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1. General

1.1 Draft clauses published for Finance Bill 2019-20

The Government has published the draft clauses for the next Finance Bill, together with policy papers and explanatory notes. The final date for submitting comments on the draft legislation is 5 September 2019.

Most of these provisions follow on from previous announcements and consultation periods. Further explanation of some of these clauses is provided in the articles below.

- directors to be jointly and severally liable for tax on tax abusive insolvencies (see article 5.5): [www.gov.uk/government/publications/tax-abuse-using-company-insolvencies](http://www.gov.uk/government/publications/tax-abuse-using-company-insolvencies)
• tax exemption for Windrush Compensation Scheme payments:
  www.gov.uk/government/publications/windrush-compensation-scheme-payments-exemptions-from-
  income-tax-capital-gains-tax-and-inheritance-tax

1.2 HMRC publishes the new Investment Funds Manual

The new manual provides guidance on tax rules affecting investment funds and fund managers.

The Investment Funds Manual replaces and updates guidance previously found in the CT Manual, Offshore

www.gov.uk/hmrc-internal-manuals/investment-funds

1.3 Revenue Scotland loses appeal against daily penalties

Appeals by Revenue Scotland (RS) have been refused in two similar cases because it failed to prove
that it had made a decision to impose daily penalties. One point on each appeal did succeed: the
First-tier Tribunal for Scotland (FTTS) had erred in law in its interpretation of an administrative
provision. For daily penalties to be issued lawfully, a notice must be sent to the taxpayer specifying
the date from which the penalty ‘is’ payable, not the date from which it ‘would be’ payable.

The FTTS had dismissed daily penalties in respect of Land and Buildings Transaction Tax (LBTT) in two
cases. The first reason was that RS had failed to prove that a decision had been made to impose these
penalties; the statute does not allow for automatic imposition. The second reason was that RS had not
issued a notice stipulating the date from which the penalties ‘would be’ payable. It was noted that this
would in fact be impossible, since RS cannot know daily penalties are in point, or even that a LBTT return
is overdue, until the return is filed. A summary of these cases can be found in article 1.1 of Tax Update
on 2 July 2019.

RS appealed these decisions to the Upper Tribunal for Scotland (UTS) on two grounds. First, it argued that
a ‘decision’ had been made to issue the daily penalties. Alternatively, the FTTS should have allowed RS to
produce such evidence, which it did not. The UTS disagreed; merely issuing a penalty is not in itself
evidence that a decision has been made, and under Tribunal procedure it was reasonable for the FTTS not
to request more evidence. Second, RS argued that that the FTTS had incorrectly interpreted the
requirement for a notice specifying the date from which the daily penalties are payable. The UTS agreed.
The notice is not a warning notice; it must state when the penalty ‘is’ payable from, not when it ‘would be’
payable from. It can therefore be issued after the date from which daily penalties are imposed. This
notice, however, cannot be given in the Penalty Assessment Notice - it must be issued before the Penalty
Assessment Notice. Although the FTTS had erred in law on one point, the appeals were denied.

Revenue Scotland v Begbies Traynor (Central) LLP [2019] UT 35 www.scotcourts.gov.uk/docs/default-
source/cos-general-docs/pdf-docs-for-opinions/2019-ut35.pdf?sfvrsn=0

Revenue Scotland v Michael Harrison and another [2019] UT 36 www.scotcourts.gov.uk/docs/default-
source/cos-general-docs/pdf-docs-for-opinions/2019-ut36.pdf?sfvrsn=0

1.4 Amendments to the General Anti-Abuse Rule (GAAR)

Draft legislation has been published modifying the General Anti-Abuse Rule (GAAR) rules to target
taxpayers who avoid providing information during the window for enquiry. HMRC will be able to
issue ‘protective GAAR notices’ if the information held is insufficient to decide whether or not to
open a full GAAR enquiry.

