

Tax update

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1. General

1.1 Liz Truss selected as Prime Minister

Liz Truss has been elected as the leader of the Conservative Party, and subsequently appointed as PM. Our article linked below sets out what is currently known about her plans for the tax system.

An emergency fiscal event, which could possibly be a full Budget, is expected in September. The likeliest dates are the 14th or 21st. The key announcements expected are a reverse to the increase in NICs, and a cancellation of the planned increase in CT.

www.evelyn.com/insights-and-events/insights/a-new-pm-a-new-tax-regime/

1.2 Kwasi Kwarteng appointed as Chancellor

Kwasi Kwarteng has been appointed to replace Nadhim Zahawi as Chancellor of the Exchequer.

Following Liz Truss's appointment as PM, she has appointed Kwasi Kwarteng as Chancellor of the Exchequer. He takes overall responsibility for the work of the Treasury, including the Budget. We wish him well in his new role.

www.gov.uk/government/ministers/chancellor-of-the-exchequer

1.3 HMRC agent update 99

HMRC has published agent update 99, 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:

- An update on the UK implementation of the two-pillar solution to global tax reform
- A note on the HMRC campaign to alert contractors to the signs of tax avoidance
- A new approach to VAT compliance for offshore traders using online marketplaces
- A note on the updated CGT on UK property account guidance
- An update on changes to the agent service account, allowing access groups for different users in one agency
- Expanding the making tax digital for income tax pilot
- Information about the Trust Registration Service
- A new ID verification option for Government Gateway, where iPhone users can use the camera to confirm that they are the person pictured on their driving licence

www.gov.uk/government/publications/agent-update-issue-99/issue-99-of-agent-update

1.4 HMRC nudge letters to persons of significant control

HMRC is writing to individuals recorded as persons of significant control for unquoted companies, where records indicate that they may have disposed of all or part of that shareholding in 2020/21 but the disposal is not reported on their tax return.

The letters explain what a disposal of shares is, and when CGT is due, as well as signposting the individuals to further guidance.

The recipients are asked to check the position, and if they have made an omission to amend their 2020/21 tax return by 31 January 2023.

www.tax.org.uk/latest-nudge-letter-from-hmrc-concerning-persons-of-significant-control-and-share-disposals

1.5 FTT upholds discovery assessments for an 11 year period

The FTT agreed with HMRC that a loss of tax had been caused by deliberate behaviour, of the taxpayer's agent, so assessments could be issued for years otherwise out of time.

For eleven tax years, a partnership submitted tax returns showing a profit of zero. This profit figure was after deductions for direct costs paid to other family partnerships. HMRC argued that these were in fact drawings, and that the family partnerships had claimed private domestic expenditure as expenses. In order to issue assessments for all the years investigated, HMRC needed to use the extended time limits for deliberate behaviour.

The FTT agreed with HMRC that there was a loss of tax due to deliberate behaviour, and upheld the assessments. There was no evidence to support why the costs had to be incurred. The agent, who had later been convicted of cheating the public revenue in relation to another matter, had deliberately designed the partnership accounts to evade tax.

The Magnet Partnership v HMRC [2022] UKFTT 288 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08570.html

2. Private client

2.1 Elaborate pension liberation scheme fails

A taxpayer suffered an unauthorised payment charge from his self-invested personal pension (SIPP) where he sold unquoted shares to his SIPP trustees at a price over the arm's length value. The FTT held that he and the trustees were not at arm's length despite having no other connection.

The taxpayer applied for shares in a company that was marketed as developing a Mediterranean hotel. At the same time, he became a member of an associated LLP. The taxpayer later sold his shares to his SIPP at the price paid, without due diligence. The structure was such that no hypothetical purchaser would have placed any value on the shares as there was no basis on which a return on them could be made and the structure was uncommercial.

The taxpayer argued that he was at arm's length from the SIPP trustees. The FTT did not accept that argument since it was only his SIPP funds that were involved.

The FTT found that the sale of the shares otherwise than at arm's length price constituted an unauthorised payment. It also upheld the surcharge HMRC had imposed on the taxpayer.

Boardman v HMRC [2022] UKFTT 238(TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08558.html

2.2 Loss relief denied as no trade was transferred

A taxpayer who was a sole trader and later incorporated a business has been denied loss relief. He had continued operating as a sole trader after the incorporation, and no trade had been transferred, so the sole trade losses could not be offset.

