Tax update

A round-up of recent issues

27 April 2022

1. General

1.1 Tax Update and May Day

Tax Update will be taking a break for the May Day Bank Holiday.

Tax Update will be taking a break next week for the Bank Holiday. The next issue will be on 10 May.

1.2 HMRC agent update 95

HMRC has published agent update 95, which provides an overview of the recent issues of which tax agents should be aware. It includes updates on HMRC services, and forthcoming changes.

The latest agent update summarises various recent issues and changes, including:

- COVID-19: the ending of some easements, and a reminder to declare support payments;
- Freeports and NICs;
- guidance on notification of uncertain tax treatments by large businesses ;
- the off-payroll working rules;
- naming tax avoidance promoters;
- residential property developers tax;
- changes to the CT600 form;
- making tax digital; and
- links to help and support for agents.

www.gov.uk/government/publications/agent-update-issue-95

1.3 HMRC to revoke status of Moscow stock exchange

The Moscow stock exchange (MOEX) is expected to have its status as a recognised stock exchange revoked on 5 May 2022. A brief consultation on the measure has been opened ahead of the change.

The status of recognised stock exchange has several tax consequences, including access to specific tax treatments and reliefs.

The status of existing investments is expected to be preserved for the investors holding them.

www.gov.uk/government/news/uk-to-revoke-moscow-stock-exchanges-recognised-status

1.4 New guidance on penalties for facilitating avoidance schemes

HMRC has published guidance on penalties for the facilitation of schemes involving non-resident promoters.

This relates to the legislation introduced in FA2022 that created a new penalty applicable to UK-based entities who facilitate tax avoidance schemes involving non-resident promoters. The penalty can be up to 100% of the fees received by all entities involved in the avoidance scheme.

The guidance sets out how the penalty amount would be calculated, the procedure for assessing it, the appeal process, HMRC powers, and the joint and several liability of directors.

www.gov.uk/government/publications/clamping-down-on-promoters-of-tax-avoidance-guidance/penalties-for-facilitating-avoidance-schemes-involving-non-resident-promoters-section-91-schedule-13-finance-act-2022

1.5 New report on tax and income inequality

The Institute for Fiscal Studies (IFS) has published a report on how much tax is paid by those in high income brackets. On analysis, it sets out the case for aligning tax rates on different forms of income.

The study is based on analysis of tax records for UK adults in the top 1% of earners. Key findings include that this top 1% received 15% of all fiscal income, and work disproportionately in the financial sector. Business income from owning a company or self-employment was a much larger factor in the top 1%, and especially the top 0.1%, than for lower earners. Many of these self-employed individuals were partners in professional services firms.

The top 1% paid a larger proportion of their income as tax than lower earners, accounting for 34% of the income tax take overall, and 28% of IT and NICs. The IFS found that income taxes reduce post-tax income inequality, to a greater extent since 2010, but average tax rates within the top 1% vary widely. It concluded that "*There is a strong case for aligning the tax rates on different forms of income, while reforming the tax base so that taxes on business income do not discourage investment*".

https://ifs.org.uk/inequality/top-income-inequality-and-tax-policy/

2. Private client

2.1 Reclaim of overpaid COVID-19 self-employment income support payments

HMRC will write to those who need to repay more than £100 of the fourth or fifth self-employment income support scheme (SEISS) grants, with details of their calculations.

Entitlement to SEISS grants was calculated based on income declared in tax returns. If a tax return was subsequently amended then a proportion of the grants may need to be repaid. These letters will address entitlement to the fourth and fifth grants made under the scheme.

The letters will be issued in April 2022 and will include information on how taxpayers can make the repayments, as well as guidance on time to pay arrangements for those who cannot pay at once. The letters will note the date payment is required by. Penalties of 5% will be issued if payment is over 30 days late, with further penalties at 6 and 12 months. Late payment interest will also apply.

Taxpayers who wish to appeal the calculation will need to write to HMRC within 30 days of the date on their letter, giving reasons for the appeal.

www.tax.org.uk/overpayments-of-seiss-grants-hmrc-update

2.2 HMRC guidance on accessing financial assistance

HMRC has published a short, non-exhaustive list of benefits and reliefs it administers, with links to guidance on how to access them. This is targeted at those on a low income, and is presumably a response to cost of living issues.

The guide covers:

- child benefit;
- tax-free childcare;
- tax relief on work-related expenses;
- the marriage allowance;
- Help to Save;
- child trust funds; and
- time to pay arrangements.

www.gov.uk/guidance/check-what-financial-help-you-can-get-from-hmrc

3. PAYE and employment

3.1 Employer bulletin: April 2022

The latest Employer Bulletin from HMRC provides reminders and updates on tax issues for employers.

It includes information on:

- expenses and benefits reporting for 2021/22;
- new thresholds and rates for 2022/23;
- the increased employment allowance;
- COVID-19 guidance such as declaring support payments and the end of some easements;
- guidance on off-payroll working; and
- making tax digital for VAT.

www.gov.uk/government/publications/employer-bulletin-april-2022

3.2 Tax schemes caught by DOTAS

Two schemes were held to be notifiable under the Disclosure of Tax Avoidance Schemes (DOTAS) rules, by reference to the premium fee and standardised tax product hallmarks.