Currently, HMRC has 12 months to gather information and consider whether or not to challenge an
arrangement under the GAAR. Some taxpayers avoid giving HMRC the information necessary for it to make
this decision during this period. Draft legislation to be introduced in Finance Bill 2019-20 will tackle this
problem by allowing HMRC to give notice to a taxpayer that it is considering whether or not the GAAR will
apply, extending the period in which it can investigate before making a formal challenge.
The new protective GAAR notice will mirror the way in which normal enquiry notices work. Taxpayers will be able to appeal a GAAR adjustment for 12 months after the protective GAAR notice is issued, reflecting the current position where appeals cannot be made in the 12 months whilst HMRC carry out enquiries. It will apply to notices issued and adjustments made on or after Royal Assent. Other minor procedural and technical changes have been made.


1.5 Consultation opens on Double Taxation Dispute Regulations

HMRC is seeking responses to draft regulations that will implement the EU double taxation dispute mechanism.

The draft regulations would implement an EU Council Directive into UK law. That Directive provides for a strengthened dispute resolution mechanism to resolve differences between Member States over the interpretation and application of double taxation treaties. It applies to disputes in respect of income or capital earned in a tax year commencing on or after 1 January 2018, where the complaint was submitted on or after 1 July 2019. The regulations would enable taxpayers to bring complaints over double taxation to their national tax authority. The clearly defined time limits and recourse for taxpayers to apply to national courts to unblock proceedings are expected to improve certainty and efficiency. The consultation closes on 27 August 2019.

www.gov.uk/government/consultations/double-taxation-dispute-resolution-eu-regulations

2. Private client

2.1 Scope of CGT relief widened on loans to traders

The Government has widened the scope of the CGT relief available when loans to traders become irrecoverable. This relief will now also apply to loans made to individuals, partnerships and companies located outside the UK.

New loans to traders, made on or after 24 January 2019, may now qualify for CGT relief where the borrower is located anywhere in the world. Other conditions must also continue to be satisfied.

CGT relief on any loans made before 24 January 2019 will remain restricted to UK borrowers only.

This amendment to the legislation follows European Commission requests that the UK amend its legislation, on the basis that current rules breach the free movement of capital.


2.2 PRR - consultation response and draft legislation published

HMRC has published its consultation response and draft legislation on changes to specific elements of the private residence relief (PRR) rules. Most of the changes will apply from 6 April 2020. They include reducing the final period exemption from the current 18 months to 9 months and restricting the availability of lettings relief.

The consultation covered five specific areas. There was a variety of responses suggesting changes to the rules proposed. The legislation has nevertheless been drafted as originally proposed as follows:

• the final period exemption will be reduced from 18 months to 9 months. The special rules for those with a disability or those moving into care will not change;

• lettings relief will only be available to those who share occupation with a tenant. Currently, where there is just one lodger, this usually does not affect PRR and so there may be limited circumstances in which this relief will continue to apply. There are no transitional rules, so periods of letting before 6 April 2020 also fall within the new rules;

• there are two Extra Statutory Concessions (ESCs) of relevance to PRR. The Government is legislating them both. The first allows a late main residence election in specific circumstances. The second allows PRR where there is a short delay in the owner taking up residence; for example, where work on the house is undertaken before moving in. The draft legislation confirms that the limit will now be 24 months in all cases, whereas previously it was generally 12 months with an extension to 24 months, in some circumstances. It remains the case, however, that if this limit is exceeded, no PRR is available in relation to this period;

• where a property is transferred to a spouse, the current rules can produce unexpected results. The Government is reforming these rules so that the receiving spouse should always inherit the transferring spouse’s period of ownership and the use to which the property was put during that time;

• the benefit of job-related accommodation will be extended to Ministry of Defence (MOD) personnel who rent privately under a MOD scheme.

It is disappointing that the Government has not taken the opportunity to reform more widely an area of tax that can produce unfair results.


2.3 FTT opines on HMRC’s ‘Notice to File’ obligations

In two recent penalty appeal cases before the FTT, both judges observed that the computer evidence presented by HMRC to prove that notices had been sent to a taxpayer was inadequate.

In order for a late filing penalty for a return to be valid, HMRC must show that, on the balance of probabilities, the taxpayer received a valid notice to file. In two recent penalty appeals, HMRC’s only proof was a printout from the taxpayer’s Self-Assessment account, showing their current address and a notional date on which the notice had apparently been issued.

