9 November 2022

A round-up of recent issues

Tax update

Contents

1. General

1.1 HMRC late payment interest rate rises

Following the Bank of England interest rate rise, the rate of interest HMRC charges on late tax payments will increase.

Following the Bank of England base rate increase from 2.25% to 3%, HMRC has announced a forthcoming rise in yearly interest rates on overdue tax by 0.75%.

The rate applied to main taxes will become 5.5%. The rate of interest on repayments from HMRC will become 2%. The rate for interest charged on underpaid quarterly instalment payments will rise to 4% and the rate for overpaid quarterly instalments to 2.75%.

The change will apply from 14 November 2022 for quarterly instalment payments and 22 November 2022 for non-quarterly instalment payments.

www.gov.uk/government/news/hmrc-late-payment-interest-rates-to-be-revised-after-bank-of-england-increases-base-rate--8

1.2 CIOT advice to the new Financial Secretary to the Treasury

Following Victoria Atkins's appointment, the CIOT president has offered her opinion on the three key priorities for administration of the tax system.

The CIOT has written to the new Financial Secretary to the Treasury, reiterating comments made in recent communications to the Chancellor about the closure of the Office of Tax Simplification (OTS).

First, investment in HMRC to improve performance. The letter gives examples of how current service levels are falling short.

Second, a review of making tax digital. The CIOT is concerned that the timetable is becoming unrealistic, and obligations are unclear.

Third, simplifying the tax system. The CIOT believes that this is best accomplished by keeping the Office of Tax Simplification open, and strengthening its powers.

www.tax.org.uk/tax-priorities-for-the-new-administration-ciot-letter-to-the-new-fst

2. Private client

2.1 HMRC nudge letters sent to landlords

Individuals who have submitted deposits into the Tenancy Deposit Scheme (TDS) and whom HMRC has identified as potentially under-declaring rental income will receive a nudge letter.

HMRC is sending these letters out in November to individuals who submitted a deposit to the TDS, but HMRC believes may have under-declared 2020/21 rental income. The letters ask them to check their 2020/21 returns and make any amendments needed within 30 days of the date on the letter. No action is required if the taxpayer has checked and believes no amendment is needed. The letter also asks them to ensure that their 2021/22 tax return is correct, and advises that if they have sold the property, CGT may be due.

www.tax.org.uk/latest-hmrc-nudge-letters-for-landlords

2.2 HMRC nudge letters sent to drivers for online platforms

These letters are going to individuals who drive for companies such as Lyft and Uber, and who may not have declared all their income from the platform.

The letter explains that HMRC has information that shows that the driver has not declared income in full. It asks the recipient to fill out the certificate of tax position enclosed. Filling this out is not compulsory, but a response is requested within 30 days whether or not there is anything to declare.

The letter explains how the driver can declare the additional income on the digital disclosure service. It also notes that tax affairs that are not up to date could affect the licensing application tax check for each driver.

Care should be taken in completing a certificate of tax position. While there may be an obligation for taxpayers to respond to HMRC, there is no obligation to do so using the certificate provided by HMRC. You can contact our tax dispute resolution team if you need any assistance on these matters on taxdisputes@evelyn.com.

www.tax.org.uk/hmrc-one-to-many-letter-to-individuals-who-drive-for-an-online-platform

2.3 HMRC invites taxpayers to pre-filing discussions

Some taxpayers with complex affairs have been offered the chance to talk through any areas of complexity with an HMRC officer before filing their 2021/22 returns.

This is a continuation of the initial exercise carried out earlier this year, expanded to more taxpayers. The aim is to prevent errors before they occur. Possible discussion topics are unusual or one-off transactions, and changes in circumstances. HMRC will not be giving advice, but will signpost to guidance or clearance services.

This is completely optional, and no further action is required if the recipient does not want to have the call.

www.tax.org.uk/hmrc-invites-discussions-with-certain-taxpayers-prior-to-submitting-tax-returns

2.4 Review of property income taxation published

The OTS has published a detailed review of the taxation of residential property income, with recommendations for changes.

The review focussed on several areas as follows.

The review noted the issues with the furnished holiday letting regime, and recommended that the Government should consider whether or not to continue it. If abolished, some property letting might need to be treated as trading instead. If retained, the OTS recommends that the relief is restricted to commercial lets, and changed to cover either just UK or worldwide properties, rather than the current scope of properties in the European Economic Area.

On the tax deductibility of work on a property, such as repairs and replacements, the OTS recommends that HMRC's guidance should be improved, as this is a confusing area for taxpayers. Alternatively, it recommends that income tax relief should be applied more broadly to property costs, as this would be simpler to administer and support the policy objective of improving the standards of rental property.

On jointed owned property, the OTS recommends that the automatic 50:50 taxation split for spouses should be changed to one that reflects underlying ownership, which applies to all unmarried co-owners.

On Making Tax Digital, the OTS has identified several potential areas for improvement, such as allowing joint owners to file one return between them, increasing the minimum threshold for reporting, and delaying the introduction until the system has been improved and tested.

