

13 July 2022

A round-up of recent issues

# Tax Update

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## Contents

13 July 2022	1
1. General	1
1.1 Finance Bill 2022-23	1
1.2 HMRC response to service levels complaint	2
1.3 Consultation on sovereign investor tax treatment	2
1.4 Call for evidence on cryptoasset taxation	2
2. Private client	2
2.1 Share valuation for IT relief reduced	2
2.2 Taxpayer loses appeal on residence	3
3. PAYE and employment	3
3.1 HMRC wins another IR35 case	3
4. Business tax	3
4.1 Land remediation relief by gas network company fails in CA	3
4.2 HMRC releases information on Corporate Criminal Offence investigations	4
4.3 HMRC issues guidance on cancelling a registration for plastic packaging tax	4
5. Tax publications and webinars	4
5.1 Tax publications	4
6. And finally	4
6.1 To be or not to be	4

## 1. General

### 1.1 Finance Bill 2022-23

*Draft legislation for the next Finance Bill is expected to be published on 20 July.*

The Financial Secretary to the Treasury has announced that draft legislation for the next Finance Bill will be laid before Parliament on Wednesday 20 July. This was announced prior to the appointment of the new Chancellor, so there is a possibility that it will be delayed. The draft clauses will largely cover pre-announced policy changes.

Other documents will also be published, including responses to consultations, explanatory notes and impact notes for the legislation, and other supporting documents.

<https://questions-statements.parliament.uk/written-statements/detail/2022-07-05/hcws180>

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## 1.2 HMRC response to service levels complaint

*HMRC has responded to the joint professional bodies letter that raised concerns about service levels, explaining measures it has already taken.*

The letter explains the service levels HMRC aims for, along with statistics demonstrating how close targets are to being met. It also notes that a performance dashboard and updated tool for checking when a response is expected will be published soon.

[www.tax.org.uk/hmrc-service-levels-joint-professional-bodies-letter-hmrc-response](http://www.tax.org.uk/hmrc-service-levels-joint-professional-bodies-letter-hmrc-response)

## 1.3 Consultation on sovereign investor tax treatment

*The Government is seeking views on its plans to modernise the tax treatment of foreign sovereign wealth funds and foreign heads of state.*

Currently, foreign sovereign persons are exempt from direct taxation on their UK income under an interpretation of sovereign immunity. The consultation proposes that this exemption is legislated in a narrower form, targeting exemptions to specific types of income. Investment income, particularly passive investment income, is mentioned specifically.

The planned date for reforms is April 2024 but details are yet to be finalised. No material impact on foreign investment is expected.

[www.gov.uk/government/news/uk-launches-consultation-to-upgrade-sovereign-investor-tax-treatment](http://www.gov.uk/government/news/uk-launches-consultation-to-upgrade-sovereign-investor-tax-treatment)

## 1.4 Call for evidence on cryptoasset taxation

*The Government is seeking opinions on the taxation of cryptoasset loans and elements of decentralised finance.*

Given the rapid expansion of digital assets, changes to the tax rules may be needed to cover new scenarios. This call for evidence is looking at decentralised finance, and the taxation of loans and 'staking' within this. The Government plans to consider how administrative burdens and costs could be reduced, and how the tax treatment can be better aligned with the economics of the transactions.

The deadline for submissions is 31 August 2022.

[www.gov.uk/government/consultations/call-for-evidence-the-taxation-of-decentralised-finance-involving-the-lending-and-staking-of-cryptoassets/the-taxation-of-decentralised-finance-involving-the-lending-and-staking-of-cryptoassets-call-for-evidence](http://www.gov.uk/government/consultations/call-for-evidence-the-taxation-of-decentralised-finance-involving-the-lending-and-staking-of-cryptoassets/the-taxation-of-decentralised-finance-involving-the-lending-and-staking-of-cryptoassets-call-for-evidence)

# 2. Private client

## 2.1 Share valuation for IT relief reduced

*The FTT has found that AIM listed shares given to charity had a much lower market value than claimed. The IT relief available was reduced.*

Three taxpayers gave shares in an AIM listed company, R, to charity, and claimed income tax relief. HMRC disagreed with the market value the taxpayers claimed the shares had on the date of donation, 53.25p a share, and issued assessments on the basis that this was 14.66p a share. HMRC then contended at the hearing that it was actually 8.05p.

Closure notices were not issued until 12 years after the enquiries were opened. In a separate judgement the FTT found that there was no prejudice to a fair hearing from the delay, so it had no jurisdiction to provide any remedy or amend the grounds of appeal. It did however criticise HMRC's conduct.

The FTT considered the merits of the competing valuations submitted, given the state of the company and the valuations in other transactions, and arrived at a final figure of 12.2p a share.

*Close & Ors v HMRC* [2022] UKFTT 193 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08518.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08518.html)

*Nuttall v HMRC* [2022] UKFTT 192 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08517.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08517.html)

## 2.2 Taxpayer loses appeal on residence

*A taxpayer was found to have become UK resident after ceasing full-time work overseas, as he retained links to the UK under the pre-statutory residence test rules.*

The taxpayer claimed to have moved from the UK to Gibraltar in 2010, and back to the UK in 2015/16, having tried and failed to establish a care home. For his first two years overseas he worked full time, and was classified as non-resident. HMRC contended that he was UK resident in 2014/15 as well as in 2012/13. It was accepted that his residence position in 14/15 under the Statutory Residency Test (SRT) hinged on that in 12/13, under the pre-SRT rules. The taxpayer argued that the cessation of his employment did not make him UK resident again, as he had made a distinct break with the UK.