The taxpayer provided finance for second hand car sales, to only one customer. The customer bought cars with the funds, and shared the profit on sale with the taxpayer, as well as repaying the loan. There were numerous defaults, with increasing frequency, before the customer became insolvent in 2008. In 2005, the taxpayer had incorporated a company, though transferred no assets to it. He argued that the trade had been transferred to the company, so loss relief should be available, although he had continued to deal with the customer personally so as not to complicate the situation with the outstanding debts.

HMRC argued that no trade had been transferred. The taxpayer had continued his sole trade for two years after incorporation. In addition, there was no continuity of trade as he and the company carried on substantially different trades, the losses were incurred post-cessation, so could not be carried forward, and the taxpayer had subscribed for shares with cash rather than in exchange for the trade.

The FTT found for HMRC, agreeing that no trade was transferred, though it found that if the trade had been transferred the businesses were similar enough to give continuity of trade, and reached no decision on the post-cessation point due to lack of evidence.

Davis v HMRC [2022] UKFTT 274 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08566.html

2.3 Technical difficulties with the CGT on UK property service

The CIOT has published guidance on how to solve a particular error encountered on the online service.

If a user sees a "technical difficulties" error message, they may be able to resolve the error by updating their address in their personal tax account and ensuring that the postcode and country are in the correct boxes, even if the overall address appears correct.

www.tax.org.uk/technical-difficulties-when-reporting-uk-residential-property-disposals

2.4 High income child benefit charge: permission granted for late appeal

Permission to make an appeal almost a year late was granted due to the strength of her case.

The taxpayer claimed child benefit for two years while unaware that she was liable for the high income child benefit charge (HICBC). She repaid the money using a payment plan when HMRC informed her about the charge, but appealed over 10 months late. She applied for permission to make a late appeal on grounds including that she had never been made aware of the HICBC, was unaware of her appeal rights, and having mental health difficulties during the pandemic.

The FTT did not find her reasons for delay particularly compelling, but allowed the application, stating that a plain injustice would arise if she was prevented from making the appeal, as following the outcome of the Wilkes case it would be bound to succeed. It commented that a much greater delay might have swayed the outcome the other way.

Marfo v HMRC [2022] UKFTT 289 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08571.html

HMRC v Wilkes [2021] UKUT 150 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2021/150.html

2.5 Taxpayer loses appeal on tax-geared penalty

The UT has backed the FTT in upholding a late filing penalty of over £42,000. As the tax return was submitted over a year late the penalty was tax-geared.

The taxpayer, the director of a small group of companies, had been issued with a tax-geared penalty of over £42,000 for filing his tax return well over a year late. The FTT had already upheld this penalty, despite a series of distressing events in the taxpayer's life including a car crash, financial difficulties with the business, and the failure of his adviser to file the return.

The UT agreed with the FTT, finding that the taxpayer had deliberately withheld information from HMRC, and that his difficulties did not meet the test for a reasonable excuse for late filing.

Harrison v HMRC [2022] UKUT 216 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2022/216.html

2.6 HMRC payments issue – Private & Confidential

Some July payments on account made on time by cheque have been credited to HMRC accounts after the deadline. HMRC should cancel the interest and amend the date on request.

Several clients who sent in cheques to HMRC for July payments on account have been charged interest. This is despite the cheques being cashed before the deadline; the online account shows late receipt. One instance has also been seen with a bank transfer.

If this applies to any of your clients you should call the agent line, as HMRC has stated in the current cases that they will amend the date of receipt. The time given for resolution was over a month, so this has yet to be tested.

The information asked for on the phone was as follows:

- The cheque number
- The date the cheque was sent to HMRC
- The date the cheque was cashed
- The reference on the cheque (normally UTR+K)
- The account number and sort code of the bank account the cheque was made out from

If this issue is not resolved quickly on one of your clients please speak to National Tax so we can take a unified approach.

3. Trusts, estates and IHT

3.1 HMRC guidance on sharing trust information with third parties reviewed

HMRC has a duty of care where sharing trust information with third parties could expose a beneficial owner to a disproportionate risk of harm.

HMRC can generally share information from the Trust Registration Service with third parties for legitimate reasons. Trustees or agents should write to HMRC if they believe that a trust should be exempt from information sharing under the duty of care, giving details including the specific risk of harm, the reasons, and the length of time for which the risk will continue.

www.gov.uk/guidance/register-a-trust-as-a-trustee

3.2 HMRC updates to trust registration service manual

In the approach to the 1 September deadline for registering non-taxable trusts HMRC added various sections to its manual, as well as publishing step by step guides to registering on the TRS.

