

Tax Update

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1. General

1.1 Spring Finance Bill to be published on 23 March

The Financial Secretary to the Treasury has confirmed the date on which the Finance Bill will be published after the Budget.

The Finance Bill will be published on 23 March 2023. This will be the second Finance Act in 2023, as Finance Act 2023 was enacted on 11 January. Draft legislation has been published previously that did not form part of that Act, which we expect to be contained in the new Bill. This includes the changes to CGT on divorce, reforms to research and development tax relief, the electricity generator levy, and the anti-avoidance rule for non-domiciled individuals swapping shares in a UK close company for shares in a non-UK company, although this is by no means exhaustive. The new Bill will also contain new Budget announcements.

<https://questions-statements.parliament.uk/written-statements/detail/2023-03-03/hcws600>

www.icaew.com/insights/tax-news/2022/nov-2022/what-to-expect-from-the-two-finance-bills

2. Private client

2.1 Discovery assessments not valid as taxpayer defrauded by agent

The FTT found that returns submitted with false enterprise investment scheme (EIS) claims were filed by an agent without the "knowledge or connivance" of the taxpayer, so the discovery assessments into them were invalid.

A colleague of the taxpayer suggested that he might be entitled to a rebate for working offshore, and recommended an agent to him. The taxpayer received refunds for two years in a row before finding that he owed money to HMRC. The agent, who has been reported to the Serious Fraud Office, had filed tax returns on his behalf including claims for EIS relief, though it was aware that the taxpayer had never made EIS investments. The majority of the refunds obtained in this way were kept by the agent.

HMRC argued that the taxpayer was liable to pay back the refunds in full as specified by the discovery assessments. He had authorised the agent online by giving them a code. The taxpayer argued that he had not authorised the agent to file returns on his behalf, and had never authorised the EIS claims to be made.

The FTT found for the taxpayer. It believed his statement that the claims had been made without his knowledge, and that he had not known that tax returns would be submitted, despite references to investments in email correspondence. As the returns had therefore not been submitted on behalf of the taxpayer, the FTT found that the discovery assessments were not valid. It will be interesting to see if this is appealed as the technical basis for the decision was not set out as clearly as it could have been, although the outcome seems fair for an individual who had been unknowingly defrauded.

Robson v HMRC [2023] UKFTT 226 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08746.html

3. Trusts, estates and IHT

3.1 Correspondence with HMRC on IHT underpayments published

HMRC has clarified some technical points on its interpretation of IHT legislation in response to questions.

The editors of Dymond's Capital Taxes corresponded with HMRC about the scope of one section of the IHT legislation in September 2022, and the CIOT has now been permitted to publish this correspondence.

The details of this are highly technical, but cover time limits for raising assessments into nil returns, the date on which the time limit for HMRC to raise an assessment starts to run, and when the 20 year assessment limit might apply.

www.tax.org.uk/correspondence-about-the-scope-of-ihta-1984-s240-september-2022

4. PAYE and employment

4.1 Deadline for voluntary NIC contributions extended

Taxpayers will now have until 31 July 2023 to rectify gaps in their contribution record as far back as April 2006. From August, it will only be possible to do this for the previous six tax years.

The extended window to make voluntary NI contributions, was due to close in April 2023, reverting to a much more restrictive system, but this has now been delayed to 31 July 2023 due to concerns about the public missing this important deadline. It will only be possible to remedy gaps in the NIC record from 6 April 2006 to 5 April 2017 until 31 July 2023, when the opportunity will close. Thereafter, only the previous six tax years can be remedied.

Even if paid between 6 April and the new 31 July deadline, class 3 top-up contributions can be paid at the lower 2022/23 rates rather than the 2023/24 ones.

Many benefits depend on the NIC record, and the state pension entitlement can vary hugely based on how many years of contributions have been made. Individuals are advised to check their national insurance records as soon as possible, which can be done online, and carefully consider whether or not additional contributions would be worthwhile, of class 2 NI or Class 3. It is also important to check for discrepancies where you think HMRC records may not reflect your full contribution history.

Populations to be mindful of are internationally mobile employees who have worked in 'rest of the world' countries such as India, Australia, Singapore etc. who may have not kept their NI records up to date. These individuals should consider requesting a state pension forecast from HMRC to ascertain and gaps in historic coverage, and consider making top up contributions to protect state pension entitlements.

www.gov.uk/government/news/taxpayers-given-more-time-for-voluntary-national-insurance-contributions

4.2 New HMRC guidance on off-payroll working

HMRC has published three guidance notes on off-payroll working (IR35) for different types of contracts. These are not a departure from current guidance, but designed to aid understanding of when the IR35 rules apply.

The note for clients explains what someone receiving services from a worker through an intermediary or personal services company needs to know about the IR35 rules including to whom they apply and what the end-client needs to do.

The other two guidance notes are for contractors or intermediaries, whose workers provide services to small companies and medium to large companies. These guidance notes explain the rules from these perspectives, and the responsibilities of the intermediaries, workers and end-clients.

