

Tax Update

A round-up of recent issues

29 October 2019

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1. General

1.1 2019 Budget delayed

The 2019 Budget, which had been scheduled for 6 November 2019, has been postponed. The new date has not yet been announced.

HMT has stated that the Budget has been delayed because the Government is pushing for a General Election on 12 December 2019. At the time of writing the date of any such election remains unclear.

www.thetimes.co.uk/edition/news/sajid-javid-seems-adrift-as-budget-is-pulled-by-those-in-the-loop-k7pcq8sr3#

1.2 Mel Stride elected as Chair of the Treasury Select Committee

Rt Hon. Mel Stride MP has replaced Nicky Morgan MP as the Chair of the Treasury Select Committee, effective immediately. Mr Stride had previously held the position of Financial Secretary to the Treasury.

He has announced that the Committee's current priorities include Brexit, the 2019 Budget and the appointment of the new Governor of the Bank of England.

It has been noted that Mr Stride faces a challenging task as the Committee will be reviewing the Disguised Remuneration Loan Charge that he was involved with at the Treasury. We wish him well in his new position.

www.parliament.uk/business/committees/committees-a-z/commons-select/treasury-committee/news-parliament-2017/new-chair-of-treasury-committee-chairs-comments-19-20/

1.3 Agent Update 74

The latest edition of Agent Update covers tax issues related to Brexit and recent changes in tax law.

This Agent Update includes practical information on social security contributions for employees and self-employed individuals working in the EU, EEA or Switzerland. It also provides:

- an overview of changes to the Short-term Business Visitor arrangements;
- details on the Employment Allowance for NICs;
- guidance on the interaction of PAYE Settlement Agreements with the Welsh rate of IT;
- guidance on tax codes for Scottish and Welsh employees;
- information on the delayed introduction of the VAT reverse charge for building and construction; and
- an overview of the forthcoming changes to the off-payroll working rules.

For further business information on Agent Update 74 see also article 5.1 on changes to processing of R&D relief payments and 5.2 on changes to Business Risk Review processes for Large Businesses.

www.gov.uk/government/publications/agent-update-issue-74

2. Private client

2.1 The FTT increases HMRC assessments on overvalued charitable gifts

Five taxpayers were found to have overstated claims for tax relief on gifts of shares to charities. An expert witness showed that the shares were worth less than both the taxpayers' valuations and HMRC's valuations. The taxpayers would therefore have paid less tax if they had not appealed the case.

The taxpayers had claimed tax relief in relation to gifts of shares in companies listed on the Channel Islands Stock Exchange to various charities. HMRC argued that the shares were placed on the stock

exchange at artificially high prices. Closure notices were issued that significantly reduced the amount of tax relief for each taxpayer.

The issue before the FTT was to determine the correct market value of the shares on the date on which they were gifted. The expert witness stated that the correct methodology was to assume the taxpayer was able to determine the actual market value of the company assets and that the lower values in that range applied. The FTT agreed: the expert testimony was unchallenged, and the prudent purchaser would have informed himself as to all relevant facts. The market value was therefore lower than that calculated by HMRC in the closure notices. The appeals were dismissed, and the FTT exercised its power to increase the assessment amounts in line with the expert evidence.

Vipin Patel and others v HMRC [2019] UKFTT 0620 (TC)

www.bailii.org/cqi-bin/format.cgi?doc=/uk/cases/UKFTT/TC/2019/TC07404.html

3. Trusts, estates and IHT

3.1 Exit charge on migration of trust

The FTT has found that the breach of EU law caused by imposing an exit charge on a migrating trust could be remedied by a conforming interpretation. It went on to find that there should be an option to permit payment by five equal instalments, without liability to interest.

Four trusts were created by the settlor in 1992 and the trustees were at the time all UK resident. In 2004, three new trustees were appointed, all resident in Cyprus. Only one original UK trustee remained, and at this point the trust ceased to be UK resident. The trustees were therefore deemed to have disposed of all their assets, namely shares, and CGT became payable accordingly. While this disposal was noted on the relevant tax return, the liability was not reported, and no tax was paid as the trustees claimed that the UK provisions imposing the liability are in breach of EU law.

The case was considered by the CJEU, who found that an exit charge on a migrating trust was incompatible with the principle of freedom of establishment, but only to the extent that immediate payment was required. This was the case even though the shares in question had in fact been sold before the due date for payment of the exit charge.

The case was referred back to the FTT, and it found that the breach of EU law is capable of remedy by a conforming interpretation. While various options had been put forward by HMRC and the taxpayer, the FTT found that the option to permit payment by installments was the most consistent with the UK's legislative regime. These should be five equal annual installments, without liability to interest, and early realisation of the assets would not affect the installment payments.

Trustees of the P Panayi A&M Trusts Nos 1-4 [2019] UKFTT 0622 (TC)

<http://financeandtax.decisions.tribunals.gov.uk/judgmentfiles/j11363/TC07406.pdf>

4. PAYE and employment

4.1 New policy paper on changes to the off-payroll working rules

HMRC has published a policy paper that sets out its position on the reforms of the off-payroll working rules.

The policy paper explains the background to the reforms and the alignment of the private sector rules with the public sector rules. It provides guidance on using the Check Employment Status for Tax (CEST) tool, and confirms that an enhanced CEST tool will be launched by the end of 2019. The paper also includes information on further support available from HMRC.

www.gov.uk/government/publications/hmrc-issue-briefing-reform-of-off-payroll-working-rules

4.2 HMRC to double its resources to tackle tax-avoiding intermediaries

In a discussion regarding the loan charge, HMRC has stated that it intends to double the resources allocated to tackling intermediaries involved in the 'avoidance supply chain'.

