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## 1. Private client

### 1.1 HMRC penalty guidance updated for follower notices

***The guidance on follower notices and accelerated payments has been updated to cover penalty reductions for taxpayer co-operation, when it is reasonable for a taxpayer to appeal, and for multiple grounds of appeal.***

The HMRC guidance now sets out specific percentages for the maximum reductions for each way in which a taxpayer can co-operate, for various circumstances. A worked example is included.

Follower notices are intended to discourage appeals in cases where the planning has been shown to be ineffective in another case. The guidance now explains in what circumstances it is reasonable for a taxpayer not to take corrective action, but to pursue an appeal. Examples are included.

A section on multiple grounds of appeal has also been added.

[www.gov.uk/government/publications/follower-notices-and-accelerated-payments/follower-notices-and-accelerated-payments](http://www.gov.uk/government/publications/follower-notices-and-accelerated-payments/follower-notices-and-accelerated-payments)

## 1.2 Appeal against tax-gearred surcharge dismissed

***The UT has found that a taxpayer had no reasonable excuse for not paying the tax demanded by a closure notice, so the tax-gearred surcharges were upheld. He did not supply evidence as to why he had not paid, so it could not tell if his reason was valid or not.***

The taxpayer was issued with closure notices, and did not pay the tax demanded. He applied for judicial review of HMRC's decision to commence bankruptcy proceedings. Once these were dismissed, he paid the tax and interest due. HMRC issued surcharge notices calculated as percentages of the outstanding tax due to the late payment.

For those closure notices that the FTT had found to be valid, the taxpayer argued at the UT that he had a reasonable excuse for non-payment. This was that he believed no payment to be due, as the closure notices did not amend his self-assessments, or that he had a real prospect of success on appeal, or that in fairness he should not have been expected to pay the tax before the judicial review proceedings concluded.

The UT remade the FTT's decision but still found for HMRC. There was no evidence as to why he did not pay the tax, so the UT could not be satisfied as to his reason for non-payment. On the judicial review point, delaying payment until proceedings were concluded was objectively reasonable. The gaps in the evidence however outweighed this, and the failure to pay had continued after the proceedings began to fail. The UT therefore dismissed the appeal but on a different basis than the FTT.

*Archer v HMRC* [2022] UKUT 61 (TCC)

[www.bailii.org/uk/cases/UKUT/TCC/2022/61.html](http://www.bailii.org/uk/cases/UKUT/TCC/2022/61.html)

## 1.3 Information notice taxpayer win in transfer of assets abroad investigation

***In a case where a discovery assessment was already under appeal, the FTT has upheld an appeal against an information notice. The taxpayers did not want to provide more information for a resolution before the hearing for that appeal, so no useful purpose would be served. The additional information was not reasonably required by HMRC to check their tax positions.***

The taxpayers were a married couple who owned shares in a company in whose management they were involved. Shares were transferred by the wife to her non-UK resident father-in-law, who received dividends. He made loans to the couple, and paid some school fees for their children. HMRC opened an enquiry on the premise that either the transfer of assets abroad rules or the settlements legislation applied, and issued information notices. These requested a list of bank accounts for each couple, with bank statements, including for accounts of their minor children.

The taxpayers appealed these notices on the grounds that HMRC already had enough information to determine the tax liability. It had already issued discovery assessments that they had appealed, so requesting further information was unreasonable. They stated that they had already provided HMRC with full explanations of the payments made and received by the extended family. This included schedules of dividends, loan agreements, evidence of how the funds were used for the couple's benefit, details of family Wills, and how properties were owned.

HMRC stated that the information was needed to prove that the couple did not beneficially own the shares nor use the dividends. The FTT upheld the taxpayers' appeal, finding that as the discovery assessment was under appeal, no useful purpose would be achieved by ordering compliance with the information notice before proceedings. The information was not reasonably required. The taxpayers did not want a resolution before that appeal, so their refusal to provide information was allowed.

