1 March 2023

A round-up of recent issues

Tax Update

Contents

1.	General	1
1.1	HMRC reminder on ATED revaluations	1
2.	Private client	2
2.1	EIS relief claims made without certificates found to be careless	2
3.	PAYE and employment	2
3.1	PAYE direct debit delays	2
4.	VAT and indirect taxes	2
4.1	FTT dismisses appeal on SDLT sub-sale scheme	2
4.2	Conservatory roof panels do not qualify for the reduced rate of VAT	3
4.3	Digital newspapers were not zero rated	3
4.4	Construction services provided to a charity were not zero rated	4
4.5	Match-making services provided to non-EU customers subject to VAT	4
5.	Tax publications and webinars	4
5.1	Tax publications	4
6.	And finally	5
6.1	Unintended consequences	5

1. General

1.1 HMRC reminder on ATED revaluations

2023/24 is a revaluation year for ATED. This will affect entities currently paying ATED, as well as entities owning UK residential property that had been below the threshold but may have increased in value such that they have become liable to pay ATED.

Entities, primarily companies, that own UK residential property need to revalue their properties at 1 April 2022, in respect of the ATED charge due in April 2023. Even if the entity does not currently pay ATED, the property may have increased in value to the £500,000 threshold or over.

ATED revaluations are conducted every five years. Properties must be revalued as at 1 April 2022, or the date of acquisition if later.

www.tax.org.uk/annual-tax-on-enveloped-dwellings-ated-revaluation

2. Private client

2.1 EIS relief claims made without certificates found to be careless

The FTT has found that a taxpayer, whose returns included claims for enterprise investment scheme (EIS) relief without receiving the necessary certificates, was not careless. His adviser however had been careless in not checking that he had received the certificates. The discovery assessments raised by HMRC were therefore in time and upheld.

The taxpayer subscribed for shares in five companies and claimed EIS relief without waiting to receive the certificates. The companies were ultimately not issued with EIS clearance certificates by HMRC. He accepted at tribunal that he was not entitled to the relief, but argued that the discovery assessments were invalid as they were made out of time. HMRC issued them outside the time period for normal mistakes, but within the allotted time for careless errors.

He argued that he had relied on his agent, so had not been careless. The firm had been completing his returns since 1993, always on time, and he had been very careful with his paperwork. He felt that HMRC should have raised any issue with his returns in good time.

The FTT found that the taxpayer had not been careless in relying on a well-qualified adviser with whom he had a long standing relationship. It was not careless to assume that the accountants preparing his tax return would deal with mechanical, administrative tasks such as making sure that any required paperwork had been obtained. It dismissed his appeal, however, as a person acting on his behalf, his tax adviser had been careless in not checking that the correct certificates had been obtained, which is a relatively mechanical, undemanding exercise. The judge noted that "*To allow a client to make a claim for EIS relief without making sure that the client held a valid EIS3 is carelessness of a high order*". The assessments for almost £255,000 were upheld.

Rizvi v HMRC [2023] UKFTT 124 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08731.html

3. PAYE and employment

3.1 PAYE direct debit delays

HMRC has advised that new variable direct debits for PAYE should be set up nine working days before the first payment is due.

Due to delays with processing, HMRC has advised employers to set up new variable direct debits for PAYE at least nine working days before collection. Currently, the guidance is to set them up six working days before collection. 'Last minute' rounding / penny differences occurring at the point of submitting the full payment submission (FPS) to HMRC mean that direct debits are seldom used for PAYE purposes in practice.

www.icaew.com/insights/tax-news/2023/feb-2023/employers-set-up-PAYE-direct-debits-nine-working-days-in-advance-of-collection

4. VAT and indirect taxes

4.1 FTT dismisses appeal on SDLT sub-sale scheme

Arrangements on a standard SDLT sub-sale scheme were found to be invalid. SDLT was charged on the purchase of the house.

The taxpayer bought a house for £325,000. He then sold it to a trust for £10,000, with exchange on the day of purchase, and completion scheduled for 124 years' time. On the same day as purchase and exchange, the trust entered into a contract to sell the property to a third party. The trust had been settled by him for the benefit of him, his spouse, and family. These were pre-planned arrangements with the aim, the FTT found, of avoiding an SDLT charge of £9,750 on the initial purchase, which was

the taxpayer's new home. The idea behind the scheme was that by selling the property on the same day as substantially completing the subsale contract to the trust, the initial purchase for £325,000 was ignored.

HMRC held that the SDLT was due, as the transfer to the trust was not strictly a secondary transaction nor transfer of rights. The limited right to call for conveyance, after 124 years, was too different from the first transaction, where completion was three days after exchange, to fall within the SDLT exemption for sub-sales. In addition, both the lack of simultaneous completion, and the artificial arrangements, meant that the scheme failed.

The taxpayer argued that the arrangements met the exemption in the legislation, that he did not have the technical skills to know whether or not HMRC's assessment was correct, but that assessment 10 years after the transaction was unfair.

The FTT dismissed the appeal. Realistically, the second contract had no prospect of completion, so the trust had no entitlement, and the scheme failed. The taxpayer's argument that SDLT payment should be postponed, as the second contract had not been substantially performed, was dismissed, as the payment of £10,000 was held to be substantial performance. Despite resolution taking 10 years, the FTT had no jurisdiction to cancel the interest charges, and HMRC had chosen not to levy penalties. The discovery assessment and closure notice were valid.

