

Tax Update

Contents

1. General	2
1.1 Budget scheduled for 6 March 2024	2
1.2 Scottish Budget published	2
1.3 Welsh Budget published	2
1.4 Digital sales platforms to begin reporting to HMRC	3
2. Private client	3
2.1 Nudge letters to landlords on capital costs claimed against income	3
2.2 HMRC updates manual on tax characterisation point	3
3. PAYE and employment	3
3.1 IR35 win for taxpayer	3
3.2 IR35 win for HMRC	4
4. Business tax	4
4.1 New form for appealing CT late filing penalties.	4
4.2 Tax relief restricted as use as accommodation not incidental	4
5. VAT and Indirect taxes	5
5.1 Taxpayer loses appeal on additional dwelling supplement	5
5.2 HMRC campaign on place of establishment	5
5.3 Walkers poppadoms found to be standard rated	5
6. Tax publications and webinars	6
6.1 Tax publications	6
6.2 Webinars	6
7. And finally	6
7.1 Red herrings and potato granules	6

1. General

1.1 Budget scheduled for 6 March 2024

The Spring Budget date has been announced.

The Chancellor has said that he will present the Spring Budget to Parliament on Wednesday 6 March.

www.gov.uk/government/news/spring-budget-2024-date-confirmed

1.2 Scottish Budget published

The Scottish Budget for 2024/25 was published on Tuesday 19 December, including significant changes to income tax rates and bands.

The Scottish Government noted that it was "choosing to use our limited set of devolved tax powers to raise additional revenue for the Scottish Budget to enhance the funding available to support our vital public services and social contract for and with the people of Scotland". The income tax changes relate to non-savings, non-dividend income of Scottish taxpayers, as the remainder of the income tax system is reserved to the UK Parliament.

Proposed tax changes include:

- The thresholds for the starter and basic rates will rise by 6.7% (with inflation)
- A new 'advanced rate' of 45% will apply on income from £75,000 to £125,140
- The top rate of tax will rise from 47% to 48%
- You can see a table summarising the current rates and bands and the proposed 2024/25 rates and bands here
- No changes to rates and bands for land and buildings transaction tax (LBTT) (Scottish equivalent of SDLT)
- Following consultation, there will be small amendments to the additional dwellings supplement (ADS) legislation, including extending the timelines for ADS
- Scottish landfill tax will rise in line with the increases to landfill tax rates in the rest of the UK (increasing to £103.70 per tonne for the standard rate and £3.30 per tonne for the lower rate from 1 April 2024)
- Some small changes to business rates

These rates must now be agreed and put into law.

www.gov.scot/budget/

1.3 Welsh Budget published

The draft Welsh Budget for 2024/25 was published on Tuesday 19 December, alongside a tax policy report.

The key tax points include:

- Income tax is partially devolved to Wales, which means that the Welsh Government is only able to vary the three income tax rates (basic, higher and additional) for non-savings, non-dividend income of Welsh taxpayers. The rates for income tax have been proposed at the same level as the rest of the UK (excluding Scotland)
- Retail, leisure and hospitality businesses will see business rate relief reduced from 75% to 40% from 1 April 2024
- No changes to land transaction tax (LTT) rates or bands (Welsh equivalent of SDLT)
- Landfill disposals tax will rise in line with the increases to landfill tax rates in the rest of the UK (increasing to £103.70 per tonne for the standard rate and £3.30 per tonne for the lower rate from 1 April 2024)

These rates must now be agreed and put into law. The final Welsh Budget is expected in late February.

www.gov.wales/draft-budget-2024-2025

1.4 Digital sales platforms to begin reporting to HMRC

Previously announced rules requiring digital platforms to report sales made on the platform by third parties to HMRC came into force on 1 January 2024. The reports are required on an annual basis, so the first reports will not be filed until after 31 December 2024.

This is not a change to the tax rules on what sales are reportable to HMRC by the individual sellers, or how they might be classed as trading income, liable to CGT, or exempt. It is simply a reporting requirement for the platforms, that may ultimately lead to more HMRC investigations into sellers suspected of non-compliance.

www.att.org.uk/technical/news/hmrc-receive-more-information-online-sales

2. Private client

2.1 Nudge letters to landlords on capital costs claimed against income

HMRC is writing to landlords who claimed repair and maintenance expenses against rental income on their 2021/22 returns, at a level higher than those in comparable situations.

