

# Tax update

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## 1. General

### 1.1 Autumn Finance Bill and tax notes published

*The draft text for the Autumn Finance Bill has been published alongside tax information and impact notes (TIINs) for the measures announced at the Autumn Statement.*

This sets out the draft legislation for the measures announced at the Autumn Statement. It will follow the normal legislative path through Parliament. The TIINs published for each measure set out slightly more detail about the announcements, and confirm that the CGT reporting threshold is increasing, see article 2.1.

The main Spring Finance Bill 2023 will follow the spring Budget in the usual way, for remaining tax measures needed ahead of April 2023.

[www.gov.uk/government/news/autumn-finance-bill-2022-published](http://www.gov.uk/government/news/autumn-finance-bill-2022-published)

[www.gov.uk/government/collections/autumn-statement-2022-tax-related-documents](http://www.gov.uk/government/collections/autumn-statement-2022-tax-related-documents)

## 2. Private client

### 2.1 CGT reporting proceeds threshold to rise

*The limit above which gains must be reported to HMRC, even if no CGT is due, will rise to £50,000 of proceeds from April 2023. This is to prevent it falling when the annual exempt amount (AEA) is cut.*

The CGT reporting limit, alongside other factors, impacts whether or not an individual within self-assessment is required to complete the CGT pages of the tax return.

The reporting limit is currently set at four times the AEA, but to prevent it falling with the AEA it will be set at the new fixed level of £50,000.

This will take effect from 6 April 2023.

[www.gov.uk/government/publications/reducing-the-annual-exempt-amount-for-capital-gains-tax](http://www.gov.uk/government/publications/reducing-the-annual-exempt-amount-for-capital-gains-tax)

### 2.2 Appeal against £2m assessment made too late

*The FTT has refused to allow a taxpayer to enter an appeal four months late against a discovery assessment for £2m, for income he believed was taxable on his personal service company instead. His agent had advised him that it would be possible to make a late appeal but the fact that he had relied on this to his detriment did not justify the disadvantage to HMRC of allowing him to make a late appeal.*

The taxpayer had entered into a contract to develop a product in 2006, which included an entitlement to future royalties. He transferred his consultancy business into a personal service company in 2006. The point at which the company became entitled to the royalties was subject to debate, including how the relevant law of the American state concerned applied, and HMRC believed that he should have been taxed on the royalties for some additional years. It issued him with two alternative discovery assessments, one for 2011/12 and one for 2014/15.

The 2014/15 assessment was issued on 22 March 2019, for the sum of over £2m. HMRC's internal review upheld this on 31 March 2021, but the taxpayer's agent, a large law firm, failed to notify an appeal to the FTT within the time limit.

The taxpayer applied to make a late appeal, contending that the tenor of his agent's advice was that the dispute would be resolved by correspondence, not tribunal, that the agent would deal solely with HMRC communications, that there would be no issue with making a late appeal, and that the best course tactically was to "delay as much as possible". The appeal was finally submitted four months and seven days late, so 38 days after the three month period in which HMRC had said it would not object to late appeals.

The FTT found for HMRC and refused to admit the late appeal. Although he had relied on his agent's poor advice this is not generally an excuse, and though he had not appreciated the seriousness of the position, he had been copied into the correspondence containing the time limits, and allowed his agent to ignore them. Allowing him to be exempt from the statutory time limit would have cost and resource implications for HMRC and would not help with the management of his litigation against the other discovery notice.

*Barrett v HMRC* [2022] UKFTT 423 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08642.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08642.html)

### 2.3 Declared but unpaid dividends not held to be taxable

*The FTT has found that dividends that had been declared, but due to an undertaking could not be extracted from the company, were not taxable. There was no right to receive the dividends as income in the tax year of declaration, or ultimately at all.*

The taxpayers held the single issued share of a property management company jointly, one was also the director and the other the company secretary. When the business was at risk and needed external investment, the director decided that strong

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dividend declarations would attract this. The bank which had made substantial loans to the company was unwilling to see substantial profit extraction, so was given an undertaking such that the dividends would effectively not be paid.

The FTT looked at the documentation and history of the dividends. The minutes that stated the amount of the dividend voted for also stated how much should be paid, and how much credited to a directors account and not made available to the taxpayer. Although the dividends had been declared, due to the unusual facts the FTT found for the taxpayer that the withheld dividends were not taxable. The undertaking and the minutes meant that there was no enforceable debt for the withheld dividends. The taxpayers did not have the right to receive the withheld dividends, so were not taxable on them.

*Jays v HMRC* [2022] UKFTT 420 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08639.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08639.html)

## 3. PAYE and employment

### 3.1 HMRC shares client PAYE records with agents

*If specifically authorised by a client, tax agents will now be able to view PAYE records for that client online using the normal agent services account.*

Following a trial, this feature has now been rolled out to all HMRC agents with individual clients. The new option will show pay and tax details with employment history, for the current tax year and the four previous tax years, and the tax code for this year. It is available for individuals not in self-assessment as well as those registered for self-assessment.

Existing clients will need to accept the agent's digital request for authorisation for this feature to work.

[www.gov.uk/guidance/get-access-to-the-income-record-viewer-for-agents](http://www.gov.uk/guidance/get-access-to-the-income-record-viewer-for-agents)

[www.icaew.com/insights/tax-news/2022/nov-2022/HMRC-rolls-out-the-income-record-viewer-service-for-agents](http://www.icaew.com/insights/tax-news/2022/nov-2022/HMRC-rolls-out-the-income-record-viewer-service-for-agents)

### 3.2 Settlement agreement taxable as employment earnings

*An employee settled a harassment grievance as part of a termination arrangement. The FTT found that the payment was for a restrictive undertaking taxable as earnings or in the alternative a termination payment.*

The taxpayer brought a grievance procedure against the owner of her employer for harassment, maintaining she wished to continue working. Having exhausted the confidential internal procedure, she began proceedings in the Employment Tribunal. She subsequently realised she had no choice but to leave employment.

