

6 July 2022

A round-up of recent issues

Tax Update

Contents

6 July 2022	1
1. General	1
1.1 New Chancellor appointed	1
2. Private client	2
2.1 FTT finds that till receipts were fake so tax not due	2
2.2 Tax avoidance partnership was not trading	2
3. PAYE and employment	2
3.1 Former director liable for PAYE debt	2
3.2 FTT cancels late filing penalties issued for early filing	3
4. Business tax	3
4.1 HMRC updates guidance for non-resident landlord companies	3
5. VAT and other indirect taxes	3
5.1 Transfer of property was not a transfer of a going concern	3
5.2 Attribution of input tax for partial exemption	4
6. Tax publications and webinars	4
6.1 Tax publications	4
7. And finally	4
7.1 Topsy turvy	4

1. General

1.1 New Chancellor appointed

Nadhim Zahawi has been appointed to replace Rishi Sunak as Chancellor of the Exchequer.

Following Rishi Sunak's resignation as Chancellor of the Exchequer, Nadhim Zahawi has been appointed as his replacement. He takes overall responsibility for the work of the Treasury, including the Budget. We wish him well in his new role.

Lucy Frazer remains in post as Financial Secretary to the Treasury.

www.gov.uk/government/ministers/chancellor-of-the-exchequer

2. Private client

2.1 FTT finds that till receipts were fake so tax not due

The FTT found that HMRC's evidence was insufficient to prove a loss of tax. It asserted that a taxpayer had only declared takings from one of two tills, but evidence from the second only covered a few months, and the taxpayer claimed that he had faked those receipts.

The taxpayer was issued with eight discovery assessments and two closure notices, for tax amounting to almost £300,000. He was a sole trader running a takeaway, who for a few months before he sold the business admitted to creating fake till receipts to inflate takings, and thus the price of the business.

He argued that he had sent these to HMRC by accident, but that they did not reflect the tax position. HMRC had extrapolated from them to estimate underpayments for a number of years, hence the assessments.

The FTT considered the history of the use of the tills, and ultimately the fact that the additional receipts covered only a few months was significant. The FTT agreed that HMRC had not proved that the receipts were real, and that it could extrapolate over several years, so cancelled the assessments. HMRC had also not proved that rental income was underdeclared.

Islam v HMRC [2022] UKFTT 188 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/ukfft_tc_2022_188.html

2.2 Tax avoidance partnership was not trading

The UT has upheld an FTT judgment that a partnership established for tax avoidance purposes was not trading

The partnership was established, ostensibly, to build a hotel and apartment complex in Montenegro. The arrangements were found by the FTT to be entirely uncommercial and artificial.

The UT dismissed the partnership's appeal, agreeing with the FTT that the partnership could only have entered into the agreements that it did for the purpose of generating tax losses for its partners. In addition, the contract agreements were accelerated to ensure that the losses would be available for the 2008/09 tax year and not delayed until the following year. The partners also undertook contrived 'make-work': artificial activities intended to avoid limits on tax relief for partners who did not spend at least ten hours per week working in the business. Even if the partnership had been trading, other FTT findings upheld by the UT would also have denied the loss relief.

Foundation Partners (GP) v HMRC [2022] UKUT 167 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2022/167.html

3. PAYE and employment

3.1 Former director liable for PAYE debt

The FTT has upheld a debt transfer notice (DTN) issued to a former director of a managed service company (MSC). Although he was not a particularly involved director, and had not been seeking a tax benefit, as a director he was responsible.

The taxpayer was formerly the director of his own MSC that had since been voluntarily struck off. HMRC had issued the company with determinations and notices, which the company appealed but did not pay. These related to PAYE and NICs. Following the dissolution, HMRC issued a DTN asking for payment from the taxpayer.

The fact that the MSC had underpaid tax was not disputed. The taxpayer did however appeal the DTN on the grounds that he was not a 'real' director. He asserted that he had been appointed without his knowledge, and had not been allowed to manage the company. The FTT found on analysis of the legislation covering DTNs, the fact that he had resigned as a director before the dissolution was irrelevant. It also found that he had not been prevented from acting as a director, but had not tried to exercise control until issues arose, at which point he was able to act. The DTN was upheld.

Gradidge v HMRC [2022] UKFTT 189 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/ukfft_tc_2022_189.html

3.2 FTT cancels late filing penalties issued for early filing

The FTT has held that an employer who filed real time information (RTI) returns too early should not be subject to late filing penalties, as they did not know that early filing was not permitted and HMRC guidance was unclear on the point.

An employer, having incurred several late filing penalties for RTI returns, decided to batch file a number of future returns in advance to avoid more penalties. As they were filed before the period in which filing was allowed, they were classed as not correctly submitted. By the time the employer realised this it had missed the filing deadline, so received late filing penalties.

HMRC contended that the employer had no reasonable excuse, as it had been sent an education letter after the previous lapses, setting out the filing procedure. The FTT however found that, given that the employer did not know it should not file early, the late filing was reasonable. It looked at HMRC guidance, which did not clearly state that early filing was forbidden. The penalties were therefore cancelled.

Quayviews Limited v HMRC [2022] UKFTT 190 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/ukftt_tc_2022_190.html

4. Business tax

4.1 HMRC updates guidance for non-resident landlord companies

HMRC has issued updated guidance on the format of the accounts that must be submitted by non-resident landlord companies as part of their corporation tax return submission.

