25 January 2023

A round-up of recent issues

evelyn PARTNERS

Tax Update

Contents

1. General

1.1 Reminder to use certificates of tax deposit

Certificates of tax deposit (CTDs), purchases of which were stopped in 2017, should be used by 23 November 2023. After this, unused certificates can be submitted promptly to HMRC for a refund.

The CTD scheme allowed taxpayers to deposit money with HMRC and use it to offset future tax liabilities. The scheme closed for new purchases on 23 November 2017,

HMRC will continue to honour existing certificates until 23 November 2023. After this date, HMRC has advised that taxpayers should submit unused CTDs for a refund as soon as possible. HMRC will try to repay the balance of certificates that remain unpaid and unclaimed, but if it cannot contact the holder the balance will be forfeit.

Reminder letters have been issued to taxpayers for whom HMRC has a current address and its records show have an unused CTD.

www.icaew.com/insights/tax-news/2023/jan-2023/certificates-for-tax-deposit

1.2 HMRC use of text messages

HMRC is trialling a new system where it automatically texts taxpayers who call helplines about routine matters with links to guidance.

If a taxpayer calls a helpline from a mobile telephone, and gives a reason for calling which is on HMRC's list, they will automatically be sent a text message with information they may be able to use to resolve their query without speaking to an HMRC adviser, and the call will be disconnected. The texts will not contain personal or sensitive taxpayer information.

Examples of issues that will be dealt with this way in the trial are:

- find a unique taxpayer reference;
- help registering for HMRC online services;
- lost or forgotten online service password or user ID;
- queries on whether or not to register for Self Assessment or continue completing tax returns;
- requests for income and employment history;
- lost National Insurance numbers, or letters confirming the number; and
- help filling in a tax return.

www.tax.org.uk/intelligent-sms-services-new-service-to-help-customers-get-it-right-message-from-hmrc

2. Private client

2.1 HMRC nudge letters to users of online marketplaces

HMRC is sending two sets of letters to taxpayers about whom it has third party information to show they have earned money online, but not declared it. One set is going to individuals selling on online marketplaces, and the other to individuals creating content to digital platforms.

These letters will go to individuals about whom HMRC has received third party information from which it believes they have been trading and earned income in excess of their personal allowance. One set is going to sellers on online marketplaces, and one to online creators.

There is a coordinated campaign addressing online content creation across several HMRC business lines, of which this is part.

Both letters ask the taxpayer to fill out a certificate of tax position and return it within 30 days of the date on the letter, ticking a box to declare if they have underpaid tax or believe they have paid all that is due. If tax is due, they are asked to make a voluntary disclosure on the digital disclosure facility.

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

www.tax.org.uk/users-of-online-marketplace-platforms-hmrc-one-to-many-letter-campaigns

3. Trusts, estates and IHT

3.1 Taxpayer win on IHT: interest in possession did not exist

The FTT has found that an interest in possession (IIP) did not exist, in a case where a right left to an individual to reside in a house after death was only made practically possible by the residuary beneficiaries lending money to the estate to pay the initial IHT bill. As, had this not happened, the right to occupy the house could not have been given, no IIP arose, and no IHT was therefore due on its termination.

The estate consisted of little apart from a house. The IHT liability, £15,600, could not be settled as there was insufficient cash in the estate. The Will granted a right to a friend (B), who had cared for the deceased, to live in the house for his lifetime, after which it was left between five nieces and nephews (the residuary beneficiaries). Due to this dilemma, the residuary beneficiaries paid the IHT from their own funds.

After B's death, the house was sold. IHT was then paid on the basis that B had held an IIP in the house at the time of his death. Subsequently, a refund was requested on the grounds that no IIP existed.

The FTT examined the provisions of the Will. Had there been enough cash in the estate to pay the IHT on death, it was common ground that an IIP would have arisen. The appellants argued that B did not have an IIP immediately on the first death, just a right to compel due administration of the estate. As the Will Trust was not capable of being achieved due to lack of funds this never matured into an IIP. Had the house been sold, B would not have had an IIP after the sale. The residuary beneficiaries' choice to pay the IHT and avert a sale should not in itself give rise to an IIP. HMRC argued that B's rights did mature into an IIP, and that the house could have been mortgaged to pay the £15,600 IHT bill.

