

Tax update

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1. Private client

1.1 CA agrees that a child benefit charge discovery was invalid

The CA has confirmed that discovery assessments made by HMRC, relating to unpaid high income child benefit charges (HICBCs) on a taxpayer who was not submitting tax returns, were not valid. The law allowed HMRC to assess amounts to IT, which is not the same as directly assessing IT.

The taxpayer was subject to the HICBC, which he had not paid. He also had not submitted a tax return because his income was fully taxed under PAYE. HMRC raised discovery assessments relating to non-payment of the HICBC over three years. The FTT and UT had found that the discovery assessments were invalid. The FTT has made conflicting rulings regarding similar HICBC assessments in other cases.

The CA has upheld this judgement. As found by the UT, legislation allows HMRC to assess income that ought to have been so assessed. In this case, HMRC was seeking directly to assess IT; the unpaid HICBC was an unpaid tax charge rather than untaxed income. Even on a purposive interpretation of the law, it was not open to HMRC to make the discovery assessments. The taxpayer was taxed correctly under PAYE, so no additional assessment of his income was due. The CA rejected HMRC's request for it to "rectify" the legislation, as it could not be sure that the wording differed from the intentions of Parliament, though this may well have been an unintended outcome.

The legislation was amended in 2022 to, with retrospective effect, to allow HMRC to use discovery assessments to recover the HICBC. The new legislation does not however apply in relation to appeals against discovery assessments where notice had been given to HMRC by 30 June 2021.

HMRC v Wilkes [2022] EWCA Civ 1612

www.bailii.org/ew/cases/EWCA/Civ/2022/1612.html

2. Business tax

2.1 CA confirms FTT decision to deny capital allowances on uranium enrichment facility

The CA has found for HMRC that capital allowances on safety structures at a uranium processing facility should be denied. While the structures in question provided essential safety functions, that did not prevent them from being 'buildings' and therefore ineligible for capital allowances.

The taxpayers operated facilities in Cheshire that processed radioactive material as part of the wider group's trade of producing enriched uranium for the civil nuclear industry. The construction of the nuclear deconversion facilities cost approximately £1bn. The FTT agreed with HMRC on denying £192m of capital allowances on part of the facility. The majority of the disputed assets provided safety functions of shielding, containment and protection against seismic events. Although the FTT agreed that two out of five structures were capable of being plant, it determined that all of the disputed assets were ineligible for allowances because they were buildings, and none of the exemptions applied.

The UT remitted the case to the FTT for partial remaking having identified errors of law in the application of the premises test and in its decision that disputed expenditure on one structure was 'on the provision of' plant. It considered that the FTT had failed to apply the relevant tests to the business actually carried on by the taxpayers.

The CA reverted to the FTT decision, allowing HMRC's appeal. It ruled that the FTT was fully entitled to conclude that the safety functions should be viewed as part of the setting within which the trade was carried on. It had reached an evaluative conclusion based on the facts and had not erred in law in finding that the disputed assets were not plant and machinery.

Urenco Chemplants Ltd & Anor v HMRC [2022] EWCA Civ 1587

www.bailii.org/ew/cases/EWCA/Civ/2022/1587.html

3. VAT and other indirect taxes

3.1 Taxpayer win on mixed use SDLT claim

Mixed use relief for SDLT has been granted for a property purchase where an area of land purchased with the property was let for agricultural use.

The taxpayer bought a house that came with a separate annexe and about 39 acres of grounds. Part of the land was let for grazing and hay cutting, and had been so for some time. The informal arrangement was clarified with a lease before the purchase. HMRC argued that this was just part of the grounds, and did not constitute mixed use of the property. The taxpayer could still enjoy the part of the grounds being used for grazing.

The FTT found for the taxpayer that this parcel of land was distinct from the house and grounds, so made the overall purchase mixed use for SDLT. It was a distinct area of the property apart from the grounds, and the farming equipment such as a feeding station and water troughs showed that it was used agriculturally rather than personally.

There were, importantly, grazing and Woodland Trust agreements in place at the time purchase and the Tribunal considered that the relevant areas of land were used for a separate purposes and self standing functions so failed to meet the tests as residential property. Their use or function does not support the use of the building concerned as a dwelling.

Withers v HMRC [2022] UKFTT 433 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08649.html

3.2 Taxpayer loss on multiple dwellings relief

The UT has upheld an FTT judgement that multiple dwellings relief (MDR) cannot be claimed for land with planning permission to build dwellings, but with no existing dwellings.

The taxpayers bought separate pieces of land with planning permission to build dwellings. One purchased empty land, and the other parcel of land had commercial buildings on that were to be demolished. The FTT denied MDR, as the main subject of each purchase was the land, not the planning permission. No interest in dwellings had been acquired, which is a requirement to claim MDR.

