

Tax Update

A round-up of recent issues

24 September 2019

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1. General

1.1 Sale of cricket ground freehold found to be of business

The sale of a cricket stadium to the cricket club that had previously leased has been held to be a transfer of a business with attached goodwill. The vendor had carried out activities connected to the venue, including catering, but HMRC had argued that these were merely ancillary to the disposal of land. The FTT found them to be significant and capable of independent operation.

The taxpayer had sold the freehold of Headingley Cricket Stadium to Yorkshire County Cricket Club, who had previously held just the lease. The question referred to the FTT was 'Did the sale involve a disposal of a business with attached goodwill or was there only a disposal of land with attached income streams?' A large CGT charge would arise only in the second case.

HMRC contended that there was no business. The stadium was leased to the club, and the activities of the taxpayer (catering, advertising, and hospitality) were merely ancillary to the land, incapable of separate operation. The taxpayer disagreed, as many staff were employed, and significant activities carried out. HMRC also argued that there had been no transfer, as the catering business was leased back to the taxpayer after the sale. The FTT did not uphold this, as the transfer and lease were clearly documented in the contracts.

The FTT held that there was a business, as, by analogy to a hotel business, the fact that it would not exist without the land did not mean that it was ancillary to the land. It found that, furthermore, significant goodwill attached to the business. A large client base and reputation had been built up, and this should not be subsumed into the value of the land. It was theoretically possible for the business to be transferred to another stadium, as it was attached to the staging of cricket matches, but not this particular stadium. The transfer was therefore that of a business, with attached goodwill, as well as the stadium.

The Leeds Cricket Football & Athletic Company Limited v HMRC [2019] UKFTT 568 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2019/TC07362.html

1.2 Liberal Democrat Conference: business tax reform plans

A paper passed at the September conference sets out plans for a full reform of business tax. Corporation tax would be replaced with a new 'British business tax' at 20%, and future tax policy would be set to allow longer term certainty for businesses.

At the Liberal Democrat Conference, which ended last week, a new policy paper was passed with a plan for the reform of business taxation in the UK. The paper notes the current problems and reasons why they feel it needs reform, and sets out principles for a new system.

The specific proposals are to replace corporation tax with 'British business tax' at a rate of 20%. This would be simplified, based on accounting profits with minimal adjustments. The capital allowances system would also be simplified, and the annual investment allowance and writing down allowances increased. The rules to determine where company profits are taxed would be reformed to prevent profit shifting.

On incentives, a standardised approach is envisaged, with clear support for early stage businesses and reduced opportunities for manipulation. Transparency on the tax paid and incentives claimed by large businesses are also supported.

The 2017 Manifesto commitment to increase all income tax rates by 1% remains in force.

www.libdems.org.uk/f7-business-tax-reform

1.3 Labour commits to abolishing non-domiciled status

The Shadow Chancellor has announced Labour plans to remove the separate tax regime for non-domiciled individuals resident in the UK. This would be implemented in the first Budget under a Labour Government. It was also a policy adopted in the 2015 Labour General Election campaign.

The Shadow Chancellor, John McDonnell, announced over the weekend that a Labour Government would abolish non-domiciled status for tax purposes in its first Budget, describing the status as a 'dodge'. Ed Miliband made a similar pledge in his general election campaign in 2015. The announcement ties into the general Labour tax policy of 'A fair taxation system', as they regard a separate taxation system for non-doms as unfair.

www.thetimes.co.uk/article/if-jeremy-is-hit-by-a-bus-the-next-labour-leader-should-be-a-woman-g7c0t0gdp

<https://uk.reuters.com/article/uk-britain-politics-labour-nondom/labour-government-would-abolish-non-domiciled-status-in-first-budget-idUKKBN1W60FZ>

1.4 HMRC agent update: Brexit edition

HMRC has published a special edition of agent update in advance of their anticipated Brexit date, with some guidance on the transition.

The update covers some post-Brexit procedures, and preparatory resources, with topics including:

- The available HMRC Brexit webinars
- Registering for an Economic Operator Registration and Identification number
- The transitional simplified procedures for imports
- National Insurance and social security contributions for overseas employees
- Changes to claiming VAT on business expenses

www.gov.uk/government/publications/agent-update-brexit-special

1.5 HMRC publishes the first edition of the Stamp Taxes Newsletter

The inaugural edition of the Stamp Taxes Newsletter has been published by HMRC. The newsletter will be published quarterly. It aims to provide the latest news and updates on SDLT, stamp duty and stamp duty reserve tax.

The first edition covers topics such as changes to HMRC's SDLT guidance, the outcome of a recent SDLT case and a brief update on the consultation on stamp taxes share consideration rules. It also reminds readers of several administrative errors that are commonly made when filing stamp taxes returns and making payment.

www.gov.uk/government/publications/stamp-taxes-newsletters/stamp-taxes-newsletter-september-2019

2. Private client

2.1 Owning shares in racehorses is not a commercial trade

A taxpayer who made losses on the sale of horses through shares he held in racehorse syndicates has been denied tax relief against his other income, as it was not a commercial trade. Shares in racehorses are specifically excluded from being trading stock in legislation, and the taxpayer's activities did not meet the criteria for trade.

