MARCH 2024

Tax Update

Contents

1. General

1.1 Spring Budget 2024

The Chancellor delivered the Spring Budget 2024, possibly the final fiscal event before the general election, on Wednesday 6 March. This included several major changes, such as a 2p NIC cut and abolition of the non-dom and furnished holiday let regimes.

Key announcements include:

- 2p NIC cuts to the main rates for employees and the self-employed from 6 April 2024. With the cuts at the Autumn Statement this means that Class 4 NIC will drop from 9% to 6% from this date. Class 1 NIC will be reduced to 8%, having been 12% until the 2p cut in January.
- Abolition of the current non-dom regime from 6 April 2025, with a new regime being introduced in its place.
- Cutting the higher rate of CGT on residential property from 28% to 24% from 6 April 2024. The basic rate will remain at 18%.
- Raising the threshold for the high-income child benefit charge to £60,000, and the upper limit for taper to £80,000, with a longer term plan to move to a household-based system by April 2026.
- Abolition of the reliefs for furnished holiday lettings from 6 April 2025. Anti-forestalling measures for CGT where unconditional contracts are used came in on Budget day.
- Consultation on legislation for full expensing relief to include plant and machinery used for leasing.
- Abolition of multiple dwellings relief for SDLT from 1 June 2024.
- Increase to VAT registration threshold by £5,000 to £90,000 from 1 April 2024. The de-registration threshold will increase by the same amount to £88,000 on the same date.

The Finance (No.2) Bill 2023-24 was published on 13 March.

More technical announcements are expected on tax administration and maintenance day, which will be held on 18 April 2024.

www.evelyn.com/budget/the-spring-budget-2024/

1.2 Finance Act 2024 receives Royal Assent

The Finance Bill 2023/24 became the Finance Act 2024 on 22 February 2024.

This means that measures in the Act without otherwise specified start dates come into force from 22 February. For this Act, these include the new criminal offence for failure to comply with a notice requiring a tax avoidance promoter to cease their activities, doubling the maximum term of imprisonment for tax offences to 14 years, and making full expensing permanent.

www.icaew.com/insights/tax-news/2024/feb-2024/finance-act-2024-receives-royal-assent

1.3 HMRC nudge letters on annual investment allowance

HMRC is sending 'one to many' letters to mid-sized businesses asking them to check that their annual investment allowance (AIA) claim does not exceed the cap.

These are being sent to companies in a group, where the group as a whole may have exceeded the £1million allowance for the year in question. The letter explains how the cap applies to a group, and should be adjusted for non-standard accounting periods, and asks the recipient to check the company's claim.

If an error is found, the company should amend the return within 30 days of the date shown on the letter. If no error is discovered then the same time limit applies for it to contact HMRC and inform it of this.

www.tax.org.uk/hmrc-one-to-many-letter-annual-investment-allowance-group-claims

2. Private client

2.1 Appeal dismissed on entrepreneurs' relief

Three taxpayers have lost their appeal to claim entrepreneurs' relief (ER), now known as business asset disposal relief. The activities carried on by a company owning land did not amount to a trade.

A company with an investment business owned land. Three individuals who disposed of their shares in the company in 2016 when it went into liquidation argued that it was carrying on a trade from 2013, so they were entitled to ER on the disposals.

HMRC argued that no ER was available, as the company did not meet the requirement to have been trading for at least a year before its trade ceased, and for that cessation date to be within the three years before the shares were sold.

The land owned by the company was previously the offices of another company. There were a number of commercial buildings on the site, with amenities. Some of the buildings were sold off individually and the company acquired permissions to redevelop the rest before it was sold. Throughout the period of ownership parts were subject to short term lets for example of parking space. These were to mitigate business rates, and did not change the overall loss-making position of the claimed trade. The taxpayers gave evidence about the complexities of running the business, and the changing plans for development. At one point the site was appropriated from investment to trading stock.

The FTT took a multi-factorial approach, using the badges of trade to inform its decision, and found that the company was not trading. All the company had in fact done was decide to sell the land, and take steps to enhance its value before dale. The FTT noted that "to be held to be trading, a person such as SGL, which acquired the asset which it says is trading stock otherwise than as trading stock, needs to do something more decisive to escape the fetters of the past than simply decide to sell the asset and then do no more than take steps to enhance the asset's value prior to sale."

Stolkin & Ors v HMRC [2024] UKFTT 160 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09086.html

2.2 Tax avoidance scheme fails again at UT

The UT has agreed with the FTT that an avoidance scheme that sought to exploit a provision in the UK-Mauritius double tax treaty was ineffective. The place of effective management of the trusts was the UK, not Mauritius, so the gains were subject to UK CGT.

