Tax Update

Contents

1. General

1.1 Nudge letters on Pandora Papers

HMRC is sending out further letters to individuals as part of its response to the Pandora Papers.

As part of its continuing compliance response to the Pandora Papers data leak, HMRC is issuing a further tranche of letters to some wealthy individuals that it suspects have undisclosed tax liabilities. The letter will name the offshore entity/ies that HMRC believes that the taxpayer has connections to. Recipients will have 60 days to respond to the letters, though no response is required if they believe that no additional tax is due. The letter sets out the various disclosure facilities, and what penalties might apply.

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/pandora-papers-hmrc-compliance-activity-april-2024

2. Private client

2.1 UT agrees Jersey company distributions are taxable to IT

The UT has upheld an FTT decision that payments from a Jersey company were taxable income distributions. The FTT's reasoning based on case law and Jersey law was correct.

The taxpayer held shares in a company incorporated in Jersey, domiciled in Switzerland, and listed on the London Stock Exchange. For five successive tax years, the company made payments to him from the share premium account, and on one occasion gave him additional shares, which were treated as cash in this decision. The share premium account was funded by a restructuring. Jersey law does not use the term dividend.

The taxpayer argued that the payments were capital receipts, or alternatively dividends of a capital nature. The FTT considered the history of the law on dividends in both Jersey and the UK, and the current position in both legal systems. Ultimately, it determined that although the payments were made out of the share premium account, they were income dividends. The FTT noted that the form in which the payment is made must be taken to determine its character. The mechanism chosen in this case represented an income distribution for Jersey law and therefore it was taxable in the UK as a dividend.

The taxpayer appealed against the findings that these were dividends, and of a capital nature, and whether or not the dividend in the form of shares should be treated the same way. The UT dismissed his appeal on all the grounds, finding that the FTT had analysed the case in the correct way.

Beard v HMRC [2024] UKUT 73 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2024/73.html

2.2 Negligible value claim disallowed

The FTT has denied a claim for capital losses based on shares having become of negligible value, as the shares had been worthless when acquired based on company history.

The taxpayer held shares in a company of which she was a director. She stated in a return that they had become of negligible value, and claimed a capital loss of £150,000. HMRC and the FTT denied her claim.

She had acquired the shares by capitalising her director's loan account. The FTT found that at the time of acquiring these shares the company was in fact insolvent, based on its accounts and later being struck off. The shares were worthless on acquisition, and no capital loss arose from them still being so.

Tan v HMRC [2024] UKFTT 238 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09112.html

2.3 Contract did not exist before date entrepreneurs' relief rules changed

The FTT has found that entrepreneurs' relief (ER), as it was called at the time, was not available on a disposal, as no unconditional contract for the sale had existed before the point at which the rules changed such that the disposal did not qualify for ER.

On 3 December 2014, the ER rules changed such that disposals of businesses to a limited company to which they were connected were no longer eligible for ER.

The taxpayer ran a nursery school business, and in 2011 started to take advice on transferring the business into a limited company. She could not complete the transfer during negotiations to extend her licence on the properties, which began in 2012. She instructed solicitors to begin work on the transfer in 2013, but the business sale agreement was not drafted as there was no dispute over terms, effectively a one person operation. The new company was incorporated in November 2013, but did not transfer the business as she was looking for premised.

She argued that these steps amounted to a contract for sale existing before the change in rules.

The FTT dismissed her appeal. No unconditional contract for the disposal existed before 3 December 2014. The disposal was not due to occur until various steps were completed, and the terms had not been set, nor had a price.

Delaney v HMRC [2024] UKFTT 214 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09101.html

2.4 Appeal against discovery assessments dismissed

The FTT has refused a taxpayer's appeal, finding that although the taxpayer's agent notified HMRC of chargeability, it did not contain sufficient information and therefore the follow up discovery assessments issued by HMRC were valid.