The taxpayer bought and sold shares in racehorses and horse racing partnerships. He claimed losses made via these against the income from his professional self-employment for five years. HMRC denied the claims, and charged inaccuracy penalties, on the grounds that that he was not carrying on a commercial trade with a view to profit.

The taxpayer explained that he had been dealing in racehorses in this way for some years, and at the time he started claiming the losses he believed that he had the expertise to turn it into a business. After five years, with losses totalling £160,000, he decided to stop treating it as a commercial venture.

HMRC contended that racing is not a taxable activity. The majority of horses involved are not profitable, so the taxpayer could not have been trading commercially. Furthermore, the taxpayer was not involved in training the horses, nor in the decisions of when to buy or sell horses owned by the syndicates. The FTT agreed that 'dealer in thoroughbreds', the trade listed on the tax returns, was not an accurate description of the activities.

The FTT found that the taxpayer had not provided enough evidence of the losses for his appeal to succeed. In addition, as the legislation specifically excludes both racing animals and shares in racing animals from being trading stock, this activity could not be a trade. The lack of involvement with the horses, and lack of a business plan, also indicated that the taxpayer was not trading. The appeal was dismissed and the penalties for deliberate inaccuracy upheld.

Cliff v HMRC [2019] UKFTT 564 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2019/TC07358.html

2.2 Penalties upheld for late payment of advance payment notice

A taxpayer who failed to pay Partner Payment Notices (PPNs) has lost an appeal against the late payment penalties. His argument that the PPNs were invalid, as the notice to file the partnership return was computer-generated rather than issued by an individual HMRC officer, was also dismissed.

During the course of an investigation into a film partnership, HMRC issued one of the partners with PPNs requiring him to pay his share of the disputed tax upfront. He did not make the payments, challenging the PPNs, and was charged various late payment penalties, which he appealed to the FTT. There is no right of appeal against a PPN.

The taxpayer argued that the PPNs were invalid as the original notices to file the partnership returns were invalid. He contended under statute that notices to file are only valid if issued by an individual HMRC officer. These were computer generated, so the partnership returns were not statutory returns. The enquiry notices, and thus the penalty notices, were therefore invalid. HMRC did not agree that notices to file were invalid if computer generated.

The FTT agreed with HMRC that the PPNs were valid. The taxpayer submitted that he had believed them to be invalid at the time the penalties were charged, so the penalties should be cancelled. This was not found to be a reasonable excuse. The penalties were upheld.

Barrett v HMRC [2019] UKFTT 560 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2019/TC07353.html

3. PAYE and employment

3.1 FTT finds for HMRC in case against three BBC presenters

It has been reported that the FTT has ruled in favour of HMRC in the most recent case against freelance presenters. David Eaves, Tim Wilcox and Joanna Gosling were all engaged through personal service companies, but were found to have had employment relationships with the BBC. The presenters had, however, acted in good faith, so some of HMRC's determinations were out of time and therefore invalid.

The FTT is reported to have found that the mutuality of obligation between the presenters and the BBC and the control the BBC exercised over their activities amounted to an employment relationship. Consequently, the three presenters were caught by the IR35 legislation and should have calculated their tax liabilities on the basis that they were directly employed by the BBC. Only some of the determinations made by HMRC were valid; the enquiry period was limited to four years because the presenters had not

acted carelessly. This is the latest case in a series of recent disputes between HMRC and media personalities.

www.ftadviser.com/your-industry/2019/09/19/hmrc-wins-ir35-court-case-against-freelancers/

3.2 Loan charge review invites submissions of evidence

The loan charge review has requested documentary evidence from those interested in contributing. Any submissions must be made by 30 September as there is a mid-November deadline for the report.

The loan charge review reported last week has issued a call for supporting evidence. It plans to consider the publicly available information on the loan charge, but is interested in understanding the perspectives of a wide range of people. Any supporting documentary evidence should be provided by 30 September.

www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review

4. VAT

4.1 FTT allows American Express appeal on recipient of supply

An American Express company has successfully appealed against HMRC's decision to deny a claim for input VAT on supplies to group members. The recipient of the supply, which HMRC had claimed was located inside the EU, was held to be a non EU group company. The FTT followed the well-established approach of first examining the contractual terms between the parties and then comparing this to the commercial and economic reality.

The taxpayer was part of the American Express group, and issued American Express cards to customers. As part of its business, it supplied card payment services, which are exempt from VAT, to another group company. The company had claimed input tax on the supply on the grounds that the supply was to a group member located outside the EU. Input VAT on such a supply would be recoverable. HMRC denied the claim, arguing that the supply was made to a different group company that was in the EU. Input VAT is not recoverable on a specified exempt supply to an EU customer.