Two taxpayers established a trust each, and the trustees made substantial capital gains in August 2020. The trusts were at first Jersey resident, but for a four month period, including August 2020, Mauritian resident trustees were appointed instead, before UK trustees were appointed. The aim of this arrangement was to give Mauritius taxing rights over the gains, as it did not charge CGT.

In a lengthy judgment, the FTT considered a previous CA decision in a similar case, and decided that, as in *Smallwood*, this scheme failed because the trusts were not truly Mauritian tax resident. Under the treaty, a tie breaker provision allows for residence in the place of effective management of a trust, as the body of trustees were a person within the meaning of the treaty, and during the period when Mauritian trustees were in position this place was the UK.

The UT upheld this decision. The taxpayers argued at appeal that the FTT had used the wrong test to determine the place of effective management of the trusts. A previous CA decision on the location of central management and control of a company had mentioned that the company and trust tests are the same in substance, so they contended that this case should be followed. The UT found that the FTT was entitled to follow the test in Smallwood, a CA trust case, instead. Therefore there was no error of law made in using that test.

Haworth & Ors v HMRC [2024] UKUT 58 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2024/58.html

HMRC v Smallwood & Anor [2010] EWCA Civ 778

www.bailii.org/ew/cases/EWCA/Civ/2010/778.html

2.3 Taxpayer loses appeal on meaning of 'discover'

The FTT has found that a taxpayer who had never declared income from working in a family business had acted deliberately, and upheld HMRC's calculations of what should be assessed.

The taxpayer worked in a family owned pub, and was paid on an irregular basis by his father. His primary income source was gambling. He sold a property in 2007 after 9 months ownership, and bought another property later.

HMRC investigated his finances, and ultimately issued nine discovery assessments covering failure to pay CGT on the property sale, and income tax on his income. No tax had been paid on his wages, which were calculated by the HMRC officer as being the unexplained deposits in his bank account.

The taxpayer appealed, arguing that the deposits were gifts from family and non-taxable gambling winnings, and that he had made a loss on the property sale. The FTT heard his evidence, and supporting statements, but found that a valid discovery had been made. The taxpayer had mentioned in an unrelated police interview that he was paid for working at a pub. The FTT specifically noted that 'blind-eye' knowledge was a form of knowledge. He had deliberately failed to notify HMRC, so the extended time limits for assessment applied. The FTT found that he was an unreliable witness, and upheld HMRC's assessments and penalties. The taxpayer had not provided reliable evidence to displace these best judgement assessments.

Hague v HMRC [2024] UKFTT 139 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09074.html

2.4 Taxpayer loses appeal on child benefit

A taxpayer has lost his appeal against the high income child benefit charge (HICBC), despite the fact that the child benefit he claimed was paid directly into the bank account of his ex-wife, who would not have been liable for the charge. The HICBC is based on the name on the claim, not the situation in reality of who receives the benefit.

The taxpayer claimed child benefit in his name. Post-separation, he arranged that the payments were made directly to his ex-wife's bank account. As the taxpayer earned over the upper threshold for claiming child benefit, HMRC issued assessments for it to be repaid.

The taxpayer appealed, arguing that he should not be liable to the HICBC as it was effectively his ex-wife who was in receipt of it. The fact that the claim was in his name did not reflect the reality of the situation. Her income was below the threshold, so as soon as he discovered from HMRC that HICBC could apply he cancelled his claim and she started her own.

The FTT dismissed his appeal. The HICBC can apply to a person who makes the claim, or a higher earner living in the household. Under the legislation, he met the definition of the person awarded child benefit and entitled to it. Where he had it paid to did not affect this.

Ward v HMRC [2024] UKFTT 142 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09077.html

2.5 Application for closure notice dismissed

The FTT has refused a taxpayer's appeal, finding that the January 2021 changes due to COVID-19 only moved the date at which penalties were charged, not the actual deadline.

The taxpayer appealed an enquiry notice arguing that it was issued late. She had filed her 2019/20 return on 28 February 2021, which as a late return would have extended the enquiry period. She argued that HMRC had given her extra time to file over email, so the return was not late. HMRC explained to the FTT, which accepted this, that the emails had only deferred the time at which late filing penalties would be issued, not the actual deadline. The FTT agreed with HMRC on the scope of this COVID-19 support measure.

The application for a closure notice was refused.

Hayes v HMRC [2024] UKFTT 118 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09060.html

2.6 Arrangements to create tax-free dividend rejected by CA

The CA has agreed with the tribunals that arrangements designed to avoid a tax charge on a dividend were ineffective. Diverting the distribution through a settlor-interested trust did not leave the liability with the settlor company, as the company shareholders retained ultimate control and on a purposive interpretation they received the distribution.