The review also recommends that a 'rural business unit' should be established for tax, to simplify obligations on diversified agricultural-based businesses.

The OTS is also concerned about low compliance with the tax withholding regime for non-resident landlords. It recommends that the policy is reviewed, and improved guidance issued if it is kept.

www.gov.uk/government/publications/ots-review-of-residential-property-income

3. Business tax

3.1 Importance of the contract for enterprise zone allowances (EZAs)

A claim for EZAs has been rejected, with the CA finding that the property built was materially different from the original contract agreed before the enterprise zone expired.

Enhanced rates of capital allowances were available for construction of buildings in enterprise zones. On the last day before the enterprise zone expired, a 'golden contract' was entered into that contained a number of different options which the developer and contractor hoped would ensure EZAs could still be claimed on future conduction on the site.

Previously, the UT found some of the property construction expenditure qualified for EZAs. This was partly on the grounds that the developer had a legitimate expectation following HMRC correspondence with an industry body.

The CA disagreed, focussing on the original contract and finding that none of the expenses qualified for EZAs. The property that was ultimately built was determined to be materially different from the original contract. The changes made were radical enough that the original contract did not apply and the property was built under a new contract. As the development was therefore not built under a contract entered into before the enterprise zone expired, no EZA was available.

Cobalt Data Centre 2 LLP & Anor v HMRC [2022] EWCA Civ 1422

www.bailii.org/ew/cases/EWCA/Civ/2022/1422.html

4. VAT and other indirect taxes

4.1 CA finds for HMRC on SDLT refund time limit

The CA has upheld a UT decision that the 12 month time limit for amending SDLT returns still applies even if the amendment is to obtain a repayment of SDLT in respect of a substantially performed contract that was never fully performed.

The taxpayer purchased a 25 year lease on a property, with agreement that he could develop it. It also purchased a separate lease of the property for 201 years. Two years later, both leases were given by the taxpayer to his brother. There were still payments due to be made for the 201 year lease, which became the brother's responsibility. Having made an SDLT return for the full amount ultimately due, the taxpayer claimed an SDLT refund for the amounts of consideration that he had not paid before the gift.

The FTT had found that this amendment was in time, as although the normal deadline for amendment has passed, on its reading of the legislation, the 12 month time limit is overridden in circumstances where an amendment is made to an SDLT return that had been filed when a contract was substantially performed, but ultimately the contract was never completed. The UT overturned this, finding that no exception applied. The CA agreed, noting that HMRC's interpretation could be open to abuse, whereas having no exception promoted certainty. A subsale to someone else would have given rise to SDLT charges on two people, with no repayment, so this was not an unfair result.

The case overall revolved around statutory construction, and the meaning of "afterwards" in disapplying the general time limit. The longer it takes for a transaction to complete the more likely it is for substantial performance to take place.

Candy v HMRC [2022] EWCA Civ 1447

www.bailii.org/ew/cases/EWCA/Civ/2022/1447.html

4.2 Car parking facilities provided by an NHS Trust is subject to VAT

The UT has ruled that where NHS Trusts operate car parking facilities at hospitals or similar, payments received are subject to VAT and not outside of the scope of VAT under the special legal regime for government authorities and public bodies. 50 similar appeals by NHS bodies were stayed behind this appeal.

The FTT had initially dismissed the NHS Trust's appeal on three separate grounds, with the UT considering a single position: whether the NHS Trust was acting as a taxable person or whether it was acting as a public body in respect of car parking charges.

The UT considered various case law on the matter and found in line with the FTT's decision that to allow the NHS Trust to rely of the special legal regime would result in a distortion of competition between the NHS Trust and private car park operators.

As a result, the UT dismissed the appeal on the grounds that the NHS Trust was a taxable person in respect of income received from car parking charges.

Northumbria Healthcare NHS Foundation Trust v Revenue and Customs [2022] UKUT 267

www.bailii.org/uk/cases/UKUT/TCC/2022/267.html

5. Tax publications and webinars

5.1 Tax publications

The following Tax publications have been published:

- HMRC launches a campaign focused on offshore companies owning UK property
- The importance of R&D tax advisers possessing industry experience

5.2 Webinars

The following client webinars are coming up soon:

- 10 November - Business exit planning for entrepreneurs: tax efficiency and employee support
- 30 November - UK tax and reporting considerations for international private clients
- 30 November - What are my business options
- 8 December - Retirement from the partnership

6. And finally

6.1 Building back better?

Regular readers will recall that in September last year we celebrated the splendid news of the future arrival of a new tax: the Health and Social Care Levy. We feared even then though that it might not survive in the bullying world of tax. Our fears have been realised. Alas, it has sadly just been consigned to the great scrap heap of tax history with along with window tax, hearth tax, our particular favourite, playing card tax, and all the other querky tax oddities whose passing we so lament. Well; for now at least.

The Government press release at the time makes nostalgic reading.

We await the statement on 17 November for a progress report on the plan outlined by the then Chancellor Sunak with interest.

https://bills.parliament.uk/bills/3338/stages/16991

www.gov.uk/government/news/chancellor-launches-vision-for-future-public-spending

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	