The respondent company was a tax adviser that advised on two tax schemes. The first involved annuity arrangements. These enabled directors' loan accounts in a close company that would otherwise be left outstanding to be cleared without falling foul of the loans to participator rules. This was done under elaborate funding arrangements, using options over annuities.

The second scheme (the Pre-Funded EBT arrangements) involved an offshore trust with convoluted additional arrangements including director loans and the company purchasing the right to appoint beneficiaries. It was argued that the arrangement might not be caught by DOTAS because the main benefit was said to be the provision of employee benefits.

The tribunal also examined the AML fee arrangements. Both schemes had been widely sold.

Unsurprisingly, notwithstanding ingenious arguments from the company, both schemes were found to be notifiable under DOTAS by reference to the premium fee and standardised tax products hallmark.

HMRC v AML Tax (UK) Limited

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08445.html

3.3 New settlement opportunity for remuneration trust schemes

HMRC has announced a new settlement opportunity for users of disguised remuneration tax avoidance schemes known as 'remuneration trusts' or 'creditor protection trusts'. The settlement opportunity is open for a limited window, with applications and supporting tax calculations to be submitted to HMRC by 31 July 2022.

This is the latest initiative by HMRC to tackle the use of disguised remuneration tax avoidance schemes that avoid the need to pay IT and NIC. The settlement opportunity is restricted to users of remuneration trusts. There are four different terms for settlement depending on the nature of the scheme user. Three of these relates to companies and the other to self-employed individuals or partnerships. Late payment interest will be due on legally enforceable tax and HMRC will consider on a case by case whether or not penalties are payable.

Settlement will bring finality of the tax position to those involved in remuneration trusts. HMRC has stated that those who do not take advantage of this settlement opportunity will be investigated and could face litigation.

Settlement opportunity for users of remuneration trust tax avoidance schemes - GOV.UK (www.gov.uk)

3.4 Updated disguised remuneration scheme guidance

The guidance on settling a particular type of scheme, an arrangement that substitutes loans for income, has been clarified and expanded.

Disguised remuneration schemes are arrangements that pay loans rather than normal income to avoid income tax and national insurance. The loan charge was introduced to tackle the use of such schemes.

A section has been added to the guidance that defines a disguised remuneration avoidance scheme, as well as more information about how the loan charge may apply, and affect individuals and employers.

Other sections include guidance on allowable expenses, which are deductible when incurred wholly and exclusively for the trade, when tax from earlier years might not be collected, and settlement opportunities.

www.gov.uk/government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans/hmrc-issue-briefing-settling-disguised-remuneration-scheme-use-andor-paying-the-loan-charge

4. Business tax

4.1 Consultation outcome on corporate re-domiciliation

The Government sought views on the introduction of a UK corporate re-domiciliation regime, which would make it possible for foreign-incorporated companies to relocate to the UK by moving a company's place of incorporation without the need for a new legal corporate identity. The consultation closed on 7 January and a summary of the responses has now been published.

Overall, respondents were supportive of the Government's proposals but noted that the wider business environment is likely to be the main driver for attracting overseas companies to re-domicile to the UK, rather than a new re-domiciliation regime. The consultation provided a high-level overview of the proposed regime design, but there was limited detail on how it would work in practice. The regime needs to be flexible, simple and sufficiently rigorous. It should also be consistent with existing tax regimes rather than introducing a new or distinct tax treatment for re-domiciled businesses. A two-way regime, permitting both inward and outward re-domiciliation was also supported, but more detail is needed on the tax implications of re-domiciling to and from the UK.

The Government confirmed it intends to introduce a re-domiciliation regime. More detailed analysis and engagement is required to do this. It will therefore continue to develop these proposals taking into account the responses from this consultation, and further consultation as appropriate.

www.gov.uk/government/consultations/corporate-re-domiciliation

5. Tax publications and webinars

5.1 Tax publications

The following Tax publications have been published.

- *Remuneration Trusts: time to settle with HMRC?*
- *Making Tax Digital: building the future of the income tax system*

6. And finally

6.1 Achieving the right AIM?

Hands up if you have ever advised a client to consider investing in Aim shares because they attract IHT Business Relief. Well; if HMRC does indeed de-recognise the Moscow Exchange [item 1.2] if your hand is up you may now have to advise your clients to consider investing in the Moscow Exchange for the same reason. And if you are still advising one of those oligarchs, you may suggest he breaks out the *Sovetskoye Shampanskoye* as those estate planning headaches may just disappear.

You'd rather not? Such are the perils of manipulating the tax system for a political cause. Surely, if the policy is to prevent investment in the Moscow Exchange, there are more appropriate and effective ways to achieve it than requisitioning the tax system for a purpose it is ill-suited to achieve?

Ban the investment; don't skew the tax.

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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