

# Tax Update

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## 1. Private client

### 1.1 HMRC nudge letters on business asset disposal relief

*HMRC is writing to individuals who it believes have claimed business asset disposal relief (BADR) in excess of the lifetime limit.*

The lifetime limit for BADR was reduced to £1million in March 2020. Individuals who were within the old limit on entrepreneurs' relief but had claimed over that amount could not make further claims.

HMRC has identified individuals that it believes have made a claim for BADR in their 2021/22 tax return that takes them over the limit, or who have made a claim for BADR in that return but had previously exceeded the lifetime limit. Both groups are asked to check their returns, and amend them if incorrect.

If they believe that the claim is correct, they are asked to contact HMRC within 30 days of the date on the letter to explain why.

These letters are being sent by the wealthy external forum in a targeted campaign.

[www.tax.org.uk/hmrc-nudge-letter-and-badr-lifetime-allowance](http://www.tax.org.uk/hmrc-nudge-letter-and-badr-lifetime-allowance)

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## 1.2 HMRC checks on undeclared income from short term lets

*HMRC has launched a one to many letter campaign tackling the issue of undeclared income from short term property lettings.*

HMRC is writing to individuals that it believes have received income from short term property letting, but have not declared it to HMRC. It works with companies including AirBnB to gather relevant data.

The letter asks the recipient to check the tax position, make a disclosure if tax has been underpaid, and let HMRC know if they believe that the correct tax has been paid.

In either case, the letter asks 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.

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](mailto:taxdisputes@evelyn.com)

The letters will be sent in February and March 2023.

[www.tax.org.uk/income-from-short-term-property-letting-hmrc-one-to-many-letter](http://www.tax.org.uk/income-from-short-term-property-letting-hmrc-one-to-many-letter)

## 1.3 Taxpayer loses film scheme appeal at CA

*The CA has upheld a UT decision that a taxpayer was taxable on monies from a film scheme. Although they were not paid directly to him but used to offset interest costs, he was entitled to them and benefited from them.*

The taxpayer entered into a Scion tax avoidance scheme under which he purchased and sold film distribution rights. As part of the proceeds, he was paid a share in the film profits annually, which had a fixed minimum level. The scheme generated a loss, which he claimed to set against his other income although this claim was denied by HMRC and the FTT and UT. The UT and FTT also found that he was taxable on the annual payments, and it was this point that he appealed on to the CA.

The CA dismissed his appeal and found that he was entitled to the income. The income was not paid directly to the taxpayer, but was used to offset his interest costs. This was held to be an 'enduring and real benefit' to him, and it was found that he had rights to these payments under the terms of the contracts. Although he did not control the payment, he was entitled to it, so taxable on it.

The CA acknowledged that this decision would be very bitter for the taxpayer, who not only had lost his initial investment in the scheme, but was also taxable to income tax on income he never received. Financially, the taxpayer's investment in the scheme has been disastrous but that cannot affect the interpretation and application of the statute.

*Good v HMRC* [2023] EWCA Civ 114

[www.bailii.org/ew/cases/EWCA/Civ/2023/114.html](http://www.bailii.org/ew/cases/EWCA/Civ/2023/114.html)

# 2. Trusts, estates and IHT

## 2.1 IHT avoidance scheme fails

*The FTT found that the assignment of a reversionary interest was a transfer of value for IHT. A previous FTT ruling on very similar tax planning arrangements found that there had been no transfer of value. Neither ruling is binding.*

The late taxpayer was assigned a reversionary interest in an Isle of Man Trust. He was then granted the option to become the income beneficiary. He transferred his reversionary interest to a different trust, then exercised the option. Under the legislation applying from June 2012, brought in to prevent this type of arrangement, this would have been a transfer of value by him chargeable to IHT, but this occurred in 2010. The aim of the arrangements was to transfer £1m to his family free of IHT.

