

Tax Update

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1. General

1.1 New regulations on mandatory disclosure rules

The Government has published regulations under which promoters and advisors will be required to disclose details of specific types of arrangements to HMRC. This replaces DAC6, with the most significant change being that the rules now apply globally rather than at EU level.

Following the UK's withdrawal from the EU, the DAC6 regulations are being withdrawn. Their scope was previously narrowed such that only hallmark D was introduced. DAC6 is being replaced with mandatory disclosure rules (MDR), which are very similar, although apply globally.

The regulations, which have recently been consulted on, will impose obligations on taxpayers and advisors to report arrangements that obscure beneficial ownership using opaque offshore structures, or circumvent reporting under the common reporting standard. HMRC will share and exchange information on these arrangements with other tax authorities who use these rules and will use the information received to identify and challenge potential cases of offshore tax evasion. Currently 16 jurisdictions, including the UK, have signed up to this agreement.

These will come into force on 28 March 2023 and will now apply at a global rather than EU level. Comprehensive guidance will be published by HMRC to help taxpayers and businesses comply with the regime.

www.gov.uk/government/publications/mandatory-disclosure-rules/mandatory-disclosure-rules-mdr

www.legislation.gov.uk/uksi/2023/38/contents/made

2. Private client

2.1 Refund of voluntary NICs refused for deceased taxpayer

A taxpayer made voluntary NIC contributions to increase her state pension, but died 9 days after reaching state pension age. The FTT has refused a refund to her estate, finding that advice given by the department for work and pensions (DWP) was technically correct, so had not led her to make an error or mistake.

The taxpayer made three years' worth of voluntary class 3 NIC contributions to protect her state pension entitlement, following advice from DWP. Subsequently, her illness became terminal and she died nine days after becoming entitled to claim the state pension.

Her husband, as executor, applied for a refund of the voluntary contributions. He had listened to his wife's conversation with DWP at her request due to her illness, though at the time she had a good prognosis and had not told DWP she was ill. He stated that she was not told that the contributions were non-refundable, and that the deadline was some time away. The news that her illness was terminal came before the deadline for payment, so had she waited until nearer the deadline she would likely not have paid.

The FTT refused the claim for refund. The advice given by DWP had not contained an error nor mistake, so the deceased had made no error at the time she paid the contributions. Happenings subsequently cannot create an error. She had not asked if the payments were refundable, nor asked for the deadline, but the fact that DWP had not volunteered the information was not an error. It was mere speculation that she might have deferred making payments, so despite the unfortunate circumstances no refund was possible.

Stephen Garwood as executor of Rosemary Garwood v HMRC [2023] UKFTT 00075 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08710.html

2.2 Redress payment found to be income

Redress payments for a mis-sold financial product were found to be refunds chargeable to income tax, rather than non-taxable damages or payment to stop litigation.

The taxpayers took out a loan to purchase a property. Between exchange and completion they agreed to the bank's suggestion to purchase an interest rate hedging product. This was later found to be mis-sold as part of a wider independent review, and the taxpayers received a redress payment and interest. They paid tax on the interest element but argued that the redress payment was not taxable income.

The settlement offer they had accepted was for an amount more than a straight refund, but led to them stopping their proceedings against the bank for claims for damages for mis-treatment and consequential losses. Had the settlement been drafted differently the tax treatment may have been clearer. The taxpayers argued that terms of the general review had prevented them from taking advice, though the FTT found that they could have taken advice on the tax treatment.

The FTT found that the fact the taxpayers had started litigation did not change the nature of the redress payment. They had chosen to enter into the redress arrangement, to put their civil claim on hold, and to accept the second of the offers made. The payment was, as stated in the offer letter, a refund of the amounts paid by the taxpayers for the mis-sold products, so the FTT upheld the closure notices finding that these were chargeable to income tax. Penalties for carelessness were upheld as the taxpayers were experienced businessmen, but had not told their tax advisers about the redress payments, just the interest.

