19 April 2023

A round-up of recent issues

Tax Update

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1. General

1.1 New monthly Tax Update

We are changing the format of this newsletter from a weekly update to a more focussed monthly edition.

We look forward to sending the first monthly Tax Update to you in May.

1.2 New guidance for the mandatory disclosure rules

HMRC has issued new guidance on how and what to report under the mandatory disclosure rules (MDR) following their introduction to replace DAC6.

The first guidance note explains how to register for reporting, with practical points such as when to do so, and what is needed for the registration form. The second is on reporting, covering who should report, what they need to report, and how to send in a report.

www.gov.uk/guidance/register-to-report-a-cross-border-arrangement-mdr

www.gov.uk/guidance/report-a-cross-border-arrangement-to-hmrc-mdr

1.3 Updates to HMRC's digital disclosure service

HMRC has updated and simplified the process of making a disclosure via the digital disclosure service (DDS).

HMRC is migrating the DDS from existing i-Form technology to a new more accessible platform from 6 April 2023. The existing start page for making a disclosure to HMRC now contains links to the new reporting service, which can be accessed through a Government Gateway account. Partial disclosures that had not been submitted by 5 April 2023 will need to be re-entered into the new system, as the old system has been removed. HMRC is using this as an opportunity to further clarify and simplify the process of making a disclosure, with the new process breaking down the process into smaller more manageable sections. The DDS is HMRC's preferred route for taxpayers and agents to submit disclosures as it allows HMRC to allocate specific reference numbers, effectively triage the disclosures and track progress with post-disclosure correspondence. Supplementary letters can also be sent to HMRC alongside a DDS submission to provide further supporting information. Our Tax Disputes team are available to assist with any queries in relation to the DDS.

www.tax.org.uk/hmrc-s-digital-disclosure-service-update

1.4 Debts released when settlement agreement signed

The FTT has found that debts were released at the time a settlement agreement was entered into, so the close company shareholders were taxable on the written off portion of loans in that tax year.

After financial difficulties, a close company, of which both the taxpayers were directors, went into liquidation. They owed the company just over £1m. As part of the liquidation, they entered into a settlement agreement whereby they paid £100,000 in instalments and the rest of the debt was released. A clause stated that if the payments were not made as agreed, then the whole of the debt would become payable. The issue at the FTT was whether or not the debt was released in the tax year of the settlement agreement. The taxpayers argued that the debt was not released until they had finished making the payments required under the agreement.

On analysis of the legislation and contracts, the FTT agreed with HMRC that the debt was released when the agreement was signed. The agreement was labelled as in full and final settlement, and referred to a release, so the main transaction of the release was made then. The close company directors were taxable on the forgiven loans in 2013/14.

England & Anor v HMRC [2023] UKFTT 313 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08770.html

2. Private client

2.1 HMRC stops sending automatic paper returns

Many taxpayers who cannot use the digital service, or prefer to file by paper, will have to ring HMRC to request a paper return.

HMRC has reduced the number of paper tax returns issued this year. Those who normally file on paper have been sent a paper return if they are over 70 or visually impaired, but other taxpayers have been sent a notice to file a return. Included with this is guidance on how to file online. The paper return will not be available to download from the website, so anyone who requires one will need to ring the HMRC helpline and ask for one to be posted to them.

This is part of the wider "digital by default" approach.

www.icaew.com/insights/tax-news/2023/mar-2023/thousands-of-self-assessment-taxpayers-to-be-moved-to-digital-filing

2.2 Taxpayers can still nominate tax repayments

Although assignments of income tax can no longer be made, the ICAEW is reminding taxpayers that they can still nominate someone to receive a repayment.

Following widespread fraud, the Government removed the system under which a taxpayer could assign their right to receive a tax repayment to someone else. Taxpayers can still however nominate someone to receive a repayment on their behalf. Nominations can be withdrawn by the taxpayer at any time, whereas assignments are legally binding, and can only be cancelled if the taxpayer and assignee agree.

www.icaew.com/insights/tax-news/2023/apr-2023/nominations-of-tax-repayments-remain-valid

2.3 Pensions scheme made unauthorised payments

A scheme designed to allow members to access pension scheme benefits without tax consequences has been defeated at the FTT.

A group of pension schemes were involved in an arrangement. Two individuals would each transfer their pensions into separate new schemes. One scheme then made a loan to the individual whose pension it was not, and the other scheme would reciprocate. The taxpayers argued that there were no tax consequences, as the loans were not made from an individual's own pension.

The FTT agreed with HMRC in finding that this arrangement gave rise to tax consequences. The loans were unauthorised payments made by the pension schemes, which caused charges on the member whose pension it was. The scheme sanction charges were also upheld.

Dalriada Trustees Ltd & Ors v HMRC [2023] UKFTT 314 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08771.html

2.4 Taxpayer wins time limit appeal at UT

The UT has found that there was insufficient evidence that a taxpayer, or someone acting on his behalf, had acted carelessly or deliberately, so the extended time limits did not apply and the discovery assessments, which had been upheld by the FTT, were invalid.