HMRC quoted a previous FTT decision that it was unreasonable to expect it to retain a paper copy of each notice, not least because of the environmental impact. In both of these cases, however, the FTT held that an electronic copy of the notice could be stored; and that an automated timestamp of the notional issue date (usually 6 April) is insufficient, given that the physical notices are never all issued on that single day.

These two cases were ultimately decided on other grounds, but the FTT’s rejection of HMRC’s computerised evidence of issuing a Notice to File could be significant in future penalty appeals, particularly where other grounds are not available.

Griffiths v HMRC [2019] UKFTT 424 (TC)
www.bailii.org/uk/cases/UKFTT/TC/2019/TC07239.html

Zurl v HMRC [2019] UKFTT 421 (TC)
www.bailii.org/uk/cases/UKFTT/TC/2019/TC07236.html

2.4 UK tax relief for losses on shares

The Government has widened the scope of the loss relief rules on shares for both income tax and corporate tax, to include shares in companies carrying on a business anywhere in the world and not just in the UK.

A disposal of qualifying shares made on or after 24 January 2019 may now attract share loss relief where the issuing company is located anywhere in the world. There will no longer be a requirement for the company to carry on its business wholly or mainly in the UK.

An additional reporting requirement will be introduced for the claimant to provide HMRC details of the tax residency of the company that issued the shares.
For share disposals made before 24 January 2019, loss relief remains restricted to shares in companies carrying on business in the UK.

This follows European Commission requests that the UK amend its legislation, on the basis that current rules breach the free movement of capital.


3. Trusts, estates and IHT

3.1 Additions to and transfers between excluded property trusts

Draft legislation has been published to restrict excluded property status for non-resident trusts where the settlor adds property after becoming UK domiciled or deemed-UK domiciled.

Under current law, assets in a non-resident trust are excluded property for IHT if the settlor was non-domiciled when the trust was established. HMRC’s view is that additions to the trust made by the settlor after becoming domiciled or deemed-domiciled are not excluded property, and so are within the scope of IHT.

The draft legislation reflects that view. It will apply as if it had always been in effect in relation to IHT charges arising from the date of Royal Assent of Finance Bill 2019-20.

Equivalent provisions are proposed for transfers between existing settlements, subject to exceptions where the transfer results from a beneficiary assigning an interest or the trustees exercising a power of appointment. This change addresses a decision in a recent tax case, Barclays Wealth Trustees (Jersey) Limited & Anor v HMRC, in which the CA found that transfers of property between excluded property settlements after the settlor became deemed UK-domiciled did not cause the property to become subject to UK IHT.

This measure will have effect from the date of Royal Assent in relation to property transferred between trusts on or after that date.


Barclays Wealth Trustees (Jersey) Limited & Anor v HMRC [2017] EWCA Civ 1512

4. PAYE and employment

4.1 HMRC loses another Media IR 35 case

The FTT has allowed an appeal by Paul Hawksbee’s personal service company in respect of his services provided to TalkSport Limited (TalkSport) the radio station. The FTT considered the hypothetical contract between the Mr Hawksbee and TalkSport and held that it was not one of employment. What was of interest in this case was that, unusually, the two judges in the case were unable to agree on the correct treatment, so the presiding judge had to use his casting vote. This illustrates the fine distinctions and lack of clarity in the area.

The court adopted the usual approach of reconstructing the hypothetical contract looking at the relevant criteria and approach to employment status. In particular they reviewed mutuality of obligation, control, and thereafter all the relevant features of the contract. Unfortunately the two judges were unable to agree on a joint analysis with Tribunal Judge Charles Baker producing a detailed rebuttal of his colleague Judge Thomas Scott concluding that the contract was not one of employment. This was appended as a dissenting judgement. Judge Thomas exercised his casting vote for the appellant.

Perhaps unsurprisingly, Judge Scott thought that increased clarity in the area from the Government was urgently needed, not least as they had been referred to over 50 cases said to be relevant.

