

23 February 2022

1. General	1
1.1 HMRC agent update 93	1
1.2 HMRC seizure of non-fungible tokens	2
1.3 HMRC announces Friday closures for CT & VAT telephone lines	2
2. Private client	2
2.1 Taxpayer loses LBTT additional dwelling supplement case	2
2.2 UT overturns 'staleness' decision	3
3. PAYE and employment	3
3.1 Employer bulletin: February 2022	3
3.2 Taxpayer wins appeal on off-payroll working rules	3
4. Business tax	4
4.1 Capital allowances available on studies and project management costs	4
5. VAT	4
5.1 Penalty reform for VAT	4
5.2 HMRC explains postponed VAT accounting for businesses using the Flat Rate Scheme	5
6. Tax publications and webinars	5
6.1 Webinars	5
7. And finally	5
7.1 Your letter is important to us	5

1. General

1.1 HMRC agent update 93

HMRC has published agent update 93, 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:

- the 28 February deadline for late claims and review requests for the self-employment income support scheme;
- information about how to agree a payment plan for self-assessment tax;
- an extension to the deadline on the call for evidence on self-assessment registration for sole traders and landlords to 22 March;

- paying HMRC using a QR code;
- information on 2022/23 ATED returns;
- information on the practical operation of the health and social care levy; and
- links to help and support for agents.

www.gov.uk/government/publications/agent-update-issue-93

1.2 HMRC seizure of non-fungible tokens

As part of a fraud investigation, HMRC has, for the first time, seized non-fungible tokens (NFTs), a type of cryptoasset generally described as a digital certificate of ownership.

HMRC has announced a seizure of NFTs, making it the first UK law enforcement body to seize this type of cryptoasset. It obtained a court order to detain three NFTs, as part of an investigation into a suspected VAT fraud scheme. Three people have also been arrested.

With the increased use of cryptoassets, including reportedly to hide assets from law enforcement, HMRC is likely to seek to use its powers in this way more in future.

www.bbc.co.uk/news/business-60369879

1.3 HMRC announces Friday closures for CT and VAT telephone lines

The HMRC telephone lines for CT and VAT will be closed on Fridays between 25 February and 25 March to allow staff to focus on post backlogs.

The VAT bereavement line will remain open as normal. The VAT line will also remain open on 4 March, but will be closed on the other four Fridays in the period.

A trial run of closing these telephone lines was carried out over three Fridays in December. HMRC found that on those days staff productivity at dealing with post was greatly improved, and that staff could handle the increased call volume on the following Mondays. Stakeholders were supportive, so a second phase of this trial has been planned to help with the post backlog that has built up over the past year by the impact of Brexit and the pandemic.

www.tax.org.uk/hmrc-telephone-line-closures-february-march-2022

2. Private client

2.1 Taxpayer loses LBTT additional dwelling supplement case

A taxpayer has been refused a refund of Additional Dwelling Supplement (ADS). Although he sold his only property after purchase of the Scottish property, he had not lived in the first property in the 18 months before the purchase. The fact that he had been unable to live there by reason of his employment did not allow this requirement to be relaxed.

A taxpayer was sent to Brazil by his employer for four years. Before this, he lived in a property he owned in England. On his return to the UK he was sent to Scotland for work, and rented a property there. Four years later he bought the Scottish property, and then sold the English property less than 18 months later. On this second sale, he sought to reclaim the ADS he had paid on purchase of the Scottish property.

RS refused his claim as the English property had not been his main residence in the 18 months before purchase of the Scottish property. The tribunal upheld this decision, as although he had been prevented from living there by reason of his employment the wording of the legislation did not permit any leeway on the requirement to live there in the 18 months before purchase. The appeal was dismissed, with the judge quoting from their decision in a similar case that ‘*This Tribunal does not have jurisdiction to consider ... fairness*’.

Mohammed v HMRC [2022] FTSTC 4

[http://taxtribunals.scot/decisions/\[2022\]20FTSTC204.pdf](http://taxtribunals.scot/decisions/[2022]20FTSTC204.pdf)

2.2 UT overturns ‘staleness’ decision

The UT has overturned an FTT decision, finding that a discovery assessment was valid. It follows the SC decision in the Tooth case that discovery assessments could not be invalid because they were issued too long after a discovery.

The taxpayer left the UK for Monaco in March 2000 and notified HMRC of his departure. He sold some shares at a large gain in May 2000. Had he been resident in the UK in 2000/01, the CGT due would have been £84m. He filed a tax return with no reference to the disposal, and included a white space note stating that he was non-resident. Prior to the hearing, he accepted that he was in fact UK resident in 2000/01.

The FTT found that HMRC’s discovery assessment was invalid on the ground of ‘staleness’, as it was not issued until 2007. Discussions with the taxpayer were opened in 2003 after a newspaper article named him as a ‘tax exile’, but HMRC’s information gathering took some time. The FTT had found that the other conditions for a discovery assessment had been met, as the return had not been made in accordance with the practice prevailing at the time, nor had HMRC been given enough information to be aware of the insufficiency of tax prior to the discovery.

Following the SC decision in *Tooth*, both parties agreed before the UT that HMRC’s appeal on the staleness point had to be allowed. The UT considered various procedural points, but ultimately agreed with the FTT’s conclusions that the discovery was valid, apart from the staleness point. The discovery assessment was therefore found to be valid.