Negotiations with the employer gave rise to a settlement agreement of £1,055,000. The taxpayer argued that in the circumstances, the payment was not in connection with the termination, and although it contained restrictive undertakings they were in connection with the grievance and not with the employment as such and therefore not earnings.

The court rejected both contentions finding that the sum was taxable as a restrictive undertaking but if they were wrong, it was, on the facts, in connection with the termination.

*Mrs A v HMRC* [2022] UKFTT 421 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08640.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08640.html)

## 4. Business tax

### 4.1 CA confirms expenses of management on business disposal are capital

*The CA agreed with the lower courts that the disputed expenses were expenses of management, but it ultimately found in favour of HMRC. The disputed expenses were capital in nature and not deductible, as capital expenses are now excluded from the management expenses regime for investment companies.*

The taxpayer was an intermediate holding company that held a Dutch holding company with four subsidiaries. A strategic decision to dispose of the Dutch holding company was taken by the taxpayer's parent company. The taxpayer subsequently

undertook a partial demerger that resulted in the sale of the assets of some of those subsidiaries. It claimed deductions for the associated expenses of disposal, which HMRC denied on the basis that they were not expenses of management.

The two separate issues under consideration were whether or not these expenses were expenses of management and whether these were expenses of a capital nature.

The CA dismissed HMRC's appeal on the first issue. The lower courts were correct in finding that the disputed expense were expenses of management. The FTT had made its finding on the facts, and as it was not erroneous the CA would not go back and reconsider that decision. The relevant principles summarised by the UT was that there is a distinction between expenses incurred in deciding whether to acquire or dispose of an asset, and expenses incurred in the mechanics of implementation once that decision had been implemented. The former qualifies as expenses of management, the latter does not. The UT went on to conclude that a 'bright line' could not be drawn at a specific date such that expenses incurred after that date automatically relate to the disposal of an investment, rather than to the management of an investment. It is the nature of the expenditure that is important, rather than when it was incurred.

On the second issue, the CA held that the UT had erred in treating the tests for expenses of management and capital as similar. The UT considered that the exclusion of capital costs from the management expenses regime for investment companies was aimed at expenses that do not normally recur, but which have the effect of creating, enhancing or disposing of a capital investment. It does not capture expenses that inform decision making and the exercise of managerial discretion. The CA disagreed. The correct statutory interpretation of the legislation is to carve out expenses that are capital in nature by reference to the well-established principles developed by the courts for trading companies. It concluded that all the disputed expenditure in question was capital in nature. The underlying appeal was therefore found in favour of HMRC.

*Centrica Overseas Holdings Limited v HMRC* [2022] EWCA 1520

[www.bailii.org/ew/cases/EWCA/Civ/2022/1520.html](http://www.bailii.org/ew/cases/EWCA/Civ/2022/1520.html)

## 5. VAT and other indirect taxes

### 5.1 VAT on a lease can be claimed on rental invoices

*The FTT has ruled that the taxpayer was correct to reclaim VAT on a lease, where those invoices were addressed to a non-trading, associated company, as the purpose of the lease was for the taxpayer's business activities.*

In May 2019, a firm of solicitors entered into a lease agreement for new office space. Due to a property law issue, the taxpayer decided to enter into the lease using a 'shell' company rather than the firm itself. As the shell company had no assets, the landlord required the taxpayer to act as guarantor for the lease.

The landlord issued VAT invoices to the shell company, marked as payable by the taxpayer and the taxpayer reclaimed the VAT through its VAT returns.

HMRC disallowed the taxpayer's input tax on the lease on the basis that the supply from the landlord was to the shell company, not the taxpayer, and that there was a separate supply from the shell company to the taxpayer. As the shell was not VAT registered and did not have an option to tax in place, its onward supply was deemed to be exempt from VAT.

The FTT found in favour of the taxpayer on the basis that the arrangements should be considered holistically and when done so, it was clear that the purpose of the lease was for the taxpayer to operate its business as a firm of solicitors. The fact that the taxpayer was a guarantor on the lease assisted the FTT in reaching this conclusion.

*ASHTONS LEGAL (A PARTNERSHIP) v HMRC* [2022] UKFTT 422 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08641.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08641.html)

## 6. Tax publications and webinars

### 6.1 Tax publications

The following Tax publications have been published.

- [Basis period reform – what do I need to know?](#)
- [Financial wellbeing](#)

### 6.2 Webinars

The following client webinars are coming up soon.

- 1 December - [Editions by Evelyn Partners - Autumn Statement and the current tax landscape](#)
- 7 December - [The financial implications of a divorce or dissolution](#)
- 8 December - [Retirement from the partnership](#)

## 7. And finally

### 7.1 Bills, bills, bills,

Who would study tax? It's happened again. Statutory references are a nightmare. We have a newly-published Finance Bill that will not become a Finance Act. It will become a Finance (No.2) Act. This bizarre outcome arises when the last Finance Bill is actually enacted in the same tax year, so that the earlier one is the Act not the second Act, but the Bill is the first and not the second bill. And so on.

Could it be worse? Yes, easily. Our minds flip back to 2010 when we have no fewer than three Finance Acts. And finally distinctly recalls not even trying to remember which bill was which because it would all unravel in the end and unlike with socks you couldn't match the Act number with the bill number.

Perish the thought that we had one annual bill and one annual act, with adjustments made retrospectively, if necessary, after proper warning of course: a tidy sock drawer. Where is the fun in that?

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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