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1. General

1.1 Tax Update and Easter

Tax Update will be taking a break for the Easter holiday.

The next issue will be on 26 April. We wish you a safe, healthy and happy Easter.

1.2 OECD consults on exchange of information about cryptoassets

The OECD has opened a new public consultation on a framework for automatic exchange of information about cryptoassets.

The systems in place for jurisdictions to exchange financial information on taxpayers automatically do not currently capture much information on cryptoassets. The OECD plans to extend the common reporting standard to include electronic money products, digital currencies, and indirect investments in cryptoassets. It also plans to introduce a new framework for the automatic exchange of information on cryptoassets that can be held and transferred in ways that do not involve financial intermediaries. Businesses that accept cryptoassets as payments will need to carry out due diligence on their customers, and report the total amounts yearly.

www.icaew.com/insights/tax-news/2022/April-2022/OECD-consults-on-exchanging-information-about-crypto-assets

2. Private client

2.1 Taxpayer wins appeal on treaty residence

The FTT has found for a taxpayer that he was treaty resident in the Republic of South Africa (RSA), rather than the UK. On extensive consideration of his economic and personal relations, the centre of his vital interests was held to be the RSA at the time in question.

HMRC assessed a taxpayer to be UK resident in several tax years under the tiebreaker clause in the UK-RSA double tax treaty. He appealed to the FTT, arguing that he was non-resident. The FTT had to determine which state was the centre of his vital interests.

The FTT heard extensive evidence on his life to determine where his personal and economic relations were. He was born in RSA to an RSA family who spent a lot of time in the UK, and undertook part of his education in the UK. As an adult he lived in RSA for some years, moved to the UK for a year, then spent some years in Zimbabwe before returning to RSA. He and his family came to the UK again in 2007 for his children's education. They acquired a substantial home in the UK but retained the RSA home as well and divided their time between these and properties in the US.

The FTT heard evidence on where he played sports (several countries), which clubs he belonged to (in the UK and RSA), where he voted (RSA), where his principal doctor and dentist were (RSA), his voluntary activities in RSA and the UK, and his investments. It considered where he worked from, which was primarily the UK, as first for the RSA family companies and later for his own UK company. He also provided day counts.

The taxpayer's appeal was upheld. The FTT found that, considering all the evidence, the centre of his vital interests was more likely to be RSA than the UK. His family and friends were primarily in RSA, and his key economic ties were to the RSA. He had habitual abodes in both countries.

Oppenheimer v HMRC [2022] UKFTT 112 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08443.html

www.step.org/industry-news/de-beers-heir-defeats-hmrc-tax-residence-battle

2.2 Appeal dismissed on quantum of CGT proceeds

The FTT found that the proceeds stated in the sale and purchase agreement for shares was the correct figure for CGT. A debt repaid from the proceeds could not be offset.

The two taxpayers sold a company, in which they each had a 50% shareholding. The sale and purchase agreement stated the proceeds as £8million in total, which was paid by the purchaser to the solicitors. £1.1m was transferred on to settle a debt owed by the company, and the remainder, less fees, to the taxpayers. They argued that the debt repayment should be deducted from the taxable proceeds.

The FTT found that the full chargeable consideration was £8million. This was specified in the contract, and the taxpayers has voluntarily discharged the debt, though they had believed they were under an obligation. The debt was not mentioned in the contract, though the taxpayers had argued that it was effectively a contract for the sale of shares and the discharge of the debt.

McEnroe & Anor v HMRC [2022] UKFTT 113 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08444.html

2.3 FTT dismisses appeal on deductible expenses for CGT

A landlord who had released a previous tenant from a reinstatement obligation was not permitted to deduct the monetary value of the release from the grant of the next lease, a long lease chargeable to CGT.

The trust granted a 60 year leave on freehold land: a part disposal. It submitted an incorrect tax return initially, treating the grant of the lease as a full disposal, which created a CGT loss in the calculation. It agreed that this was an error, but argued that it should be allowed to deduct a payment from the gain. This was for the monetary value of the obligation they had released the previous tenant from, to restore the property to the condition specified in the lease.

The FTT dismissed the appeal. It decided that forgiveness of an obligation was not expenditure, merely consideration, and the legislation only allows deductions for expenditure.

