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1. General

1.1 HMRC late payment interest rate to increase again

Following the Bank of England base rate rise, the rate of interest HMRC charges on late tax payments will be increased again. This will be the fourth rate increase in 2022.

HMRC will increase yearly interest rates on overdue tax by 0.25%, following the Bank of England base rate increase from 0.75% to 1%. The rate applied to the main taxes will therefore become 3.5%. The rate of interest on repayments from HMRC will remain unchanged at 0.5%.

The change will apply from 16 May 2022 for quarterly instalment payments and 24 May 2022 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--4

1.2 EC consults on EU-wide withholding tax system

The EC is looking at the withholding tax (WHT) system on dividends and interest payments. Currently, claiming cross-border refunds can be complicated and slow, as well as open to abuse.

The three options under consideration are:

1. Aligning WHT refund procedures. The payer would apply its domestic WHT rate and the payee would claim any refund due.
2. A universal relief at source system, where the payer applies the correct WHT rate reduced for the payee's liability.
3. Improving administrative cooperation to check payees' entitlement to double tax treaty rules. This would involve exchange of information.

www.icaew.com/insights/tax-news/2022/April-2022/EU-Commission-consults-on-EU-wide-system-for-withholding-tax-on-dividends-and-interest-payments

https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13031-Withholding-taxes-new-EU-system-to-avoid-double-taxation/public-consultation_en

2. Private client

2.1 Jersey company distributions found to be taxable to IT

The FTT has determined that payments from a Jersey company were taxable income distributions, following detailed analysis of case law and Jersey law.

The taxpayer held shares in a company incorporated in Jersey, domiciled in Switzerland, and listed on the London Stock Exchange. For five successive tax years, the company made payments to him from the share premium account, and on one occasion gave him additional shares, which were treated as cash in this decision. The share premium account was funded by a restructuring. Jersey law does not use the term dividend.

The taxpayer argued that the payments were capital receipts, or alternatively dividends of a capital nature. The FTT had to consider the history of the law on dividends in both Jersey and the UK, and the current position in both legal systems. Ultimately, it determined that although the payments were made out of the share premium account, they were income dividends. The judge noted that the form in which the payment is made must be taken to determine its character. The mechanism chosen in this case represented an income distribution for Jersey law and therefore also for English law purposes.

Beard v HMRC [2022] UKFTT 129 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08460.html

2.2 Taxpayer behaviour not deliberate

In a case where a taxpayer failed to file returns, an FTT finding of non-deliberate behaviour has led to the cancellation of penalties, and all but one discovery assessment.

The taxpayer, a successful music producer, bought a vineyard in France. He intended it to supplement or replace his income due to concerns about the future of his music business, though he had no experience of the wine industry. He regularly filed returns late, and was behind with paperwork, despite using tax advisers. HMRC issued various late filing penalties and surcharges, along with discovery assessments for years when returns were not filed.

The taxpayer appealed, arguing that he intended to file the returns but was busy with two businesses, a young family, and other litigation. He had periodically caught up with his UK tax affairs during his history of late filing. He believed that losses from his wine making business would mean that no tax was due. The

FTT upheld his appeal, finding that he had not intended to bring about a loss of tax, so his behaviour could not be classed as deliberate, though it was careless. It also accepted his claims for sideways loss relief, finding that the partnership commenced trading when he claimed it did, and that consultancy fees he charged were wholly and exclusively for the benefit of the trade.

The findings on deliberate behaviour meant that some of the discovery assessments were out of time. The penalties were cancelled as not validly served, due to discrepancies in HMRC's address records for the taxpayer. One discovery assessment was upheld, but revised.

Dougan v HMRC [2022] UKFTT 00140 (TC)

<https://financeandtax.decisions.tribunals.gov.uk/Aspx/view.aspx?id=12421>

2.3 'Staleness' win for HMRC

The UT has overturned a FTT decision, finding that that a discovery assessment was valid. This was on the grounds that there is no concept of staleness following a recent SC case. This is an unsurprising result, given that staleness was the only reason argued by the taxpayer for the discovery assessment to be invalid.

At the FTT, the taxpayer had won his appeal against a discovery assessment on the grounds that the discovery had become 'stale' due to HMRC's delay in issuing it. Following the *Tooth* decision, HMRC appealed to the UT. The taxpayer contested the appeal, but offered no grounds for so doing.

The UT considered whether or not there were other reasons for the discovery assessment to be invalid. It found none, and consequently accepted HMRC's appeal.

HMRC v Jafari [2022] UKUT 119 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2022/119.html

HMRC v Tooth [2021] UKSC 17

www.bailii.org/uk/cases/UKSC/2021/17.html

3. Trusts, estates and IHT

3.1 HMRC Trusts and Estates Newsletter

The latest edition of the HMRC Trusts and Estates Newsletter has been released, with information about forthcoming changes to the Trust Registration Service (TRS) and various reminders.

Points raised include:

- a reminder of the trust registration deadline of 1 September, and a brief explanation of which trusts must register;
- guidance on using the CGT on UK property account to report gains;
- a reminder of the correct address to use for post relating to an estate;
- some IHT guidance pages have been updated following a review, and video guides are now available for some aspects;
- those submitting a form IHT400 will now receive a letter with an estimated processing date 12 weeks on;
- changes to applying for IHT100 clearance; and
- a reminder on the correct use of corrective accounts.

www.gov.uk/government/publications/hm-revenue-and-customs-trusts-and-estates-newsletters/hmrc-trusts-and-estates-newsletter-april-2022

3.2 Consultation on removing trusts and estates with low income from IHT

HMRC is seeking views on its proposals to formalise an existing concession. Some trusts and estates with a tax liability under £100 could be removed from IT altogether.

