

# Tax update

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## 1. General

### 1.1 Sunak appointed as PM, Hunt to remain as Chancellor

*Former Chancellor Rishi Sunak has been appointed as Prime Minister. Jeremy Hunt remains in his role as Chancellor, and will give an Autumn Statement on 17 November.*

Jeremy Hunt, who was appointed as Chancellor by Liz Truss on 14 October, remains in post under the new PM.

A full Autumn Statement is now scheduled for 17 November, which will be given alongside forecasts from the Office for Budget Responsibility. This replaces the medium-term fiscal plan that had been scheduled for 31 October.

[www.gov.uk/government/people/rishi-sunak](https://www.gov.uk/government/people/rishi-sunak)

[www.gov.uk/government/people/jeremy-hunt](https://www.gov.uk/government/people/jeremy-hunt)

[www.bbc.co.uk/news/av/uk-politics-63399201](https://www.bbc.co.uk/news/av/uk-politics-63399201)

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## 1.2 HMRC agent update 101

HMRC has published agent update 101, 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:

- A reminder to implement the NIC changes in the November payroll, and remove the message about the now abolished Health and Social Care Levy from payslip templates.
- A note on the latest nudge letter campaign.
- A reminder of the October deadline for Plastic Packaging Tax returns.
- Compliance guidelines for PAYE settlement agreements.
- The latest on making tax digital for VAT.
- An update on access groups for agent HMRC logins.
- A note on the interactive new starter checklist.
- Links to help and support for agents, including the online forum.

[www.gov.uk/government/publications/agent-update-issue-101](https://www.gov.uk/government/publications/agent-update-issue-101)

## 1.3 HMRC nudge letters on ATED revaluation

ATED payers will receive a letter reminding them of the need to use an April 2022 revaluation of the property in returns from 2023/24 onwards.

In October, HMRC is writing to those it has on record as submitting ATED returns. The letters remind them that the five-yearly revaluation of the property should be done on open market value at 1 April 2022, and used for returns from 2023/24 onwards.

The letter also explains when the return should be filed, and the consequences of failing to revalue.

[www.tax.org.uk/hmrc-one-to-many-reminder-letters-about-ated-following-april-2022-revaluation](https://www.tax.org.uk/hmrc-one-to-many-reminder-letters-about-ated-following-april-2022-revaluation)

# 2. Private client

## 2.1 HMRC 'nudge' letters: foreign tax credit relief

HMRC has announced a new letter campaign. This is an educational letter targeted to those who have claimed foreign tax credit relief on employment income.

In October, HMRC is writing to those who claimed a foreign tax credit against non-UK employment income on their 2020/21 self-assessment tax return. This is not a letter requesting a correction, but is aimed at improving the quality of claims for subsequent years. It notes that the taxpayer may also be making a claim in 2021/22, and sets out the conditions for a claim, including that under a double tax treaty it might be necessary to claim tax relief from the other country.

[www.tax.org.uk/hmrc-one-to-many-reminder-letter-about-foreign-tax-credit-relief](https://www.tax.org.uk/hmrc-one-to-many-reminder-letter-about-foreign-tax-credit-relief)

# 3. PAYE and employment

## 3.1 HMRC employer bulletin: October 2022

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

It includes information on:

- The reduction in NIC rates from 6 November and withdrawal of the health and social care levy.
- Making PAYE settlement agreement payments, and guidelines for compliance in the calculations.
- The introduction of the interactive new starter checklist.
- The new tax year basis of calculating taxable profits.
- A decision tool and calculator for the super-deductions and 50% special rate first year capital allowances.

- The new Government information and advice service.

[www.gov.uk/government/publications/employer-bulletin-october-2022](http://www.gov.uk/government/publications/employer-bulletin-october-2022)

## 4. Business tax

### 4.1 Taxpayer wins unilateral relief case

*The UT agreed with the FTT that a UK company could claim unilateral relief against US withholding tax despite being refused treaty relief by the Internal Revenue Service (IRS) under the limitations of benefits provisions. It found that the UK/US tax treaty does not include express provisions prohibiting relief for the arrangement in question.*

The taxpayer was a UK company that suffered US withholding tax on interest payments from its US subsidiary. The US competent authority denied the taxpayer the benefits of the UK/US tax treaty, which could have reduced the withholding tax to nil, on two grounds. First, the taxpayer was not a 'qualified person' under the UK/US tax treaty. Second, it was not clear that obtaining treaty benefits was not a principal purpose of the arrangements. The taxpayer then claimed unilateral relief in the UK, which amounted to approximately £4.5m. HMRC denied relief, arguing that the case fell within the exclusion provisions. Unilateral relief is not available where the arrangements made in relations to a territory outside the UK include express provisions that deny credit relief. HMRC interpreted the UK/US tax treaty as containing such provisions.