His executors contended that the reversionary interest had not been acquired for money or money's worth, so as it was held in a trust settled by a non-dom it was excluded property. The FTT disagreed, finding that the taxpayer had acquired the interest at the same time as he paid the fee for the scheme, which covered *"the full package of rights and interests...included the granting*

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*of the option*". The FTT concluded that it was not excluded property. It also found that the transfer of the reversionary interest to the second trust was a transfer of value. The value of the option to purchase the income interest at the point the reversionary interest was transferred was nil. The consequence of this was that the transfer of the reversionary interest, although itself also commercially unsaleable and valued at nil, diminished the taxpayer's estate by the value of the combined interest, being the reversionary interest combined with the option. The executors' appeal was dismissed.

A case on the same arrangements, *Salinger*, was previously decided by the FTT for the taxpayer, as it was found, as here, that the interest was not excluded property, but that tribunal found that there was no transfer of value.

*Linington, The Executors of the Estate Of v HMRC* [2023] UKFTT 89 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2023/TC08717.html](http://www.bailii.org/uk/cases/UKFTT/TC/2023/TC08717.html)

*Salinger & Anor v HMRC* [2016] UKFTT 677 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2016/TC05407.html](http://www.bailii.org/uk/cases/UKFTT/TC/2016/TC05407.html)

## 3. Business tax

### 3.1 HMRC nudge letters on research and development tax relief

*HMRC has launched a one to many letter campaign targeting 2,024 companies that have claimed research and development (R&D) tax relief.*

The letters are being sent to directors whose companies have made claims in the past. They are being asked to review their previous claims using a checklist to make sure that the information they have provided about their claim is complete and correct and, if there is an error, to make amendments as necessary.

The letters were sent in January, and contain information on how to find further guidance on R&D tax relief.

The letters are intended to raise awareness of fraudulent R&D tax relief claims. If the claim is correct, no further action is needed. The checklist includes questions such as "Does this claim seem to be too good to be true?" as a prompt to taxpayers to think further about these claims

[www.tax.org.uk/research-and-development-tax-relief-hmrc-one-to-many-letter](http://www.tax.org.uk/research-and-development-tax-relief-hmrc-one-to-many-letter)

## 4. Indirect taxes

### 4.1 Scottish Government consulting on LBTT

*The consultation is on proposals to amend the additional dwelling supplement (ADS) rules, including by doubling the relevant timelines to 36 months.*

Currently, in order to reclaim the ADS a taxpayer must sell an original main residence not more than 18 months after the purchase of a new main residence, must not delay the purchase of a new main residence more than 18 months after the sale of the original, and the period considered to see if it is a main residence in the 18 months before the transaction. All of these are proposed to be doubled to 36 months. There have been several tribunal cases recently where individuals fell foul of the 18 month rule for good reasons, but could not reclaim the ADS, so this would be very welcome.

The proposals for inherited property include that properties inherited after a main residence is purchased should be disregarded for the ADS. Additionally, small shares should be exempt from counting as properties.

Another proposed amendment should provide relief on divorce or separation where an interest in a previous main residence is required to be retained by court order. Where a new main residence is purchased jointly, ADS should be refunded to both if only one meets the conditions.

The consultation will close on 5 April.

[www.gov.scot/publications/land-buildings-transaction-tax-additional-dwelling-supplement-proposed-amendments-additional-dwelling-supplement-legislation/](http://www.gov.scot/publications/land-buildings-transaction-tax-additional-dwelling-supplement-proposed-amendments-additional-dwelling-supplement-legislation/)

## 5. Tax publications and webinars

### 5.1 Webinars

The following client webinars are coming up soon.

- 23 February - [The financial implications of a divorce or dissolution](#)

## 6. And finally

### 6.1 Looking for love? That'll be 20% VAT please

The CA released a very appropriate judgement on the eve of St Valentine's day. Finally, an answer to the eternal question: are matchmaking services exempt from VAT? The judges, channelling the parents of Verona, came down firmly against love (unless properly taxed).

Though the matchmaker's arguments were hardly more romantic – exempt for overseas customers because it is a consulting service? No. Only consult the heart.

*HMRC v Gray & Farrar International LLP* [2023] EWCA Civ 121

[www.bailii.org/ew/cases/EWCA/Civ/2023/121.html](http://www.bailii.org/ew/cases/EWCA/Civ/2023/121.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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