

Tax update

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1. General

1.1 Medium-term fiscal plan to be released on 31 October

The Chancellor's statement, initially planned for 23 November, has been brought forward to 31 October.

It was initially announced that the Chancellor would publish his medium-term fiscal plan on 23 November. It has now been confirmed that this will be brought forward to 31 October, and it will be issued alongside an Office for Budget Responsibility (OBR) forecast. It is currently still expected that there will then be a Spring Budget, with a further OBR forecast at that time.

www.gov.uk/government/news/letter-notifying-the-treasury-select-committee-of-the-date-of-obrs-forecast-and-chancellors-medium-term-fiscal-plan

2. Private client

2.1 HMRC nudge letter on exceptional circumstances and residence

Those non-UK residents whose 2020/21 returns include UK days discounted due to "exceptional circumstances" may receive an educational letter from HMRC.

This nudge letter will go to those whose 2020/21 returns stated that they were non-UK resident, and attributed some UK days to either exceptional circumstances, or coronavirus (COVID-19) related work. Errors seen by HMRC in some returns include claims over the respective 60 and 57 day limits.

The letter will ask the taxpayer to check that their claim was within the day limits, and met the criteria for the claim, then make a correction if needed. HMRC is not expecting changes to every return, so no action is required if the taxpayer is satisfied that the return was correct.

www.tax.org.uk/hmrc-s-otm-letter-on-exceptional-circumstances-and-the-statutory-residence-test

2.2 Taxpayer found to be UK resident under old residency rules

The FTT has found that, under the rules predating the statutory residence test, a taxpayer remained UK tax-resident despite a theoretical move to Belgium. The pattern of his UK visits indicated an ongoing connection.

The taxpayer, a successful businessman who was born and raised in the UK, moved to Belgium in early April 2006 to develop his European business further. He returned to the UK in 2013. HMRC argued that he remained UK resident for tax purposes throughout this period.

Initially, he rented a flat in Belgium, before purchasing a property which he moved into in November 2006. His wife visited, but largely remained living in the UK. He took some steps to transfer his life to Belgium, such as closing some UK bank accounts and opening Belgian ones, resigning from UK clubs, and notifying his new address to organisations and contacts.

The FTT however found for HMRC that he remained UK tax resident. His wife remained in the UK family home, which he visited despite staying in hotels overnight. He saw friends in the UK, and attended sporting fixtures there. Although he spent relatively little time in the UK and there had been a clear change in the pattern of his life, his visits were frequent and there was not a sufficient loosening of his ties with the UK.

The FTT also found that for the purposes of the double tax treaty, his UK property remained his permanent home. The fact that he had transferred it solely into his wife's name and did not stay there overnight was an artificial step that carried no weight. His personal and economic interests remained in the UK, which was his centre of vital interests, meaning that he was treaty resident in the UK.

McCabe v HMRC [2022] UKFTT 356 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08609.html

3. PAYE and employment

3.1 Appeal dismissed on furlough scheme information notice

The FTT found that bank statements are statutory records, so the tribunal had no jurisdiction to exclude them from an information notice.

The taxpayer, an IT support company, claimed about £73,000 in payments under the coronavirus job retention scheme (CJRS). Due to its VAT deregistration and lack of CT returns, HMRC wanted to check its entitlement to the grants. HMRC issued an information notice requesting copies of bank statements, and other details such as a description of the business activities, and a breakdown of how the claims for grants were calculated. The taxpayer appealed, though did not attend the hearing nor send representation. The only information it had supplied was heavily redacted bank statements.

The FTT confirmed its view that payments made under the CJRS can lawfully be the subject matter of an information notice. It struck out the appeal in relation to the bank statements. These are statutory records, and the company could not withhold them nor redact them. The appeal was also dismissed in relation to the other details, which HMRC demonstrated that it reasonably required to check the position.

Fresh Consulting And Support Ltd v HMRC [2022] UKFTT 353 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08606.html

4. VAT and other indirect taxes

4.1 Advisory panel decides against an SDLT arrangement

The general anti-abuse rule (GAAR) panel has found that a particular set of SDLT arrangements in relation to the sale and purchase of a residential property involving an alternative finance agreement and a lease agreement constituted tax avoidance.

In summary, the arrangements consisted of the taxpayers buying a residential property in a complicated way to save SDLT, as advised by a tax avoidance scheme promoter. They entered into a contract to buy the property, then settled the sum needed to purchase it into a company, which settled the same amount back onto them under a bare trust. The money remained in one account throughout, held by a manager who received instructions that he was holding it as nominee for each party at handover. The taxpayers then bought the property, theoretically in a bare trust where the trustee was the company, so they paid it a peppercorn rent.

The GAAR panel held that both entering into, and carrying out, the tax arrangements was not a reasonable course of action in relation to the relevant tax provisions.

www.gov.uk/government/publications/gaar-advisory-panel-opinion-of-27-july-2022-stamp-duty-land-tax-arrangements-in-relation-to-the-sale-and-purchase-of-a-residential-property-involvin

5. Tax publications and webinars

5.1 Webinars

The following client webinars are coming up soon.

- 19 October - [Innovate Finance: Impact of the changing R&D tax legislation and how best to maximise your R&D benefit?](#)
- 25 October - [Financial planning for professionals](#)
- 3 November - [The tax landscape](#)
- 10 November - [Business exit planning for entrepreneurs: tax efficiency and employee support](#)
- 30 November - [UK tax and reporting considerations for international private clients](#)

6. And finally

6.1 A sticky situation

Regardless of what else happens in the world of tax, VAT can always be counted on for a little light relief. This week, a new case has passed into the annals of VAT history. Yes, we've had Jaffa cakes, we've had protein flapjacks – but what about differently sized marshmallows?

In a judgement worthy of Goldilocks, it has been decided: Big ones? Zero rated. Little ones? Depends on the planned use. Standard size? Standard rated.

The question of course hinges, sensibly enough, on whether the product is a snack, a confectionary, or a cooking ingredient, such as the large ones for roasting.

We leave you with a fine example of a judge applying real-world practical experience to the knotty problems of taxation:

34. *Mr Foster's evidence was that roasting the product made it more palatable. That is Mr Foster's opinion, but we do not share it. Larger marshmallows are equally palatable whether eaten as a snack or after roasting. However, roasting the marshmallows gives them a different texture and flavour. It is easier to roast a larger marshmallow than a regular size marshmallow. Roasting larger marshmallows also gives a different result in terms of the ratio of crisp outer to soft inner mallow. Regular marshmallows would not be as effective to make a s'more because there would not be sufficient soft inner mallow.*

Innovative Bites Ltd v HMRC [2022] UKFTT 352 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08605.html

www.bbc.co.uk/news/uk-england-leicestershire-63157432

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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