The FTT assessed the fact pattern, including his available accommodation in the UK, and found that under the rules preceding the SRT the taxpayer was UK resident in 2012/13, when the distinct break with the UK came to an end. He was therefore resident under the SRT in 2014/15, with significant tax consequences.

*Batten v HMRC* [2022] UKFTT 199 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08524.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08524.html)

# 3. PAYE and employment

## 3.1 HMRC wins another IR35 case

*The FTT has found that a football commentator should be taxed as an employee. He had contracted with the broadcaster through his personal service company (PSC) but was subject to the off-payroll working rules (IR35) due to the nature of the relationship.*

The commentator had worked for the broadcaster for many years through his PSC. HMRC assessed for PAYE and NICs on the grounds that he should have been treated as an employee of the broadcaster.

The FTT went through the case law on the IR35 legislation, including the recent CA judgments, and described the tests that must be used. It constructed the hypothetical contract that would reflect the actual relationship between the parties, and concluded that the degrees of control and mutuality of obligations met the threshold for an employment relationship. Although other factors militated against this conclusion, looked at as a whole the relationship was caught by IR35, so the appeal was dismissed.

*Alan Parry Productions Limited v HMRC* [2022] UKFTT 194 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08519.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08519.html)

# 4. Business tax

## 4.1 Land remediation relief by gas network company fails in CA

*The taxpayer, a gas network company, asked for a purposive interpretation of the legislation to permit it to claim relief where it supplied gas through leaky pipes. On a strict interpretation it failed, but it unsuccessfully argued against an over-literal interpretation of the legislation.*

The case was under the old, less stringent, 2001 legislation. The taxpayer operated a gas network through iron pipes, which were not installed by anyone connected to the taxpayer. The pipes were leaky, so the taxpayer was required to replace them with plastic ones. The taxpayer sought land remediation relief.

The issue on which the case turned was whether or not the polluted state of the land was as a result of any action or omission on the part of the company. Was the company responsible, not least because it was the leaky pipes that were at the heart of the problem, although the taxpayer was responsible for the gas?

The taxpayer appealed to the principle of 'the polluter pays' arguing that it was the laying of the pipes that was the pollution. If that were not the case, companies such as the taxpayer could never enjoy relief.

The appeal failed. The wording of the legislation was clear and covered a company, as here, at least partially responsible for the contamination.

*Northern Gas Networks Ltd v Commissioners for HMRC* [2022] EWCA Civ 910

[www.bailii.org/ew/cases/EWCA/Civ/2022/910.html](http://www.bailii.org/ew/cases/EWCA/Civ/2022/910.html)

## 4.2 HMRC releases information on Corporate Criminal Offence investigations

*The Corporate Criminal Offences (CCO) legislation for the failure to prevent the facilitation of tax evasion was introduced in 2017 and made it a crime for businesses to fail to put in place reasonable procedures to prevent associated persons from facilitating tax evasion. Details on the number of investigations are released biannually with the latest figures as of May 2022 now available.*

As of 13 May 2022, HMRC had 7 live CCO investigations and a further 21 potential cases under review. To date, 69 cases have been reviewed and closed. The investigations cover a wide range of business sectors including software providers, accountants and transport services. In some cases, even though no deliberate facilitation of tax evasion was established, other tax or regulatory offences have been found that are being pursued.

Businesses convicted under these new rules face a potentially unlimited fine and need to consider the reputational risk of non-compliance. HMRC commented that the number of investigations is not the only measure of success, as the legislation was introduced to drive behavioural change that would prevent the facilitation of tax evasion in the first place.

[www.gov.uk/government/publications/number-of-live-corporate-criminal-offences-investigations/number-of-live-corporate-criminal-offences-investigations](http://www.gov.uk/government/publications/number-of-live-corporate-criminal-offences-investigations/number-of-live-corporate-criminal-offences-investigations)

## 4.3 HMRC issues guidance on cancelling a registration for plastic packaging tax

*Businesses must cancel its plastic packaging tax (PPT) registration if it is no longer liable for the tax.*

PPT came into force in April 2022 and applies to plastic packaging produced in, or imported into, the UK that contains less than 30% recycled plastic. The new guidance explains how to cancel registration if a business is no longer liable for the tax. Approval will usually take 28 days. There is also guidance on how to submit a final return and how to claim tax back after deregistration.

[www.gov.uk/guidance/cancel-your-registration-for-plastic-packaging-tax](http://www.gov.uk/guidance/cancel-your-registration-for-plastic-packaging-tax)

# 5. Tax publications and webinars

## 5.1 Tax publications

- [Changes to the definition of bank: the evolution of taxation in the financial sector](#)

[www.evelyn.com/insights-and-events/](http://www.evelyn.com/insights-and-events/)

# 6. And finally

## 6.1 To be or not to be

In the *Close* decision at 2.1 above, were some quite awesome timings. Transactions took place as early as 2003/4 with closure notices in 2017/18 reaching the FTT in February this year. We wouldn't have been surprised if HMRC's estimate of share value might have been better expressed as 1 shilling, seven pence one farthing, so long was it after the original enquiry into the taxpayers' returns. As the *Nuttall* case finds, HMRC's delays in getting to closure were 'inordinate and inexcusable'.

It's probably just as well that Hamlet lived in Denmark, because if he had had such a share valuation dispute with HMRC, perhaps it might have tipped his famous decision the other way.

*Close & Ors v HMRC* [2022] UKFTT 193 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08518.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08518.html)

*Nuttall v HMRC* [2022] UKFTT 192 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08517.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08517.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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