The Wakelyn Trust v HMRC [2022] UKFTT 23 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08375.html

2.4 Taxpayer wins appeal on fixed protection

The FTT has restored a taxpayer's pension lifetime allowance protection, as the event that invalidated it, his auto-enrolment into a pension scheme, had been done without notifying him correctly.

When the taxpayer changed jobs, he asked his new employer not to enrol him in a pension scheme as he was approaching his lifetime allowance. He then applied successfully for fixed protection 2016, which would have kept his lifetime pension allowance at the then level provided that he did not make further contributions. When HMRC discovered that he had in fact been auto-enrolled into the workplace pension, the protection was revoked.

The taxpayer appealed this decision on the grounds that he had not been given the auto-enrolment information. He had been told by the employer that if he did not sign a payroll deduction form, which he did not, he would not be auto-enrolled. An email was sent to him informing him that he would be enrolled but he stated that he had never seen this email, and produced evidence of IT issues. Alternatively, he pointed out that the wrong date had been included in the email the pension provider supplied as sent.

The FTT upheld his appeal. It found that it was most likely that he had opened the email, not recognised the importance, as it was marked as an external email, and deleted it, which would have counted as appropriate notice to him. It did however agree with him that the wrong auto-enrolment date was on the email, so it was technically an invalid notice.

Moan v HMRC [2022] UKFTT 118 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08449.html

2.5 Taxpayer found to have suppressed cash takings

The FTT has agreed with HMRC's calculations of additional tax owed by a restaurant owner. These were based on clear evidence, including an undisclosed bank account belonging to the taxpayer, and test meals conducted by officers.

The taxpayer ran a restaurant, and following test meals there by officers HMRC raised IT assessments for four tax years on the grounds that cash takings were being underdeclared. Officers met with the taxpayer, who explained the systems in place for handling cash, including that it was used to pay suppliers and

employees, and provide his own drawings. The test meals did not all appear in the records, and HMRC found evidence of a second bank account belonging to the business, which was not declared. The taxpayer argued that the account was not his, and that HMRC had no clear evidence that he had undeclared sales.

The FTT dismissed his appeal. It found that although the second bank account was not in his name, it clearly belonged to him and was associated with the business. It agreed with the assessments raised by HMRC, and upheld the penalties for deliberate behaviour.

Kotpat v HMRC [2022] UKFTT 117 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08448.html

2.6 Information notices upheld

The FTT found that the information specified in notices issued to directors was reasonably required to establish their correct tax position.

The taxpayers owned a company, and HMRC suspected that the employees had received more in wages, subsistence payments, and expenses than was paid by the company. HMRC believed that the taxpayers had paid the difference, and had an undeclared income source from which they had made the payments. The taxpayers stated that the company had made all the payments, directly or indirectly through loans to the taxpayers.

HMRC issued information notices to the taxpayers requesting various details about their financial affairs, including a list of bank accounts and statements for them. The FTT upheld these notices. The information was reasonably required to assess the correct tax position for the taxpayers.

Gilmore & Anor v HMRC [2022] UKFTT 116 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08447.html

3. PAYE and employment

3.1 Personal liability notice upheld on director

The FTT has upheld a personal liability notice (PLN) issued to a director who failed to meet his company's obligations to pay NICs before it was liquidated. This was due to neglect, as it was his third company in that business that had failed whilst in substantial debt to HMRC.

A company entered compulsory liquidation owing HMRC NICs totalling over £108,000, plus interest. The director had previously liquidated two similar companies with PAYE and NIC debts. He was issued with a PLN for the newest debt, on the grounds that he had prioritised the company making payments to himself and to related companies rather than settling its debts to HMRC. He argued that the other companies would have failed without the payments, which were for legitimate debts, and that in any case he should only be held liable for debts that arose after a time to pay arrangement broke down.

The FTT dismissed the appeal. The fact that two similar businesses of his had already failed meant that the taxpayer knew the risks inherent in the trade, and as he was aware that NIC was due monthly he should have prioritised this. Agreeing a time to pay arrangement did not mean that he had acted reasonably.

Eames v HMRC [2022] UKFTT 119 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08450.html

3.2 TV presenter loses contractor working case

The FTT has agreed with HMRC that the off-payroll working (IR35) rules apply to the case of a football presenter who worked for Sky TV using a personal service company (PSC), as the relationship was characteristic of employment.