The taxpayer approached an agent in relation to rental income received on which tax was due. Over the course of several years, the agent wrote to HMRC notifying chargeability for the 2016/17 to 2020/21 tax years with no information of the source of income or any quantification. In 2022, HMRC issued a UTR and requested further information to which the agent provided rental and mortgage statements. HMRC provided a calculation showing income tax of £22,495.40 and a penalty assessment showing £4,008.54 due for the periods in question. The agent appealed the decision stating that valid notices of chargeability were served on HMRC in good time and therefore the tax and penalties were not due.

While there is no specific wording for a taxpayer to notify chargeability, the FTT found that the notification of chargeability provided by the agent contained inadequate information and that HMRC had to drag the information out of them. All of the discovery statements were issued well within the 20-year time limit and were therefore validly issued in accordance with the statutory requirements. One might have expected that HMRC would have simply issued tax returns on receipt of the notifications of chargeability, which would then have quantified the tax liability.

Owens v HMRC [2024] UKFTT 192 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09098.html

2.5 Correction issued following rental expenses nudge letter

HMRC has issued a correction following the nudge letter sent to taxpayers in December 2023 in relation to rental expenses.

The original nudge letters advised taxpayers that certain rental expenses may have been disallowable in their 2021/22 tax returns. The correction confirms that a new boiler may be an allowable expense when it is an upgrade because of an advance in technology.

www.tax.org.uk/hmrc-correction-issued-for-otm-letter-for-rental-cost-deductions

2.6 Taxpayer win on child benefit

The FTT has found that discovery assessments issued to a taxpayer for not paying the high income child benefit charge (HICBC) were invalid, as the legislative condition for them to be issued in the name of an HMRC officer was not met.

The taxpayer was assessed to the HICBC and penalties for four tax years, with interest. He appealed to the FTT, as he had not realised that the HICBC applied to him.

The FTT found that all the discovery assessments were invalid, so allowed his appeals. This was because the assessments were issued in the name of the HICBC team, rather than a named HMRC officer. A named officer had made the discovery, but then had no further involvement, despite the legislation requiring that that officer should issue the assessment.

Brown v HMRC [2024] UKFTT 245 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09114.html

2.7 Taxpayer win on loss relief

The FTT found that the taxpayer was entitled to claim loss relief on shares in a liquidated company,

The taxpayer incorporated a company in 2004, with his wife as sole shareholder and director, due to his employer asking him not to hold external directorships personally. The purpose of the company was to trade in books and memorabilia. Stock was acquired, but after initial success it became clear that the business was becoming unsustainable.

In 2013 most of the money that the taxpayer had loaned to the company was capitalised, in the belief that the shares becoming of negligible value would entitle the taxpayer to claim a loss against income tax. He made a claim on this basis when the company was liquidated. In the course of an enquiry into this claim, he accepted that he could not claim income losses as the shares were of negligible value at the time of conversion. Instead, he made a protective claim for capital losses. HMRC denied this claim.

The FTT considered the legislation and allowed the appeal. It found that the statute meant that at the time of the claim the debt must have become irrecoverable, and be outstanding. The loan met these conditions, as the worthless shares supplied in exchange for it meant that no valuable consideration had been supplied so that it remained outstanding.

Bunting v HMRC [2024] UKFTT 275 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09121.html

2.8 Entrepreneurs' relief allowed on holding 0.00002% too small

The FTT has allowed a taxpayer's appeal on a share disposal. Entrepreneurs' Relief (ER), as it was then known, was available on the gain, as the conditions were only not met due to an error for which rectification should be allowed.

The taxpayer sold 4.99998% of the shares in a company, his entire holding. He claimed ER in the belief that he had met the conditions by holding 5% of the shares for a year before the disposal. He had agreed to buy 5% of a company, and his purchase agreement had included an anti-dilution clause providing that his share should not go below that. In fact, his holding of 245,802 shares was one share short. A spreadsheet used to calculate 5% had rounded percentages to two decimal places.

He appealed to the FTT against HMRC's denial of ER and his appeal was granted. The FTT noted that he had taken action to remedy the problem as soon after the sale as it came to his attention. It was also clearly a mistake. Because of this, the HC would be highly likely to grant rectification if applied to, and the effect of this would be that the conditions for ER would have been met.

