

A round-up of recent issues

19 June 2018

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1. General

1.1 Draft legislation for Finance (No.3) Bill

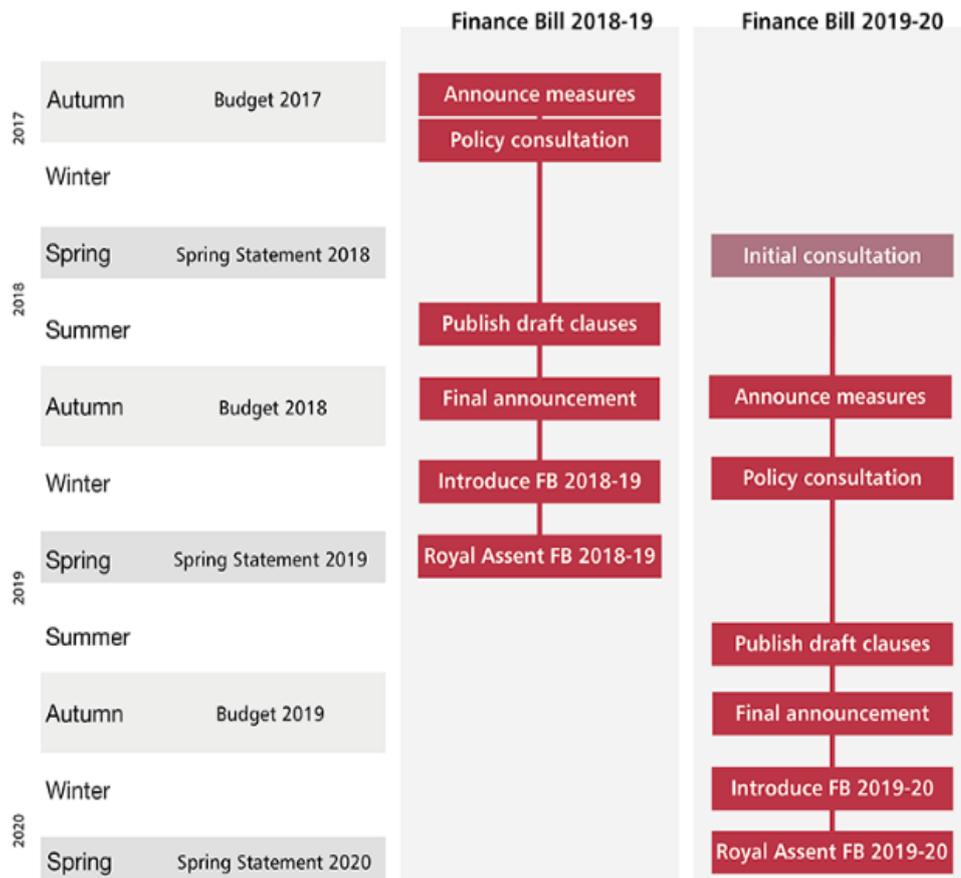
The Government has announced that it will publish draft clauses for Finance (No.3) Bill on Friday 6 July 2018. This will be accompanied by explanatory notes, tax information and impact notes, responses to consultations and other supporting documents.

The Government has published a written statement confirming that draft clauses for the next Finance Bill will be published on 6 July 2018. This is in line with the Government's commitment to publish, where possible, most tax legislation in draft for technical consultation before the legislation is laid before Parliament. The new timetable was detailed in 'The new Budget timetable and the tax policy making

process', published in 2017. It is expected that the draft legislation will relate to measures announced at Autumn Budget 2017, many of which have since been consulted on.

The two diagrams below are reproduced from 'The new Budget timetable and the tax policy making process' and are a helpful reminder of the budget and consultation timetables.

1.4 The new budget timetable in practice



3.2 The policy consultation cycle



www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-06-11/HCWS757

www.gov.uk/government/publications/the-new-budget-timetable-and-the-tax-policy-making-process/the-new-budget-timetable-and-the-tax-policy-making-process

1.2 HMRC director general appointment

HMRC has appointed Ruth Stanier as director general of customer strategy and tax design.

She will take over from the interim director general, David Richardson, when he retires in July. She is currently the director for customs and indirect tax. This permanent appointment follows an open recruitment competition.

www.gov.uk/government/news/new-director-general-of-customer-strategy-and-tax-design-announced?utm_source=f1cdfdff-6e7c-4f8e-8b58-c36ba410647f&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

1.3 G7 summit

Leaders at the G7 summit pledge support to the current international efforts to fight tax evasion and avoidance.

The following was included in the communiqué released after the meeting:

'In order to ensure that everyone pays their fair share, we will exchange approaches and support international efforts to deliver fair, progressive, effective and efficient tax systems. We will continue to fight tax evasion and avoidance by promoting the global implementation of international standards and addressing base erosion and profit shifting. The impacts of the digitalization of the economy on the international tax system remain key outstanding issues. We welcome the OECD interim report analyzing

the impact of digitalization of the economy on the international tax system. We are committed to work together to seek a consensus-based solution by 2020.'