The FTT found for the taxpayer. It held that the UK/US tax treaty, and in particular the limitation of benefits article, is not explicit as to the cases and circumstances in which credit relief is not available. UK unilateral relief was therefore available.

The UT has now dismissed HMRC's appeal, holding that the limitation of benefits article was not an express provision. It noted that *"the fact that a domestic law provision may be inconsistent with a treaty provision does not mean, without more, that it is ineffective"*.

*Aozora GMAC Investment Limited v HMRC* [2022] UKUT 258 (TCC)

[www.bailii.org/uk/cases/UKUT/TCC/2022/258.html](http://www.bailii.org/uk/cases/UKUT/TCC/2022/258.html)

### 4.2 Consultation on digital platform reporting rules

*HMRC is seeking feedback on draft regulations for applying the OECD's Model Reporting Rules for Digital Platforms to UK platform operators.*

Under the model rules, UK platform operators will need to report information on sellers using their platforms to HMRC, which it will exchange with other tax authorities. The platform is also required to share the relevant data with the seller, to help them with their compliance obligations.

This consultation is looking for technical feedback on the draft regulations. Consultation responses need to be submitted before 13 December 2022.

[www.gov.uk/government/consultations/draft-regulations-the-platform-operators-due-diligence-and-reporting-requirements-regulations](http://www.gov.uk/government/consultations/draft-regulations-the-platform-operators-due-diligence-and-reporting-requirements-regulations)

## 5. VAT and other indirect taxes

### 5.1 Public right of way does not make a property mixed use for SDLT

*The FTT has found that a property including a section of public highway was not classed as mixed-use for SDLT. The fact that the path was used for access by a farm did not mean that it was commercial land.*

The taxpayers originally filed an SDLT return on the basis that their property purchase was residential. Soon afterwards, they filed an amendment classifying it as mixed use due to the existence of a public right of way across the property. This was a public highway used by vehicles, running along the edge of the property. It was both how the owners accessed the property, and access for other houses and a farm along the lane. HMRC refused to reclassify the property after enquiry. The taxpayers appealed.

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The taxpayers argued that the path restricted their enjoyment of the land, as they could not use that area privately. They set out the various obligations the existence of a right of way placed on them, such as keeping it clear and maintained. The reasonable enjoyment test no longer applied, so before the FTT, they also argued that the land of the path was used for a separate commercial purpose, as it granted access to a farm, interrupting their use of it as a residential property.

The FTT considered the characteristics of the property, and dismissed the appeal. It found that the use of the path by a farm did not make it a place where business was conducted, so did not change the residential character. The fact that the path came with burdensome obligations did not change its character as part of the grounds of the property.

*Averdieck & Anor v HMRC* [2022] UKFTT 374 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2022/TC08623.html](http://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08623.html)

## 6. Tax publications and webinars

### 6.1 Webinars

*The following client webinars are coming up soon.*

- 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](#)

## 7. And finally

### 7.1 Worrying trend

At first sight, the decision in *Aozora* [at article 4.1 above] looks welcome, with the UT accepting that legislation should be interpreted straightforwardly. So indeed it is, but it may represent a worrying trend on the part of HMRC. HMRC would not accept a straightforward reading of plain legislation. Readers will understand that this is a subject close to our hearts as we had the same issue in the *NCL* litigation.

This has got to stop. Taxpayers should be entitled to rely on straightforward readings of legislation without having to resort to the courts.

HMRC might counter that it is its duty to ensure that tax collection is maximised because the country needs the money.

If the last few weeks have taught us anything, however, it is that governments can move extremely quickly when it is necessary to raise tax. Parliament can tax whom it likes, what it likes and whenever it likes. There is never a shortfall of tax because tax revenue is an ever-flowing stream. All the Government needs to do is dip the bucket into it.

How much better to have plain and simple tax rules, and accept that in any instance they may not necessarily collect the expected amount. Mostly it will even itself out, and, if it doesn't, just dip the bucket in again. The taxpayer will, these days, be expecting it.

*Aozora GMAC Investment Limited v HMRC* [2022] UKUT 258 (TCC)

*HMRC v NCL Investments Ltd & Anor* [2022] UKSC 9

[www.bailii.org/uk/cases/UKUT/TCC/2022/258.html](http://www.bailii.org/uk/cases/UKUT/TCC/2022/258.html)

[www.bailii.org/uk/cases/UKSC/2022/9.html](http://www.bailii.org/uk/cases/UKSC/2022/9.html)

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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