Due to this, HMRC asks recipients to check that no capital costs have been included as revenue expenses, with examples illustrating the distinction. Any amendments to the return should be made by 31 January 2024. If no errors are identified, the recipient does not need to do anything.

www.tax.org.uk/hmrc-one-to-many-letters-sent-to-landlords-concerning-rental-costs

2.2 HMRC updates manual on tax characterisation point

The HMRC manual that sets out how foreign entities are treated from a UK tax perspective has been updated.

Following the SC judgement in the Anson case, the guidance has been updated to include details about the case. HMRC's view is that the Anson decision was fact specific and that US LLC are opaque structures, contrary to the decision in Anson.. It explains HMRC's view in detail on the treatment of distributions of profit from US LLCs.

Other pages have been added on non-statutory clearances in entity status cases, and on how HMRC assesses the status of an entity.

www.gov.uk/hmrc-internal-manuals/international-manual/intm180050

3. PAYE and employment

3.1 IR35 win for taxpayer

Kaye Adams has won the latest stage of her long-running tax dispute over whether or not her relationship with the BBC was one of employment. The case was remitted to the FTT by the CA for the decision to be remade, which the FTT has done in her favour.

The personal service company of a TV presenter was assessed by HMRC to PAYE and NICs on the grounds that the presenter's relationship with the BBC should be one of employment. After hearings going up to the CA, the case was remitted back to the FTT for the decision to be remade in light of the findings.

The FTT upheld the taxpayer's appeal. It looked at the hypothetical contract that would reflect the real relationship, and found that it was not one of employment. The presenter had her own distinctive approach and the BBC did not control her other work. Although she had worked for the BBC for a long time, she also had considerable other engagements, reflecting her self-employment.

Atholl House Productions Ltd v HMRC [2024] UKFTT 37 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09026.html

3.2 IR35 win for HMRC

The FTT has found that a football pundit was in an employment relationship with Sky. His personal service company was assessed for almost £300,000 of PAYE and NICs.

An ex-footballer began appearing on football programmes in the 1990s, as a panellist. He took a break, and returned to the show in 2004. In 2013 he set up a personal service company, and thereafter his work at the broadcaster was contracted for through this company. The contract provided for work as needed on any programme, and the exclusive use of his services in the UK. HMRC challenged this on the basis that this was an employment relationship, and assessed the company to PAYE and NICs.

The FTT followed the standard practice in these cases of determining what a hypothetical contract that reflected the relationship as it actually was would have said. It found that there would be mutuality of obligation, as the taxpayer was required to provide services and the broadcaster to pay him. It found that the broadcaster had enough control to amount to that of an employer. It determined when services were provided, without the taxpayer having the right of refusal, nor the right to work for competitors. The fact that the taxpayer expressed his own opinions on the show was in the nature of the service, rather than having control over the service.

The FTT therefore found that the relationship should have been one of employment, and dismissed the personal service company's appeal. Although the taxpayer's work for the company did not take up much of his time, the vast majority of the company's earnings derived from it, and it was the main source of his own income.

PD & MJ Ltd v HMRC [2024] UKFTT 38 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09029.html

4. Business tax

4.1 New form for appealing CT late filing penalties.

HMRC has published a new online form for submitting appeals against CT late filing penalties.

The form can be prepared online by taxpayers and agents. Once complete the form must be printed and sent to HMRC by post. HMRC says that the form will allow it to capture all the information it needs to review the appeal in full. If appealing by letter the same information (as detailed below) should be included:

- the accounting year end date the return relates to;
- whether or not the return has been submitted;
- the reason why the return will be or was submitted late;
- the date the penalty notice was issued;
- the amount of the penalty;
- the company's name;
- the company's unique taxpayer reference; and
- whether the company is dormant.

www.tax.service.gov.uk/guidance/appeal-a-late-filing-penalty-for-corporation-tax

4.2 Tax relief restricted as use as accommodation not incidental

This case relates to the oil industry and whether or not hire costs for a support vessel that was used for several purposes should be subject to a restriction because it also provided sleeping accommodation. The test is whether the use as accommodation was incidental to other uses.

The taxpayer had been successful at both the FTT and the UT but the CA found in HMRC's favour. The CA concluded that for use to be incidental it must have some link or connection with another use. The facts showed that use as accommodation was separate and distinct from the support vehicles other uses, and so could not be considered incidental. As such tax relief for the costs of hiring the support vehicle was restricted.

The outcome of the case is likely to be of direct relevance to very few companies but the meaning of 'incidental' could have a far wider application.

