

Tax Update

Contents

1. General	1
1.1 HMRC late payment interest rate rises	1
1.2 HMRC nudge letters on ATED valuations	2
1.3 Report on use of financial institution notices	2
2. PAYE and employment	2
2.1 Gifts of £5m to former employees taxed as earnings	2
3. Business tax	3
3.1 House of Lords comments on R&D reforms	3
4. VAT and other indirect taxes	3
4.1 Property occupied for ten days not main residence	3
4.2 LBTT relief refused as property held for too long	4
4.3 Wording requirement dropped for plastic packaging tax invoices	4
4.4 UT overturns FTT decision that cereal bars are 'confectionary' for VAT purposes	4
5. Tax publications and webinars	5
5.1 Tax publications	5
5.2 Webinars	5
6. And finally	5
6.1 When is a present not a present?	5

1. General

1.1 HMRC late payment interest rate rises

Following the Bank of England interest rate rise, the rate of interest HMRC charges on late tax payments will increase.

HMRC has announced a forthcoming rise in yearly interest rates on overdue tax by 0.5%, following the Bank of England base rate increase from 3.5% to 4%. The rate applied to the main taxes will become 6.5%. The rate of interest on repayments from HMRC will become 3%.

The change will apply from 13 February 2023 for quarterly instalment payments and 21 February 2023 for non-quarterly instalment payments.

www.gov.uk/government/news/hmrc-late-payment-interest-rates-to-be-revised-after-bank-of-england-increases-base-rate--10

1.2 HMRC nudge letters on ATED valuations

HMRC is writing to those who have filed ATED returns but may have valued the property incorrectly. The letter explains the ways in which a disclosure can be made.

As part of the HMRC campaign to tackle non-compliance by offshore corporates owning UK property, another set of nudge letters is being issued. These letters will go to companies that, HMRC believes, have declared the value of a property in an ATED band that does not correspond with its actual value.

The letter asks the recipient to check the tax position, make a disclosure if tax has been underpaid, and let HMRC know if they believe that the correct tax has been paid.

In either case, the letter asks the taxpayer to fill out a certificate of tax position and return it within 40 days of the date on the letter, ticking a box to declare if they have underpaid tax or believe they have paid all that is due.

Care should be taken in completing a certificate of tax position. While there may be an obligation for taxpayers to respond to HMRC, there is no obligation to do so using the certificate provided by HMRC. You can contact our tax dispute resolution team if you need any assistance on these matters at taxdisputes@evelyn.com

www.tax.org.uk/uk-residential-property-and-the-annual-tax-on-enveloped-dwellings-ated-hmrc-letter-campaign

1.3 Report on use of financial institution notices

HMRC has reported for the first time on its use of financial institution notices (FINs). These have improved HMRC's response times to international information requests.

The report considers the period from the introduction of FINs in summer 2021 to spring 2022. FINs can be issued by HMRC officers to compel financial institutions such as banks to disclose information that HMRC reasonably requires for the purpose of either checking the tax position of a known taxpayer or collecting a tax debt of the taxpayer. They were introduced to allow HMRC to meet international standards on time limits for international exchange of information requests.

No taxpayers nor financial institutions had made complaints against the use of FINs, and there have been no judicial review applications. FINs have brought down the average time HMRC takes to respond to international information requests considerably, from 365 days to 197 days. The target is 180 days.

www.gov.uk/government/publications/hm-revenue-and-customs-financial-institution-notice-powers/report-on-hm-revenue-and-customs-financial-institution-notice-powers

www.step.org/industry-news/most-hmrc-fins-not-issued-international-request-purposes

2. PAYE and employment

2.1 Gifts of £5m to former employees taxed as earnings

A company undergoing a takeover made gifts to two former employees to repay loans. The loans were taken out to acquire shares, but had fallen in value. The FTT found for HMRC that the payments or gifts were earnings, as they were ultimately 'from' employments.

The taxpayer, a company, made gifts to two former employees. The gifts were to enable them to repay loans that they had taken out to acquire shares. The shares had been acquired as a result of their employment and had fallen significantly in value. The company was being purchased by another company at the time it made the gifts. HMRC issued PAYE determinations to the company, holding that the gifts were earnings from their former employments.

The taxpayer argued that the gifts were not earnings, as the employments were not the reason the gifts were made. The employments had ceased years earlier, and the payments were made for commercial reasons to remove an obstacle to the sale of the company, as the company had given indemnities to the former employees. The payments therefore derived from rights held under the share arrangements, and were just payments for release from the indemnities, not related to the employments.

