

Tax Update

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1. General

1.1 Tax Update and Easter

Tax Update will be taking a break for the Easter holiday.

The next issue will be on 18 April. We wish all our readers a happy Easter.

1.2 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 0.25%, following the Bank of England base rate increase from 4% to 4.25%. The rate applied to the main taxes will become 6.75%. The rate of interest on repayments from HMRC will become 3.25%.

The changes will apply from 3 April 2023 for quarterly instalment payments and 13 April 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--11

2. Private client

2.1 Redress payment taxable on partners

A redress payment has been found to be taxable on three individuals, despite the fact they had transferred the business of their partnership into a company.

The three taxpayers had traded as an unincorporated Scottish partnership. The partnership took out loans, along with an interest rate hedging product that was later found to have been missold. In 2012, the business of the partnership was transferred to a limited company, leaving just properties in the partnership.

A redress payment in respect of the product was made in 2014. It was paid to the taxpayers in their names, and not declared in their personal returns nor the company return. The company later paid the tax to HMRC when the accountants identified the payment as taxable. It was agreed that it was taxable, but the taxpayers argued that it was taxable on the company.

The FTT agreed with HMRC that this was taxable on the individuals. The legal right to redress had arisen at the point that the Financial Services Authority notified the bank that compensation was due. This was after the date of transfer to the company, so the right was not transferred under that agreement, and the payment was due to the partnership.

Penalties for carelessness were upheld against one of the three taxpayers.

O'Neil & Ors v HMRC [2023] UKFTT 00290 (TC)

<https://financeandtax.decisions.tribunals.gov.uk/Aspx/view.aspx?id=12685>

2.2 Deferred remuneration taxable on members of LLP as miscellaneous income

The FTT has found that amounts reallocated to LLP members were taxable as miscellaneous income. The tax at stake was £22.5m.

Individual members of an LLP were paid a proportion of profits upfront. There was also a corporate member in the structure, of which the individual members were shareholders. A proportion of the profits were allocated to a corporate member, who then reallocated the sums to the individual members over the next three years. The individuals argued that they should pay IT just on their initial allocation, and that the later payments were tax free transfers of a capital asset from the corporate partner. CT had been paid by the corporate member.

The FTT had found that the payments from the corporate member were taxable on the individual members as miscellaneous income, rejecting HMRC's alternative argument that they were partnership income on reallocation. The UT agreed on both these points, dismissing appeals from both HMRC and the taxpayers. The individuals received reward for their activities in the LLP. The fact that some of this came from a fellow LLP member did not mean that it was non-taxable, but it was miscellaneous income rather than partnership income.

This decision is in line with two other recent cases concerning mixed membership partnerships and deferred remuneration arrangements, one of which, *HMRC v Bluecrest Capital Management LP and others and (2) Andrew Dodd and others v HMRC* [2022] UKUT 200 (TCC), has been appealed to the Court of Appeal.

HFFX LLP, Christopher Shucksmith & Ors v HMRC [2023] UKUT 73 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2023/73.html

3. PAYE and employment

3.1 Appeal on furlough scheme dismissed

A company must repay a grant claimed under the Coronavirus Job Retention Scheme (CJRS) in respect of an employee who had erroneously not been added to the payroll before the relevant date.

To make a claim for this employee under the CJRS scheme, they had to have been included on a real time information (RTI) return submitted to HMRC before the lockdown. The taxpayer had employed and paid the wife of a director from December 2019, but failed to add her to its RTI submissions until June 2020. CJRS grants claimed in respect of her were thus invalid.

The taxpayer argued that its accountants had failed to carry out its instructions to add the new employee to the payroll, and the directors had only discovered this in May 2020. The FTT did not disagree with this but found that the legislative requirements did not allow for an exception, even if the company amended its previous RTI submissions. HMRC's assessment to reclaim the CJRS grants were upheld.

Luca Delivery Ltd v HMRC [2023] UKFTT 278 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08752.html

4. VAT and indirect taxes

4.1 Appeal on land transaction tax dismissed

A taxpayer who co-purchased a property with her daughter has lost her appeal against a charge to higher LTT rates on a second home. Although the property was for her daughter's sole use, and she was simply assisting with the mortgage, there was no scope for an exemption in the legislation.

The taxpayer's daughter did not meet the affordability requirements for a mortgage. The taxpayer took out the mortgage jointly with her to allow the property purchase to go ahead and was on the deeds as an additional owner. She was to come off the mortgage and deeds as soon as her daughter could meet the affordability requirements alone.

