

Tax update

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1. General

1.1 New Financial Secretary to the Treasury

Victoria Atkins MP has been appointed 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 (FST) has been appointed: Victoria Atkins MP. We wish her well in her new position.

www.gov.uk/government/people/victoria-atkins

1.2 HMRC compliance campaign: offshore corporates owning UK property

HMRC is writing to non-resident corporate owners of UK property who have been identified as potentially non-compliant with either ATED or non-resident CGT. Although targeting companies, it recommends that the recipient asks connected individuals to check that they are personally compliant.

Following a review of data, including from the Land Registry, HMRC has announced two new batches of nudge letters. These will ask recipients to make a disclosure, or to inform HMRC why they do not need to make a disclosure. A Certificate of Tax Position and a Notice of Intention to Disclose will be enclosed.

One batch will go to non-resident companies owning UK property that may be liable to ATED or tax on income received as a non-resident landlord. The letter explains how to make a disclosure, and how to seek help, such as by authorising an agent to deal with HMRC.

The other batch will go to non-resident companies that have sold a UK property but not filed a non-resident CGT return. The letter also sets out the other taxes the company might owe, including on rents. The letter explains how to make a disclosure, and how to seek help, such as by authorising an agent to deal with HMRC.

Care should be taken in completing any such forms. While there may be an obligation for taxpayers to respond to HMRC, there is no obligation to do so using the particular forms and certificates provided by HMRC. You can contact our tax dispute resolution team if you need any assistance on these matters on taxdisputes@evelyn.com.

www.tax.org.uk/offshore-corporates-owning-uk-property-hmrc-campaign

1.3 CIOT asks for Office of Tax Simplification to be kept

The CIOT has written to the new Chancellor asking for Chancellor Kwarteng's announcement that the OTS would be closed to be reconsidered.

The letter sets out the valuable work the OTS has done so far, and future tax simplification projects to which it would make a valuable contribution.

The CIOT has suggested that the OTS's revived role should be strengthened and has asked for a meeting with the Chancellor to discuss the future of the OTS.

www.tax.org.uk/office-of-tax-simplification-ciot-letter-to-the-chancellor

2. Private client

2.1 Nudge letters targeting persons of significant control

HMRC is using Companies House records to write to persons of significant control (PSCs). One batch of letters targets those declaring income under £100,000, and another those not filing returns at all.

The first batch are being sent to PSCs who are self-assessment taxpayers with declared 2020/21 income under £100,000. HMRC considers this to be lower than expected, so they will receive letters asking them to check that the return was correct. If any errors are identified an amendment should be filed. The letter also asks the taxpayers to ensure that their 2021/22 return includes all sources of income and gains. The letter sets out various circumstances in which they might have to pay tax as an individual due to their connection with the company, such as if they have the use of business assets or pay interest at less than the official rate on loans from the company.

The second batch, to PSCs not registered for self-assessment, will ask them to consider whether or not they need to register. It also set out the circumstances in which they might have to pay tax as an individual due to their connection with the company. Those who do not need to file a return are asked to inform HMRC of this, setting out their reasons. The letter also explains how to register for self-assessment.

www.tax.org.uk/hmrc-s-one-to-many-letters-to-persons-of-significant-control-earning-below-100-000

3. Trusts, estates and IHT

3.1 Further updates about the trust registration service

HMRC has clarified guidance for the trust registration service (TRS) about data sharing, premium bonds, and National Savings certificates.

The TRS manual has been updated to add guidance that an adult purchasing a premium bond for a minor child does not create a requirement to register, as there is no express trust. Likewise an adult buying a National Savings certificate for a minor is non-registerable, unless the purchase was by trustees of an express trust for the minor.