The taxpayers entered into arrangements whereby funds left a company (WY) of which they were the sole shareholders and directors, and reached their hands indirectly. WY subscribed for 2 classes of shares, A and B, in a new subsidiary (WS), and settled the B share, whose only significant right was a right to distributions, on trust for the shareholders. WY subscribed for further shares in its subsidiary WS; this was followed by a reduction of share premium creating distributable reserves. A dividend was then paid by WS on the B share. Although the company was to receive a small portion of any trust income, and the trust property was to revert to it, B reduced its share capital and declared a dividend, which was paid to the trust beneficiaries. This was the lead case for several appeals on similar arrangements.

The taxpayers contended that under the settlements legislation, as WS retained an interest in the trust it settled, by virtue of the A shares, the income of said trust was taxable solely on WS. HMRC argued that under a purposive construction of the legislation the income was simply a distribution from WY to the taxpayers. The CA agreed with HMRC and the tribunals and dismissed the appeal. Before the year in which this marketed tax arrangement was used, WY had made yearly distributions to the taxpayers in the normal way. The taxpayers did not dispute that the main purpose of the arrangements was to negate tax on the dividend. Under the *Ramsay* principle, the income was a direct distribution rather than income from a settlement.

HMRC also suggested that the taxpayers were the true settlors, so taxable on the income, as they had retained full control over A. The CA agreed with the UT that they were indeed the settlors.

Clipperton v HMRC [2024] EWCA Civ 180

www.bailii.org/ew/cases/EWCA/Civ/2024/180.html

3. PAYE and employment

3.1 Footballer loses appeal on payments to agent

The FTT has dismissed an appeal from a footballer who paid fees to his agent to arrange a move between clubs. These were not necessary for his employment, so not deductible against employment income.

The taxpayer, a professional footballer, moved to a different football club. His agent charged him fees for the transfer, and the taxpayer claimed these as deductions against his employment income from the club he joined. The club had agreed to make the payments to his agent on his behalf during the contract negotiations.

The taxpayer argued that he was obliged to incur the fees due to his employment with the new club. It was "almost obligatory, if not customary" to use an agent in this scenario, and he could not have concluded the contract without the agent. The FTT found against him, agreeing with HMRC that his duties as a footballer did not create an obligation to pay the fees. The fees were incurred under the contract for transfer, not the subsequent contract of employment. These were separate, not part of the same framework as argued by the taxpayer. No evidence was provided to prove that an agent was necessary, and in fact professional association rules include an express statement that players can represent themselves. Ultimately, the bar that expenses must be incurred wholly, exclusively and necessarily in the performance of the duties of the employment was not met. The closure notices were upheld.

His subsidiary argument, that he should be classified as a theatrical artist or otherwise entertainer, who are permitted to deduct agents' fees, was also dismissed.

The taxpayer also lost his appeal against penalties for late filing. The taxpayer had not proved that he did not receive the notices to file, and in any case the appeals against several of the penalties were out of time. On those, the FTT refused to admit them late, so upheld the penalties. All of the other penalties were upheld as well, as there was not reasonable excuse for the late submissions.

Niasse v HMRC [2024] UKFTT 179 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09093.html

3.2 New advance assurance process for termination payments

HMRC has changed the process for those wishing to determine how a termination payment will be taxed in advance.

Those wishing to determine how a termination payment will be taxed should make an enquiry through the non-statutory clearance service. This should only be done where there is a genuine point of uncertainty on the IT or NIC treatment. The answer will be non-binding, which is a change from the current policy of HMRC giving a binding answer.

www.gov.uk/government/publications/employer-bulletin-february-2024/february-2024-issue-of-the-employer-bulletin

www.icaew.com/insights/tax-news/2024/feb-2024/new-hmrc-process-for-termination-payment-queries

4. Business tax

4.1 Commencement date of the merged R&D scheme confirmed as 1 April 2024

Regulations were made on 4 March to designate 1 April 2024 as the 'appointed day' for the purposes of commencing the changes to the R&D regime introduced by Finance Act 2024.

The amendments to R&D relief, as set out in Finance Act 2024, including the new merged R&D scheme, and the additional relief for loss making, R&D intensive SMEs will have effect in relation to accounting periods beginning on or after 1 April 2024.

www.legislation.gov.uk/uksi/2024/286/pdfs/uksi_20240286_en.pdf

5. VAT and Indirect taxes

5.1 Update to VAT guidance on live streaming of funerals

HMRC has updated its guidance to state that live web streaming of funeral, burial, or cremation services is exempt from VAT.

This is a clarification, not a change, so previous VAT returns showing other positions may have to be amended.

If the live streaming is provided by a third party and paid for separately then that streaming is not covered by this exemption.

www.gov.uk/government/publications/revenue-and-customs-brief-1-2024-live-web-streaming-of-funeral-services

www.gov.uk/guidance/burial-cremation-and-commemoration-of-the-dead-notice-70132

5.2 HMRC wins UT appeal on SDLT

HMRC has won its appeal against an FTT decision that held that multiple dwellings relief (MDR) was available on the purchase of two adjacent properties, one a house and one that was being commercially let at the time of purchase.