The guidance also clarifies when offshore intermediaries are within the scope of the IR35 rules.

www.gov.uk/guidance/off-payroll-working-for-clients

www.gov.uk/guidance/off-payroll-working-for-intermediaries-and-contractors-providing-services-to-the-public-sector-or-medium-and-large-clients-in-the-private-sector

www.gov.uk/guidance/off-payroll-working-for-intermediaries-and-contractors-providing-services-to-small-clients-in-the-private-sector

5. Business tax

5.1 HMRC nudge letters on super-deduction claims

On 1 March, HMRC issued two batches of letters asking companies to check potentially inaccurate claims for super-deduction and special rate allowances. One batch relates to lease restrictions the other covers companies with an accounting period that straddles the commencement date of 1 April 2021.

A temporary 130% super-deduction is available for expenditure incurred on qualifying plant and machinery between 1 April 2021 and 31 March 2023 (the super deduction). A 50% first year allowance is also available for qualifying special rate expenditure (the SR allowance).

The super deduction and SR allowance may not be available if the plant or machinery was purchased for leasing. One batch of letters is going to the small number of companies that HMRC believes may have made claims that were invalid for this reason. It is targeted at companies that may leasing as part of their trade. Companies are being asked to amend their returns, if necessary, within 30 days from the date of the letter.

The other batch is going to companies with an accounting period straddling 1 April 2021. If a contract to buy the plant or machinery was entered into before 3 March 2021, even if payment was made after 1 April 2021, neither the super-deduction or the SR allowance are available. These companies are being asked to check the date on contracts, and amend their tax returns within 30 days if necessary.

No action is required if the recipient company is confident that the claim is correct.

www.tax.org.uk/super-deductions-hmrc-one-to-many-letters

5.2 CA rules on compatibility of group relief rules with EU law

The CA has agreed with the UT that the UK's restriction on the surrender of losses from a UK permanent establishment (PE) is a justified restriction on the EU principle of freedom of establishment. It differed from the UT by finding that this restriction was proportionate.

A non-UK resident company that has a PE in the UK is permitted to surrender losses associated with the PE to other members of the group. UK legislation restricts this ability to surrender losses of the PE if that loss was deductible from or otherwise allowable against non-UK profits. This case relates to claims for group relief of £38m from a UK branch of a Dutch company in the years ended 31 December 2007 to 2009, which were denied by HMRC, and whether or not the restriction on surrender of losses was compliant with EU law in that period.

At the FTT, the issue on compatibility with the EU law came down to two previous decisions of the CJEU: *HMRC v Philips Electronics UK Limited* [2013] STC 41 and *Case C-28/17 NN A/S v Skatteministeriet*, EU:C:2018:526. Based on those cases, in particular the similarity of the facts in the Philips Electronics case, the FTT concluded that the UK group relief restriction was contrary to the freedom of establishment.

The UT concluded that, although the UK rules do impose a restriction on the freedom of establishment, this restriction is justified to prevent the double claiming of losses. The restriction, however, operates disproportionately and it is this that makes it incompatible with EU law. Unless a conforming interpretation of the rules could be found that would allow them to be applied proportionately, the restrictions would be disapplied. Both parties appealed this decision.

The CA agreed with the UT that the restriction was justified but found that it was not disproportionate. There was no need to adopt a conforming interpretation of the rules. It dismissed the taxpayer's appeal. The claim for group relief by the UK companies was denied in full. The CA decided that it was unnecessary to consider HMRC's alternative argument that it should exercise its powers to depart from EU case law.

Volkerrail Plant Ltd & Ors v HMRC [2023] EWCA Civ 210

www.bailii.org/ew/cases/EWCA/Civ/2023/210.html

N A/S v Skatteministeriet [2018] EUECJ C-28/17, EU:C:2018:526, ECLI:EU:C:2018:526

www.bailii.org/eu/cases/EUECJ/2018/C2817.html

HMRC v Philips Electronics UK Ltd [2012] EUECJ C-18/11

www.bailii.org/eu/cases/EUECJ/2012/C1811.html

6. Tax publications and webinars

6.1 Tax publications

The following Tax publications have been published.

- [What could the Budget mean for businesses?](#)
- [Proposed changes to the UK R&D tax relief schemes](#)
- [Global mobility trends: what to expect in 2023](#)
- [If I were the Chancellor](#)

6.2 Webinars

The following client webinars are coming up soon.

- 21 March - [Editions by Evelyn Partners: The Budget Update](#)
- 22 March - [Talking Tax: The Budget Update](#)

7. And finally

7.1 Our sort of film

Congratulations to the winner of Best Picture at the Oscars. I confess that *And finally* has yet to watch *Everything Everywhere All at Once*, but this is an omission that must be rapidly remedied following our discovery of its subject: filing a tax return.

Our swift research on the plot disclosed that a visit to an (American) tax office leads to the taxpayer entering several parallel universes, having confusing conversations with an inspector, and finding a mysterious black hole on her return. So, a pretty normal visit then.

It all sounds so charmingly *Alice in Wonderland*. And the main character's name? Evelyn. We'd better get down to the cinema.

www.bbc.co.uk/news/entertainment-arts-64938320

https://en.wikipedia.org/wiki/Everything_Everywhere_All_at_Once

<https://www.dontmesswithtaxes.com/2022/05/taxes-play-key-role-in-hit-indie-film-everything-everywhere-all-at-once.html>

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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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.

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