In 2016, HMRC issued the taxpayer with three discovery assessments, one more than four years old and two more than six. The FTT held that they had been issued in time, as the taxpayer or his agent had acted carelessly in one case, and deliberately in the other two so the extended time limits applied. The issues related to understatement of profits in a successful business.

The UT overturned the FTT judgement, finding for the taxpayer on the basis of a lack of evidence. The FTT had not given adequate reasons for its finding that the accountants had acted carelessly, particularly as HMRC's case had been that it was the taxpayer who acted carelessly. The firm had given no evidence and was not cross-examined, so in the absence of knowing how it had reached its conclusions a finding could not be made against it. Similar arguments applied to the FTT's reasoning for deliberate behaviour.

Danapal v HMRC [2023] UKUT 86 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2023/86.html

3. Trusts, estates and IHT

3.1 No IHT reduction given for debt

A debt created using loan notes to reduce the value of a trust to zero was not deductible in calculating IHT on the beneficiary's death.

The deceased had been the principal beneficiary of a family trust. This held a property, had indemnified loan notes such that it was essentially the debtor, and held two investment bonds. The executors argued that the value of the loan notes should be deducted from the deceased's estate for IHT.

The FTT found that under the arrangements, although the loan notes were a liability, and loan notes were permitted to be used by the recipient, their value was essentially nil, so no deduction could be given.

Pride v HMRC [2023] UKFTT 316 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08776.html

4. PAYE and employment

4.1 IR35 did not apply to a direct contract

The FTT found that Gary Lineker's work for the BBC was not caught by the IR35 rules, as he provided services under a direct contract rather than through an intermediary.

The taxpayer worked through a general partnership in which he and his now former wife were the two partners. He provided services to the BBC from 2013 under a contract signed by both partners in that capacity.

On analysis of the legislation, the FTT found that IR35 can in theory apply to partnerships as well as personal service companies, but that it could not apply to contracts made directly between the worker and the recipient of services. There was no intermediary in a contract signed by the worker rather than a personal service company.

This was enough for the FTT to find for the taxpayer without further analysis. This is the first case involving IR35 and a partnership to come to tribunal.

Lineker & Anor v HMRC [2023] UKFTT 340 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08774.html

4.2 HMRC issues discovery assessments for April 2019 Loan Charge

HMRC has issued a batch of discovery assessments to taxpayers before 6 April 2023 to avoid becoming time-barred from collecting additional tax due.

The April 2019 Loan Charge is a tax charge that applies in certain conditions where, as at 5 April 2019, loans were outstanding from arrangements caught by the disguised remuneration rules (under Part 7A, ITEPA 2003).

The normal time limit for HMRC to issue a discovery assessment is four years from the end of the tax year, but this is extended in certain circumstances. As the Loan Charge reporting requirement arose for the 2018/19 tax year, HMRC has issued a batch of discovery assessments on or before 5 April 2023 to ensure it doesn't fall out of time to collect the tax due under the normal time limit.

With these assessments, HMRC is seeking to address taxpayer non-compliance with the loan charge. This includes, for example, where the loan charge may have been fully omitted from an individual's tax return, where HMRC disagrees with the value entered or where there is a conflict over whether the employer or employee should be liable to pay the additional tax. HMRC has stated previously that it is aware of a number of schemes designed to circumvent the loan charge rules and maintains that these do not work. There are also additional liabilities which may be in scope (under Section 222/223, ITEPA 2003), as well as interest and potential penalties, depending on the circumstances. Our Tax Disputes team have a lot of experience handling loan charge and disguised remuneration cases with HMRC and can assist if any discovery assessments are received.

www.tax.org.uk/loan-charge-and-section-222-charges

5. Business tax

5.1 CA finds for HMRC on business premises renovation allowances

The CA has overturned a UT decision on how to determine eligibility for business premises renovation allowances (BPRA). The primary issue was whether or not the words "on or in connection with the conversion" should be construed narrowly or widely.

The taxpayer paid a developer to convert a flight training centre into a hotel near Luton airport and claimed BPRA on the full amount. BPRA is a specific type of capital allowance and was abolished in April 2017. HMRC rejected approximately £5m of the £12.4m claim. The central issue was whether or not the expenditure was "on or in connection with the conversion, renovation or repair" of the building, as was required to qualify for BPRA.

The FTT found that the correct approach was to split the total development cost into discrete elements based on what the developer did with the money received from the taxpayer. It then determined the availability of BPRA for each element of the cost in accordance with whether or not it was incurred on or in connection with the conversion of the site. The UT rejected this approach. It found that the central question is 'what did the taxpayer "get for its money"?' In this case, the taxpayer acquired a series of discrete rights and obligations from the developer. The UT split the total development cost between those rights and obligations, and then determined whether or not each element was incurred on or in connection with the conversion. On this basis, it remade several of the FTT's decisions, and most of the disputed items except interest and legal fees were allowed. Both parties cross appealed.