The FTT ultimately agreed with HMRC and dismissed the taxpayer's appeal, after hearing considerable evidence. As the gifts were 'from' the former employments, they were taxable as earnings, and the PAYE determinations were upheld.

Different PAYE, national insurance and reporting obligations may exist where loans to employees or directors are effectively waived. Where there is uncertainty, taxpayers should consider getting confirmation of the tax treatment to prevent unexpected outcomes.

Gain Capital Ltd v HMRC [2023] UKFTT 61 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08703.html

3. Business tax

3.1 House of Lords comments on R&D reforms

The proposed changes to R&D tax relief announced in July 2022 are currently going through the legislative process. Recommendations from the Economic Affairs Finance Bill Sub-Committee in the House of Lords include a call for the advance notification requirement to be scrapped.

The reform of R&D tax relief included in Finance Bill 2022-23 is intended to combat abuse. The proposed changes include a requirement to provide HMRC with more detailed information about the nature of the R&D claim. It also introduces a requirement to provide advance notification of an intention to make an R&D claim. The committee noted that the changes will not be effective unless supported by improvements to HMRC's compliance capability, including a more focused and targeted approach to identifying suspect claims, greater expertise and potentially more resources.

The committee considered the requirement for advance notification 'uniquely onerous' and called for it to be dropped from the Bill. Fraud and error could be mitigated before claims are made if HMRC improved its guidance expanded the existing advance assurance process. It welcomed the increased scope of qualifying expenditure but suggested that a transitional relief was needed for overseas expenditure that would no longer qualify, and that a general awareness campaign was needed.

<https://committees.parliament.uk/committee/230/finance-bill-subcommittee/news/185805/lords-committee-publishes-report-on-research-and-development-tax-relief-and-expenditure-credit>

www.att.org.uk/technical/news/peers-call-%E2%80%9Conerous%E2%80%9D-rd-claims-advance-notification-proposal-be-dropped

4. VAT and other indirect taxes

4.1 Property occupied for ten days not main residence

The FTT has denied a claim for SDLT relief, finding that a property was not the taxpayer's only or main residence. He had decided before moving in that his long term home would be elsewhere, and only lived at the property for ten days.

The taxpayer bought a property in need of renovation, and moved in that week. He slept there, moved his clothes in, and entertained friends, but moved out after ten days. He sold the property to his parents after three months ownership. He claimed SDLT relief on the grounds that the new property he purchased was a replacement for his only or main residence. He did not register himself as the owner with the electricity company.

The taxpayer argued that he had intended to make the first property his permanent home, but decided to move on after he began to live there. The FTT found that he had made the decision to move elsewhere before moving in, as he had put down a holding deposit on the next property. Due to this finding about his intentions, when moving in, the property was never his only or main residence. The very short occupation contributed to this finding.

The FTT followed the decision in *Goodwin*, where a house occupied for five weeks was found to be temporary accommodation, rather than a permanent home, though this was in the context of CGT. The mere fact that an occupation has occurred does not create a residence.

Cohen v HMRC [2023] UKFTT 90 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08718.html

Goodwin v Curtis (Inspector of Taxes) [1998] STC475

<https://vlex.co.uk/vid/goodwin-v-curtis-inspector-806101437>

4.2 LBTT relief refused as property held for too long

A taxpayer who sold his original home over 18 months after purchasing a replacement has been refused a refund of the additional dwelling supplement (ADS). Although the sale was agreed within 18 months, the rules are clear that the sale must complete in that period to obtain a refund.

The taxpayer bought a second property (B) while he still owned property A. ADS was therefore charged on the purchase. He arranged for property A to be sold, then applied for an ADS refund. RS informed him that the refund could not be processed before completion. Completion ultimately occurred over 18 months after the taxpayer had purchased property B, so a refund was refused. The LBTT rules only allow relief if the first property is sold less than 18 months after the second is purchased.

The taxpayer appealed, as the sale had been agreed within the 18 month period. The tribunal, however, upheld RS's decision to refuse his claim, as the rules were clear and there was no scope for discretion in the legislation.

