

Tax update

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1. General

1.1 HMRC late payment interest rate to increase again

Following the Bank of England base rate rise, the rate of interest HMRC charges on late tax payments will be increased again. This will be the sixth increase in 2022 for non-quarterly instalment payments. The repayment interest rate will also rise, for the first time since 2009.

HMRC will increase yearly interest rates on overdue tax by 0.5%, following the Bank of England base rate increase from 1.25% to 1.75%. The rate applied to the main taxes will therefore become 4.25%.

The change will apply from 15 August 2022 for quarterly instalment payments and 23 August 2022 for non-quarterly instalment payments.

The rate of interest on repayments from HMRC will increase to 0.75% from the current rate of 0.5% from 23 August. This is the first change to that rate since 2009.

www.gov.uk/government/news/hmrc-late-payment-interest-rates-to-be-revised-after-bank-of-england-increases-base-rate
[6#:~:text=HMRC%20interest%20rates%20for%20late,interest%20rate%20rise%20to%201.75%25.&text=The%20Bank%20of%20EEngland%20Monetary,Bank%20of%20England%20base%20rate](https://www.gov.uk/government/news/hmrc-late-payment-interest-rates-to-be-revised-after-bank-of-england-increases-base-rate#:~:text=HMRC%20interest%20rates%20for%20late,interest%20rate%20rise%20to%201.75%25.&text=The%20Bank%20of%20EEngland%20Monetary,Bank%20of%20England%20base%20rate)

www.gov.uk/government/publications/rates-and-allowances-hmrc-interest-rates-for-late-and-early-payments/rates-and-allowances-hmrc-interest-rates

1.2 HMRC nudge letters on suspected tax evasion

HMRC is writing to individuals with connections to a particular bank, who are suspected of tax evasion and money laundering.

Following concerning reports about the Euro Pacific International Bank in Puerto Rico, HMRC is investigating UK taxpayers with connections to it. They will receive letters in the next few weeks urging them to check their tax affairs, and contact HMRC if they need to make any corrections. Letters sent to unrepresented individuals will suggest that they seek advice from a suitably qualified specialist. HMRC is encouraging account holders to come forward and settle any tax due under its Worldwide Disclosure Facility.

If affected, you can speak to one of our tax dispute resolution specialists, who can review your situation and advise on the best course of action. You can contact us through our Tax Dispute Resolution Helpline 0203 8334 101 or by emailing us at taxdisputes@evelyn.com.

www.tax.org.uk/euro-pacific-international-bank-hmrc-activity

2. Private client

2.1 HMRC nudge letters on rollover relief

HMRC is writing to taxpayers who claimed business asset rollover relief on residential properties, to check whether or not the home was used in a trade.

Rollover relief is only available on disposals of assets used in a trade. After having identified a number of 2020/21 returns where the relief was claimed on the sale of a residential property, HMRC is writing to the relevant taxpayers to ask them to review the claim.

The letters will be sent out from 8 August, and taxpayers will have 30 days to check the claim and amend their tax return if required. If they do not respond, HMRC will review the return and may open a compliance check.

3. Trusts, estates and IHT

3.1 HMRC Trusts and Estates Newsletter

The latest edition of the HMRC Trusts and Estates Newsletter has been released, with information about forthcoming changes to the Trust Registration Service (TRS) and various reminders.

Points raised include:

- How to report a discrepancy with TRS data
- When, and what, TRS data might be shared with third parties such as law enforcement organisations
- Procedural changes to IHT, including a way to pay it online

www.gov.uk/government/publications/hm-revenue-and-customs-trusts-and-estates-newsletters/hmrc-trusts-and-estates-newsletter-august-2022

4. PAYE and employment

4.1 Settlement agreement amount found to be employment income

The CA has found that the whole of a payment under a settlement agreement was taxable employment income. The payment had arisen from the taxpayer's claim for unpaid overtime and allowances, so although the settlement agreement provided for some to be paid to lawyers and insurers, it did not change the character of the payment.

An employer had settled a dispute with some of its employees over unpaid overtime and hardship allowances. The total payment was comprised of agreed court costs and a settlement sum. The employees paid some of their legal and insurance costs relating to the case out of the settlement sum. HMRC argued that the total settlement sum was employment income subject to IT. The taxpayer, one of the claimants, argued that the portion of the settlement sum used to pay those legal and insurance costs was not employment income subject to IT.