The additional sections cover penalties, data requests, discrepancy reporting, FAQs, and examples about Scottish trusts.

The step-by-step guides cover how to register a trust, how to claim it, and how to authorise an agent.

www.step.org/industry-news/uk-government-updates-trs-manual-deadline-approaches

www.icaew.com/insights/tax-news/2022/Aug-2022/HMRC-issues-step-by-step-guides-to-trust-registration

4. PAYE and employment

4.1 HMRC employer bulletin: August 2022

The latest Employer Bulletin from HMRC provides reminders and updates on tax issues for employers.

It includes information on:

- a digital submission route for PAYE settlement agreements, and a reminder about the October payment deadline
- the new variable direct debit payment plan for employers' PAYE

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- what to do if deferred VAT is outstanding
 - four steps you need to do now to sign up to MTD for VAT
 - information on the HMRC campaign to help contractors spot the signs of tax avoidance
 - the new tax resident indicator tool
 - an explanation of organised labour fraud and how to avoid it.

www.gov.uk/government/publications/employer-bulletin-august-2022

4.2 Call for evidence on hybrid and distance working

As part of the Office of Tax Simplification (OTS) review of hybrid and distance working, it is asking for input from employers, employees, the self-employed, and others.

The review will look at issues including working across international borders, whether or not the permanent workplace rules make sense, the short-term business visitor and overseas workday relief rules, and pension contributions and share schemes.

The OTS is looking to engage with a variety of people to see what the current issues are, and how businesses and advisers are adapting.

Responses can be emailed in, or employees and the self-employed can take an online survey about their experience of hybrid working. The deadline for responses is 25 November 2022.

www.gov.uk/government/consultations/review-of-hybrid-and-distance-working-call-for-evidence

4.3 HMRC warning about tax avoidance by umbrella companies

Spotlight 60 explains some of the ways in which some umbrella companies use contrived arrangements to avoid tax, and how an agency worker or contractor can identify them.

Spotlight 60, the latest in a series of HMRC articles raising awareness of tax avoidance, is a warning to contractors and agency workers. It explains the principles of tax avoidance by umbrella companies, whilst noting that many of these companies are compliant with the tax rules. It explains that the individual remains responsible for their own tax affairs, and warns about the large fees charged by umbrella company schemes. It gives a list of ways to spot a tax avoidance scheme, including unusual payment arrangements, and reminds workers to obtain and keep a copy of their employment contract.

www.gov.uk/guidance/warning-for-agency-workers-and-contractors-employed-by-umbrella-companies-spotlight-60

5. Business tax

5.1 Christmas spectacular found eligible for theatre tax relief

The FTT has found for the taxpayer that a production consisting of various elements was one dramatic production overall, so theatre tax relief was available.

This is only the second reported case on theatre tax relief, introduced in 2014. It is available on theatre, ballet shows, and other dramatic productions.

The taxpayer put on a show each year, which consisted of a number of elements such as dance, song, and shows. HMRC argued that this was essentially a variety show, with no consistent story. The tribunal watched a recording and heard extensive evidence as to how the show was put together, and the roles of the performers.

The FTT agreed with the taxpayer that this fell within the category of other dramatic production, and that the performance was mainly given through the playing of roles. The dancers and singers were performing not as themselves but were playing the role of a dancer or singer as required by the story, such as a chorister in some scenes. It commented that karaoke, pop concerts, and the Royal Variety Show would not be entitled to theatre tax relief, but that this show would.

The legislation on 'other' dramatic productions was amended with effect from April 2022.

Thursford Enterprises Limited v HMRC [2022] UKFTT 240 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08560.html

5.2 Changes to corporate interest restriction returns

HMRC has issued a notice requiring additional information to be included in returns filed on or after 1 October 2022.

From 1 October taxpayers will need to include additional information on a corporate interest restriction return, including the country of incorporation (if no tax reference number for this) and legal entity identifier for the ultimate parent of the worldwide group. Where a full interest return is submitted, the adjusted net group-interest expense of the worldwide group for the return period must be stated even if the group ratio is used.