<https://g7.gc.ca/en/official-documents/charlevoix-g7-summit-communique/>

1.4 CFE opinion statement

The Confédération Fiscale Européenne (CFE) has issued an Opinion Statement on the importance of taxpayer rights, codes and charters on tax good governance.

The opinion statement was submitted to the European Commission and notes the fundamental importance of taxpayers' rights for tax good governance, and the role that clear statements of taxpayer, and tax administration, rights and obligations, can play in this respect. It discusses the increased reporting requirements stemming from international measures targeting tax avoidance and tax evasion.

It refers to the Model Taxpayer Charter that was jointly published by CFE, STEP and the Asia Oceania Tax Consultants' Association. It states: *'The CFE does not expect a Taxpayers' Charter to lead to full harmonisation of taxpayer rights and obligations but believes that it can contribute to an acceptable approximation of laws. Concerning measures to combat tax avoidance and evasion, there is, currently, a notable lack of legal certainty in the area between tax avoidance and tax evasion. The distinction between acceptable and unacceptable tax planning is not a legal but a moral distinction, subject to change according to public opinion. For these reasons, the CFE finds that protecting the legally held rights of taxpayers is all the more significant given the current state of public opinion and as important as ensuring the continuance of legally enforced compliance.'*

<http://taxadviserseurope.org/blog/portfolio-items/opinion-statement-the-importance-of-taxpayers-rights-codes-and-charters-on-tax-good-governance/>

1.5 CIOT responds to Treasury sub-committee inquiry on tax avoidance and evasion

The CIOT has published its responses to the two Treasury sub-committee inquiries on how well HMRC is dealing with tax avoidance and evasion and on the conduct of tax enquiries and the resolution of tax disputes.

The CIOT's response to the tax avoidance and evasion inquiry notes that it is concerned about the trend toward increasingly severe treatment of offshore 'non-compliance', even in the absence of deliberate intent. It recommends that resources should be focussed on data analytics, given the vast information received under data sharing and the Common Reporting Standard, rather than *'adding more Draconian legislation to the statute book.'*

The CIOT also believes that HMRC needs more resources to tackle onshore illegal activity. The report comments on the fact that new legislation can increase non-compliance because people are simply unaware of their obligations, as demonstrated by the non-resident CGT return regime.

The second inquiry looks at HMRC's approach to conducting tax enquiries, resolving tax disputes, and determining the amount of tax to be paid meets the standards set out in its code of governance. The CIOT notes that more interaction between HMRC technical specialists and governance boards, and taxpayers, would help increase all parties' understanding and lead to better decisions. It makes various comments on HMRC's behaviour, including:

- HMRC adopting an interpretation of the law to bring in the greatest tax, rather than the right tax at the right time;
- HMRC feeling compelled to collect tax in some cases where the level appears unfair: it recommends that Parliament should act promptly to correct defective legislation and HMRC must communicate legislative changes quickly to relevant staff; and
- aggressive behaviour during enquiries, demanding information unrealistically quickly and asking for information that it is not entitled to receive.

www.tax.org.uk/sites/default/files/180531%20Treasury%20Committee%20sub-committee%20inquiry%20into%20Tax%20Evasion%20and%20Avoidance%20-%20CIOT%20response.pdf

1.6 UK/Uzbekistan double tax treaty

The updated UK/Uzbekistan double tax treaty entered into force on 1 June 2018.

Salient amendments include:

- dividend article - a maximum of 15% withholding tax on dividends derived from certain immovable property; and
- amendments to the mutual agreement procedure and the exchange of information.

The amendments are applicable from:

- 1 August 2018 in respect of withholding tax paid in both the UK and Uzbekistan;
- 1 January 2019 in respect of all other taxes in Uzbekistan;
- 1 April 2019 in respect of UK corporation tax; and
- 6 April 2019 for UK income tax and CGT.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714797/2018_Uzbekistan-UK_Protocol_to_The_Double_Taxation_Convention_-_in_force.pdf

2. Trust, estates and IHT

2.1 AAT responds to OTS call for evidence on IHT

The Association of Accounting Technicians (AAT) has published its response to the OTS IHT review call for evidence. It has recommended scrapping many of the current IHT exemptions, and refers to the possibility of abolishing IHT altogether.