The appellant is the PSC of a TV presenter. It was set up in 2009, after he retired from professional football, and it entered into contracts with a broadcaster to provide his services. The FTT considered the

wording of the contracts, and how he performed his duties in practice. Overall, the appeal against determinations to tax him as though he were a direct employee of the broadcaster was dismissed, as the relationship was closer to employment than contract work.

Specific points drawn out by the FTT included that the presenter was not at financial risk, as his annual fee was paid in unvarying monthly instalments regardless of the distribution of work across the year. He worked solely for the broadcaster in the first three years after setting up a PSC, so the PSC was dependent on this work.

McCann Media Limited v HMRC [2022] UKFTT 104 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08435.html

4. Business tax

4.1 Updated guidance on uncertain tax treatment notification requirements

New statutory guidance has been added to the HMRC manual specifying what must be included in a valid notification.

FA2022 included a provision for HMRC to specify the requirements for this form of notification. HMRC has now added guidance to its manual that must be included, or the notification will be invalid.

www.gov.uk/guidance/check-if-you-need-to-notify-hmrc-about-an-uncertain-tax-treatment

www.gov.uk/hmrc-internal-manuals/uncertain-tax-treatments-by-large-businesses-manual/utt15100

5. VAT

5.1 VAT claimed found to be dishonest

The FTT considered entitlement to input tax recovery for supplies made by an associated company that had not paid the output tax, and refused the claim.

The parent company charged the appellant company management fees that were subject to VAT at the standard rate. The parent company failed to account for the VAT, which was claimed by the appellant company as input tax. After less than a year of operation, the parent company went into liquidation.

HMRC took the view that the input tax claimed was fraudulent in nature and that as the companies shared common directors they would have known that the parent would not account for the output tax due in relation to transactions between the companies.

The appellant appealed against the restriction on the input tax it could recover on supplies made by its parent company on three grounds. These were first, the parent was established to manage and implement a new payment bonus scheme, so there was no intention to use the company for fraud or abusive ends; second, the liquidator of the parent was pursuing the appellant for settlement of the outstanding amounts as a debtor; finally, at the time of the supplies made by the parent it was not known that, due to a serious problem with the contracts being undertaken by the parent, substantial cash flow issues would occur, so they could have not known about the future liquidation.

The FTT dismissed the appeal on the basis that even though the business was facing genuine commercial and financial pressures, despite being advised to do so, it failed to take the open and honest course of contacting HMRC to explain the problems faced. It was found therefore that the VAT returns were submitted with the knowledge that the parent company would not pay its VAT liability and so were dishonest.

Grantham Ceilings and Interiors v HMRC [2022] UKFTT 99 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08429.html

5.2 Mitigation of penalty

The FTT has reduced penalties issued by HMRC, finding that an inaccuracy was careless behaviour rather than deliberate.

The taxpayer, a garage that sold vehicles, appealed against the penalties for deliberate behaviour imposed by HMRC.

The taxpayer had previously made the same type of error in reporting, relating to ‘bumping’, where the value of part exchange vehicles is inflated on the documentation entered in to with finance companies, had not fixed its record systems, and had not initially advised there was any issue at the VAT inspection.

The FTT found that the taxpayer had not tried to mislead HMRC, and the error was in fact due to careless behaviour, with full mitigation for telling and providing assistance to HMRC with their review. As a result, the penalty was substantially reduced to 10% but could not be reduced to nil, to reflect the period of inaccuracy being made and being corrected.

Atlas Garages (Morpeth) Limited v HMRC [2022] UKFTT 101 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08431.html

6. And finally

6.1 Vivaly interesting

It is always nice when someone takes an interest, isn't it? Well, mostly. The taxpayer in 2.1 may well have felt by the end of the HMRC investigation that they had rather exhausted the subject of his life. The judgment has some striking similarities to an exhaustive obituary, covering his childhood, where he has lived, and his charity work. Handy though it may be for anyone wanting to invite him onto Desert Island Discs, it cannot represent less than months of work for HMRC and his tax advisers.

All we can say is, thank goodness that most residence positions can be worked out with the statutory residence test. For those fascinated with the topic of diamond mines, such as Frances Hodgson Burnett fans, this is an interesting insight into an interesting family.

[A Little Princess - Wikipedia](#)

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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