HMRC has also updated its guidance to clarify that it will not routinely appoint a reporting company if the taxpayer has missed the deadline and explains how and in what circumstances it may do so on behalf of the taxpayer.

www.gov.uk/government/publications/notices-under-schedule-7a-of-the-taxation-international-and-other-provisions-act-tiopa-2010

www.gov.uk/guidance/corporate-interest-restriction-on-deductions-for-groups

5.3 Nudge letters on UK property owned by offshore corporates

HMRC is writing to offshore corporates owning UK property that may owe IT, ATED, or non-resident CGT.

HMRC has identified some potential non-compliance from Land Registry data, which it is aiming to resolve by sending nudge letters in September. The letters, in two batches, will recommend that taxpayers seek professional advice to ensure that they are compliant, and their tax affairs are up to date.

One batch will go to non-resident corporates owning UK property that may not have paid ATED, nor disclosed income received as a non-resident landlord, or may be within the transfer of assets abroad provisions.

The other batch will be sent to non-resident companies thought to have disposed of a UK residential property between 6 April 2015 and 5 April 2019 without filing a non-resident CGT return. These taxpayers may owe CGT, as well as UK tax on rental profits, IT under the transactions in land rules, and/or ATED.

www.tax.org.uk/offshore-corporates-owning-uk-property-hmrc-campaign

5.4 HMRC wins appeal on ATED daily penalties

The UT found that the date stated in a notice from which a daily penalty is payable can be a date before the notice is issued.

Two companies were issued with penalty notices for the late filing of ATED returns. No tax was due under these ATED returns.

At the FTT, one taxpayer company won its appeal against the decision to impose daily penalties as the FTT, adopting a purposive approach, found that the daily penalty notice could not be given retrospectively. The other taxpayer company lost its appeal on penalties at the FTT.

The UT found that daily penalties were validly issued in both cases. The date from which penalties were applied did not have to be after the date the penalty notice was issued to the taxpayer. Retrospective notice can apply.

Priory London Ltd v HMRC and HMRC v Jocoguma Properties Ltd [2022] UKUT 225 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2022/225.html

5.5 Company entitled to an exemption from UK withholding tax

An Irish resident company has won its appeal against HMRC's decision not to repay IT withheld from interest in respect of a debt claim. The arrangement was not designed to take advantage of the UK/Ireland double tax treaty (DTT), so anti-avoidance rules did not apply.

The Irish resident company had bought, from a Cayman Islands resident company, a debt claim in the administration of Lehman Brothers. When the interest was discharged, UK IT was withheld at source from the payment, HMRC refused to refund the withholding tax on all of the interest payments. It considered that the DTT did not apply to exempt some of the payments from UK tax as at least one of the companies had had a main purpose of taking advantage of the relevant interest article by means of the assignment of debt.

The FTT found that the interest payment did qualify for the exemption from UK withholding tax in the DTT. On consideration of the overall arrangement, and the motives of the parties, tax avoidance was not a main purpose of the arrangement.

Burlington Loan Management DAC v HMRC [2022] UKFTT 290 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08572.html

6. Tax publications and webinars

6.1 Tax publications

The following Tax publications have been published.

- [A new PM, a new tax regime?](#)
- [Salaried members' rules: what are the learning points from the first case?](#)

7. And finally

7.1 So much drama

(No, not article 1.1, article 5.1.)

One of the best parts of being an FTT judge must surely be the opportunity to grapple with practical questions of modern philosophy, the outcomes of which may (not) become guiding principles for tax advisers to live their lives by. The best hits list, which includes the equally important questions "what is a home?" and "what is cake?" has now been expanded to cover "what is theatre?".

In pursuit of the noble aim of answering this question, a judge spent three days hearing evidence about the composition of a three hour Christmas Spectacular, as well as watching a video of it. (See article 5.1.) Luckily for the taxpayer, she was sufficiently impressed to conclude that it was overall a dramatic performance eligible for theatre tax relief.

Her comments, on which we cannot hope to improve, included noting that both *Cats* and *Waiting for Godot* were counted as dramatic performances, despite lacking a story, so this could not be essential to theatre.

It must, surely, however, have been the voice of bitter experience that led her to comment: "*Karaoke is unlikely to even be a theatre production never mind dramatic. It is in the experience of the Tribunal questionable whether the performers could be considered to be singers*".

Vesti la giubba.

Thursford Enterprises Limited v HMRC [2022] UKFTT 240 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08560.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. Clients should always seek appropriate tax advice before making decisions. HMRC Tax Year 2022/23.

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