Kickabout Productions Limited v HMRC [2019] UKFTT 0415


16/07/2019
4.2 Off-payroll working legislation published

*Following a consultation in 2018, draft legislation has been published that will extend the public sector off-payroll working reforms to medium and large companies. Amendments have been made to the draft provisions based on the responses to the consultation.*

These rules will place the responsibility for assessing an individual’s employment status and deducting the correct tax and NICs on medium and large employers, in line with the rules for the public sector. The tests in the *Companies Act 2006* will be used to determine the size of an employer. As suggested by responses to the consultation, unincorporated entities will have a simpler test: if turnover exceeds £10.2m the entity is within the scope of the rules. Other changes that have been adopted following the consultation include requiring clients to pass the status determination and reasons for the determination together down the contractual chain, as well as passing them directly to the worker. The option to make tax and NICs relief available where fee-payers pay into private pensions has been removed because the prevailing view was that there would be little take-up of the option. HMRC has also confirmed that it is working to improve the Check Employment Status for Tax tool to assist businesses implementing these reforms.


4.3 Government proposes temporary car benefit reductions

*The Government has set out proposed reductions in tax rates to be applied to company cars during 2020/21 and 2021/22. Legislation will be introduced to enact the reductions in the next Finance Bill.*

A new worldwide vehicle test procedure, linked to CO2 emissions, will be applied to vehicles first registered from 6 April 2020. Company car tax may increase, as it is anticipated that the new test will result in higher CO2 emission levels.

In an effort to balance climate change commitments with consumer protection, the Government has confirmed that:

- for cars first registered from 6 April 2020, the appropriate percentage when calculating the car benefit will reduce for most cars by 2% in 2020/21. It will then see an increase of 1% in 2021/22 and in 2022/23; and
- users of zero emission company cars will pay no company car tax in 2020/21. The appropriate percentage when calculating the car benefit will be 1% in 2021/22 and 2% in 2022/23.

The new company car rates for 2020/21 to 2022/23 are set out in Annex A to the response document. Legislation will be introduced in the next Finance Bill.

For cars registered before 6 April 2020, HMRC will continue to base company car taxation on the current test procedure.

The impact on vans is being considered separately.


4.4 Simplifying the tax system for self-employed and landlords of residential property

*The OTS has set out the scope of its latest project on simplifying tax reporting and payment arrangements for the self-employed and landlords of private residential property.*

The report will consider existing and new options for the self-employed and landlords of private residential property to report taxable income and pay tax. The objective is to consider whether or not the processes involved could be made simpler so that individuals can meet their tax obligations in a practical,
convenient and streamlined way. New options include reporting or paying tax taking place closer to real
time.
The review will be completed over the Summer, with a view to publishing an initial paper in the Autumn.
The paper will build on earlier work by the OTS regarding the impact of the platform economy and use of
technology on how people manage their tax affairs.


5. Business tax

5.1 Late capital allowances claim is not late if an enquiry is opened

The UT has upheld a decision by the FTT that capital allowances claims were made in time because
HMRC opened enquiries into those tax returns. The claims were made more than 12 months after the
tax return filing dates, which would have been out of time except that statute effectively extends
the time limit where an enquiry is opened after the first filing anniversary.

The taxpayer was a company that filed two CT returns more than 12 months late. Claims for capital
allowances were made in these returns. HMRC subsequently opened enquiries into the returns and denied
those claims on the basis that they were made too late. The taxpayer argued that the claims were in fact
made within the time limits specified in statute. Statute provides that a claim for capital allowances is to
be made by the last of four dates. These four dates include the first anniversary of the filing date of the
CT return, and 30 days after the date of the notice of amendment of an enquiry. The taxpayer argued
that, although the claims were made more than 12 months after the filing date, the fact that an enquiry
was opened brought the claims within the allowable time limits. Had HMRC not opened the enquiry, the
claims would have been out of time. HMRC could not deny the claims, however, without opening an
enquiry. The FTT had found for the taxpayer.

The UT agreed with the FTT: the words of the law are clear and unambiguous; a different meaning  cannot
be given to them. It also did not accord with the other provisions of the section to restrict the application
of that particular time limit. The UT rejected HMRC’s argument that to make a claim more than a year
late is equivalent to making no claim at all. The appeal was dismissed.

HMRC v Dundas Heritable Limited [2019] UKUT 0208 (TCC)
www.bailii.org/uk/cases/UKUT/TCC/2019/208.html

5.2 Draft legislation released for the Digital Services Tax

HMRC has published the draft legislation, consultation outcome and draft guidance for the new
Digital Services Tax, which will apply to revenue earned from 1 April 2020. The proposed legislation
imposes a 2% tax on the turnover of search engines, social media platforms and online marketplaces
to the extent that such revenue is derived from UK users.