Cooke v HMRC [2024] UKFTT 272 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09118.html

3. Trusts, estates and IHT

3.1 FTT allows appeal on beneficial ownership of a property

The FTT accepted a taxpayer's evidence that a property he legally owned was held on trust for his brother. He had evidence that his brother had contributed, and that due to his brother's bankruptcy finance could only be taken out in the taxpayer's name.

After nine years of full ownership, the taxpayer transferred a house to his sister-in-law for less than market value. HMRC raised a discovery assessment, but he argued that he was only the legal owner of the house, not the beneficial owner.

The taxpayer had owned the leasehold of the property since 1989. His brother had traded from the property since that date. Nine years ago, the freehold came up for sale, but his brother, a recent bankrupt, could not obtain a loan to buy it. The taxpayer bought it in his name. Leasehold and freehold were later transferred to his sister-in-law.

The taxpayer argued that his brother had given him money for the leasehold purchase, and that though he had taken out a loan in his own name for the freehold purchase, this was on the understanding that it was on his brother's behalf. He had contributed none of his own money to the purchases. The transfer to his sister-in-law was agreed as having a loan in his own name was affecting his credit.

The FTT accepted the taxpayer's evidence and upheld the appeal. Although there was no trust deed to show beneficial ownership, the taxpayer had shown bank statements showing his brother's contribution, and the justification that he was unable to obtain credit as a bankrupt was entirely plausible. Both parties clearly understood the beneficial ownership throughout.

Raveendran v HMRC [2024] UKFTT 273 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09119.html

4. PAYE and employment

4.1 TV presenter loses appeal on contractor working

The UT has upheld an FTT decision that the off-payroll working (IR35) rules apply to the case of a football presenter who worked for Sky TV using a personal service company (PSC), as the relationship was characteristic of employment.

The appellant is the PSC of a TV presenter. It was set up in 2009, after he retired from professional football, and it entered into contracts with a broadcaster to provide his services. The FTT considered the wording of the contracts, and how he performed his duties in practice. Overall, the appeal against determinations to tax him as though he were a direct employee of the broadcaster was dismissed, as the relationship was closer to employment than contract work.

Specific points drawn out by the FTT included that the presenter was not at financial risk, as his annual fee was paid in unvarying monthly instalments regardless of the distribution of work across the year. He worked solely for the broadcaster in the first three years after setting up a PSC, so the PSC was dependent on this work.

Before the UT, the taxpayer argued that the FTT had erred in law on the mutuality of obligation issue, in not taking into account that other parts of the contract were inconsistent with employment, and that the three stage test from another case had been applied incorrectly.

The findings of the FTT, which could not be challenged, were enough to dismiss the first two points. The UT considered the application of the test, but concluded that the hypothetical contract had been correctly constructed, and met the requirements to be one of employment. The appeal was dismissed.

McCann Media Ltd v HMRC [2024] UKUT 94 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2024/94.html

5. Business tax

5.1 UT dismisses appeal on seed enterprise investment scheme

The UT has upheld an FTT decision that investments in a company did not qualify for the seed enterprise investment scheme (SEIS) as there were disqualifying arrangements.

The company was incorporated to exploit the intellectual property rights to an animation programme and related spin-offs. The originator of the concept was a director within a group of companies (the Group) that operated a fund for investors to subscribe for shares in creative companies. An anti-avoidance provision denies SEIS relief where there are disqualifying arrangements. This includes where shares are issued subject to arrangements whose main purpose is to generate access to tax relief and the benefit of the investment is passed to another party to the arrangements.

The FTT had found that disqualifying arrangements existed, preventing relief for investors under the SEIS. Over half of the capital raised was paid by the media company under a production services agreement to a member of the Group. The media company argued that the company to which the payment was made was not party to the arrangements, but the FTT disagreed, noting the extensive involvement of members of the Group in virtually every aspect of the arrangements.