The statement was made by HMRC's Director General of Customer Compliance at the Treasury Select Committee evidence session on 22 October 2019. She was responding to a suggestion that some taxpayers were caught by the loan charge because of the actions of intermediaries that had promoted the schemes. The Committee had questioned what action HMRC was taking to pre-empt this behaviour by intermediaries. She also confirmed that HMRC currently has more than 100 investigations open into promoters of such schemes.

www.ftadviser.com/your-industry/2019/10/22/hmrc-clamps-down-on-tax-avoidance-intermediaries/

4.3 UT reviews control for the purposes of the intermediaries legislation.

Christa Ackroyd's personal service company has lost its appeal over PAYE and NIC on the provision of her services to the BBC. The appeal was on the narrow grounds that she was not under the control of the BBC and therefore, her arrangements were not employment. The UT dismissed the appeal, finding that the BBC did have sufficient control necessary for an employment relationship.

The intermediaries legislation, usually known as the IR35 legislation required that a hypothetical contract between the worker and the end user of the services was posited, and if that contract would be one of employment then the IR35 rules applied, and the personal service company was required to operate PAYE.

The taxpayer company accepted that two of the three planks needed for such a contract were present. These were mutuality of obligation and that the other provisions were consistent with it being a contract of employment. The company argued however that the second requirement, that the employee is sufficiently subject to the employer's control, was not present. One line of argument they used in court was that the BBC had control over the output of the services, but not on the input. The court did not accept this. In reviewing the FTT decision, it expressed some reservations of the previous decision but not enough to cause it to be changed and found it to be employment.

Christa Ackroyd Media Limited v HMRC [2019] UKUT 0326 (TCC)

https://assets.publishing.service.gov.uk/media/5db2ee88e5274a4aa7eafd5f/CHRISTA_ACKROYD_MEDIA_LTD_v_HMRC.pdf

5. Business tax

5.1 Changes to processing of R&D relief payments

From 1 October, the Business Tax & Customs area of HMRC will process payments in respect of R&D claims. These payments had previously been processed by the Wealthy & Mid-sized Business Compliance (WMBC) team.

Agent Update 74 includes details of changes to the HMRC team that processes payments relating to R&D claims. The WMBC team will retain responsibility for compliance and technical aspects of R&D relief. Telephone calls will largely now be handled by the Corporation Tax Helpline. The R&D technical helpline number (03000 123 3440) is still available, but is only a call back service. Technical queries can also be sent to rd.incentivesreliefs@hmrc.gov.uk.

www.gov.uk/government/publications/agent-update-issue-74

5.2 Changes to Business Risk Review processes for Large Businesses

From 1 October, the rating system for large businesses has been revised to include four rating categories and to introduce assessments on business behaviour. The changes are to enable large

businesses to have a better understanding of their risk rating and what they need to do to reduce the level of risk.

Agent Update 74 includes details of the new Business Risk Review+ (BRR+) process which has been introduced following public consultation and a pilot exercise involving 65 companies. HMRC has enhanced the rating system for large businesses which rates companies based on their behaviour and approach to paying tax. Under the new BRR+ process companies will be rated as either low, moderate, moderate-high or high-risk, compared to the current approach which only categorises companies as 'low risk' or 'non-low risk'. Assessments will be carried out on business behaviour across systems and delivery, internal governance and approach to tax compliance. HMRC has also defined what low risk looks like for each of these three distinct areas.

The Tax Compliance Risk Management Manual has been updated to reflect these changes.

www.gov.uk/government/publications/agent-update-issue-74

5.3 European Parliament resolution to publicise tax data of multinational enterprises

The European Parliament has adopted a resolution to make information about the turnover and tax liability of multinational enterprises available to the public. Disclosure of this information is already required under Country-by-Country reporting for groups with an annual global turnover of €750 million. Currently, these reports are only exchanged by governments; they are not publicly available.

This proposal was put forward by the EC in 2016. It requires large multinational enterprises to disclose information on their revenues and how much tax is paid in each EU Member State. It must be approved by the European Parliament and the European Council before it comes into force. Adopting the resolution is the first step in this approval process. EU countries have, however, struggled to agree on a position. The European Council is also questioning the legal basis for the proposal. The classification of the proposal as a single market issue or a matter of taxation will determine the procedures for enacting the legislation.

www.europarl.europa.eu/news/en/headlines/economy/20191017STO64562/tax-transparency-meps-deplore-council-s-lack-of-action-on-multinationals

6. Tax publications and webinars

6.1 Tax publications

The following Tax publications have been published

- [Entrepreneurs Relief - Avoiding the pitfalls](#)

7. And finally

7.1 If we can just enlarge...

Notwithstanding the obvious paradox, some weeks we wish we could write two And finally articles, and last week was one of them. We had urgent things to do last week, but this week we can belatedly revisit a truly delicious VAT case, and savour it as it deserves, at our leisure.

Regular readers know that VAT has a special place in our hearts: it never fails to satisfy. Last week's decision in *Immanuel Church v HMRC* was one of those cases, up there with Jaffa Cakes, Pasties, and Nesquik. The question was the VAT treatment of, let's keep it neutral, ancillary buildings next to a church. The question was, and we are not making this up, was the new building an extension, an enlargement or an annexe? Logicians among you will expect the answer is 'yes', as when you are asked if you would like beer or wine, so we'll make it harder. Which one was it? Because the VAT treatment was different. Really. Why? Because it had to be; in exactly the way that chocolate Nesquik VAT is different from Banana Nesquik VAT. And for exactly the same reason: because it's VAT.

www.bailii.org/uk/cases/UKFTT/TC/2019/TC07384.html

Glossary				
<i>Organisations</i>		<i>Courts</i>	<i>Taxes etc</i>	
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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