

### 26 January 2022

1.	General	1
1.1	HMRC agent update 92	1
2.	Private client	2
2.1	UT dismisses SDLT appeal on mixed use property	2
3.	Business tax	2
3.1	Consultation on uncertain tax treatment guidance	2
4.	VAT	3
4.1	FTT issues ruling in respect of the supply of temporary accommodation	3
5.	Tax publications and webinars	3
5.1	Webinars	3
6.	And finally	3
6.1	How to fix the national debt	3

## 1. General

### 1.1 HMRC agent update 92

***HMRC has published agent update 92, 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:

- a reminder to declare COVID-19 support payments on tax returns;
- details of the penalty grace period for self-assessment;
- a reminder that the residential property developer tax will come into effect on 1 April;
- a link to the updated technical note on the tax gap and compliance yield; and
- links to help and support for agents.

[www.gov.uk/government/publications/agent-update-issue-92/agent-update-issue-92](https://www.gov.uk/government/publications/agent-update-issue-92/agent-update-issue-92)

## 2. Private client

### 2.1 UT dismisses SDLT appeal on mixed use property

***The UT has confirmed that a house with a self-contained flat on the first floor did not qualify for SDLT multiple dwellings relief (MDR). The only way to access the flat was to go through the main part of the house, and the UT upheld the FTT determination that it was not a separate dwelling.***

The taxpayers initially paid SDLT at the residential rate, but later submitted an amended return to claim MDR, on the grounds that the annexe counted as a separate dwelling. HMRC disallowed the claim, and the FTT agreed with HMRC. The property was a detached house, on the first floor of which was self-contained accommodation of a bedroom, bathroom, and kitchen. This annexe was separated from the rest of the building by a locked door, and had its own boiler and electrical circuit. Although it could only be accessed by going through the main house, the outside door had a separate doorbell for the annexe.

At the UT, the taxpayers argued that the FTT had made errors of law in its decision, as it had not used the correct test for determining what a single dwelling was. The annexe had historically been used by independent occupiers as a single dwelling. In theory another part of the property could be made into a separate flat accessible from the main stairway, but this would leave the ground floor unused.

The UT dismissed the taxpayers' appeal. The FTT had not accepted that the flat had ever been used by independent occupiers, as only hearsay evidence was available. In addition, the use at the date of the purchase was more relevant, and the flat had not been used separately at that point. The FTT would have been entitled to disregard the historic use. Overall there were no errors of law in the FTT decision, the property was not configured as two self-contained living units.

*Doe & Anor v HMRC [2022] UKUT 00002 (TCC)*

[www.bailii.org/uk/cases/UKUT/TCC/2022/2.html](http://www.bailii.org/uk/cases/UKUT/TCC/2022/2.html)

## 3. Business tax

### 3.1 Consultation on uncertain tax treatment guidance

***HMRC is seeking views on revised technical guidance issued to help large businesses comply with the forthcoming notification requirements.***

New measures are being introduced in Finance Bill 2021/22 that will require large businesses to notify HMRC when they adopt tax treatments that are uncertain. These will apply to returns due to be filed on or after 1 April 2022 where the tax advantage is at least £5m. Relevant taxes include CT, income tax (in a partnership or PAYE return) and VAT. 'Large business' for these purposes means businesses with a UK turnover exceeding £200m or a UK balance sheet total exceeding £2bn. A tax treatment will be uncertain and needs reporting if a large business meets at least one of two triggers. These are that a provision has been made in the accounts in respect of an uncertain tax outcome, or the position taken differs from HMRC's known interpretation of the law.

An initial draft of the technical guidance, which set out HMRC's interpretation of the new legislative requirements, was published in August 2021. HMRC has now published revised technical guidance for consultation. The guidance has been updated to remove a previously proposed trigger that would have required notification where there was a substantial possibility that a tribunal or court would rule against the position taken by the taxpayer. The guidance has also been updated to provide more examples, commentary and practical steps for businesses in a number of other key areas, in response to comments raised during the consultation process.

