Smith & Williamson

Tax update

A round-up of recent issues

3 February 2022

1. Private client

1.1 Proof of letting needed for holiday accommodation to qualify for business rates

New rules will be introduced from 1 April 2023, which will mean that some owners of holiday lets will be subject to council tax rather than business rates. The stricter criteria for the generally more advantageous business rate treatment include a requirement that the property was actually let for 70 days in the previous year, and the property owner will need to prove that this criteria has been met.

After consultation, the Government has announced that self-catering holiday accommodation will only qualify for business rate treatment if it meets new criteria. Currently, owners only need an intention to let the property. Under the new rules, the property must be available for short term self-catering commercial lets for 140 days both in the year in question and in the prior year, and must have actually been let as such for 70 days in the prior year. Where the conditions are not met, council tax will be payable instead.

Owners will be required to produce evidence that the property was available to let, and let, for the periods required. Evidence may include the website or brochure used to advertise, letting details and accounts.

The new rules apply from 1 April 2023. A change to the rules was expected, but this announcement gives more detail on how it will operate.

www.gov.uk/government/news/gove-closes-tax-loophole-on-second-homes

www.gov.uk/government/consultations/business-rates-treatment-of-self-catering-accommodation

1.2 Lost deposit not allowable loss for CGT

The FTT has found that a taxpayer who lost a deposit when he defaulted on later payments due under a contract did not have an allowable loss for CGT. The facts of the case were similar to a UT decision in a different case, so the UT decision that no asset had been disposed of was binding.

The taxpayer paid a deposit on a property under construction. He agreed to pay a further amount 12 months later, with the balance due when the property had been built. He failed to make the interim payment, as he could not obtain funding, so forfeited the deposit. As a loss can only accrue on the disposal of an asset, HMRC refused his loss claim on the grounds that he had not held the asset. He argued at the FTT that under the contract he had acquired rights, and the loss of these rights when the contract was forfeit was the disposal of an asset.

The FTT found for HMRC. A previous UT decision on a similar case had found that no allowable CGT loss arises if a taxpayer forfeits a deposit by defaulting on subsequent payments, and the FTT decided that it was bound by this finding. Other cases had addressed slightly different points, and did not change the conclusion that the UT decision was binding.

Drake v HMRC [2022] UKFTT 25 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08377.html

1.3 UT dismisses appeal on SDLT avoidance scheme

The UT has upheld an FTT decision that an SDLT avoidance scheme designed to allow a taxpayer to obtain sub-sale relief by granting an option did not work. As the option was never taken up then the second transaction was not substantially completed.

The taxpayer entered into an SDLT avoidance scheme designed to allow him to purchase a residential property without paying SDLT. At the same time as the purchase, he granted an option to a company, of which he was the CEO, to allow the company to purchase the property. Although the option was not exercised he argued that sub-sale relief applied. The case had also considered the impact of Project Blue and the anti avoidance provisions

The FTT had found for HMRC, on the grounds that the secondary transaction had not been substantially completed, as although the option had been granted it had not been used. The UT agreed with this decision, rejecting the taxpayer's argument that the contract for the property sale and the grant of the option were part of one transaction, which had been substantially performed.

Fanning v HMRC [2022] UKUT 21 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2022/21.html

2. VAT

2.1 Decision on whether or not VAT can be claimed when not charged by the supplier

The CJEU has ruled that where a price is expressed to be exclusive of VAT and the supplier does not charge VAT in addition to the price, but it is subsequently shown that the supply was taxable, the recipient of the supply cannot claim input VAT unless additional VAT is actually charged to it by the supplier.

The taxpayer supplied vitamins and minerals to consumers in the UK by mail order. Between 2006 and 2010, the taxpayer received postal services from Royal Mail in respect of the delivery of these goods, for which both parties had entered into an individually negotiated contract. Royal Mail treated the postal services as exempt from VAT.

As a result of a separate European case in 2009, it was determined that the exemption does not apply to individually negotiated contracts.

The taxpayer took the view that the services provided by Royal Mail were inclusive of VAT and submitted a claim to HMRC for a refund of the purported VAT. Royal Mail did not pursue the VAT from the business's

customers for past supplies and neither did HMRC issue claims against Royal Mail for the VAT, as it considered that Royal Mail had grounds for a defence based on legitimate expectation.

The CJEU found that the taxpayer was not entitled to deduct VAT in these circumstances, unless additional VAT was actually charged by the supplier.

Zipvit Ltd v HMRC [2022] EUECJ C-156/20

www.bailii.org/eu/cases/EUECJ/2022/C15620.html

3. Tax publications and webinars

3.1 Webinars

The following client webinars are coming up soon.

- 9 February - S&W Sessions: VAT/Indirect Tax – new legislation coming into effect in 2022

https://smithandwilliamson.com/en/events/

4. And finally

4.1 A bundle of joy?

When the notes on the Finance Bill at the report stage were published, we did take a quick look in our tax baby monitor. Well, just as well we looked twice, because a day after these innocuous notes were published, an extra document was slipped into the tax world. Suitably quiet news for a Friday afternoon – after all, it's only a new-born tax. At a 75% rate!

Welcome to the Public Interest Business Protection Tax.

It seems to belong to that charming subset of taxes that are designed never to be collected. As you may have gathered from the threatening name, it is intended as a deterrent. Woe betide anyone trying to net a windfall by closing down their energy company prematurely.

Frankly, though, we prefer our new-born taxes to cry loudly; then everyone can pay them attention.

https://commonslibrary.parliament.uk/research-briefings/cdp-2021-0184/

www.gov.uk/government/publications/finance-bill-2021-2022-report-stage#full-publication-update-history

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		

smithandwilliamson.com

Offices: London, Belfast, Birmingham, Bristol, Dublin (City and Sandyford), Glasgow, Guildford, Jersey, Salisbury and Southampton.

Smith & Williamson LLP: Regulated by the Institute of Chartered Accountants in England and Wales for a range of investment business activities. Smith & Williamson LLP is a member of Nexia International, a leading, global network of independent accounting and consulting firms.

Please see *https://nexia.com/member-firm-disclaimer/* for further details. Registered in England No. OC 369631.

A member of Nexia International