The FTT found for HMRC based on the terms of the settlement agreement. It held that the settlement sum arose from the taxpayer's employment and the use of those funds to pay legal and insurance costs did not change the nature of the settlement sum. The UT overturned this decision. It ruled that sums used to pay legal and insurance costs did not differ from the agreed court costs except insofar as the former were not yet ascertained at the time of the settlement agreement. Furthermore, even if the amount used to pay the legal and insurance costs arose by reason of the employment, it was not profit of the taxpayer from his employment.

The CA restored the FTT judgement. It commented that "*whether a payment is taxable is a matter of substance, not form*". The parties had chosen to enter into an agreement where only part of the settlement sum related to costs, the rest would have been taxable as employment income when falling due. That did not change just because more costs had to be paid out of that amount.

HMRC v Murphy [2022] EWCA Civ 1112

www.bailii.org/ew/cases/EWCA/Civ/2022/1112.html

4.2 New guidance on common errors in claiming furlough payments

HMRC has published guidance covering common errors made when claiming grants under the Coronavirus Job Retention Scheme (CJRS), and how to correct them.

The simple examples given cover scenarios such as calculations made under previous guidance and not corrected, errors in calculations, and when repayments must be made.

www.tax.org.uk/coronavirus-job-retention-scheme-hmrc-guidance-on-common-errors-in-the-calculations-of-cjrs-grants-q-as

5. Business tax

5.1 Reconstruction scheme did not have tax avoidance as a main purpose

The UT has upheld the FTT in dismissing HMRC's appeal against its decision that a commercial deal did not have tax avoidance as a main purpose.

The taxpayer company had entered into a commercial deal to transfer shares for ordinary shares and cash. As an afterthought, it renegotiated the deal so that it received some redeemable preference shares instead of cash, with the subsequent redemption of those shares giving a tax free receipt. The late clearance for the reconstruction was refused.

In the circumstances of the case the FTT found that although this tweak was for the purpose of avoidance it was not a main purpose, which would be the reason to deny reconstruction relief. The UT confirmed that in considering the statutory test it was necessary to look at the totality of the arrangements, rather than just an individual constituent of them which was HMRC's first contention. HMRC also argued that the FTT had erred in law in concluding the arrangements did not have a main purpose of avoidance. The UT found that the FTT was entitled to conclude that the relatively modest tax advantage meant it was not a main purpose was not an error of law.

HMRC v Euromoney Institutional Investor PLC [2022] UKUT 205 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2022/205.html

5.2 CA confirms the restrictions on deeming provisions

The CA has followed the lower courts in not extending a deeming provision further than is necessary.

As previously reported, the taxpayer sought to claim capital allowances on the costs incurred by its predecessor in trade on the launch of leased satellites. To do so, it claimed that the satellites were deemed to have been sold to it, and therefore, under old rules now repealed, should be treated as belonging to it.

The CA followed the lower courts in being unwilling to extend the deeming provisions in this way.

The purpose of the legislation was to value property that passed to the successor without a sale and this was done by deeming a sale. This did not mean that the transfer to have passed, because the deeming rule was not created for that purpose. As the taxpayer did not acquire ownership of the satellites the deeming provision cannot entitle it to claim capital allowances.

Inmarsat Global Limited v HMRC [2022] EWCA 1076

www.bailii.org/ew/cases/EWCA/Civ/2022/1076.html

5.3 UT rules on limited partnership arrangement

A Cayman company was found to be liable to UK CT on its share of profits in a UK limited partnership (LP), to which it was indirectly entitled through a Cayman LP.

This is a very complex case involving a detailed cross-border partnership structure. Broadly, a Cayman company was incorporated to acquire a 19% interest in a UK LP, and it incurred interest expenses on a loan to facilitate that acquisition. The company then restructured its interest in the UK LP through a Cayman LP, in which it was the general partner. The FTT ruled that the company alone, rather than all the partners of the Cayman LP, was subject to UK CT on the share of profits allocated to the Cayman sub-LP by the UK LP in line with the partnership agreement and letters of allocation. It also held that the interest expense on the loan to acquire the interest in the UK LP was not tax-deductible. Other issues raised at the FTT were divided into a separate UT judgment.