The consultation will run for two weeks and closes on 1 February 2022.

[Technical consultation: Uncertain Tax Treatment guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/consult/technical-guidance-uncertain-tax-treatment)

## 4. VAT

### 4.1 FTT issues ruling in respect of the supply of temporary accommodation

***The taxpayer won its appeal regarding the VAT classification of supplies of temporary accommodation for young people.***

The taxpayer, a charity, had historically treated the supply of temporary accommodation as exempt from VAT on the basis that this was ancillary to the supply of exempt welfare. In 2010, the taxpayer ceased providing welfare services and wrote to HMRC to confirm its intention to charge VAT on the supply of accommodation going forward, as it was akin to hotel accommodation or similar. This in turn would allow the taxpayer to account for VAT at a reduced rate on any stays that exceeded 28 days consecutively. From 2020 onwards, this also allowed the taxpayer to apply the temporary reduced VAT to all supplies of accommodation, under the temporary measures introduced to benefit the hospitality sector.

HMRC subsequently challenged this and took the view that the supply was not a 'licence to occupy land' as it believed the agreements with the tenants did not confer 'exclusive possession of the property'. This meant that although the supplies were subject to VAT at the standard rate, it did not fall under hotel or similar accommodation, so could not benefit from the reduced VAT rate provisions.

The FTT considered the contractual agreements and found that the supplies did represent a licence to occupy land and also that the taxpayer was providing accommodation as a 'hotel or similar establishment'.

*City YMCA London v HMRC* [2021] UKFTT 477 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2021/TC08351.pdf](http://www.bailii.org/uk/cases/UKFTT/TC/2021/TC08351.pdf)

## 5. Tax publications and webinars

### 5.1 Webinars

***The following client webinars are coming up soon.***

- 9 February: S&W Sessions: VAT/Indirect Tax - new legislation coming into effect in 2022

<https://smithandwilliamson.com/en/events/>

## 6. And finally

### 6.1 How to fix the national debt

One man's attempt to repay it has this week concluded without total success, as the HC ruled that the National Fund should be paid over to the Government. This fund was a legacy, left on trust to be invested until it should have reached such a size that it could repay the National Debt, then used for that purpose. The best part of a century on, the fund's substantial growth has been rather outstripped by that of the debt. £600m just isn't going to cut it, so the HC has finally decided that it should just be used to reduce it. This leaves open the question of what would work?

The only person ever to get rid of the National Debt was, of course, Mr Dearly. More famous for being the pet of Pongo, those who have not read *The Hundred and One Dalmatians* for some time may have forgotten the finer details. Well, Mr Dearly was a financial wizard, and was lent the house in Regent's Park by the Government as a reward for wiping out its debt - as well as being given a lifelong exemption from income tax.

There is our solution - offer anyone who can sort out the National Debt this lifelong exemption. Possibly sweeten it with an IHT one too, and the solutions might come rolling in from the modern financial wizards.

A caveat: by the final chapter, the Government has got itself back into debt, and repays Mr Dearly for sorting it out again with an income, on which to use his income tax exemption. (This is just as well given that by then he has rather more dalmatians to feed.) Perhaps a permanent solution is unlikely.

NB: *And finally* understands that these important details may have been left out of the Disney adaptation. The above is written in sole reference to the book, which we recommend to any age of reader.

*HM Attorney General v Zedra Fiduciary Services (UK) Ltd* [2022] EWHC 102 (Ch)

[www.bailii.org/ew/cases/EWHC/Ch/2022/102.html](http://www.bailii.org/ew/cases/EWHC/Ch/2022/102.html)

[https://en.wikipedia.org/wiki/The\\_National\\_Fund](https://en.wikipedia.org/wiki/The_National_Fund)

[https://en.wikipedia.org/wiki/The\\_Hundred\\_and\\_One\\_Dalmatians](https://en.wikipedia.org/wiki/The_Hundred_and_One_Dalmatians)

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		

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