

28 September 2022

A round-up of recent issues

Tax update

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1. General

1.1 The Growth Plan

Following the Chancellor's statement, which contained more tax changes than expected, our technical team has put together some commentary on the announcements, with summaries of the key points. You can read our detailed coverage on the website, including insight articles on each area that has changed.

Some key points from the statements are as follows:

- The basic rate of IT will be reduced to 19% from 20% from April 2023, a year earlier than expected.
- The 1.25% increase to national insurance rates introduced in April 2022 will be removed from 6 November 2022. The threshold increases that applied from July will be retained, so this is a tax cut at all income levels. The health and social care levy will not be brought in as planned in April.
- The extra 1.25% added to dividend tax rates from April 2022 will be removed from April 2023.
- The additional rate of income tax (45%) will be abolished from April 2023

- The threshold above which SDLT is due on a property purchase has been doubled from £125,000 to £250,000 with immediate effect. It is now £425,000 for first time buyers purchasing properties up to the value of £625,000
- CT will not increase as planned in April 2023, but will remain at 19%

<https://www.evelyn.com/budget/the-growth-plan-2022/>

1.2 HMRC late payment interest rate rises

Following the Bank of England interest rate rise, the rate of interest HMRC charges on late tax payments will increase.

HMRC has announced a forthcoming rise in yearly interest rates on overdue tax by 0.5%, following the Bank of England base rate increase from 1.75% to 2.25%. The rate applied to the main taxes will become 4.75%. The rate of interest on repayments from HMRC will become 1.25%.

The change will apply from 3 October 2022 for quarterly instalment payments and 11 October 2022 for non-quarterly instalment payments.

www.gov.uk/government/news/hmrc-late-payment-interest-rates-to-be-revised-after-bank-of-england-increases-base-rate--7

1.3 HMRC agent update 100

HMRC has published Agent Update 100, which provides an overview of the recent issues of which tax agents should be aware. It includes updates on HMRC services, and forthcoming changes.

The latest Agent Update summarises various recent issues and changes, including:

- A tool for calculating the super deduction and special rate capital allowances.
- Exclusions for self-assessment online filing.
- New powers for naming tax avoidance promoters.
- Advice on preparing for the new tax year.
- The economic crime levy.
- CGT on UK property accounts – agent authorisation for the digitally excluded.
- HMRC agent services.
- The trust registration service.

www.gov.uk/government/publications/agent-update-issue-100

1.4 Taxpayer awarded £1 in costs against HMRC

A judge agreed that HMRC had acted unreasonably, so taxpayers were entitled to claim costs of defending their previous appeal. Given that HMRC's procedural failure had previously resulted in the taxpayers being able to keep a £1.3m tax refund to which they were not entitled, the judge capped the costs award at £1.

The taxpayers had entered an SDLT avoidance scheme, which all parties agreed was ineffective. They were however able to keep the tax refund of over £1.3m, as the assessments were not raised in the right timeframe. They won their appeal last year against HMRC's argument that they had been negligent for not amending their returns in line with a legislative change. The deadline for an assessment in a case of negligence would have been later. The legislation now refers to deliberate behaviour.

Subsequently, they applied for HMRC to pay the costs they had incurred in defending their appeal. The tribunal agreed that HMRC had taken forward a case in which it had no reasonable prospect of success, due to a lack of evidence, so had caused the taxpayers to incur the costs of an unnecessary hearing.

The judge found that it was just and fair to make an award of costs against HMRC. The costs were over £80,000. The judge awarded £1.

GC Field & Son Ltd & Ors v HMRC [2022] UKFTT 314 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08583.html

1.5 Correction on minister responsible for tax

Responsibility for the tax system has been shifted away from the Financial Secretary to the Treasury (FST), and now lies with the Economic Secretary to the Treasury (EST).

Richard Fuller MP, who has held the post of Economic Secretary to the Treasury (EST) since July, has now absorbed responsibility for the tax system into his duties.

Our apologies for the error in article 1.2 of our 14 September edition, which stated that these lay with the new FST, and we wish Mr Fuller well with his new responsibilities.

www.gov.uk/government/ministers/economic-secretary-to-the-treasury

2. Private client

2.1 CA allows taxpayers' appeal on Entrepreneurs' Relief (ER) for trusts

The CA has found that the FTT, and not the UT, was right in a case on ER (now known as Business Asset Disposal Relief). Relief was available for the taxpayers, as the qualifying time period to hold the shares before disposal did not apply to trusts.

The three taxpayers were each granted an interest in possession in three separate settlements in July 2015. A relation gave an equal number of trading company shares to each settlement in August 2015, and the trusts disposed of them less than four months later. The three taxpayers were qualifying beneficiaries for ER, as they were officers of the trading company, and their shareholdings were otherwise sufficient to meet the personal company rules and had been held for over the holding period in a personal capacity. Together with the trustees they therefore claimed ER on the disposals, which HMRC rejected on the grounds that the trust shares were held for under one year.

The FTT found for the taxpayers, on the grounds that that the statutory provisions on the time period applied only to shares held directly. The UT found for HMRC that the requirement to hold an interest for a year before disposal does apply to trusts. It considered the historical basis for ER, looking at its predecessors and the rationale behind the relief. It found that the availability of ER to a trust beneficiary was closely linked to that beneficiary, rather than looking solely at the trust.

