details of the taxpayer's personal and household expenditure, nor information not in his possession.

In the course of an enquiry, HMRC issued the taxpayer with information notices, as it believed his lifestyle did not match reported income. These required, amongst other things, full details of his household and personal expenditure, holiday dates and costs, analyses of director's loan accounts, and his personal accounts including bank statements. He appealed on the grounds that the information was not reasonably required to check his tax position, and argued that it was so broad neither party would be able to tell if it had been complied with, and it was a clear "fishing expedition".

At the hearing, it emerged that HMRC had not considered non-taxable monies available to the taxpayer, which he could live on, and the FTT also stated its concerns over inaccuracies in HMRC's evidence. The information notices were varied to restrict them to relevant information which the taxpayer would be able to access. Information about his personal and household expenditure was not required.

Jenner v HMRC [2022] UKFTT 203 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08528.html

1.3 Late appeal accepted due to agent's failings

The FTT has permitted a taxpayer to make a late appeal against a 2005/06 CGT assessment, as she had been incorrectly informed by her agent that he had made an appeal, and she was suffering ill health.

HMRC had received an appeal from the taxpayer over four years after issuing her with an assessment, which could only be appealed within 30 days. It was rejected for lateness, but she appealed, submitting that her agent had told her he had submitted the appeal. When she had received letters from HMRC showing that it had not received the appeal, he repeatedly told her that he had made the appeal. She had asked him to refile it when HMRC continued to say it had not been received, but had not changed agent due to her significant ill health.

The FTT permitted the late appeal to be made, rejecting HMRC's contention that it had repeatedly contacted the taxpayer. It was reasonable to believe her agent, and to suspect that the appeal letter had simply gone astray. She had been advised by HMRC to engage a tax adviser, and had done so. Discussions of her tax affairs had continued throughout the period since the assessment, this was not a long-closed enquiry that would be difficult to reopen. Adding to this her health problems, the late appeal should be considered.

De'Roy Badejo v HMRC [2022] UKFTT 202 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08527.html

2. Private client

2.1 HMRC launches tax residence status indicator tool

Those with straightforward tax affairs can now use a tool on HMRC's website to check their tax residence status.

The tool is designed to replicate the statutory residence test in an easy-to-use format, where one question is displayed at a time. It covers the automatic overseas test, the automatic UK test, and the sufficient ties test. It is only intended for those individuals whose situation is straightforward. Feedback on the new tool has been requested.

<https://www.tax.org.uk/new-tax-residence-indicator-tool>

www.tax.service.gov.uk/guidance/check-your-UK-residence-status/uk-home

2.2 Penalties on unreported disposal reduced

The FTT has upheld discovery assessments on a taxpayer who underreported rental income and a capital gain, but reduced the quantum of those and the penalties based on issues with HMRC's calculations.

The taxpayer received rental income that he underreported on his returns, and failed to declare the capital gain when he sold the rental property. His argument that he had not claimed many expenses of the flat upkeep, and had not intended to evade tax, was rejected. He was issued with assessments and penalties.

The FTT upheld the assessments, but reduced them, as HMRC had failed to take into account elements such as agent fees, mortgage interest, and enhancement expenditure. Penalties were recalculated at a lower level, as the FTT disagreed with HMRC's calculation of the reductions.

Aggrey v HMRC [2022] UKFTT 200 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08525.html

3. PAYE and employment

3.1 FTT considers salaried members legislation

The FTT has considered whether or not the salaried members legislation applied to a group of LLP members. It disagreed with HMRC that the legislation requires a member to have significant influence over the affairs of the LLP as a whole, rather than just a part, but found that the legislation applied to some members.

Members of LLPs are generally taxed as self-employed, rather than employees, which can give a significant saving in NICs. The salaried members legislation, introduced in 2014, deems members to be taxable as employees in some circumstances, generally where their work relationship is similar to an employment relationship.

HMRC issued the taxpayer LLP with PAYE and NIC determinations covering five years, on the grounds that some of its salaried members fell under the legislation. This only applies if at least 80% of remuneration is disguised salary that does not vary with LLP profit, and the members do not have significant influence in the LLP.

The FTT examined the day to day running of the LLP, which had an informal approach to management, with reference to the investment portfolio managers whose tax position was disputed. It found that, contrary to HMRC's assertion, an individual did not have to demonstrate significant influence over the LLP as a whole, but just over one or more aspects of the affairs of the LLP. This could include financial influence, based on a large capital contribution. It allowed the LLP's appeal in relation to some members, including the heads of areas in the firm, and those who managed portfolios over a certain size. The others did not have significant influence, and the bonuses paid to all did not vary enough with profit to be anything other than disguised salary.

Bluecrest Capital Management (UK) LLP v HMRC [2022] UKFTT 204 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08529.html

3.2 Employment-related securities COVID-19 easement to end

HMRC has published edition 44 of the Employment-related securities (ERS) bulletin, which includes information on the end of the extended time limit for granting Enterprise Management Incentive (EMI) options.