Where accounts reporting the UK property business are prepared under an accounting standard that is supported by an XBRL taxonomy these must be filed with the corporation tax return in iXBRL format. Currently, the supported taxonomies are UK GAAP, IFRS and US GAAP. If the accounts are prepared and filed under a local accounting standard that is not recognised by HMRC, they do not have to be filed in iXBRL format, but must be attached as a PDF. A UK GAAP-compliant detailed profit and loss must always be included in the tax computation in iXBRL format.

Accounts are not required to be included as part of the tax return submission if they are not prepared and filed in accordance with a local reporting obligation, or if the business does not produce accounts at all; but a UK GAAP-compliant detailed profit and loss must be included in the tax computation in iXBRL format.

[COM130010 - Returns / notices: notices and returns: accounts - HMRC internal manual - GOV.UK \(www.gov.uk\)](#)

[Company Tax Returns: format for accounts forming part of an online return \(publishing.service.gov.uk\)](#)

5. VAT and other indirect taxes

5.1 Transfer of property was not a transfer of a going concern

The FTT ruled that, due to the substance of the sale, the sale of a commercial property did not qualify as a transfer of a going concern (TOGC) and as the seller had opted to tax the property, the supply was subject to VAT.

The taxpayer owned a site and, following notice by the tenant to vacate the property, applied for planning permission for redevelopment of the whole site for residential purposes.

An offer for the site was accepted, and the heads of terms agreed before exchange provided that VAT would be payable on the purchase price. The arrangements were then changed. The sale agreement referred to the sale as a TOGC, and outside the scope of VAT. A lease was arranged with a tenant connected with the buyer. Just before completion, a new lease was also put in place between the owner and the buyer's demolition company for a two-week period, paid in advance of completion, covering a number of days either side of the date of completion.

After completion, HMRC enquired why the buyer had not made any rental income. The taxpayer contended that the sale had qualified as a TOGC on the basis that a property development business was transferred, or a property rental business had been transferred. HMRC disagreed and raised an assessment for VAT on the sale price on the basis that the supply was that of property which the taxpayer had opted to tax.

The FTT agreed with HMRC and found that in substance no business was transferred. It found that the taxpayer had no intention of carrying out the development and there was no mention of a property development business in the exchange contract. Although the taxpayer had obtained planning permission, it was not actively carrying out the development, so did not

transfer a property development business. The FTT also did not accept that the taxpayer had carried on a genuine property rental business and found that the leases were granted solely to structure the transaction as a TOGC. The taxpayer's position was difficult to support given that the site had been marketed for sale with vacant possession, the tenants were connected to one of the parties, and the buyer had received no rental income.

As a result, VAT was due on the sale price, which would also increase the SDLT liability for the buyer.

Haymarket Media Group Ltd v HMRC [2022] UKFTT 00168 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/168.html

5.2 Attribution of input tax for partial exemption

The FTT considered the VAT recovery position for two well-known sofa retailer and ruled that the online advertising costs had a direct and immediate link to their sales and not to the insurance intermediary services offered in addition to the sofas or to their overall business. As a result, the retailers could fully recover VAT incurred on the advertising costs.

Typically, retailers agree to pay Google each time a customer looking to buy a sofa clicks on a result and is redirected to their website. Additionally, when customers buy a sofa, insurance can also be purchased to provide cover against both accidental stains and scratches. Both retailers earn exempt insurance commission for arranging these policies. Here, in HMRC's view, the input tax incurred related either to both the taxable and exempt supplies, with recovery split accordingly, or to neither, in which case it fell into the non-attributable 'pot' to be split as part of the partial exemption calculation.

The FTT's key focus was whether or not there was a 'direct and immediate link' between the expenses and a particular supply. The tribunal noted that determining a supply would not have been made 'but for' a particular cost did not necessarily create a direct and immediate link. The FTT concluded that the taxpayers incurred the Google costs in order to promote the sales of sofas which in turn may also lead on to sales of associated insurance. The fact that there was an economic link, or a close link, between the sofas and the insurance did not mean that a direct and immediate link existed. The FTT concluded that the Google costs did not have a direct and immediate link either to the insurance, or to the taxpayers' overall business, meaning that the taxpayers were entitled to recover input tax on the Google costs in full.

Sofology Limited and DFS Furniture Company Limited v HMRC [2022] UKFTT 153 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08480.html

6. Tax publications and webinars

6.1 Tax publications

The following Tax publications have been published.

- VAT and the Travel Industry – UK and wider developments.
- Proposal for possible "Online Sales Tax"

www.evelyn.com/insights-and-events

7. And finally

7.1 Topsy turvy

The delicious case of *Quayview* (item 3.2 above) cannot be permitted to pass without comment. Late filing penalties for filing too early? We have once again fallen down the rabbit hole, following a taxpayer who, much like the White Rabbit, was deeply concerned with being late. Sadly, a pocket watch cannot help much with timing monthly submissions, and their expedient of filing early only made the situation worse.

They can only be grateful to a wise judge, who refrained from crying "Off with their heads!" but instead took the path of encouraging compliance.

Quayviews Limited v HMRC [2022] UKFTT 190 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/ukfft_tc_2022_190.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. Clients should always seek appropriate tax advice before making decisions. HMRC Tax Year 2022/23.

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