The UT upheld this decision. The taxpayer's appeal on the basis that the company was not a party to the arrangements was dismissed. The shares were issued due to a disqualifying arrangement.

Coconut Animated Island Ltd v HMRC [2024] UKUT 75 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2024/75.html

5.2 Loan relationship debit denied as it did not fairly represent the true position

The FTT has denied a loan relationship deduction in respect of a discount shown as accruing on a debt instrument as it did not fairly represent the position of the individual company, which was just one part of a larger group transaction.

The taxpayer issued interest bearing debt instruments called Reserve Capital Instruments (RCIs) with a face value of £3bn. At the same time its parent company issued warrants over its own shares. The taxpayer received £3bn but accounted for the transaction as if £800m was paid by the investors for the warrants and recorded £2.2bn as paid for the RCIs and £800m as a capital contribution from the parent company. The difference between the £3bn face value and the £2.2bn deemed as received for the RCIs was treated as an accruing discount, and a deduction claimed under the loan relationship rules.

The hearing pack and supporting evidence presented to the FTT ran to nearly 7,000 pages but the FTT focused on whether the company's accounts gave a 'true and fair view' and if they did, did they 'fairly represent' the substance of the transaction for tax purposes.

On the first point the FTT found that the taxpayer was paid £3bn for the RCIs not a package of RCIs and warrants, and relying upon expert accounting evidence concluded that the accounts should have recognised £3bn as the amount received for the RCIs. As a result, there would be no discount and no loan relationship debit.

They went on to consider the position had they concluded that the £3bn should have (or could have) been presented as payment for a package of RCIs and warrants under GAAP. Although GAAP accounts should be the starting point, a departure from the accounts may be needed if they do not fairly represent the position. The FTT found that although the £800m did represent a real economic loss at a group level the tax position must be determined based on the individual company alone. Taken in isolation the taxpayer issued the RCIs at par, received £3bn and then repaid £3bn, therefore no loan relationship debit arose.

Barclays Bank Plc v HMRC [2024] UKFTT 246 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09115.html

6. VAT and Indirect taxes

6.1 CA rules that hospital parking is a VAT exempt supply

The CA has found in favour of the taxpayer, an NHS Foundation Trust, ruling that the supply of car parking at hospital sites is a VAT exempt supply. Although not a formal test case, several similar appeals are currently in progress.

For the provision of parking to be an exempt supply, two conditions must be met. The first is that the car parking is provided by a taxpayer 'acting as a public authority', and second that not charging VAT would not distort competition.

HMRC accepted that the Foundation Trust was a 'body governed by public law' but claimed it was not acting as a public authority when providing car parking. Based on earlier case law, to be acting as a public authority in providing parking the Foundation Trust would need to be acting under a special legal regime. The CA found in the taxpayer's favour that the guidance provided in guidelines issued by the Department of Health (2015 Parking Principles), had a significant impact on how the car parking was operated, including what could be charged. As a result, the legal conditions under which the Foundation Trust operated its car parks was materially different to private operators, and so the FTT and UT had erred in law in deciding that a special legal regime was not in operation.

When considering whether not charging VAT would distort competition, the CA concluded that the onus should be on HMRC to prove that this was the case, and that they had not provided sufficient evidence to show that there was an effect on competition. The taxpayer's appeal was therefore allowed.

As well as being of interest to other NHS Foundation Trusts operating car parks, this case provides guidance for organisations acting as public bodes as to what constitutes a 'special legal regime'.

Northumbria Healthcare NHS Foundation Trust v HMRC [2024] EWCA Civ 177

www.bailii.org/ew/cases/EWCA/Civ/2024/177.html

6.2 HMRC correct to deny transfer of residence relief

The FTT has upheld HMRC's decision to deny the taxpayers claim for transfer of residence relief, resulting in import VAT and customs duties for the taxpayer on personal and household goods brought to the UK.