The taxpayer purchased a house, and a separate property that happened to be on an adjacent piece of land. This second property had previously been an artist's studio, converted from a garage. He was advised that SDLT relief would be available if it was being used commercially when he bought it; so a fortnight prior to the purchase, he was involved in finding a photographic studio that agreed to take a commercial lease on the property for 9 months. The taxpayer claimed mixed use relief from SDLT.

HMRC argued that, despite guidance stating that commercial tenancies would cause mixed use relief to apply, this did not have the force of law. It argued that the test should be whether or not the property was suitable for use as a dwelling, as the guidance had subsequently been amended to say. The FTT had disagreed that due to the lease, the property was not capable of being occupied as a dwelling at the point of purchase but found the anti-avoidance provisions meant that the lease should be ignored. The FTT then however allowed MDR though the taxpayer had not claimed it, as it held there is no statutory requirement to claim this in an SDLT return nor amendment to such.

The UT found that contrary to the FTT decision, the building was suitable for use as a dwelling. The lease, and various planning restrictions should be included in the multi factorial assessment undertaken in deciding whether the property is residential. Therefore, mixed use rates could not apply. It also denied MDR, holding that the taxpayer would have had to claim it for it to be available.

HMRC has won the majority of recent MDR cases at the FTT. This UT decision brings this case back into line with the general view.

HMRC v Ridgway [2024] UKUT 36 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2024/36.html

5.3 SDLT appeal on communal garden fails

The FTT has dismissed a taxpayer's appeal, where he argued that the fact that his flat came with a right to use a communal garden meant that it fell within mixed-use rates for SDLT.

The taxpayers bought a leasehold interest in a flat. The lease included the right to use a communal garden, accessed by a key fob. After initially paying SDLT at the residential rate, the taxpayers amended their return to claim mixed-use treatment, on the grounds that the right to use the garden was an easement, and non-residential land as it benefitted multiple homes. Alternatively, the easement was a chargeable interest separate to the rest of the lease, so the whole transaction was mixed-use.

The FTT dismissed the appeal, agreeing with HMRC that the only chargeable interest was the lease over residential property. The main subject of the transaction was the purchase of the lease, and the easement was just acquired with it as pertaining to it. Even if it had been otherwise, the easement counted as residential property, as that particular easement just benefitted one dwelling, though the land over which it was used by several.

Bosnu & Anor v HMRC [2024] UKFTT 158 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09084.html

5.4 Fruit and nut bars should be treated as confectionery for VAT purposes

In a case remitted from the UT, the FTT has ruled that fruit and nut bars sold under the Organix and Nakd brands should be treated as confectionery for VAT purposes, and so be standard rated, despite their perceived healthiness and the lack of traditional confectionery ingredients.

In 2021 the FTT had ruled that products sold under the two brands were confectionery, not cakes and so should be subject to VAT. On appeal the UT found that the FTT had made a material error by failing to consider the healthiness of the products, and the absence of common confectionery ingredients. For these reasons the case was remitted back to the FTT.

Considering all the findings from the original FTT decision, and these additional factors the FTT again ruled that the bars should be treated as confectionery. They found that the products had the appearance, density, texture, and taste of confectionery, and were marketed as individually wrapped small snacks intended to be eaten with the fingers. They would be regarded as confectionery by the informed ordinary person in the street, and the mere absence of traditional confectionery ingredients did not outweigh these other characteristics.

The taxpayer had put forward an alternative argument that the products were cakes. The FTT agreed with the original findings that they were not cakes, they were not marketed as cakes, and their taste, texture and appearance was not that of a cake.

With the constant development of products such as these, rapidly changing tastes, and legislation originally drafted decades ago, we are likely to continue seeing many more cases like this.

W M Morrison Supermarkets Plc v HMRC [2024] UKFTT 181 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09095.html

6. Tax publications and webinars

6.1 Tax publications

The following Tax publications have been published.

- The 'IR35 Offset' – Reducing the risk of double taxation | Evelyn Partners
- Aggregates levy update | Evelyn Partners
- The Spring Budget 2024

6.2 Webinars

The following client webinars are coming up soon.

- 16 April - 'The Partner's Trusted Partner': Things to consider when becoming a partner

7. And finally

7.1 Own goal

3.1 is one of those cases that could have been written as a gift for editors. A footballer arguing that he is a theatrical artist who performs with a theatrical bent? The diving jokes write themselves. The detailed comparison of his work to that of Richard and Judy, who did win an appeal on that point, is a pleasure. Even the subsidiary appeal – how can anyone say that he lost on penalties with a straight face?

Anyone who looks at the judgement to see his salary will however understand that he has the last laugh.

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	