The UT agreed that the Cayman company in question was a partner in the UK partnership, and was taxable on its share of UK trading profits through a permanent establishment. It found that the FTT had erred in law in finding that there was no

mechanism for the company to claim relief for the interest, but as the FTT was correct in finding that there was no trading loan relationship it dismissed the appeal on interest deductibility.

BCM Cayman LP and Bluecrest Capital Management Cayman Limited v HMRC [2022] UKUT 198 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2022/198.html

5.4 HMRC loses appeal on partnership taxation

The UT has upheld an FTT judgement that individual partners in the UK LP of a Cayman company were subject to UK IT on allocations of 'special capital', which were analogous to taxable bonuses.

A UK LP had established an incentivisation plan under which profits were allocated to a corporate partner that reinvested those amounts into the UK LP as 'special capital', which was invested into sub-funds. Shares in the special capital were awarded as capital to the individual partners in accordance with their performance in the business. The FTT found that the awards of capital amounted to miscellaneous income subject to UK IT in the hands of the individual partners. Other issues raised at the FTT were divided into a separate UT judgment.

The UT has now upheld that FTT judgement. The partners were conducting activities that came into the category of a profession, they were acting in partnership, the amounts were not capital as they were discretionary awards made from the corporate partner's profits, and avoidance or reduction of tax was a main object of the arrangements.

(1) *HMRC v Bluecrest Capital Management LP and others* and (2) *Andrew Dodd and others v HMRC* [2022] UKUT 200 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2022/200.html

5.5 Holding in life assurance company found to be structural asset.

The FTT has upheld a company's appeal, finding that a shareholding it owned was a structural asset used in the business, so relief could be claimed on sale. Dividend income and increases in capital value were therefore not taxable as trading profits.

The company, a life assurance company, held a majority stake in a Canadian life insurance company, which was an integral part of its business. It excluded receipts, expenses and changes in capital value arising from this holding from the computation of trading profits on the grounds that it was long-term business fixed capital. HMRC argued that this was not a structural asset of the business.

The FTT found for the taxpayer. The holding was used in the business, and at risk. It was a very similar business to that of the taxpayer company, so operationally enhanced it. The shareholding was also held for almost 30 years, which lent weight to the argument that it was a structural asset. The taxpayer's appeal was allowed.

Guardian Assurance Limited v HMRC [2022] UKFTT 234 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08555.html

5.6 Revised guidance on R&D claims

HMRC has published updated guidance on claiming R&D tax relief.

Guidance on how to claim R&D tax relief has been updated to include details on how and when to use the online service to support the R&D claim and what information is required. Additional guidance has also been provided on when the R&D expenditure credit can be claimed and what tax liabilities can be discharged with the credit.

www.gov.uk/guidance/corporation-tax-research-and-development-tax-relief-for-small-and-medium-sized-enterprises

www.gov.uk/guidance/corporation-tax-research-and-development-tax-relief-for-large-companies

6. Tax publications and webinars

6.1 Tax publications

The following Tax publications have been published.

[Euro Pacific Bank – HMRC Investigations](#)

7. And finally

7.1 Coming out in a rash

The Hampshire burr is a wonderfully evocative accent, particularly for those with long memories. For older cricket lovers, it means cricket radio commentator John Arlott; or as it may be, the late Master of the Rolls himself, Lord Denning, raised in that golden cricket age before the First World War. He it was who started a judgement with 'In summertime village cricket is the delight of everyone'. Sadly, though, a judge had ordered the cricket to stop and, as he said, 'the young men will turn to other things instead of cricket. The whole village will be much the poorer.' Ah, England, Their England!

Our thoughts nostalgically turned to Lord Denning's fabled simple style while reading the Murphy case (article 4.1) above. This cited him in *Hochstrasser v Mayes* where 'he stated that tried by the touchstone of common sense – which he immediately described as "rather a rash test in a revenue matter" – this was a plain case.'

Sadly, Lord Denning's astute tax wisdom isn't quoted much these days, but what an And finally view of revenue cases!

Miller v Jackson [1977] EWCA Civ 6

www.bailii.org/ew/cases/EWCA/Civ/1977/6.html

Hochstrasser v Mayes [1960] AC376

www.bailii.org/uk/cases/UKHL/1959/TC_38_673.html

HMRC v Murphy [2022] EWCA Civ 1112

www.bailii.org/ew/cases/EWCA/Civ/2022/1112.html

England, Their England

https://en.wikipedia.org/wiki/England,_Their_England

DATE

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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