HMRC assessed the taxpayer to the higher rate of LTT, as she owned another home with her husband. She argued that she should be exempt in the circumstances, as she had no beneficial interest in the property and was only on the deeds for a short period. The FTT dismissed the appeal, as it had no power to deviate from the legislation, under which the higher rates clearly applied.

Hayes v WRA [2023] UKFTT 280 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08754.html

4.2 CA dismisses appeal on SDLT avoidance scheme

The CA has upheld a UT decision that an SDLT avoidance scheme designed to allow a taxpayer to obtain sub-sale relief by granting an option did not work. As the option was never taken up then the second transaction was not substantially completed. This was a test case with 41 other appeals affected by the outcome.

The taxpayer entered into an SDLT avoidance scheme designed to allow him to purchase a residential property without paying SDLT. At the same time as the purchase, he granted an option to a company, of which he was the CEO, to allow the company to purchase the property. Although the option was not exercised he argued that sub-sale relief applied. The case had also considered the impact of Project Blue and the anti avoidance provisions.

The UT had found for HMRC, on the grounds that the secondary transaction had not been substantially completed, as although the option had been granted it had not been used. The UT had agreed, rejecting the taxpayer's argument that the contract for the property sale and the grant of the option were part of one transaction, which had been substantially performed.

The CA also dismissed the taxpayer's appeal. The scheme did not fall within the definition of "other transaction" needed to gain the exemption in the legislation. In this case, the grant of the option was not an adequate transfer of rights.

There were other cases standing behind this one with approximately £4m of tax at stake.

There is a clear analysis of the application of the subsale legislation set out in the decision.

Fanning v HMRC [2023] EWCA Civ 263

www.bailii.org/ew/cases/EWCA/Civ/2023/263.html

Project Blue Ltd v HMRC [2018] UKSC 30

www.bailii.org/uk/cases/UKSC/2018/30.html

4.3 SC confirms taxpayer cannot have its cake and eat it

The taxpayer recovered VAT incurred on the purchase of development land, then a subsequently onward supply of the land was treated as exempt.

A highly complex technical case, involving the interaction of the anti-avoidance provisions for the option to tax, and the unexpected consequences arising from the taxpayer's specific circumstances. The SC agreed with HMRC that that the sale was not exempt, and the taxpayer ought to have charged the purchaser VAT and then paid that VAT over to HMRC.

An important reminder that VAT on land transactions is a highly complex area, and a review of the underlying VAT law is essential to prevent an unexpected extra 20% cost.

Moulsdale (t/a Moulsdale Properties) v Revenue and Customs (Scotland) [2023] UKSC 12

www.bailii.org/uk/cases/UKSC/2023/12.html

4.4 UT confirms FTT judgement was not unfair

The taxpayer initially sought to argue certain VAT incurred was recoverable in full, with the FTT agreeing with HMRC the VAT was not recoverable in full.

The taxpayer, an agricultural college, sought to recover VAT it deemed fully recoverable. HMRC raised an assessment on the basis that the VAT incurred was partly attributable to exempt supplies. The taxpayer challenged the assessment and appealed to the FTT on the basis the VAT was fully recoverable but, mistakenly, it did not argue that if this was not the case then some VAT was recoverable. The FTT held that the VAT was not fully recoverable and dismissed the appeal. The practical effect of this decision was that none of the VAT could be reclaimed, despite some being partially attributable to taxable supplies. The key point confirmed by the UT was that it was too late to raise a further argument that the VAT was partly recoverable and, as the taxpayer's argument advanced at the original appeal was "all of nothing", there was no unfairness.

This is a reminder that taxpayers must ensure they advance all potential arguments early in the litigation process, otherwise they may be barred from raising them later.

Kingston Maurward College v Revenue and Customs (PROCEDURE) [2023] UKUT 69 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2023/69.html

5. Tax publications and webinars

5.1 Tax publications

The following Tax publications have been published.

- [International trade: Here's what you need to know](#)

6. And finally

6.1 Signs of Spring

An office discussion last week on whether or not it was really Spring yet was resolved in a moment when the Spring Finance Bill 2023 appeared. Clocking in at a hefty 481 pages it is rather harder to miss (for the tax profession) than the appearance of frogspawn in the local pond.

www.gov.uk/government/news/spring-finance-bill-2023-published

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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