14 September 2022

A round-up of recent issues

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Tax update

Contents

1. General

1.1 Tax Update and the bank holiday

There will be no Tax Update next week due to the bank holiday for the state funeral.

Tax Update will not be published next week following the 19 September bank holiday. The next issue will be on 27 September.

1.2 New Financial Secretary to the Treasury

Andrew Griffith MP replaces Lucy Frazer MP as the Treasury Minister chiefly responsible for dealing with HMRC and the tax system.

Now that a new Prime Minister has taken office, a new Financial Secretary to the Treasury has been appointed: Andrew Griffith MP. We wish Mr Griffith well in his new position.

www.gov.uk/government/people/andrew-griffith

1.3 HMRC online forms can now be viewed as a whole

A software update means that some HMRC online forms (gForms) can now be viewed as a whole rather than screen by screen.

The ICAEW advises:

"It is now possible to view the whole of an HMRC gForm by inserting the URL into the following link template:

https://www.tax.service.gov.uk/submissions/new-form/specimen-INSERT-URL-HERE."

www.icaew.com/insights/tax-news/2022/Aug-2022/HMRC-online-gForms-can-now-be-viewed-before-completion

2. Private client

2.1 Supplementary guidance on the requirement to correct published

New guidance has been published that to clarify areas not fully covered in the initial requirement to correct guidance, including the treatment of NICs and the responsibilities of personal representatives.

HMRC has published guidance to supplement the current requirement to correct guidance, which has not changed, although the original deadline has passed. The areas covered in the supplementary guidance are:

- Treatment of NICs.
- Which years are covered.
- Treatment of the remittance basis charge.
- Disclosures for deceased taxpayers.
- Reasonable excuse.

www.gov.uk/government/publications/requirement-to-correct

2.2 Self-employment income support scheme grants can be recovered

The FTT has agreed with HMRC that a taxpayer was not self-employed at the relevant time, so not entitled to claim grants under the self-employment income support scheme (SEISS). HMRC's assessment is therefore valid, and the grants must be repaid.

The taxpayer had been self-employed as a fitness trainer, but incorporated in 2018 and traded through the company thereafter. His tax returns reflected the change in his employment circumstances. In May 2020, he applied for and received an SEISS grant, and a second in August. HMRC started a compliance check in October. He argued that the need to be a sole trader was not clear from the claims process. He should be allowed to keep the grants, as HMRC had paid them to him in the full knowledge, from his returns, that he was not self-employed at the relevant time.

The FTT found for HMRC. It was shown screenshots of the claims process, in which the eligibility criteria were clearly set out, but noted this was not that important. The taxpayer was never entitled to the grant, and HMRC had raised an assessment in good time. Although HMRC knew he was not trading, the FTT could not consider a ground of legitimate expectation., The assessment was upheld.

Taylor v HMRC [2022] UKFTT 304 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08576.html

3. Business tax

3.1 Media company did not qualify for the seed enterprise investment scheme

Investments in a company did not qualify for the seed enterprise investment scheme (SEIS) as there were disqualifying arrangements.

The company was incorporated to exploit the intellectual property rights to an animation programme and related spin-offs. The originator of the concept was a director within a group of companies (the Group) that operated a fund for investors to

subscribe for shares in creative companies. An anti-avoidance provision denies SEIS relief where there are disqualifying arrangements. This includes where shares are issued subject to arrangements whose main purpose is to generate access to tax relief and the benefit of the investment is passed to another party to the arrangements.

The FTT found for HMRC due to the existence of disqualifying arrangements, preventing relief for investors under the SEIS. Over half of the capital raised was paid by the media company under a production services agreement to a member of the Group. The media company argued that the company to which the payment was made was not party to the arrangements, but the FTT disagreed, noting the extensive involvement of members of the Group in virtually every aspect of the arrangements. On other points, the FTT found in favour of the taxpayer, making comments on various aspects of this notoriously complex area.

Coconut Animated Island Limited v HMRC [2022] UKFTT 303 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08575.html

3.2 Bloodstock business did not qualify for the enterprise investment scheme

The FTT agreed with HMRC that the taxpayer was an investment company, so ineligible for the relief. The profits came from appreciation in stock, and capital was not sufficiently at risk to meet the criteria for the scheme.

HMRC refused to certify share issues by the company as enterprise investment scheme (EIS) shares. The company bought and sold potential racehorses, and outsourced raising them to a third party. The FTT considered the operations of the company. In order to qualify for EIS the capital needed to be at risk, and there had to be a plan for longer term development of the company.

This company indicated in its publicity for investors that it only intended to last for three years. It had no employees, and subcontracted all activities. The company had not sought advance clearance, and had also not prepared any business plans or cash flow forecasts to support its case. The FTT therefore found for HMRC that it was correct to deny EIS status.

Valyrian Bloodstock Limited v HMRC [2022] UKFTT 306 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08578.html

4. And finally

4.1 And finally

And finally joins the country, and the world, in mourning the loss of Her Majesty Queen Elizabeth II.

Our very best wishes as well to what is now His Majesty's Revenue and Customs. It will take some getting used to, for all of us.

God save the King.

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	