HMRC v Dolphin Drilling Ltd [2024] EWCA Civ 1

www.bailii.org/ew/cases/EWCA/Civ/2024/1.html

5. VAT and Indirect taxes

5.1 Taxpayer loses appeal on additional dwelling supplement

The FTSTC agreed with Revenue Scotland's (RS) view that a property that had been sold was never the taxpayer's main residence. He had only lived there for 18 days. A refund of the additional dwelling supplement (ADS) was refused.

The taxpayer sold the first property and 18 days later purchased the second property with another individual (M). He did not declare any liability for ADS on the purchase. Throughout, M

owned another house, the third property, which was sold exactly three years after the purchase of the second property. He lived in this house during the 18 days between sale and purchase of properties 1 and 2.

The taxpayer amended the return for the purchase of the second property at this point, claiming that ADS was due on that purchase as the third property was his main residence, not the first. He claimed a refund as it had now been sold. RS argued that this property was never his main residence, and so no ADS refund was due.

The FTSTC agreed with RS that the third property was never his main residence. Although it had been his only home for 18 days, and he had lived there in that time, this was always planned as a temporary measure. The fact that it was then his residence did not mean that it had become his only or main residence.

The FTSTC did sympathise with the taxpayer, but could only go by the legislation. He would have been eligible for an ADS refund if he had cohabited with M before they bought the second property jointly, or if the first property had been sold after purchase of the second, but the tribunal could not allow for unfairness.

Blue v RS [2023] FTSTC 4

[www.taxtribunals.scot/decisions/\[2023\]%20FTSTC%204.pdf](http://www.taxtribunals.scot/decisions/[2023]%20FTSTC%204.pdf)

5.2 HMRC campaign on place of establishment

HMRC will shortly be sending 'one to many' letters to businesses that sell through online marketplaces. The letter will ask them to provide evidence that their place of establishment is the UK. The letter is targeted after initial HMRC checks to those it suspects may not be UK based.

Those businesses that are non-UK based do not need to do anything. HMRC has made the decision that they are overseas, and is changing the VAT register to reflect this. Online marketplaces will need to collect VAT on their sales.

If the business does not agree, and wishes to prove that it is UK established, it must send evidence to HMRC at a dedicated email address provided on the letter within 30 days from the date of the letter.

www.tax.org.uk/vat-selling-via-online-marketplaces-upcoming-hmrc-campaign-to-check-place-of-establishment

5.3 Walkers poppadoms found to be standard rated

The FTT has found that poppadoms sold by Walkers fall within the same VAT category as potato crisps, so are standard-rated.

The taxpayer contended that its 'Sensations Poppadoms' should be zero-rated for VAT, as they are 'food of a kind used for human consumption' and did not fall within any of the exceptions to this in the VAT Act. HMRC argued that these fell into the same excepted category as crisps, as they were products similar to crisps, packaged for consumption without additional preparation.

The FTT considered the characteristics of the products, and agreed with HMRC that they fell within this exception. They were marketed like and of a similar flavour to potato crisps.

The taxpayer argued that the products would be eaten with a dip or on the side of a meal, so did not meet the 'without additional preparation' requirement. The FTT disagreed, as there was nothing on the packaging to state that additional preparation was required, and the marketing material showed them being eaten alone.

The taxpayer also argued that they did not meet the requirement to be made from potato, potato flour or potato starch, as this was at most 34% of the product; 17% if potato granules were ignored. The FTT found for HMRC that all potato elements counted, being 40% including modified potato starch, and that that was more than enough to qualify.

Walkers Snack Foods Ltd v HMRC [2024] UKFTT 31 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09024.html

6. Tax publications and webinars

6.1 Tax publications

The following Tax publications have been published.

- [UK Carbon Border Adjustment Mechanism to be implemented by 2027](#)
- [The Border Target Operating Model – what it is and what it means for your business](#)

6.2 Webinars

The following client webinars are coming up soon.

- 27 February - [Talking Tax and Tax year end planning](#)
- 7 March - [Business Exit - Pre-exit planning for business owners](#)

7. And finally

7.1 Red herrings and potato granules

It is a truth universally acknowledged that everyone loves a VAT case on borderline foodstuffs, and 6.3 above did not disappoint.

Walkers' gallant attempt to argue that calling a foodstuff a poppadom made it so was shot down by the judge pointing out that "calling a snack food "Hula Hoops" does not mean that one could twirl that product around one's midriff, nor is "Monster Munch" generally reserved as a food for monsters". Despite some gram flour, the description was a pure red herring, and these were essentially potato crisps.

Crisply argued, but crisply judged.

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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