The taxpayer and his wife came to the UK to live in 2012, following their son being awarded a three-year scholarship at a UK performing arts college. It was their intention to return to New Zealand after three years and so they brought limited personal possessions with them, with the rest of their possessions being stored in the garage and attic of their house in New Zealand, which was being rented out whilst they were in the UK. In 2019, following their son's decision to stay in the UK permanently, the taxpayer and his wife also decided to stay permanently. They decided to sell their home in New Zealand but were prevented from travelling there until November 2022 because of the covid pandemic.

In January 2023 the taxpayer applied for transfer of residence relief, which enables overseas residents who wish to make the UK their permanent home relief from import duties and charges on personal possessions brought into the UK. In that claim the taxpayer stated his arrival date in the UK as 30 January 2023, the date he returned to the UK following his visit to New Zealand to clear his house and arrange its sale.

HMRC refused the claim on the grounds that the 12-month deadline to make the claim started when the taxpayer first arrived in the UK in 2012. The FTT agreed with HMRC, the taxpayer intended to live in the UK for at least 185 days in a 12-month period and had sufficient occupational and personal ties to be considered normally resident in the UK from his initial arrival on 22 September 2012. The FTT concluded that the taxpayer's decision to make, what was initially a temporary move, permanent did not amount to an exceptional circumstance.

This case serves as an important reminder that customs duties are something individuals need to consider, not just businesses.

Mr Stewart Bowman v HMRC [2024] UKFTT 162 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09088.html

6.3 Paddock found to be part of residential grounds

The FTT has found that a paddock let from purchase of the property for grazing a horse was still part of the grounds. If the taxpayers had grazed their own horse there then that would not have been inconsistent with the use of grounds, and the agreement, which was partly a way to keep the paddock looked after, was not so onerous as to make the paddock not part of the grounds.

The taxpayers bought a property with a paddock and submitted an SDLT return using the mixed-use rates. This was a converted barn on a 3 acre plot. About half of the plot was fenced off into a paddock with its own road access, which was let under a grazing agreement. The taxpayers formed this new grazing agreement themselves, as they knew the tenant who owned horses. They signed the agreement before completion, and the date was then added by the solicitor following completion. As the tenant found the distance to the property inconvenient, she ended it six months later. Since then, the taxpayers have let it to graze sheep, then as an allotment.

HMRC argued that the paddock was in fact part of the grounds of the residential property. The grazing agreement was not in place until after completion, and the lease was not commercial, as it was for a nominal rent and to keep the paddock looked after. The paddock has been part of the plot of land with the barn for 12 years before the purchase, looking at the historic use.

The FTT agreed with HMRC. The paddock was marketed as part of the plot, and proportionate to the size of the house and garden. This was one plot, and the use of part of it for grazing was not inconsistent with the use of grounds. Overall, the agreement did not take the paddock out of being considered as grounds.

Harjano v HMRC [2024] UKFTT 228 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09107.html

7. Tax publications and webinars

7.1 Tax publications

The following Tax publications have been published.

- Payrolling benefits in kind
- Embracing the future: Three key considerations for tax leaders in the digital age
- Global mobility landscape and the end of the UK's non-dom regime

7.2 Webinars

The following client webinars are coming up soon.

- 1 May - Editions by Evelyn Partners: The Impact of UK R&D Tax Relief Reforms on Your Business

8. And finally

8.1 Happy New Tax Year

As those who celebrate know, 6 April marked the start of the 2024/25 tax year, bringing with it basis period reform, changes to Class 2 NICs, and cuts to some allowances. Despite various discussions about changing it, the not at all random date has now persisted for over 200 years. Historically, the new year began on Lady Day, 25 March, but when England switched from the Julian to the Gregorian calendar in 1752, the date moved forward by 11 calendar days. To ensure no loss of revenue, the tax year was kept at the usual length of 365 days, and the 1752 year end of 4 April remained until 1800, when, due to a complication with leap years it switched to 5 April.

Happy New Tax Year to all our readers.

www.gov.uk/government/publications/exploring-a-change-to-the-uk-tax-year-end-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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