The report makes various suggestions, including:

- removing the residence nil rate band;
- removing the exemption that allows AIM shares to benefit from business relief;
- removing the exemption for gifts to charity;
- removing taper relief on gifts;
- removing the exemption for gifts on marriage, exemptions for gifts generally, gifts to political parties and the small gifts exemption;
- various restriction to business relief and agricultural relief; and
- removing pre-owned assets tax.

www.aat.org.uk/prod/s3fs-public/assets/Inheritance-Tax-Review.pdf

3. PAYE and employment

3.1 SC agrees that operative was worker for employment purposes

The SC has upheld the CA decision in Pimlico Plumbers Ltd, finding that a plumber, who was working under a contract that clearly stated he was self-employed, was a 'worker' for employment purposes.

Mr Smith worked for Pimlico Plumbers (PP) under a contract that described his relationship to PP as a self-employed 'operative'. Mr Smith engaged an accountant, was VAT-registered and paid tax on a self-employed basis, which the SC noted was correct, while working solely for PP for six years.

The SC considered that:

- there was no unfettered right of substitution, albeit operatives of PP could swap jobs amongst themselves. It noted that the dominant feature of his contract was an obligation of personal performance;

- PP had tight control over Mr Smith, reflected in its requirements that he should wear the branded PP uniform, drive its branded van, to which Pimlico applied a tracker, carry its identity card and closely follow the administrative instructions of its control room. The contract also made references to 'wages', 'gross misconduct' and 'dismissal'.

The SC agreed with the findings of the CA, that Mr Smith was a worker and as such entitled to employment rights including holiday pay and rights against discrimination.

While no tax issue was considered, the difference between employment law and tax rules for such workers is topical. It was highlighted as part of the Matthew Taylor review in 2017, and HMRC's consultation on employment status recently closed; we await the publication of the response. The 'off-payroll working in the private sector' consultation is also still ongoing.

Pimlico Plumbers Limited v Smith [2018] UKSC 29

www.bailii.org/uk/cases/UKSC/2018/29.html

4. Business tax

4.1 Exercise of HMRC discretion reviewed by SC

The SC has agreed with the CA that HMRC is not obliged to take into account the impact on a taxpayer's business before exercising the power of cancellation of registration for gross payment status.

The taxpayer was registered for gross payment under the Construction Industry Scheme (CIS). After numerous late payments of PAYE, HMRC exercised its power to revoke the CIS registration. More than half of the company's turnover derived from contracts with large firms, who would withdraw work if the company lost its gross payment status. The taxpayer has contended that as HMRC took no account of the likely effect of its action on the company's business, this represented a failure to take account of a material consideration, in breach of both domestic public law, and of the European Convention on Human Rights.

The SC has found in favour of HMRC, agreeing with the CA's conclusions. The legislation states that HMRC 'may' cancel a registration, importing an element of discretion. The SC agreed with the CA that the existence of a discretion does not imply that it must be treated as an unfettered discretion. Any statutory discretion must be exercised consistently with the objects and scope of the statutory scheme. As stated by the CA, there was no "*indication in this tightly constructed statutory scheme that Parliament intended HMRC to have the power, and still less a duty, to take into account matters extraneous to the CIS regime, when deciding whether or not to exercise the power of cancellation*".

The SC also considered the European Convention on Human Rights, agreeing with the CA that any interference was proportionate.

JP Whitter (Water Wells Engineers) Limited v HMRC [2018] UKSC 31

www.bailii.org/uk/cases/UKSC/2018/31.html

4.2 Project Blue - SC sees real world

In a victory for HMRC, the SC decided in a majority decision that the 'anti avoidance' provision in the SDLT code applied to override the interaction of two specific reliefs. This interaction would otherwise have resulted in no charge to SDLT when Chelsea Barracks was purchased for £959m in 2008.

Project Blue Limited (PBL) was set up as a purchasing vehicle to acquire and develop Chelsea Barracks. Its financing of the purchase was set up in accordance with a Shari'a-compliant funding model that involved the purchase and then immediate on-sale of the property to a Qatari bank, Masraf al Rayan (MAR), with the bank then immediately leasing back the property to PBL. PBL contended that the interaction of the sub-sale and Islamic finance reliefs in the SDLT code meant that there was no charge to SDLT on either PBL or MAR in connection with the transactions. The planning relied on the initial purchase being

disregarded under sub-sale relief and the subsequent sale and leaseback being exempt under the Islamic finance relief rules. A condition of the latter relief was that the sale to MAR must have been by PBL. HMRC argued that this condition was not satisfied in this case precisely because the sub-sale rules meant that the initial purchase was ignored for SDLT purposes. As such, the Ministry of Defence (which was the original vendor in the chain) was the vendor in the sale to MAR for SDLT purposes. HMRC further contended that even if the two reliefs did operate as PBL envisaged, that the 'anti avoidance' rule would operate in this case to give rise to a charge to SDLT on PBL.

This is the conclusion of a long running saga, with the FTT, UTT and CA all deciding that SDLT was payable in connection with the transactions, but by different parties, in differing amounts and for different reasons.