The Digital Services Tax (DST) was announced in the 2018 Budget and the drafting process has been
informed by a consultation. The DST will apply to businesses with worldwide revenues of at least £500m
from digital activities, where at least £25m is derived from UK users. The first £25m of revenues derived
from UK users will be exempt from the DST. An alternative ‘safe harbour’ basis for calculation is also
available. This is intended to prevent the DST from disproportionately affecting business sustainability
where a business has low operating margins from providing in-scope activities to UK users.

Several points are yet to be finalised; a further technical consultation has been opened, which will close
on 5 September 2019. HMRC has stated that it expects to release further guidance at or close to Budget
2019.

The Government has reiterated its commitment to disapply the DST once an appropriate international
solution is in place. The OECD and EU have both developed DST proposals for an international framework
for taxing the digital economy.
5.3 Report finds that high CT rates are harmful to economic growth

A study commissioned by the European Economic and Social Committee has found that higher CT rates tend to have a negative impact on economic growth. This reduced investment in turn reduces the tax base and therefore lowers tax revenue.

The report analyses CT changes in developed economies from 1981 to 2014. The results of the study suggest that corporate taxation may be the most harmful form of taxation to economic growth. There has been no reduction in CT revenues over the past 40 years, and some countries that reduced their CT rates have experienced increased business investment as a result. The report notes that global CT rates have tended to converge at approximately 20%, and a reduction in the CT rate of 10% can increase annual economic growth by 1 - 2 percentage points.

5.4 Draft legislation allows deferral of CT on EU group asset transfers

New laws have been drafted that will allow companies to defer the payment of CT liabilities arising on intra-group transfers of assets within the EU and EEA for up to five years. This will bring the treatment of EU and EEA group companies in line with that of UK group companies.

The extension of deferred payments has been made following a FTT case decided earlier in 2019, Gallaher Limited v HMRC. A summary of this case can be found in article 5.1 in the 2 April 2019 edition of Tax Update. The FTT had ruled that the advantageous deferral available to UK companies amounted to an infringement on the Freedom of Establishment of companies resident in other Member States. Although the case is still subject to appeal, the new legislation has been drafted to remove uncertainty over the compatibility with EU law of the UK rules. Companies of all sizes will be able to defer payment of CT on profits or gains attributable to affected group asset transfers, for which the due and payable date has not yet passed. The rules will take effect from 11 July 2019, so they may apply to group asset transfers during accounting periods that ended on or after 10 October 2018.

5.5 Proposal to make directors liable for tax avoided through insolencies

Draft legislation has been published, which will make directors and other persons connected to a company jointly and severally liable for tax debts arising where insolvency is used to avoid tax. The measures would apply where corporate entities engage in tax avoidance, tax evasion or ‘phoenixism’, and where the individual is responsible for the tax abuse or received a benefit that, to his knowledge, arose from that tax abuse.

Following a consultation in 2018, draft legislation has been published that gives HMRC the power to make directors and other connected persons jointly and severally liable for certain corporate tax liabilities. This power is limited to circumstances where three conditions are met. First, the liability arises or is expected to arise from tax avoidance, tax evasion, repeated insolvency or a penalty for facilitating avoidance or evasion. Second, the company begins insolvency proceedings, or is expected to do so, so that some or all of the tax liability will be lost to HMRC. Third, the individual was responsible for the tax abusive actions of the company, or he received a benefit that was, to his knowledge, a result of those actions. The liability can be imposed on company directors, shadow directors and participators in the company. In respect of
‘phoenix’ companies, where a company is wound up and a new company carries on the same business, it also extends to persons who have any role in running the company and its affairs, whether directly or indirectly.

Taxpayers will have a right of appeal against this liability. The new rules are stated to take effect from the date of Royal Assent of Finance Bill 2019-20.


5.6 Assessments invalid where notice is sent three years late

The FTT has ruled that an assessment, which is otherwise validly made, will be out of time if it is sent to the taxpayer too long after it is made. No specific time limit was determined, but the assessments in question, which were sent at least three years after being made, were held to render the assessments out of time.