A new question has been added asking if the trust has a data sharing exemption. HMRC needs this information to exclude the data for those trusts from third party information requests.

www.tax.org.uk/trust-registration-service-updates

4. Business tax

4.1 HMRC directed by FTT to issue CT closure notice

The appellant, a charity, applied to the tribunal for HMRC to issue a closure notice for an enquiry. The charity had submitted that it could not comply with HMRC's information requests further due to a lack of records. The FTT agreed that the charity should be issued with the closure notice and that HMRC should decide the outcome on the data it had already.

The charity had made payments in relation to an historic debt that did not have a clear, documented record. It claimed tax relief on the payments as they were made for the purposes of the charity. HMRC was concerned about whether or not the debt payments were legal obligations of the charity or illegitimate payments, and the accuracy of the debt balance.

The charity argued that due to the nature of the arrangements some documentation had never existed and some had been lost over the years as the debt originated in 1988. The FTT agreed that there were no reasonable grounds to maintain the enquiry and directed HMRC to issue a closure notice based on the documentation it had already. The taxpayer will be able to appeal the closure notice and progress the dispute from there.

Newpier Charity Ltd v HMRC [2022] UKFTT 373 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08622.html

5. VAT and other indirect taxes

5.1 HMRC guidance on VAT and children's face masks

HMRC has published a brief with guidance on its revised position regarding children's face masks.

If designed for children under 14, these are now considered items of clothing and as such qualify for the normal VAT relief on children's clothing. This is a change to HMRC's previous position, so some businesses may be able to reclaim past overpaid VAT.

www.gov.uk/government/publications/revenue-and-customs-brief-11-2022-vat-and-childrens-face-masks

5.2 HMRC has power to delay a VAT refund under investigation

The SC unanimously dismissed the taxpayer's appeal, finding both that HMRC had raised the VAT assessment in time, and that HMRC has the power to refuse a claimed repayment while it is undergoing verification.

The taxpayer made taxable supplies, including eyeglasses, and also exempt supplies including laser eye surgery. The dispute with HMRC arose from how consideration from the customers was attributed between the two types of supplies.

This part of a long running dispute covered two main points. The first was whether or not HMRC's assessment had been raised out of time. The SC found conclusively that the assessment was in time, as the one year time period to raise the assessment only began when HMRC received the last pieces of information it needed, before which it could not have raised the assessment.

The second was about HMRC's powers. The taxpayer held that HMRC should have made the claimed repayment of input tax on submission of the return, rather than holding off during the investigation, then paying the reduced amount it calculated. The SC held that HMRC did have the power to delay the payment, as though not explicit in the legislation it is implicit that "the obligation on HMRC to pay a VAT credit arises only once it is established that the VAT credit is due. There must be a VAT credit due before HMRC are under the statutory obligation to pay. The obligation on HMRC to pay does not depend solely on the say-so of the trader".

DCM (Optical Holdings) Ltd v HMRC [2022] UKSC 26

www.bailii.org/uk/cases/UKSC/2022/26.html

6. Tax publications and webinars

6.1 Webinars

The following client webinars are coming up soon.

- 3 November - [The tax landscape](#)
- 10 November - [Business exit planning for entrepreneurs: tax efficiency and employee support](#)
- 30 November - [UK tax and reporting considerations for international private clients](#)

7. And finally

7.1 Nudging through the centuries

Nudge letters are a regular feature of HMRC's campaigns (see articles 1.1 and 2.1 above). We can trace back the current form of nudge letters to more general Government "nudge" policy to influence behaviour, but how did this start?

Well, one early example may be found in the Stamp Duties Act 1783. Patent medicines bought from quacks? Subject to medicine stamp duty. More legitimate medicines purchased from an apothecary? Exempt. Debate over whether or not this was a public health nudge measure continues, but we like to believe.

Why did the Government need the money? Well, to put down rebellion in the American Colonies of course. Perhaps the rate should have been higher.

(With thanks to the Worshipful Company of Tax Advisers and Jon Sherman for a fascinating talk on the history of stamp taxes in the UK, recording linked below.)

www.taxadvisers.org.uk/history-of-tax-events/

www.taxadvisers.org.uk/tax-and-quacks/

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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