

Tax Update

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1. General

1.1 15 March Budget: our predictions and coverage

Jeremy Hunt is due to deliver his first full Budget as Chancellor on 15 March 2023. We will be covering the announcements, and analysing what this means to taxpayers. You can access our Budget hub to read our thoughts on possible changes, and our full analysis will be available shortly after the Budget.

As the Autumn Statement came less than a month into Rishi Sunak's premiership, this Budget may be a better indication of the current Government's plans for the tax system, and what the Chancellor may target as he continues to work on rebuilding the economy.

Our Budget hub is here: www.evelyn.com/budget/spring-budget-2023/

2. Private client

2.1 HMRC publishes paper form for reporting property disposals

Previously those who could not submit a 60 day CGT return online had to request one from HMRC. Now, the form is available for download on gov.uk.

Taxpayers should still use the digital form where they are able. The paper form is however being made available to download, on a trial basis only.

www.att.org.uk/technical/paper-forms-reporting-uk-property-disposals

2.2 FTT directs HMRC to issue closure notices

The FTT found that HMRC had enough information to issue closure notices for enquiries relating to the transfer of assets abroad (TOAA) rules. The additional information requested by HMRC was unnecessary.

The taxpayers, three members of the same family, were subject to longstanding enquiries. One had been under investigation for eight years, and had in fact died, the underlying events went back 20 years, and there had been previous enquiries. The enquiries open when the case came to tribunal related to transactions that might come under the TOAA rules in relation to two offshore structures.

The taxpayers applied for closure notices. HMRC argued that it required further information before it could issue these, as it was as yet unable to set out how the TOAA charge would arise. It asked for the application to be dismissed, and the taxpayers to comply with information notices asking for extensive details of financial transactions to do with the offshore entities.

The FTT directed HMRC to issue closure notices. It considered the transactions that HMRC was currently suggesting the TOAA rules applied to, and found that none of the taxpayers were the ultimate recipients of and did not benefit from a £40m distribution. This meant they did not have to provide further details to HMRC. Although not every line of enquiry had been pursued to the end, the outstanding questions on the £40m transaction were described as a 'fishing expedition' rather than reasonably required. HMRC had enough data to make an informed judgment, and should do so without further delay. HMRC was given six weeks from the date of the decision to issue the closure notices.

A useful reminder that in the right case, a closure notice application can be a very valuable mechanism to help move forward a long standing enquiry,

Hitchens & Anor v HMRC [2023] UKFTT 127 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08732.html

2.3 Taxpayer found to be UK domiciled

In a lengthy domicile case, the FTT has found that a taxpayer whose parents were immigrants to the UK was domiciled in England. His domiciles both of origin and dependency were English, as his parents had acquired that domicile. Regardless, the taxpayer would have been found to have an English domicile of choice based on his life as an adult.

The taxpayer argued that he was domiciled in Austria. He was born in England to married parents, so took his father's domicile at the time of his birth automatically as his domicile of origin. If his father's domicile had changed before the taxpayer was 16, he would also have acquired the new domicile as a domicile of dependency. The taxpayer's father died in 1968. As the taxpayer was still a minor, at this point, if his mother's domicile was different, he would have taken his mother's domicile as a domicile of dependency. The fourth time at which his domicile could have changed to an English domicile of choice was as an adult. Due to these circumstances, if HMRC could prove that either of his parents had acquired an English domicile before he was 16, or that he had done so in his own right thereafter, the taxpayer would be UK domiciled.

The FTT considered the history of the family.

The taxpayer's father had an Austrian domicile of origin. He moved to England in 1938 aged 20 to escape Nazi persecution, and never returned to Austria. He died unexpectedly in 1968. The FTT found that he had acquired a domicile of choice in

England by the time of the taxpayer's birth, and maintained it until his death. His wife had suggested that he intended to retire to France, where he enjoyed holidaying, but the evidence of a fixed intention was not strong, and he had severed all ties with Austria. Although he lived in an immigrant community, he was settled in England, albeit a small part, and his family life was in England. The taxpayer's domicile of origin was therefore English.