The taxpayers had all entered into separate stamp duty mitigation schemes in order to pay no SDLT on the acquisition of land on which SDLT would otherwise be payable. HMRC purported to raise assessments in respect of these transactions, but notices of these assessments were not sent to the taxpayers until at least three years after the acquisitions. The taxpayers argued that the assessments had not been validly made.

The FTT found that while issuing and serving an assessment is part of the procedure of an assessment, they can occur after the last lawful date for the making of an assessment. An assessment is ‘made’ when an HMRC officer acting as an HMRC officer decides to make an assessment and notes the necessary details in a reasonably permanent record held by HMRC. HMRC had, in this case, made assessments. Those assessments were held be in invalid, however, because they were served too late. The FTT ruled that the making and the notification of an assessment are part of a single assessing procedure and there must be proximity or nexus between the two steps. Otherwise, the protection of the time limit on assessments is illusory. Although no specific rule was determined to calculate the exact timeframe within which an assessment must be issued, three years was found in this case to no longer be proximate to the making of the assessments. The appeals were allowed.

Mitesh Kumar Kothari and others v HMRC [2019] UKFTT 0423 (TC)
www.bailii.org/uk/cases/UKFTT/TC/2019/TC07238.html

5.7 New rules for spreading accounting adjustments on leases

Draft legislation has been published that will amend the rules for spreading an accounting adjustment on the adoption of the lease accounting standard IFRS 16. The new provisions clarify that the spreading applies to all lessees adopting IFRS 16, regardless of when it is adopted.

The provisions governing the spreading of an accounting adjustment arising on the adoption of IFRS 16 were included in Finance Act 2019. Under the initial rules, there was some uncertainty as to whether or not spreading only applied where a company adopted IFRS 16 in the first period of account beginning on or after 1 January 2019. The amendments are intended to clarify that the spreading rules apply to all lessees adopting IFRS. Companies that adopted IFRS 16 early will be deemed to have adopted it in the first period of account beginning on or before 1 January 2019. The amendment will be treated as always having had effect.

The legislation is to be included in the next Finance Bill.

6. Tax publications and webinars

6.1 Webinars

The following client webinars are coming up over the next few months.

- 23 July 2019: Planning for the future
  https://smithandwilliamson.com/en/events?page=1

7. And finally

7.1 Summer Reading

It’s that time of the year, and And finally has been buzzing with discovering just the perfect beach reading for the summer holidays. We extend our particular thanks to our colleague Jane Duncan for introducing us to the murder mystery novels of the late Sarah Caudwell. These feature a sleuth who is an Oxford Professor of Medieval Legal History who is friendly with a group of young barristers in Lincoln’s Inn who feature in the adventures. Hardly our kind of stuff you might have thought, except that the first novel is deeply concerned with FA 1975, which is a good start and then with an Inland Revenue employee who happens to be spectacularly handsome - the Adonis of the first of the novels below. The second novel below features an offshore discretionary trust based in Sark (those were the days) and trustees’ tax residence and their shenanigans have an interesting influence on the outcome. It's as if they were written for us. We gobbled them up. We checked the legislative references and our joy was complete. The reference to the Capital Transfer Tax (CTT) transitional provisions in FA 1975 Sch 5 was worth the purchase money alone. They are delightfully written with a light touch, and, yes, even a non tax practitioner can appreciate their style and elegance. Enjoy!

Thus was Adonis murdered www.amazon.co.uk/Thus-Adonis-Murdered-Hilary-Tamar/dp/1780339275/ref=sr_1_1?keywords=sarah+caudwell&qid=1562854316&s=gateway&sr=8-1

The Sirens sang of murder www.amazon.co.uk/Sirens-Sang-Murder-Number-Hilary-ebook/dp/B009NESAEW/ref=sr_1_2?keywords=sarah+caudwell&qid=1562854367&s=gateway&sr=8-2

The shortest way to Hades www.amazon.co.uk/Shortest-Way-Hades-Hilary-Tamar/dp/1780339267/ref=sr_1_3?keywords=sarah+caudwell&qid=1562854425&s=gateway&sr=8-3

Glossary

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