The FTT made its decision by looking at what the executors would have been compelled to do had all parties not agreed to the practical route taken. The residuary beneficiaries could have compelled administration of the estate, and HMRC compelled payment of the IHT. The only route to compel payment was the sale of the house, in which case there would have been no IIP. As there was a creditor when the estate was reduced to just the property, B could not enforce a right to live in the property under the Will. Therefore he did not have an IIP, and the appellants' appeal was allowed.

Hall & Lopez as trustees of the Carolina Raboni estate v HMRC [2023] UKFTT 32 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08691.html

4. PAYE and employment

4.1 FTT dismisses scheme involving gold bullion

The FTT has agreed with HMRC that PAYE was due on monies received by directors.

The taxpayer company set up an employee benefit trust (EBT) with plans to contribute £300,000 over 10 years. It agreed to purchase £300,000 of gold bullion from another company for its own directors (the other appellants in the case, who were also shareholders and employees). The gold was paid for by its immediate sale by the directors. This created a credit on the directors' loan accounts, which they drew out as cash payments, and they agreed to assume the company's obligation to fund the EBT in 10 years. HMRC alleged that the intention was to avoid the "disguised remuneration" rules.

HMRC contended that the directors were taxable on the cash payments as earnings, despite their obligation to fund the EBT. This meant that they were also liable for tax on a benefit as they had not made good the PAYE that should have been withheld to the company, which was liable to account for the PAYE and NICs. Alternatively, the company is liable to tax on the value of the benefit (gold) provided to directors. HMRC also argued that the company was not entitled to a CT deduction as the expenses were not wholly and exclusively for the purposes of the company's trade, and were not recognised in accordance with generally accepted accounting practice.

The FTT agreed that the scheme did not work, for the reasons given by HMRC. The provision of gold was the provision of money or money's worth. This was a clear payment, and the fact that a future obligation to fund the EBT was in play did not mean that the payment was a loan. It upheld the PAYE determinations on the company as well as the loan benefit charges on

the directors, rather than taxing the company on the value of the benefit. It agreed that no CT deductions were available, as the cash paid for gold was being recycled to the directors.

The decision shows that avoidance schemes concerning EBTs will continue to be challenged by HMRC and the courts are likely to take HMRC's side.

Wired Orthodontics Limited & Ors v HMRC [2023] UKFTT 17 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08679.html

4.2 Win for taxpayer in off-payroll working case

The FTT has found that a sports commentator for Sky TV was in business on his own account, rather than effectively being an employee, so found that he had paid the correct tax by working through his personal service company (PSC).

Following a career as a rugby union player, the taxpayer provided his services commenting on rugby union to several media organisations, including newspapers and broadcasters. He worked through his PSC. He was engaged by Sky as a commentator in 1994, and HMRC took issue with contracts covering six tax years, arguing that he was effectively an employee and should have been taxed as such, issuing PAYE and NICs determinations.

On consideration of the contracts, and the actual working relationships, the FTT found for the taxpayer. On constructing a hypothetical contract that would reflect the reality, it found that there was mutuality of obligation, as the parties were obliged respectively to do the work and to pay for it, and that Sky had sufficient control over how the taxpayer worked to satisfy the control test. On consideration of the other factors, however, the overall test for treating the taxpayer as an employee was not met. He worked for many organisations and drew about 40% of his income from those other than Sky. His working days for Sky varied without his fixed annual fee varying, he could reuse his opinions in his newspaper articles, and had flexibility over when he agreed to cover live matches. He was in business on his own account.

S&L Barnes Limited v HMRC [2023] UKFTT 42 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08697.html

4.3 Course fees paid by employer not exempt from NICs

The FTT has found that course fees paid by an employer did not meet the requirements to be an exempt bursary.

The taxpayer worked as a volunteer counsellor at a charity for four years, and was then issued with a fixed term employment agreement. He undertook a relevant course in 2012/13, for which the charity paid. In March 2017 he attempted to reclaim IT and NICs deducted on the basis that the course fees were a bursary rather than part of his salary. HMRC found that he was out of time to claim an IT refund, and refused NIC refunds.

The FTT found that the NIC exemption did not apply. During the period he spent one day a week studying at a university, and four days working at GP surgeries. The FTT disagreed that the GP days were part of the course, partly as after the course he continued working at GP surgeries five days a week. The exemption only applies to full-time students. The course also ran for less than the minimum time to qualify, and the fees exceeded the maximum allowed under the exemption.

The FTT agreed that the IT refund claim was out of time, and found it had no jurisdiction to admit it late. Had it admitted the claim, it found it would have been refused.