The taxpayer's mother started with an Irish domicile of origin. She moved to England aged 18, and met her future husband in London. On her marriage in 1954 she automatically acquired her husband's domicile under the pre-1974 domicile of dependency rules. Following her husband's death she remained in England, though due to financial troubles was initially in no position to move, but ultimately she raised her three children there, and married again in her late fifties. The FTT found that her domicile of choice had become English by the time the taxpayer was 16. She never moved back to Ireland, despite having the opportunity in later life, and was settled in England. The taxpayers would have therefore acquired an English domicile of dependency from her had he not had the English domicile of origin already.

The taxpayer therefore lost his appeal, but for completeness the FTT considered whether or not he would have acquired an English domicile of choice had he succeeded on the other grounds. It found that he would. Though he had applied for Israeli citizenship, and intended to spend more of his time there than anywhere else in future following his divorce, he had lived in the UK all his life, married and raised a family here. At the time in question he had no home elsewhere, and had visited Israel only twice.

Coller v HMRC [2023] UKFTT 212 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08738.html

3. PAYE and employment

3.1 Cars in dealership found to have been made available for private use

The UT has largely upheld an FTT judgment on benefit in kind and NIC charges against a car dealership and its director. In any year in which he had used the cars for private journeys, they had effectively been available to him, even if taxed as off road.

HMRC assessed an individual to a benefit in kind charge covering five tax years in respect of two cars. It also issued NIC determinations on the company believed to have made them available to him, for a slightly different time period. The appeals were heard together by the FTT, which dismissed both.

The company was a car dealership, which also owned two expensive cars. The taxpayer and his wife were the directors. The tribunal heard evidence on how the cars were used in the business, for example to attract business, and how they were taxed as off road except when taken out specially. In some years, a benefit in kind was declared on one or the other, and some years not, which was intended to reflect the years in which the cars were occasionally used for private journeys.

The FTT had found that in any year where the cars had been used for private journeys, they had in effect been made available to the director, even if taxed as off road. It also found that the cars had been made available in more years than had been declared.

The UT upheld the FTT judgment, except by allowing the appeal against one year's discovery assessment on the taxpayer, as it was issued during the enquiry period so invalid.

The P11D(b) filing deadline is 6th July; businesses may want to check the treatment of any unusual benefit in kind arrangements.

Norton & Anor v HMRC [2023] UKUT 48 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2023/48.html

4. VAT and other indirect taxes

4.1 Supplies found to be closely related to education

The FTT issued a split decision on whether or not services provided by a further education college were exempt.

The college operated a restaurant, performing arts centre and beauty salon, which were staffed by students to gain practical experience as part of their courses. The issue was whether or not the supplies made by the college to the public from these activities were exempt from VAT.

VAT exemption may be available on supplies closely related to education; however, where the basic purpose of the onward supplies is to obtain additional income through transactions that are in direct competition with other commercial businesses VAT exemption does not apply.

The FTT ruled that the restaurant, which operated at a loss, could benefit from exemption, but the other activities in relation to the training salon and supplies from the performing arts centre were found to be subject to VAT. The basic purpose of these supplies is to obtain additional income which are direct competition with commercial enterprises.

Fareham College v HMRC [2023] UKFTT 00214 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08740.html

5. Tax publications and webinars

5.1 Tax publications

The following Tax publications have been published.

- [What could the Budget mean for businesses?](#)
- [Proposed changes to the UK R&D tax relief schemes](#)
- [Global mobility trends: what to expect in 2023](#)
- [If I were the Chancellor](#)

5.2 Webinars

The following client webinars are coming up soon.

- 21 March - [Editions by Evelyn Partners: The Budget Update](#)
- 22 March - [Talking Tax: The Budget Update](#)

6. And finally

6.1 Personal and public

Quite apart from the domicile question, which, given questions of origin, dependency in three ways, and choice, looks like a particularly fiendish exam question the Collier case (2.3) is fascinating on a human level. Our write-up by necessity leaves out most of the detail, and the judgment can only be a summary, but the insight into the joys and tragedies of one family, and how their lives played out, takes this from a dry judgment to a deeply personal story. The deepest questions of identity, and future plans for life are inseparable from domicile, even more than other areas of tax, though of course residence and IHT planning can be particularly personal.

Having these pored over by HMRC and judges, however tactfully, must be a strain. All we can do is express our sympathies to the taxpayer, who no longer feels like a stranger to us, and wish him the best for his future life.

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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