Normally, once the value of an EMI option has been agreed with HMRC, the options must be granted within 90 days or the valuation expires. During the COVID-19 pandemic, this was extended to 120 days to account for delays in granting options. This easement will end on 1 December 2022, any valuations issued on or after that date will be valid for 90 days only.

www.gov.uk/guidance/employment-related-securities-bulletin-44-july-2022

3.3 Director personally liable for unpaid NICs

The FTT has upheld a personal liability notice issued to the sole director after a company was dissolved owing PAYE and NICs. His lack of experience was not a reasonable excuse, as he could have sought advice.

Over two years, the taxpayer became director of a number of companies that were rapidly wound up, generally with unpaid debts to HMRC. In this case HMRC sought to recover unpaid NICs owed by one of these companies from him. To succeed, it needed to prove that the underpayment was due to the taxpayer's negligence, and that he was an officer of the company at the relevant time, as well as proving that the NICs were underpaid.

The taxpayer argued that he was not negligent, but had a lack of experience and commercial acumen, demonstrated by his recent bankruptcy, and that commercial life and the failure of the company was unpredictable. The FTT found that his conduct had not been something that a reasonable and prudent man would do, so was negligent. He had been aware that NICs were not being paid each month, and could have sought training or advice if needed. Other debtors had been being paid during the period of default. As the only other company officer had resigned before the defaults, it was the taxpayer's responsibility, and the personal liability notice was upheld.

Howick v HMRC [2022] UKFTT 208 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08531.html

4. VAT and other indirect taxes

4.1 UT rules that a sports league organiser's supplies represented an exempt composite supply

If the character of the supply is predominantly the hire of land, and the ancillary services are viewed as additional, the hire or lease of the land may not be removed from the exemption of VAT.

The taxpayer organised competitive 5-a-side football and netball leagues. It made block bookings of pitches from third parties, then hired them out to teams in the league, to enable them to play their league fixtures. It also managed all aspects of league administration.

The taxpayer considered the supply to be a single exempt supply as a grant or right over land, whereas HMRC took the view that the supply was subject to VAT as the company was supplying competitive league sports management services.

The FTT originally found in the taxpayer's favour.

The tribunals needed to establish whether or not the supply fell within the VAT exemption as "*the grant of any interest in or right over land or of any licence to occupy land*". HMRC argued that the FTT had failed to consider the 'passivity principle' of the letting of land or the objective character or economic reality of the taxpayer's supplies. HMRC considered it to be not the grant of a licence to occupy land nor the hiring out of pitches but rather the supply of league administration services.

The UT dismissed HMRC's appeal and found that the FTT had applied the correct tests in law. Based on the facts available, it was entitled to reach the conclusion that the supplies were exempt.

HMRC v Netbusters (UK) Limited [2022] UKUT 175 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2022/175.html

5. Tax publications and webinars

5.1 Tax publications

The following Tax publications have been published

- [ATAD III – identifying EU shell holding companies](#)

www.evelyn.com/insights-and-events/

5.2 Tax webinars

The following client webinar is coming up soon

- 27 July - [Retirement from the Partnership](#)

6. And finally

6.1 Sometime too hot the eye of heaven shines

What a seasonal time for the Climate Change Committee to request a net zero tax review (see 1.1). Though this is really just about low carbon technologies, and we deplore the tendency of Governments to respond to everything by mucking about with tax, we would love to see a few little tweaks, for when summer feels eternal:

A good start would be cutting VAT on sunscreen (it is currently 20%).

Tax breaks for straw hat manufacturers (stylish for any age).

Extra R&D tax credits for anyone who can work out how to keep the trains operational in hot weather.

In the meantime, we hope that our readers are staying cool, until the weather is more lovely and more temperate.

<https://hansard.parliament.uk/commons/2021-08-18/debates/21081813000072/VATOnSunscreen>

www.poetryfoundation.org/poems/45087/sonnet-18-shall-i-compare-thee-to-a-summer-day

Glossary				
Organisations		Courts	Taxes etc	
ATT – Association of Tax Technicians	ICAEW - The Institute of Chartered Accountants in England and Wales	CA – Court of Appeal	ATED – Annual Tax on Enveloped Dwellings	NIC – National Insurance Contribution
CIOT – Chartered Institute of Taxation	ICAS - The Institute of Chartered Accountants of Scotland	CJEU – Court of Justice of the European Union	CGT – Capital Gains Tax	PAYE – Pay As You Earn
EU – European Union	OECD - Organisation for Economic Co-operation and Development	FTT – First-tier Tribunal	CT – Corporation Tax	R&D – Research & Development
EC – European Commission	OTS – Office of Tax Simplification	HC – High Court	IHT – Inheritance Tax	SDLT – Stamp Duty Land Tax
HMRC – HM Revenue & Customs	RS – Revenue Scotland	SC – Supreme Court	IT – Income Tax	VAT – Value Added Tax
HMT – HM Treasury		UT – Upper Tribunal	LBTT – Land and Buildings Transaction Tax	

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Tax legislation is that prevailing at the time, is subject to change without notice and depends on individual circumstances. Clients should always seek appropriate tax advice before making decisions. HMRC Tax Year 2022/23.

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