

Tax update

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1. General

1.1 Season's Greetings

We wish all our readers a merry Christmas and a happy and healthy New Year.

The next edition of Update will be published on 10 January 2022.

1.2 2023 Budget date announced

The Chancellor has announced that there will be a Budget on 15 March 2023.

This will be accompanied by forecasts from the Office for Budget Responsibility.

<https://questions-statements.parliament.uk/written-statements/detail/2022-12-19/hcws458>

1.3 Scottish Budget: income tax to rise

The Scottish Government will increase income tax for higher and additional rate taxpayers by 1% in 2023/24. The additional dwelling supplement for LBTT has been increased from 4% to 6%.

The Scottish Government published its Budget for 2023/24 on 15 December, proposing the following tax changes:

- The two highest rates for Scottish income tax, which only apply to non-savings and non-dividend income, are to rise from April 2023. The higher rate will rise from 41% to 42%, and the top rate from 46% to 47%.
- The top rate income tax threshold will be reduced to £125,140 from £150,000 from April 2023, in line with the announcements from the UK Government. All other Scottish income tax thresholds remain unchanged.
- Land and buildings transaction tax (LBTT) rates and bands will be maintained at their current levels. The additional dwellings supplement for LBTT will rise from 4% to 6% with effect from 16 December 2022.
- The Scottish Government will increase the Scottish landfill tax (SLfT) rates from April 2023 to maintain consistency with UK landfill tax rates.

These rates must now be agreed and put into law.

www.gov.scot/publications/scottish-budget-2023-24/

1.4 Welsh Budget: no changes to tax

The Welsh Government is making no changes to the Welsh rate of income tax and land transaction tax for 2023/24. Landfill disposals tax will rise with inflation.

The Welsh Government published its draft Budget for 2023/24 on 13 December. Key tax points are as follows:

- The rates for income tax have been proposed at the same level as the rest of the UK (excluding Scotland).
- Changes to residential rates of land transaction tax (LTT) were previously brought forward to take effect from 10 October 2022, following the UK Government's changes to SDLT. The LTT rates and thresholds remain different from those for SDLT. No further changes were proposed at this draft Budget.
- The Welsh Government proposes to increase the landfill disposals tax (LDT) rates in line with RPI inflation, with effect from 1 April 2023. This will ensure that rates are consistent with UK landfill tax.

These rates must now be agreed and put into law. The final Welsh Budget is expected in March.

<https://gov.wales/draft-budget-2023-2024>

1.5 HMRC 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 0.5%, following the Bank of England base rate increase from 3% to 3.5%. The rate applied to the main taxes will become 6%. The rate of interest on repayments from HMRC will become 2.5%.

The change will apply from 26 December 2022 for quarterly instalment payments and 6 January 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

2. Private client

2.1 Domicile could not be determined at preliminary hearing

In the latest stage of the taxpayer's long running dispute with HMRC over his domicile, the FTT has decided that his domicile cannot be determined separately from tax due by the FTT at a preliminary hearing.

The CA previously found, against the taxpayer, that partial closure notices (PCNs) cannot be issued without a calculation of the tax due. Taxpayers found by HMRC to have a UK domicile will therefore not be able to appeal this decision pending determination of the tax at stake, and will have to supply details of overseas income and gains. He was denied permission to appeal this decision to the SC.

Separately, HMRC issued a discovery assessment, for a significant amount of tax (just under £10m), for the 2013/14 tax year. The taxpayer appealed against the assessment, on the grounds that:

(a) he had not acquired a domicile of choice within the UK ("the domicile issue"); and

(b) even if he had, the amount assessed is excessive ("the liability issue") because his overseas income in that year was approximately £50,000.

In this case, the FTT considered whether or not the domicile issue could be determined as a preliminary issue. The FTT weighed up the various factors and dismissed Mr Embiricos's application for a preliminary hearing on domicile. A delay argument was not sufficient, as the full hearing would likely be only six months later than a preliminary hearing would have been, and the delay and costs might be greater overall, if the preliminary judgment was appealed. In summary, allowing a preliminary hearing would also not be in keeping with the overall objective to deal with cases fairly and justly due to these points.

Embiricos v HMRC [2022] UKFTT 464 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08664.html

2.2 Making tax digital for self-assessment postponed

This is now due to become compulsory from April 2026, a delay of two years. The initial income threshold has been raised to £50,000 from £10,000.

Making tax digital (MTD) for income tax self-assessment was due to become compulsory from April 2024, and a pilot is currently running. This has now been delayed to April 2026, as a phased approach will allow HMRC to work with taxpayers. It was originally planned to become compulsory in April 2023, but the technology was not ready.