Phelan v HMRC [2023] UKFTT 29 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08688.html

5. Business tax

5.1 Enterprise investment scheme requirements not met

The FTT has upheld HMRC's decision that shares did not qualify for the enterprise investment scheme (EIS). Although a qualifying trade was in motion, and plans were being made to grow the business, disqualifying arrangements were in place.

The taxpayer, a company that had been incorporated to carry on the trade of developing and producing an animation show, issued various tranches of shares. It first obtained advance assurance from HMRC that these could be treated as qualifying for EIS relief or relief under the SEIS, the seed enterprise investment scheme. HMRC issued compliance certificates for the first few tranches, but following a review it refused to issue compliance certificates for the more recently issued tranches. The taxpayer appealed.

HMRC's grounds for refusal were that the company did not meet the risk to capital condition, that there were disqualifying arrangements, and that the company was involved in an excluded trade.

The FTT upheld HMRC's decision to refuse to issue the certificates, but for slightly different reasons. It analysed the activities and running of the company in some detail, along with the outcome of earlier FTT cases involving the same group that had similar characteristics and legal issues. It agreed with the company that at the relevant time it had had the objective to grow and develop its trade in the long term, and that it had been engaged in a qualifying trade. The company held intellectual property rights to the series that were growing in value, and serious plans were in motion to develop it. The reason that the FTT agreed with HMRC's decision overall was that it also found that there were disqualifying arrangements. Sums raised by the share issues were paid to and for the benefit of a third party who had helped to set up the arrangements. The taxpayer's appeal was therefore dismissed.

Hoopla Animation Limited (formerly known as Daisy Boo and Monkey Too Limited) v HMRC [2023] UKFTT 24 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08683.html

6. VAT and other indirect taxes

6.1 Changes to the VAT penalty and interest regimes

Wholesale changes will apply to the VAT late payment penalty and interest regimes from 1 January 2023.

With effect from 1 January 2023, the existing default surcharge regime in respect on late payments and submissions of VAT returns has been replaced by a new, points-based system.

The application of interest on late payments is also changing, with interest applied to all late payments, as well as late payment penalties where a payment is more than 15 and 30 days overdue.

www.gov.uk/guidance/penalty-points-and-penalties-if-you-submit-your-vat-return-late

6.2 Changes to HMRC options to tax procedures

From 1 February 2023, HMRC will no longer issue option to tax notification receipt letters.

The changes follow efficiency reviews undertaken to simplify HMRC procedures with the aim of improving response times in this area. The first change happened with effect from 1 September 2022, where acknowledgement letters were replaced by a receipt letter. With the latest announcement, options notified before 1 February 2023 will receive a standard option to tax notification receipt letter, but for options made after this date notification receipts will not be issued by HMRC.

From 1 February 2023, the receipt letter will be replaced with an automated response when an option to tax is submitted to HMRC by email. The subject line of the notification should include the property address, including postcode, and the effective date of the option to tax. The automated response by HMRC will have the date when the notification was received, which should be held by the opter in their business records.

HMRC will also only respond to requests to check if it holds a record of an option if the effective opted date is likely to be over 6 years ago, or if it is requested by an insolvency practitioner or Land and Property Act receiver.

www.gov.uk/government/publications/revenue-and-customs-brief-1-2023-changes-in-processing-option-to-tax-forms-by-the-option-to-tax-national-unit/changes-in-processing-option-to-tax-forms

7. Tax publications and webinars

7.1 Tax publications

The following Tax publications have been published.

- HMRC Compliance: renewed focus in a post-Covid landscape

7.2 Webinars

The following client webinars are coming up soon.

- 16 February - Editions by Evelyn Partners – National Minimum Wage

8. And finally

8.1 Coining it in

There is a week to go to the tax return deadline (at the time of writing), and while HMRC, tax advisers and filers alike are rather busy with returns, the Treasury must be looking forward to its annual bonanza. Yes, despite regular PAYE receipts, and those who opt to pay tax early (if not using certificates of tax deposit, as in 1.1), somehow HMRC does tend to get the money in right at the wire.

Well, we are sure the public finances could do with a boost. Still, given that the interest rate on late payments is now 6% a year, HMRC may be looking forward even more to payments after the deadline.

www.gov.uk/government/statistics/hmrc-tax-and-nics-receipts-for-the-uk/hmrc-tax-receipts-and-national-insurance-contributions-for-the-uk-new-monthly-bulletin#income-tax-capital-gains-tax--national-insurance-contributions

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	