*Yerou & Anor v HMRC* [2022] UKFTT 79 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08410.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08410.html)

## 2. Business tax

### 2.1 CA upholds UT decision that gas cavities were not plant

***The CA has rejected the taxpayers claim that if an item performs any plant-like function, it must qualify as plant.***

The taxpayers had incurred expenditure on leaching and de-brining underground cavities to permit the safe storage of gas before it re-entered the national energy transmission system. HMRC denied claims for capital allowances on those costs. The FTT and UT found in favour of HMRC. The primary question was whether or not the cavities were 'plant' for the purposes of capital allowances.

The CA held that whether or not an item qualifies as plant is a question of fact and degree. It agreed with the UT that the correct approach is to consider which function is more appropriate, plant or premises. This is the 'premises test', which is widely documented in case law. The CA found no error of law in the UT's application of this test, so the original decision that the cavities were not plant could not be overturned.

*Cheshire Cavity Storage 1 Limited (and another) v HMRC* [2022] EWCA Civ 305

[www.bailii.org/ew/cases/EWCA/Civ/2022/305.html](http://www.bailii.org/ew/cases/EWCA/Civ/2022/305.html)

### 2.2 FTT finds that film partnership scheme was an investment not a trade

***The FTT upheld HMRC's closure notice in respect of a film LLP, reducing the available trading loss to nil.***

The taxpayer, an LLP, together with a number of group entities entered into a complex series of transactions relating to the film version of Les Misérables. The taxpayer made payments of approximately £3m, which it claimed as a trading loss on the basis it was carrying on a trade of providing print and advertising services in return for the right to receive amounts in respect of the film's profits. As part of the series of group transactions, those services were subcontracted to a group entity.

The FTT found that the activities constituted an investment, not a trade. No services were actually being supplied by the taxpayer; there was simply a single payment for rights to potential future payments, nor did the taxpayer have a view to profit. There was no practical likelihood of the taxpayer making a profit. It was also indifferent to whether or not a profit arose. The FTT also found that the accounts were not compliant with GAAP as it did not reflect the commercial substance of the transaction, and the actual expense that could have been recognised would have been far lower than the £3m. Finally, the FTT concluded that none of the payments were deductible as they were not wholly and exclusively for the purposes of the assumed trade and were capital in nature. The taxpayer's appeal was dismissed.

*Acomar Productions LLP v HMRC* [2022] UKFT 00074 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08405.pdf](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08405.pdf)

### 2.3 New HMRC guidance on qualifying asset holding company regime

***HMRC guidance on the new qualifying asset holding company (QAHC) regime is now included within the Investment Funds Manual. The new regime provides a simplified basis of taxation for holding companies of alternative investment funds and comes into effect from 1 April 2022.***

The QAHC rules aim to ensure that UK investors are only taxed as if they had invested in the underlying assets directly and the QAHC pays no more tax than is proportionate to the activities it performs. The guidance includes detail on how to enter the regime, returns and notifications required, the tax treatment of certain income and gains, and other tax issues such as stamp duty, transfer pricing and corporate interest restriction.

## 3. Tax publications and webinars

### 3.1 Tax publications

*The following Tax publications have been published.*

- [The end of the tax year - what should you be thinking about?](#)

### 3.2 Tax podcasts

*The latest episode is available now.*

- [The end of tax year, are you ready for 5th April?](#)

### 3.3 Webinars

*The following client webinars are coming up soon.*

- 23 March - Introducing robotics and real time consolidation: What's in it for me?
- 31 March - Introduction to the Partnership

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

## 4. And finally

### 4.1 Beware the (23<sup>rd</sup>) of March

This week's fun fact? Julius Caesar was assassinated on Tax Day. Well, in Rome in 44 BC it was the deadline for the Romans to settle debts, including to the Government, so close enough. Quite apart from all those warnings about the Ides, perhaps the fact that it was a day of settling scores should have kept him cautious.

Personally, we will save our caution for Wednesday next week: the Spring Statement.

[https://en.wikipedia.org/wiki/Ides\\_of\\_March](https://en.wikipedia.org/wiki/Ides_of_March)

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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