The FTT noted that there is no statutory rule for determining the recipient of a supply. It therefore followed the two-step process set down in common law: analyse the contractual terms governing the supply, then examine the economic and commercial reality of the arrangement. When considering the wording of the relevant contract, it found that there was a supply to the non-EU group company. It was not, as HMRC had argued, merely a conduit in an agency relationship. This was also evidenced in the commercial and economic reality of the transactions. It held that a supposed disparity in the consideration received by the taxpayer and other group companies supplying similar services did not prove the economic reality differed from the contractual terms. There are many commercial reasons for differences in pricing, particularly between connected companies. The fact that payment was settled by accounting adjustments to the inter-company balances rather than actual transfers of funds also did not affect this conclusion. This case reinforces the importance of contractual terms in determining the correct VAT treatment, and the need for these terms to be reflected in the conduct of the parties.

American Express Services Europe Limited v HMRC [2019] UKFTT 548 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2019/TC07342.html

4.2 Family assessment centre found to be an exempt supply of welfare services

The FTT has ruled in favour of HMRC, agreeing with its decision that a family assessment centre was an exempt supply of welfare services. The purpose of the centre was found to be both 'directly connected' and 'closely linked' to the care or protection of children. The FTT's analysis of the meaning of 'welfare services' provides some clarification on how the definition in EU law interacts with the definition in the UK legislation.

The taxpayer was a charitable trust that operated residential accommodation to assess and improve the parenting of at-risk children. It had treated its supplies as standard-rated. It applied to HMRC to recover

the input VAT. HMRC denied the recovery on the grounds that the trust was making exempt supplies of welfare services. The trust appealed against this refusal.

The decision of whether or not the trust was supplying welfare services turned on the extent of the connection between the supply and the care or protection of the children. The supply of the assessment centres was to the Local Authority, not to the children, but the result was the provision of protection for the children involved. Under EU law, the welfare exemption applies to supplies 'closely linked' to the protection of children. The UK legislation, however, requires the supply to be 'directly connected' to the care or protection of children. The FTT held that 'closely linked' is of slightly wider application than 'directly connected'. It looked to the 'essential purpose' of the assessment centres, which was found to be both closely linked and directly connected with the protection of children in its care. The trust was therefore making exempt supplies and could not reclaim the input VAT.

The Liliis Graham Trust v HMRC [2019] UKFTT 552 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2019/TC07346.html

4.3 HMRC updates VAT guidance for Brexit

HMRC has issued new guidance and updated existing guidance on how to comply with the VAT regime where the UK is no longer a member of the EU.

These publications provide information on how to operate VAT in the event that the UK withdraws from the EU. They are primarily focused on the changes that will be made to the compliance procedures that apply to businesses with EU customers, such as registration, refunds and payment processes.

Pay VAT when you sell digital services to EU customers after Brexit: www.gov.uk/guidance/pay-vat-when-you-sell-digital-services-to-eu-customers-after-brexit

Claim VAT refunds from EU countries after Brexit: www.gov.uk/guidance/claim-vat-refunds-from-eu-countries-after-brexit

Refunds of VAT for UK businesses buying from other EU countries: www.gov.uk/guidance/vat-refunds-for-uk-businesses-buying-from-other-eu-countries

Register for the VAT Mini One Stop Shop scheme: www.gov.uk/guidance/register-and-use-the-vat-mini-one-stop-shop

5. Tax publications and webinars

5.1 Tax publications

The following tax publications have been published.

- [Optional remuneration arrangements and p11d reporting](#)
- [Patent Box - what you need to know](#)
- [Structures and building allowances](#)

6. And finally

6.1 The real And finally

What comes last? An IHT charge, of course. We have been reading the ever-fascinating inheritance tax statistics, for this most political of taxes. In short, the news is IHT is all about your house. To 2016/17, the year of the report estates increased in value by £15bn and a huge proportion of this growth was residential property - some 80%. Surprisingly, however, the combined value of agricultural and business property relief fell by some 18% from 2015/16 (the AIM market contribution dropped by 25%). Charitable giving also nosedived by over 40% in the year. What can be going on to create such, comparative, stinginess?

From a political point of view, it is notable that the steepest fall in the proportion of deaths resulting in tax took place between 2006 and 2010 under the Labour Government and has risen in every year since. On other hand, the proportion is still well below its peak in 2006/7 (The change is due to the transferable nil rate band). Choose your political slant.

Men still get off IHT comparatively lightly compared to women because they have the good sense to die earlier.

It is a London and South East tax. These two regions account for 48% of the tax (see above, residential property).

Feel free to pick out the bones.

www.gov.uk/government/statistics/inheritance-tax-statistics-commentary?utm_source=2b2619d0-6120-480c-a78d-b701a470d539&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

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		

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