In a further easement for HMRC, the income threshold above which the self-employed and landlords will need to register has been raised from £10,000. The April 2026 mandate will apply to those over a £50,000 income threshold, and from April 2027 the income threshold will be £30,000.

MTD for general partnerships will be delayed from 2025, but details of when it will be mandated have not been announced.

www.gov.uk/government/news/government-announces-phased-mandation-of-making-tax-digital-for-itsa

2.3 Application to postpone tax refused

The FTT found that, in a case where the taxpayer had disclosed a large amount of untaxed remittances, postponement of the tax payment was not reasonable

In the course of an HMRC enquiry, the taxpayer disclosed that he had made large remittances to the UK. He had only sought tax advice when the enquiry was opened, and had been unaware of the tax implications at the time. On investigation, HMRC assessed a much larger amount. The taxpayer requested postponement of payment of all the tax until he had finished disputing it with HMRC. HMRC refused to postpone the tax on the original amount of remittances he had declared, and the FTT agreed. There were no reasonable grounds for believing that he had been overcharged to tax.

Ravicher v HMRC [2022] UKFTT 454 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08659.html

2.4 FTT had no jurisdiction on loan charge point

The taxpayer appealed HMRC's decision not to make a refund of tax under the disguised remuneration voluntary repayment scheme 2020, but this was struck out as the FTT had no jurisdiction.

The taxpayer paid HMRC £6,500 in respect of a loan charge under a settlement agreement he entered into in 2019 for a 2004/05 loan. One of the recommendations of the recent loan charge review was that HMRC should set up a refund scheme for individuals who had made voluntary payments of liabilities relating to loans made before 2010. HMRC refused the taxpayer's claim for a refund under the scheme. Its reasoning was that it would only make refunds where it could recover the tax elsewhere. This taxpayer had voluntarily paid the PAYE and NICs liability for a company, which he had no obligation to do. No funds were available in the company to pay the tax, as it was insolvent, so HMRC would not refund the individual.

The FTT reluctantly struck out the appeal, as it has no jurisdiction to hear appeals about this refund scheme.

Lambourne v HMRC [2022] UKFTT 466 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08666.html

3. PAYE and employment

3.1 PAYE could not be offset as no evidence of payment.

In a case with no evidence that PAYE had been paid to HMRC, the taxpayer has been refused a credit for it against his liability.

£2.6m had been credited to the taxpayer's loan account. He asserted that this was a net amount, after deductions for PAYE and NIC. There was however no evidence that this had been paid to HMRC prior to the company going into liquidation, and the accountants had confirmed that there was no payment. He argued the HMRC had not included a debt for PAYE on the liquidation, so it must have been paid. He sought to offset this credit against a tax bill arising after his claim for film partnership scheme losses was refused.

HMRC dismissed the appeal. There was no evidence of a PAYE credit.

Baillie v HMRC [2022] UKFTT 456 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08661.html

4. Business tax

4.1 New HMRC guidance on small profits rate.

HMRC's Company Taxation Manual has been expanded to provide guidance on the small profits rate of CT that will apply from 1 April 2023.

The small profits rate of CT applies where a company's profits fall below a lower limit, with marginal relief between that lower limit and the specified upper limit. The upper and lower limits are proportionately reduced by the number of associated companies of a company. Whether or not a company is associated with another company is dependent on control, and these rules are modified where there is no substantial commercial interdependence between companies. It does not apply to close investment-holding companies or non-resident companies.

The guidance includes definitions and examples of augmented profits, associated companies, control and substantial commercial interdependence. Separate guidance has also been published on claiming marginal relief from 1 April 2023.

www.gov.uk/hmrc-internal-manuals/company-taxation-manual/ctm03900

www.gov.uk/guidance/corporation-tax-marginal-relief

5. Tax publications and webinars

5.1 Webinars

The following client webinars are coming up soon.

18 January: [Environmental taxes](#)

6. And finally

6.1 Dropping the Pilot

For our older regular readers, we have to confess that our trips into the mists of distant tax time are likely to be over. No longer will we allude to our shock when, back in 1984, the then Inland Revenue stopped actively assisting us in planning tax schemes. Gone are the memories of huddling around the wireless to hear the Budget speech. We'll probably skip over close company apportionment or Business Expansion Schemes. As from the New Year, our team will be on average a lot younger and a sight more dynamic.

As our resident old codger retires, we hope nevertheless that the spirit of And finally will live on. While tax endures, there will be scandals to call out and absurdities to enjoy. And tax is one of life's certainties.

Close company apportionment: <https://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg57101>

Business Expansion Scheme : [CG56900 - Business Expansion Scheme \(BES\): general - HMRC internal manual - GOV.UK \(www.gov.uk\)](#)

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. Clients should always seek appropriate tax advice before making decisions. HMRC Tax Year 2022/23.

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