The CA found that both tribunals had incorrectly given the words "on or in connection with the conversion" too broad a meaning. This should be construed relatively narrowly, meaning that the expenditure incurred must have a strong and close nexus with the physical work on the building to qualify for BPRA. It therefore restricted the claim back to HMRC's original narrow view of what should be allowed and dismissed the taxpayer's appeal.

London Luton Hotel BPRA Property Fund LLP v HMRC [2023] EWCA Civ 362

www.bailii.org/ew/cases/EWCA/Civ/2023/362.html

5.2 R&D tax relief: new HMRC guidance and forms

Various sections of the R&D tax relief guidance have been updated following the reform to R&D tax relief from 1 April 2023. This includes new guidance on the steps to follow before claiming R&D tax relief for accounting periods beginning on or after 1 April 2023 and for claims from 1 August 2023.

The new digital forms required to notify HMRC in advance about a claim and to provide additional information to support the claim are now available. HMRC has published two new guidance notes that explain when these digital forms must be submitted, who can submit, what information will be required, and how to submit. The guidance includes the links to the digital forms.

HMRC has also updated its guidance on how to claim under the two R&D schemes to reflect the changes in rates of R&D tax relief from 1 April 2023, changes to qualifying expenditure, how to calculate the reliefs available and the steps to now follow before claiming.

www.gov.uk/guidance/tell-hmrc-that-youre-planning-to-claim-research-and-development-rd-tax-relief www.gov.uk/guidance/submit-detailed-information-before-you-claim-research-and-development-rd-tax-relief

www.gov.uk/guidance/corporation-tax-research-and-development-tax-relief-for-small-and-medium-sized-enterprises

www.gov.uk/guidance/corporation-tax-research-and-development-tax-relief-for-large-companies

6. VAT and indirect taxes

6.1 Energy saving materials

The zero-rating for the installation of energy saving materials available in England, Wales and Scotland has been extended to Northern Ireland.

With effect from 1 May 2023, the supply of energy saving materials in Northern Ireland will also benefit from the same zero-rating provisions as Great Britain, which apply until 31 March 2027.

www.gov.uk/government/publications/vat-relief-for-energy-saving-materials-to-northern-ireland

6.2 Services supervised by registered pharmacists

As announced in the recent budget, the VAT exemption has been extended to allow medical services carried out by staff directly supervised by pharmacists, to benefit from VAT exemption from 1 May 2023.

Medical services supervised by a wide range of health professionals have long benefitted from VAT exemption. The changes will bring the treatment of pharmacists in line with other health professionals.

With approximately 14,000 community pharmacies across the UK it is hoped the measures will encourage more medical services to be provided in these settings, reducing pressure on GPs and the NHS.

www.gov.uk/government/publications/vat-exemption-to-cover-services-supervised-by-pharmacists

6.3 Plastic packaging tax webinar

Plastic packaging tax has now been in place for a year. The latest statistics from HMRC are that just over 3,500 of an expected 20,000 businesses have registered.

HMRC will be focussing on importers of packaged goods over the coming months to check whether they should have registered.

Our specialist environmental taxes team are running a plastic packaging tax basics webinar on Friday 21 April at 10am to recap on the basics of plastic packaging tax for those businesses that have not registered, are considering registering, or are early on their plastic packaging tax compliance journey. If you want to attend the webinar, please register using this link: Plastic packaging tax basics.

We will be doing a series of deep dive webinars on aspects of plastics packaging tax for businesses that are further advanced in their plastic packaging tax journey over the coming weeks. If there are any aspects of the tax that you would like our team to do a deep dive on, please contact Jayne Harrold at Jayne.harrold@evelyn.com.

6.4 50 years of VAT

On 1 April 2023 VAT celebrated its 50th birthday, since replacing purchase tax in 1973.

The standard rates have changed, through 10%, 8%, 15%, 17.5% and 20%, with further reduced and temporary rates over the years.

With VAT being the third highest revenue raiser for the government we will no doubt have another 50 years of complexity for businesses and advisers to navigate.

7. Tax publications and webinars

7.1 Tax publications

The following Tax publications have been published.

- Getting it right for your business

7.2 Webinars

The following client webinars are coming up soon.

- 21 April - Plastic packaging tax basics
- 25 April - Editions by Evelyn Partners: How to optimise and simplify your transfer pricing

8. And finally

8.1 All change

The end of the tax year is always a peculiar time, as although unnoticed by much of the population it is the moment when the majority of announced measures actually come into effect. Plans for 6 April 2023 changed several times with the flurry of 2022 tax announcements, but the final tally includes everything from pension allowance changes to a drop in the additional rate threshold. Many of the measures will not really be felt until the next tax bill arrives, but they are here with the Spring nonetheless.

Our other change will be coming in from May: our new monthly update (see 1.1).

Happy new tax year, and we look forward to writing to you next in May.

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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