The SC held that the two reliefs did operate as the taxpayer envisaged and in particular that the wording of the Islamic finance relief, when referring to the vendor, was referring to the real world vendor rather than the 'SDLT vendor'. The decision acknowledged that this meant that there was a lacuna in the law for a period, caused by a patchwork of amendments and updates to the original SDLT code, after the introduction of the original legislation providing the exemptions on which the taxpayer was relying. The '75A' rule, in spite of being headed 'anti avoidance' in the legislation, was held to be purely mechanical in its operation and did not require any particular motive of the avoidance of tax before it would operate. The 'anti avoidance' rule charges to SDLT the greatest amount paid by any party to the transactions in question. In this case therefore the price paid by MAR to PBL for its purchase, being £1.25bn in order to fund the acquisition and development costs, was brought into charge to SDLT, at a cost of £50m to PBL.

It should be noted that the SDLT sub-sale legislation was updated in 2011, subsequent to the property acquisition that was considered in this case, to clarify that the interaction of these two specific reliefs could not result in no charge to SDLT.

Project Blue Limited v HMRC [2018] UKSC 30

www.bailii.org/uk/cases/UKSC/2018/30.html

5. VAT

5.1 AG suggests contract termination payments are taxable consideration for a supply

If the CJEU agrees with the Advocate General (AG), which remains to be seen, the payment of a fixed amount agreed in advance is taxable where the payment is economically consideration for a supply received and is not limited to the amount of actual financial damage suffered.

In MEO - Serviços de Comunicações e Multimédia SA (C-295/17), the taxpayer provided telecommunication services and offered fixed minimum term contracts to its customers. Where a customer defaulted, the services were no longer provided but a sum equating to the outstanding monthly net payments was still payable by the customer and treated as compensation for the termination of the contract by the taxpayer.

Analysing the facts and previous CJEU case law, the AG observed that there were only two ways to look at this case: either, the payments were compensation for damages which could only amount to the taxpayers lost profit, or they were economically part of the overall consideration for the telecommunication supplies which was broken down into monthly instalments for mere payment reasons.

The AG decided on the latter approach as she questioned the amount of the supposed damage where it equated to the consideration for supplying the services. Further, the amount the supplier received for the fixed term was a fixed price agreed when the contract was concluded and which was independent from the actual length of the contract. In her view, there was no loss or damage. She also stated that the payment method could not have any impact on the nature of the supply.

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30dda47d39a0837d472da7659f47a38c5f7b.e34KaxiLc3qMb40Rch0SaxyNchn0?text=&docid=202645&pageIndex=0&doclang=DE&mode=req&dir=&occ=first&part=1&cid=360035>

5.2 Negotiating discounts for third parties is a taxable supply

The UT confirms the FTT's view that a taxpayer negotiating discounts on behalf of third parties and retaining a part of this discount is providing a taxable service.

The appellant (Redwood) carried on the business of owning and managing hotels and public houses and in the course of that business negotiated discounts on the purchase price of beer and other products from its suppliers. It also negotiated discounts with the brewers on the price of beer and other drinks supplied to public houses owned or tenanted by third parties. Redwood negotiated those discounts each year and paid the third parties a proportion, but not all, of the sums it received from the brewers. The question was about the supply chain in relation to the third party discount.

The UT largely agreed with the FTT's analysis that the transaction was a supply of services by Redwood to the third parties. The UT described it as a service consisting of negotiating and administering an arrangement with the suppliers with the consideration being the amounts actually received, that is, the amounts retained by Redwood out of the discounts received from the brewers.

Redwood Birkhill Limited v HMRC [2018] UKUT 0189 (TCC)

https://assets.publishing.service.gov.uk/media/5b1e656ae5274a18fc321c47/Redwood_Birkhill_Ltd_v_HMRC.pdf

6. And finally

Taxing Gossip

We remember with great fondness a colleague, now long dead, who had been a commercial airline pilot. As one steeped in art of radio telephony, he had been trained to keep his radio conversations in the air short. On occasion, he would answer the telephone by giving his name and simply saying 'pass your message'. You knew where you stood: your conversation would be brief, if not terse, but to the point.

He would so have approved of the Ugandan Excise Duty (Amendment) Bill. Put simply, it includes a proposal for a daily 4p tax on the use of social media platforms, which the Ugandan President thinks will discourage gossip.

It's difficult to argue with the President on his specific point, Yes, they encourage talking; none of us is entirely immune to them, and you will have your own lively views of their benefits and blights but social media also do much more.

We know, though, what our friend would have thought of the Bill: 'It's a start.'

www.accountancydaily.co/uganda-introduces-whatsapp-tax

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		SC - Supreme Court	IT - Income Tax	VAT - Value Added Tax
HMT - HM Treasury		UT - Upper Tribunal		

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