The CA overturned the UT judgement and restored the FTT's. It looked at the logic behind the legislation, and found on close reading that each individual was a qualifying beneficiary, then the trust did not also need to meet the time limit.

The Quentin Skinner 2015 Settlement L & Ors v HMRC [2022] EWCA Civ 1222

www.bailii.org/ew/cases/EWCA/Civ/2022/1222.html

2.2 Taxpayer wins appeal on remittance point

The FTT found that payments under an indemnity had not generated a capital gain. There was no remittance to the UK, as this was just settling a debt.

The two taxpayers, who were non-UK domiciled, sold a company. As part of the agreement, they gave an indemnity against a debt being irrecoverable, which turned out to be the case. The complex mechanism chosen to settle the liability was essentially to create and then write off a debt.

HMRC argued that the transactions had generated a capital gain, which was a taxable remittance to the UK. On close analysis of the transactions and legislation, the UT found that there was no remittance. There was no value added, so no chargeable gain.

Sehgal & Anor v HMRC [2022] UKFTT 312 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08581.html

2.3 HMRC compliance approach for wealthy individuals

HMRC has published a briefing on its compliance approach when dealing with wealthy individuals.

This applies to the approximately 800,000 individuals with incomes in excess of £200,000 a year, or assets equal to or greater than £2m in any of the last 3 years.

It explains how the right tax is collected, including the co-operative approach, compliance checks, and customer compliance managers, and addresses how the Wealthy team works with other departments.

www.tax.org.uk/hmrc-wealthy-team-publishes-briefing-on-tax-collection

www.gov.uk/government/publications/how-hmrc-collects-the-right-tax-from-wealthy-individuals

2.4 HMRC nudge letter on CGT when selling residential property

HMRC's Wealthy External Forum is writing to taxpayers with a reminder on the CGT obligations when selling a UK residential property.

The letter is to go to those who have recently sold, or are considering selling, a UK residential property which was not their main residence. It explains the requirement to complete a CGT return, and the consequences of not filing one on time. A set of FAQs is included.

www.tax.org.uk/hmrc-are-reminding-those-who-are-or-may-be-selling-a-residential-property-about-their-cgt-obligations

2.5 HMRC wins cross appeal on market value

HMRC has won an appeal on the market value of a distribution, where the split between income and capital was unclear for tax. The UT found that the distribution should be calculated by reference to the sales consideration in the agreement rather than the amount actually received.

The taxpayers owned a potato grading and processing business, which they operated as a partnership. They incorporated the partnership, which involved transferring goodwill to a new company. The goodwill was valued at approximately £1.2m in the accounts. The company paid approximately £750,000 cash to acquire it and left the balance on a loan account. The company later became insolvent and so the balance was never repaid.

HMRC disputed the value of the goodwill, and the FTT found that it should have been valued at approximately £270,000. The parties agreed that the excess paid for the goodwill over the true value was a distribution taxable on the taxpayers. They disagreed, however, on whether the excess should be measured using the figure of £1.2m or £750,000. The presiding member of the FTT found that the distribution was equal to the excess of £750,000 over the true value of the goodwill, though the other member dissented. He held that the amount actually transferred was what mattered; crediting a directors' loan account did not amount to a distribution. The increase to the loan account created a liability for the company; it was not a transfer of assets.

Both parties appealed to the UT. The taxpayers argued that the FTT should have assessed market value as the price a reasonably prudent purchaser would have paid for the debt, so no more than company net assets. The UT dismissed this, as the value was from the perspective of a member of the company. HMRC appealed on the grounds that the transfer of goodwill was the new consideration, that the benefit to the taxpayers was not only when payments were made to them for the debt, and that the value of the benefit was just the value of the debt. The UT accepted HMRC's appeal, finding that the FTT had erred in law, and the market value could only be determined by what was known at the time, not information found years later.

HMRC v Pickles & Anor (Cross Appeals) [2022] UKUT 253 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2022/253.html

3. PAYE and employment

3.1 Guidance update on travel reimbursements

The Government has confirmed that reimbursements in excess of the approved amount for a vehicle are taxable, even if they match actual costs incurred.

This ministerial statement corrects previous responses to questions on this subject. The reimbursement amount is taxable if over 45p a mile is paid for car mileage.

<https://questions-statements.parliament.uk/written-statements/detail/2022-09-05/hcws280>

www.icaew.com/insights/tax-news/2022/Sept-2022/Employers-cannot-reimburse-more-than-approved-amount-for-business-travel

4. And finally

4.1 Tax is coming home

Oh our paws and whiskers! It's not often that we feel the need to disagree with the views of the FTT, not least because we may be next up in front of them. We do though have to take issue with the thinking in Seghal (see item 2.2 above).

Judge Ann Short disparagingly commented that HMRC's approach 'has something of Alice in Wonderland about it'. If so, And finally is contrariwise very encouraged. Regular readers know that our view is that Wonderland is the true home of tax and if HMRC is now also taking that approach too we can only welcome it.

With Wonderland thinking, HMRC was almost certainly on to something; so far from disparaging this mindset, HMRC was probably on the right lines.

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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