Currently, if a trust or death estate's only income is savings income, and the tax liability in a tax year is under £100, no IT is due. This temporary concession was introduced when banks stopped deducting IT at source in 2016, to prevent administrative complications for trustees and executors dealing with small amounts of income.

The consultation is on a proposal to formalise this concession and make it permanent. HMRC is seeking technical comments on the proposal, that can include views on whether or not it should be expanded to cover trusts and estates with dividend income as well.

The consultation closes on 18 July 2022.

www.gov.uk/government/consultations/income-tax-low-income-trusts-and-estates

4. PAYE and employment

4.1 Presenter contractor case remitted for further consideration

The CA has allowed HMRC's appeal set aside a UT decision, finding that the wrong tests had been used to determine whether or not the off-payroll working rules applied to a presenter's personal service company. The case has been remitted to the tribunals.

A presenter worked through her personal service company. The UT had found that the relationship between the company and the broadcaster did not come within the scope of the off-payroll working rules, the presenter had entered into business on her own account.

HMRC appealed to the CA which allowed HMRC's appeal. Rather than making its own decision it instead set aside the UT decision and remitted the case back to the tribunals. HMRC argued that the UT had erred in law in basing a decision on whether or not the presenter was in business on her own account, rather than using an established test, and had not taken other factors into sufficient account. The CA found that the tribunals had made errors in their approach, as the UT had used the wrong tests, focussing too much on the terms of her contracts with other organisations than with the broadcaster relevant to this case.

The tribunals will remake the decision applying the tests and findings specified by the CA.

HMRC v Atholl House Productions Limited [2022] EWCA Civ 501

www.bailii.org/ew/cases/EWCA/Civ/2022/501.html

4.2 Taxpayer loses appeal on IR35

The CA has found that the UT was correct in its decision that the relationship between a sports presenter and a broadcaster fell within the off-payroll working rules.

The appellant was the personal service company of a retired sportsman who had gone on to work as a sports presenter. He presented a three hour radio broadcast every weekday.

The taxpayer had won at the FTT but lost at the UT on the grounds that there was sufficient mutuality of obligations and control by the broadcaster for the relationship to be classed as one of employment. The CA agreed with the UT on both points having considered how the relationship worked in practice.

One strand of the appeal, that the presenter was in business on his own account partly due to the lack of security in his contract, was particularly noted by the judge as not persuasive. The security given by his contracts, which were for two years, was perfectly consistent with a contract of employment.

Kickabout Productions Ltd v HMRC [2022] EWCA Civ 502

www.bailii.org/ew/cases/EWCA/Civ/2022/502.html

5. VAT

5.1 CJEU clarifies VAT treatment of vouchers

The CJEU has ruled that a short-expiry date for vouchers sold to customers does not preclude the vouchers from being treated as multi-purpose vouchers (MPVs).

The taxpayer sold pre-paid cards to tourists in Sweden, which allowed the tourists access to a number of amenities and attractions. The amenities and attractions were subject to Swedish VAT at different rates. The cards usually had a 24-hour expiry limit, after which they could no longer be used.

VAT is due on the sale of a single-purpose voucher at the time of sale, as the VAT treatment is known at this point, that is the vouchers can only be redeemed for goods and services that are subject to the same VAT treatment. An MPV is a voucher that can be redeemed for goods and services, which are potentially subject to VAT at different rates and as a result, VAT is only accounted for upon redemption of the voucher.

The taxpayer treated the cards as MPVs and accounted for VAT upon redemption and at the appropriate VAT rate for which the services were redeemed. The Swedish authorities considered that the cards were not vouchers at all, due to the short expiry-limit and the fact that benefit of the cards were proportional to the extent to which they were used.

The CJEU found that the expiry-limit had no bearing on the VAT treatment and that it was clear that the taxpayer was selling MPVs.

DSAB Destination Stockholm [2022] EUECJ C-637/20, ECLI:EU:C:2022:304, EU:C:2022:304

www.bailii.org/eu/cases/EUECJ/2022/C63720.html

6. Tax publications and webinars

6.1 Tax publications

The following Tax publications have been published.

- [Risks around national minimum wage compliance for businesses](#)

7. And finally

7.1 Goose and Gander

It's a tax cliché that the art of taxation is to pluck the goose so as to procure the largest quantity of feathers with the least possible amount of hissing; but, identifying the taxpayer as the goose may lead us to identify HMRC as the gander. Specifically, we note with dismay (see Item 1.1) that although interest rates for late payment of tax are increasing there is no commensurate increase for late repayment by HMRC. We struggle to understand the logic. HMRC is not some sort of bank that needs to make a lending turn. Indeed, we struggle to see why the two rates should not match each other. Even you think there should be a differential, it is difficult to see why that differential should be increased just because one rate increases.

Might it be that someone has looked at what the banks have been known to do at interest rate rises and acted similarly? Failing to pay an appropriate rate for late repayment amounts to raising money at the taxpayers' expense; in other words, a tax. Taxing those misfortunate enough to be a victim of late repayment seems an appropriate reason to hiss. Sauce for the goose....

www.gov.uk/government/news/hmrc-late-payment-interest-rates-to-be-revised-after-bank-of-england-increases-base-rate--4

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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