The UT agreed. The taxpayers had argued that the land was undergoing a process of construction, so should be treated as having dwellings on it. The UT preferred HMRC's more restrictive interpretation, that the land needed to have a dwelling under construction. The taxpayers had only dug bore holes and begun clearing the land respectively, rather than beginning work on an actual dwelling, so despite the fact that these were preparatory steps, no MDR was due.

Ladson Preston Ltd and AKA Developments Greenview Ltd v HMRC [2022] UKUT 301 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2022/301.html

3.3 SDLT saving scheme for house purchase defeated at UT

The UT has upheld an FTT judgement that taxpayers who purchased a house in a company, which was then distributed to them due to a reduction in share capital, were personally liable for SDLT on the purchase. The arrangements made meant that they had the power to call for conveyance, as well as the company.

The taxpayers, a married couple, subscribed for all the shares in a newly incorporated company. It used the funds to place a deposit on a house; then, on completion of the purchase, it reduced its share capital to £2, making a distribution in specie of the house to the taxpayers. The original subscription to the company was made by the taxpayers giving promissory notes payable on the day of completion of the house purchase. No SDLT returns were made, on the basis that there was no consideration paid for the transfer of the house to the taxpayers. HMRC assessed the taxpayers for SDLT as though they had purchased the house personally.

The FTT found that the arrangement constituted a transaction under which a person other than the purchaser (the company) was entitled to call for conveyance. The distribution was contingent on the house purchase being completed. The consideration was the subscription to the company, slightly more than the amount the company paid for the house due to conveyancing costs.

The UT mostly agreed, holding that the taxpayers were liable to pay SDLT as per the FTT decision, but on a consideration £5,000 less, as this was the amount of the deposit paid by the company (£955,000), rather than the amount paid for the subscription of shares (£960,002)

Brown v HMRC [2022] UKUT 298 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2022/298.html

3.4 Revised HMRC policy on gas and electricity supplies to developers

An update to the guidance shows HMRC's new position that developments of new build housing with separate gas and electricity supplies to the rest of a development site can be treated separately for the purposes of VAT and the climate change levy (CCL). This may mean that the part of the site falls below the minimum amount for CCL, and may qualify for the reduced rate of VAT.

HMRC has issued updated guidance on supplies of fuel and power to developers of new build housing. Previously, HMRC's position was that a development site was to be treated as a single premises for supplies of fuel and power with the minimum threshold for VAT and CCL measured against the total supply to the developer for the whole site. HMRC now accepts however that where the individual premises are 'sufficiently developed', and each is connected separately to gas or electricity mains with their own meter which is billed separately, they can be treated as individual premises with each premises subject to its own minimum limit.

Utility companies may have an over declaration of CCL historically where the development was treated as a single site. Any housing developers who paid CCL on energy which was billed separately to individual plots may wish to consider asking their supplier to amend any bills received in the last 4 years in order that they can recover the overcharged CCL.

www.gov.uk/hmrc-internal-manuals/vat-fuel-and-power/vfup3150

3.5 Consultation on VAT treatment of fund management

The Government is consulting on potential reform of the VAT treatment of funds management services. The proposed changes are not to policy, but to improve the legislative expression of current policy.

This is part of a wider review of the UK funds regime launched in 2020, covering both tax and regulation. The area this consultation looks at is the legislation providing for the VAT exemption of particular fund management services. Some of these are currently set out in retained EU law.

Evelyn Partners will be responding to the consultation, due to our work in this area of VAT. If you are in this sector and would like to share your views with us prior to our submission please [get in touch](#) as soon as possible. The consultation will close on 3 February, so please get in touch as soon as possible.

www.gov.uk/government/consultations/vat-treatment-of-fund-management-consultation

4. Tax publications and webinars

4.1 Tax publications

The following Tax publications have been published.

- [HMRC target till fraudsters](#)
- [Germanys new plastic bill](#)
- [VAT in the digital age the platform or sharing economy](#)
- [An update from HMRC on basis period reform](#)

5. And finally

5.1 Advent 1955

We commend to our readers Sir John Betjeman, but reading him is challenging now for tax, and indeed financial services, people.

And finally was reading this seasonal poem this week when our attention strayed.

'...We dole out bribes we call a present

To those to whom we must be pleasant

For business reasons. Our defence is

These bribes are charged against expenses

And bring relief in Income Tax.'

The late Poet Laureate's sentiments have not dated but perhaps his tax reference has, since we now have the disallowance rules in ITTOIA s45 and CTA 09 s1298 to thwart his tax planning. Except of course he might point to the narrow permitted employee deduction under ITEPA s358.

Adding 'up to £50' might slightly spoil the verse but we think he would find a great tax euphony. The matter of bribes we prefer to leave to regulators.

www.betjemansociety.com/poem-of-the-month-dec-2020/

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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