16 November 2022

A round-up of recent issues

Tax update

Contents

1. Private client

1.1 HMRC nudge letters on crystallising deferred gains

HMRC is reminding taxpayers who claimed deferral relief under the enterprise investment scheme (EIS) about the events that will cause this gain to come back into charge.

These letters are not an indication that the taxpayer has made a mistake, but are being sent to some of the taxpayers who claimed EIS deferral relief in 2012/13 and 2013/14. The letters explain the five events that will cause the deferred gain to crystallise, as a reminder, and advise the taxpayer to amend their return accordingly if the gains have crystallised. It also points the taxpayer to additional guidance.

www.tax.org.uk/hmrc-remind-taxpayers-who-have-claimed-eis-deferral-relief-about-crystalising-events

1.2 HMRC nudge letters on rollover relief

Taxpayers who claimed business rollover relief on a residential property disposal before 2020/21 are being reminded of the limited circumstances in which this can be validly claimed.

Business rollover relief only applies to a limited subset of capital gains, and rarely to gains arising on the sale of residential property. In case of errors, HMRC is therefore writing to taxpayers who made this claim on a pre-2020/21 gain to remind them of the rules.

Recipients are asked to correct any errors within 30 days of the date on the letter. Alternatively, if the taxpayer is happy that their return is correct they must email confirmation to HMRC, again with 30 days of the date of the letter. If no action is taken HMRC is likely to open an enquiry and possibly issue assessments.

www.tax.org.uk/hmrc-reminder-letters-about-rollover-relief-and-residential-properties

1.3 Taxpayer win on timing of business transfer

Following a protracted enquiry, the FTT found that a partnership business was transferred to a company earlier than HMRC believed, so the penalties raised on the partnership for a later year were invalid.

The taxpayers formed a partnership in 2003, the business of which was transferred to a company in 2005. The taxpayers contended that this transfer was before 6 April 2005, so there were no taxable profits for the partners in 2005/06. HMRC believed that this was later, presenting as evidence a 2011 letter which gave the date of transfer as 2 August 2005. The taxpayers had also filed a return in 2005/06 on the basis that the business was operating as a partnership.

Weighing all the evidence, the FTT found for the taxpayers that the business transfer occurred in 2004/05, so cancelled the assessments and penalties. There was very little direct evidence, and the oral evidence was not of value given the lapse of time. The agent involved at the time was not of assistance, and there were questions about the accuracy of his treatment. Documents prepared by him were therefore found not to reflect the underlying commercial reality, which was a transfer of the business to the company in 2004/05.

Kingdon & Ors v HMRC [2022] UKFTT 407 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08633.html

2. Business tax

2.1 HMRC correcting loss amounts in CT returns

Where the loss amount disclosed in the CT return does not match that on the tax computation, HMRC will use the tax computation as the accurate position for losses and write to the taxpayer to tell them so.

HMRC has identified a number of CT returns where the loss amount disclosed does not match the tax computation. The inconsistencies relate to the inclusion of brought-forward losses within the 'amount arising' boxes of the CT return for property business losses, non-trading losses on intangible fixed assets and management expenses, which in HMRC's view is incorrect following the loss reform provisions of 1 April 2017. HMRC guidance has now been updated to confirm that these boxes should only include current period amounts.

No action is required by taxpayers. HMRC will rely on the amounts in the tax computation for losses, and affected taxpayers and their agents will receive letters to confirm this. If affected taxpayers or agents disagree with HMRC's approach they have 60 days from the date of the letter to contact HMRC.

www.tax.org.uk/hmrc-letter-differences-in-the-loss-position-of-company-tax-returns

2.2 Government publishes call for evidence on digital services tax

This 2% tax on the revenues of search engines, social media platforms and online marketplaces that derive value from UK users is due to be replaced with an OECD equivalent, so the Government is assessing its effectiveness and learning points.

Digital services tax (DST) came in in April 2020. The questions the Government is asking HMRC and the Treasury before implementing the OECD reforms include:

- What the digital services tax is and why it was introduced
- How HMRC managed risks when implementing the digital services tax
- The lessons HMRC has learned from implementing digital services tax and how it intends to use them in implementing OECD reforms.

The deadline for submissions closes on 27 November 2022.

https://committees.parliament.uk/call-for-evidence/2962/

3. VAT and other indirect taxes

3.1 HMRC reminder on registering for plastic packaging tax

HMRC is issuing reminders on when a taxpayer needs to register for plastic packaging tax (PPT).

As PPT was only introduced on 1 April 2022, many taxpayers are still getting to grips with the registration requirements and deadlines.

Extensive guidance has been published by HMRC, which is regularly updated to clarify queries such as whether or not a particular type of packaging is caught by the definition.

The most significant recent amendment to the guidance is that HMRC has determined that reusable plastic crates fall within the definition of transport packaging and are therefore exempt from PPT when imported filled with goods into the UK, although empty crates are still taxable.

www.gov.uk/guidance/when-you-must-register-for-plastic-packaging-tax

3.2 SC rules against an NHS Trust's claim for historical VAT

SC has ruled that HMRC was correct to disallow an historic 'Fleming' VAT refund claim by an NHS trust on the basis that the trust had failed to provide sufficient evidence to support its entitlement to reclaim the VAT.

The FTT and UT had initially allowed the trust's appeal but at the Scottish Court of Session, the decision was overturned and remitted back to the FTT. The second FTT decision dismissed the appeal, with the case then heard in the SC.

In March 2009, the trust submitted a 'Fleming' claim for input tax incurred between 1 April 1974 and 30 April 1997, originally for £7m of VAT incurred in respect of the trust's business activities. During the appeal process, the claim was subsequently reduced to around £900,000.

HMRC had rejected the claim on a number of grounds, including the trust's failure to demonstrate that some of the VAT had not already been reclaimed, the methodology used to calculate the claim was flawed, and the trust's failure to explain why VAT claimed for some earlier years was over four times higher than VAT being claimed in the current year.

The SC agreed with the second FTT decision insofar as the trust had failed to produce sufficient evidence to support the claim and therefore allowed HMRC's appeal.

The SC decision also noted that a number of other trusts had similar claims stood behind this decision, in the region of £38m.

HMRC v NHS Lothian Health Board (Scotland) [2022] 1 WLR 4888, [2022] UKSC 28, [2022] WLR 4888

www.bailii.org/uk/cases/UKSC/2022/28.html

3.3 Option to Tax consultation by HMRC

As part of an efficiency drive, HMRC has issued a brief consultation Option to Tax - Consultation Comms.pdf which proposes to reduce their services provided in relation to options to tax. Please let your normal contact at Evelyn Partner know if you have any comments to feed back to HMRC by the closing date of 28 November. Alternatively, comments can be sent direct to HMRC at: hmrcoptiontotaxcontinuousimprovementconsultation@hmrc.gov.uk.

4. Tax publications and webinars

4.1 Tax publications

The following Tax publications have been published.

- 12 steps your business can take to get recession ready

4.2 Webinars

The following client webinars are coming up soon.

- 30 November - UK tax and reporting considerations for international private clients
- 30 November - What are my business options
- 8 December - Retirement from the partnership

5. And finally

5.1 Winds of change?

For what feels like the umpteenth time this year, we are going to have a fiscal event this week. The difference with this one, however, is that the changes are more likely to stick. The speculation is fevered already, and it seems that the Press have left no stone unturned in coming up with possible changes, some more left field than others.

Well, we'll just have to see what the Chancellor says. And if it's quieter than expected? The Spring Budget is just around the corner.

https://whatson.parliament.uk/event/cal40336

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	