Olufote v HMRC [2023] UKFTT 130 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08735.html

4.2 Conservatory roof panels do not qualify for the reduced rate of VAT

The taxpayer lost its appeal at the CA against a £2.5m VAT assessment on the VAT treatment of insulated roof panels.

The taxpayer, Greenspace, supplied and fitted replacement insulated roof panels onto the pre-existing roof structure of customers' conservatories to assist with temperature regulation across the seasons. The issue was whether or not these panels were subject to a reduced rate of VAT on the basis that the supplies qualified as insulation material for roofs or insulated roofing materials subject to the standard rate of VAT. Energy saving materials include insulation for walls, floors, ceilings, roofs or lofts or for water tanks, pipes or other plumbing fittings. The taxpayer submitted that its supplies were the application or addition of insulation to an existing roof and not the provision of a new roof. HMRC argued that there must be a clear distinction between insulation material for a roof and the roof itself, that there was no sliding scale on what is the 'predominant purpose' of the panels.

The FTT and UT ruled that the panels installed by the taxpayer were not insulation for a roof but were in fact a new roof in their own right, and that the taxpayer's supplies did not therefore qualify for the reduced rate of VAT. The CA considered that the FTT and UT's approach was incorrect because the issue should not have been whether something was for a roof or not but in fact simply to ask whether Greenspace was supplying insulation for roofs, using the ordinary meaning of those words. Although the roof panels might have insulating properties, the CA found that Greenspace was not supplying insulation for roofs and as a result the standard rate of VAT should apply.

Greenspace (UK) Ltd v HMRC [2023] EWCA Civ 106

www.bailii.org/ew/cases/EWCA/Civ/2023/106.html

4.3 Digital newspapers were not zero rated

The SC has ruled that the zero rating for printed matter did not apply to digital versions before the change in the legislation.

The taxpayer produced various printed newspapers, which it also allowed customers to download online.

The taxpayer contended that the zero rating for printed matter should apply equally to printed versions.

The FTT dismissed the taxpayer's original appeal, but it was allowed by the UT. The CA subsequently overturned the UT's decision, upholding HMRC's position.

The SC considered the 'always speaking' principle in respect of UK legislation, however, as the matter involved supplies made prior to the UK's change in legislation in May 2020, which allows for zero rating of digital publications, it decided that the strict

application of zero rating per EU law should be adhered to and as such, zero rating could not apply in these circumstances. It therefore dismissed the taxpayer's appeal.

News Corp UK & Ireland Ltd v HMRC [2023] UKSC 7

www.bailii.org/uk/cases/UKSC/2023/7.html

4.4 Construction services provided to a charity were not zero rated

The FTT has ruled that a charity, which received zero rated construction services under the relevant charitable purpose provisions, was not eligible for the relief.

The taxpayer was engaged by The Zoological Society of Hertfordshire to construct an outside exhibit, a lion enclosure and a shop at the charity's wildlife park. The taxpayer had zero rated the construction work on the basis the buildings were intended for use solely for a relevant charitable purpose (RCP). The charity issued a zero rated certificate confirming non-business RCP use to the taxpayer.

HMRC issued an assessment on the basis that the buildings were for business use and therefore did not qualify for RCP. The taxpayer accepted that zero-rating should not have applied in respect of the shop, but appealed that the other two buildings should qualify.

The FTT considered whether the outside exhibit and lion enclosure formed part of the charity's business of operating and charging for admissions to the wildlife park, and determined they were. As a result, the charity had incorrectly issued the certificate and the works should not have been zero rated.

Paradise Wildlife Park Limited v HMRC [2023] UKFTT 122 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08729.html

4.5 Match-making services provided to non-EU customers subject to VAT

The CA has ruled that match-making services are not 'consultancy services' and are therefore subject to VAT

The taxpayer is a dating agency that provided match-making services to UK and non-UK customers. The taxpayer contended that its supplies were similar to 'consultancy services' and therefore, where provided to non-EU customers, were not subject to UK VAT.

HMRC did not consider that the services were akin to those supplied by consultants or similar and raised assessments accordingly.

The FTT found in favour of HMRC. The UT however subsequently determined that the FTT had erred in law, so remade the decision in favour of the taxpayer.

The CA determined that the match-making services were not based on a high degree of expertise or that the advice was provided by someone with extensive experience or qualifications in the subject. It therefore allowed HMRC's appeal.

HMRC v Gray & Farrar International LLP [2023] EWCA Civ 121

www.bailii.org/ew/cases/EWCA/Civ/2023/121.html

5. Tax publications and webinars

5.1 Tax publications

The following Tax publications have been published.

- What are the tax implications of the Net Zero Review?

6. And finally

6.1 Unintended consequences

Regular readers will know just how much *And finally* loves the little, and not so little, absurdities of VAT. Our topic for today: things that we would really very much like taxpayers to be encouraged to keep doing. Previously, we have seen capital allowances denied on structures to keep a nuclear power plant safe, and now (see 4.4), we see a VAT exemption denied for a lion enclosure.

The taxpayer argued that the enclosure wasn't used in its business as a zoo (but for the charitable purpose of animal welfare), as the public couldn't go in with the lions. Well, that's not unusual in our experience of zoos, but perhaps we are behind the times.

The FTT, fortunately, seems to have some reservations about returning to the games of the Roman Empire, given the best line in the judgment:

"Self-evidently and for obvious reasons, there is no public admission to the lions' enclosure."

Urenco Chemplants Ltd & Anor v HMRC [2022] EWCA Civ 1587

www.bailii.org/ew/cases/EWCA/Civ/2022/1587.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	