Barnett & Anor v HMRC [2023] UKFTT 62 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08704.html

2.3 Penalty of £280,000 upheld as notices sent to taxpayer

The FTT found that HMRC had proved penalty notices were sent to a taxpayer, and that the taxpayer had not rebutted the presumption that he had then received them.

The taxpayer appealed against 12 penalties for late payment and late filing amounting to over £280,000. He argued that these were invalid as he had never received penalty notices. Penalty assessments must be notified to the taxpayer.

The FTT upheld the assessments, finding that HMRC had proved that the notices were sent. HMRC produced evidence from its systems that the notices had been generated, and the address to which they were sent. The taxpayer gave evidence about the arrangements for dealing with post at his home, but as he had received other HMRC correspondence it was found that it was not credible that the only post from HMRC he had not received was the penalty notices.

Burley v HMRC [2023] UKFTT 59 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08701.html

3. Trusts, estates and IHT

3.1 New HMRC guidance on penalties for not registering a trust

Three new guidance documents have been issued by HMRC, covering penalties that can be incurred for not registering a trust on the trust registration service (TRS).

These explain that trustees will be charged penalties for not registering or maintaining a trust, unless this was not done deliberately, and the trustees correct the position within a time limit set by HMRC. Penalty letters will explain what the taxpayer needs to do, and time limits. The guidance also covers how to pay the penalty, and how to challenge a penalty with which the taxpayer disagrees.

www.gov.uk/guidance/when-hmrc-will-issue-a-penalty-charge-for-not-registering-or-maintaining-a-trust
www.gov.uk/guidance/ask-for-a-review-or-appeal-against-a-trust-penalty-charge
www.gov.uk/guidance/pay-a-penalty-charge-for-not-registering-or-maintaining-a-trust
www.step.org/industry-news/hmrc-issues-new-guidance-penalties-trs-non-registration

4. Indirect taxes

4.1 Communal garden did not make flat non-residential for SDLT

The fact that the purchase of a leasehold flat brought with it a right to use the communal garden did not mean that the transaction was non-residential for SDLT.

The taxpayers bought a leasehold interest in a flat. The lease also gave them the right to use a communal garden, subject to the payment of an additional "garden community charge". They paid SDLT at the residential rate, and later submitted an overpayment relief claim. They argued that the garden was non-residential as it was used in common with owners of the other properties, and that to be residential in nature the right to use the garden must belong only to that dwelling. Alternatively, they argued that the bare land of the communal gardens was not residential property, as it was not the garden nor grounds of that one particular flat, just shared.

The FTT dismissed the appeal, agreeing with HMRC that the flat was the main subject matter of the transaction, and the easement to use the gardens an extra right, the acquisition of which did not change the overall substance of the transaction. Dealing with the alternative argument, the FTT agreed with the taxpayer that the garden was not the garden nor grounds of that one particular flat, but held that it fell within another category, a right over land for the benefit of a building.

Sexton & Anor v HMRC [2023] UKFTT 73 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08708.html

5. Tax publications and webinars

5.1 Tax publications

The following Tax publications have been published.

- [The risks around national minimum wage compliance for businesses](#)
- [Indirect Taxes newsletter – January 2023](#)
- [Reminder to energy intensive businesses to claim their energy tax reliefs on time](#)

5.2 Webinars

The following client webinars are coming up soon.

- 15 February - [Talking Tax and Tax Year End](#)
- 16 February - [Editions by Evelyn Partners – National Minimum Wage](#)

6. And finally

6.1 Judging with a sweet tooth

Flip flop it is, as the UT, wanting a bite of the cereal bar case, essentially spat it out as it was not sweet enough. Too healthy to be confectionary, off it goes back to the FTT for remaking.

Confusing as the endless march of VAT cases on zero-rating for biscuits or confectionary is, at least the tax judges must be refining their palates. On we go to find that Goldilocks case where the oatly cereal bars are just sweet enough, but not too sweet.

WM Morrison Supermarkets PLC v HMRC [2023] UKUT 20 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2023/20.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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Tax legislation is that prevailing at the time, is subject to change without notice and depends on individual circumstances. You should always seek appropriate tax advice before making decisions. HMRC Tax Year 2022/23.

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