Tavendale v RS [2023] FTSTC 1

[www.taxtribunals.scot/decisions/\[2023\]%20FTSTC%201.pdf](http://www.taxtribunals.scot/decisions/[2023]%20FTSTC%201.pdf)

4.3 Wording requirement dropped for plastic packaging tax invoices

The Government had planned that when a business purchased goods on which plastic packaging tax (PPT) had been paid, the invoice it received would have to state the fact that PPT had been paid. This requirement will not be introduced, though businesses are encouraged to make their customers aware of PPT, and work with them to increase the amount of recycled plastic used.

PPT came in on 1 April 2022. The intention was that all invoices for goods on which PPT had been paid would be required to include wording stating that the PPT had been paid. The introduction of this requirement was deferred, and it has now been dropped altogether.

HMRC encouraged businesses liable to PPT to provide information about the tax paid on invoices to business customers, even though it will no longer be a legal requirement.

The removal of formal invoicing requirements will be a relief for many businesses. The question of what should be disclosed on invoices and how the cost of PPT should be recovered is now a commercial decision and can be implemented in the way that works best for the business.

If you would like to speak to our specialist team about invoicing or adjustment of prices to account for PPT charges please contact [Jayne Harrold](#), [Dale Cambridge-Sharpe](#) or [Hugh Doherty](#).

www.gov.uk/guidance/record-keeping-and-accounts-for-plastic-packaging-tax#creating-invoices

www.tax.org.uk/plastic-packaging-tax-invoicing-update

4.4 UT overturns FTT decision that cereal bars are 'confectionary' for VAT purposes

The UT has ruled that the FTT erred in law in deciding that cereal bars are confectionary, so subject to VAT at the standard rate. The case has been referred back to the FTT for a final decision.

The taxpayer sold certain 'cereal bars' to the public and accounted for VAT on the sale at the standard rate. The taxpayer then determined that the cereal bars met the conditions for zero rating and subsequently submitted a claim for a refund of the VAT from HMRC.

The FTT decided in favour of HMRC, deciding that the cereal bars were 'confectionary', which resulted in the taxpayer appealing to the UT.

The UT examined the make up of the cereal bars in detail and found that the FTT had not given due consideration to the perceived healthiness of the cereal bars, nor the lack of other components that would ordinarily be found in confectionary, including sugar, butter and flour.

The UT ruled that the FTT had erred in law, but as it did not have sufficient evidence to rule on the matter, the case was referred back to the FTT to determine the VAT position.

WM Morrison Supermarkets PLC v HMRC [2023] UKUT 20 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2023/20.html

5. Tax publications and webinars

5.1 Tax publications

The following Tax publications have been published.

- [Year-end tax planning with an international twist](#)
- [Tax planning in tighter times](#)

5.2 Webinars

The following client webinars are coming up soon.

- 15 February - [Talking Tax and Tax Year End](#)
- 16 February - [Editions by Evelyn Partners – National Minimum Wage](#)
- 23 February - [The financial implications of a divorce or dissolution](#)

6. And finally

6.1 When is a present not a present?

The taxpayers in 2.1 were having such a nice time. £5m as a gift from a former employer? What could go wrong! Well, just a little something called tax. The FTT has seen it all before though - the *Mullens* case had £37m that turned out not to be gifts, and the line between earned and given can be very fine on occasion.

Although, unlike countries including Ireland, the UK has no automatic 'gift tax', there are still many circumstances where a thank you letter is not enough to satisfy HMRC. In IHT alone, potentially exempt transfers have the caveat in the name, and gifts with reservation of benefit can be more of a headache than just what you've always wanted.

Still, all these cases have one feature in common. Each recipient is better off than before the 'gift', despite tax. What was that about gift horses?

Mullens v HMRC [2021] UKFTT 131 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2021/TC08112.html

www.revenue.ie/en/gains-gifts-and-inheritance/gift-and-inheritance-tax-cat/index.aspx

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	

[Evelyn.com](https://www.evelyn.com)

Offices: For details of all Evelyn Partners' offices, check our locations [here](#).

Evelyn Partners LLP: Regulated by the Institute of Chartered Accountants in England and Wales for a range of investment business activities. Evelyn Partners LLP is an independent network member of CLA Global Limited. See <https://www.claglobal.com/disclaimer/>.



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

We have taken care to ensure the accuracy of this publication, which is based on material in the public domain at the time of issue. However, the publication is written in general terms for information purposes only and in no way constitutes specific advice. You are strongly recommended to seek specific advice before taking any action in relation to the matters referred to in this publication. No responsibility can be taken for any errors contained in the publication or for any loss arising from action taken or refrained from on the basis of this publication or its contents. © Evelyn Partners 2023.