Hargreaves v HMRC [2022] UKUT 34 (TC)

www.bailii.org/uk/cases/UKUT/TCC/2022/34.html

HMRC v Tooth [2021] UKSC 17

www.bailii.org/uk/cases/UKSC/2021/17.html

3. PAYE and employment

3.1 Employer bulletin: February 2022

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

It includes information on:

- changes to employer helpline processes;
- the new health and social care levy;
- new national minimum wage rates
- reporting expenses and benefits;
- Freeports employer NICs relief;
- COVID-19 guidance such as claiming back statutory sick pay;
- changes to the construction industry scheme claims; and
- making tax digital for VAT.

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

3.2 Taxpayer wins appeal on off-payroll working rules

A TV presenter who worked through a personal service company (PSC) has been found not to be subject to the off-payroll working rules (IR35). Despite mutuality of obligation and control, he was

in business on his own account due to the extent of his other work over a long period. HMRC had argued that he should be taxed as though he was a direct employee.

A TV presenter who worked through a PSC entered into various contracts, including with ITV and the BBC. HMRC issued determinations for the five years including the time these contracts were in place, on the basis that they fell within the off-payroll working rules (IR35) so he should be subject to PAYE and NICs.

The FTT constructed a hypothetical contract where the terms reflected the actual working relationship. It found that there was mutual obligation in both the BBC and ITV contracts, given that ITV had offered all work as anticipated when it needed a presenter for football matches. In relation to control, the presenter was restricted by editorial guidelines, but this was found to be part of the role of any presenter. The framework of control that the BBC and ITV held over the production work was however enough to constitute the presenter as an employee of both.

The crucial factor in the FTT's decision was however that, if he had not been acting through a company, he would still have been in business on his own account. This was because he had many clients throughout his career for a wide range of work, including commercials and writing as well as presenting. He used an agent to promote his career, and as well as seeking work he developed and co-produced a show of his own. In this context, the contracts with the BBC and ITV in the period were simply part and parcel of his overall business, and not employments.

Basic Broadcasting Limited v HMRC [2022] UKFTT 48 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08400.html

4. Business tax

4.1 Capital allowances available on studies and project management costs

The FTT found that studies and project management costs relating to the construction of offshore windfarms partly qualified for capital allowances.

The taxpayers incurred expenditure of approximately £48m in relation to the construction of offshore windfarms. HMRC accepted that plant and machinery allowances were available on the construction and installation of the wind turbines and the electrical cabling which connected them but denied capital allowances on studies and project management costs. It argued these costs were too remote from, and not incurred on the provision of, the windfarm or the wind turbines themselves.

The FTT found that several of the studies related directly to the necessary design, construction or installation of the turbines and without such studies the turbines would not have been able to perform their function. These costs qualify for plant and machinery allowances. Allowances are also available on a proportion of the project management costs as preliminaries. Those costs that did not qualify for capital allowances could not be deducted from profits as pre-trading revenue expenditure as they were capital in nature.

Gunfleet Sands Ltd v HMRC [2022] UKFTT 35 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08387.pdf

5. VAT

5.1 Penalty reform for VAT

HMRC has published guidance on the operation of the new penalty regime for VAT, which applies from 1 January 2023.

A table has been released that illustrates how the first accounting period will work for businesses with different filing frequencies, showing the dates when penalties or interest could apply. It includes the one-year familiarisation period, where HMRC will take a light-touch approach to the 2% payment penalty until more time has passed if a taxpayer is trying to comply.

www.tax.org.uk/penalty-reform-for-vat

[Penalties for late payment and interest harmonisation - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

5.2 HMRC explains postponed VAT accounting for businesses using the Flat Rate Scheme

Guidance on the operation of the VAT Flat Rate Scheme from 1 June 2022 has been published.

From that date, businesses registered under the Flat Rate Scheme should calculate their flat rate turnover to exclude imports accounted for under postponed VAT accounting. The brief explains the change, and how it will affect VAT returns.

www.gov.uk/government/publications/revenue-and-customs-brief-3-2022-postponed-vat-accounting-and-businesses-registered-under-the-flat-rate-scheme

6. Tax publications and webinars

6.1 Webinars

The following client webinars are coming up soon.

- 9 March - S&W Sessions: Employment tax, forthcoming changes for 2022/23

<https://smithandwilliamson.com/en/events/>

7. And finally

7.1 Your letter is important to us

Isn't it nice to see an HMRC initiative acclaimed as a resounding success (see article 1.3 above)? On one side, that is, at least, and we aren't necessarily against it either. Allowing staff to get on without interruptions sounds pretty sensible considering the size of the post backlog.

The discrepancy between how long it can take to get a letter answered, and how long it takes to get an issue resolved by phone reached incredible proportions some time ago, though even the latter isn't always straightforward. We'll leave aside how quaint telephone calls and letters seem in the age of the email, as there is little sign of progress on that front.

As *And finally* writes this on a windy Friday, we really can't see the issue. If you do have any objections, we won't get back to you before Monday.

www.tax.org.uk/hmrc-telephone-line-closures-february-march-2022

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	

smithandwilliamson.com

Offices: London, Belfast, Birmingham, Bristol, Dublin (City and Sandyford), Glasgow, Guildford, Jersey, Salisbury and Southampton.

Smith & Williamson LLP: Regulated by the Institute of Chartered Accountants in England and Wales for a range of investment business activities. Smith & Williamson LLP is a member of Nexia International, a leading, global network of independent accounting and consulting firms.

Please see <https://nexia.com/member-firm-disclaimer/> for further details. Registered in England No. OC 369631.

