

Tax Update

A round-up of recent issues

26 November 2019

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1. General

1.1 Political parties' tax proposals have been published ahead of the General Election

Many of the political parties have published their manifestos, setting out the changes they propose making to tax policy. We have prepared our guide to the various parties' tax proposals, summarising the measures that will impact businesses and private clients, and this is available on our website.

At the time of writing we have seen manifestos for the Conservative Party, Labour Party, Liberal Democrat Party, Green Party of England and Wales, Plaid Cymru and a 'contract with the people' from the Brexit Party. The proposals put forward include major overhauls of long-established tax systems. A number of parties have focussed on simplifying certain areas of tax, such as by combining sources of income and applying single tax rates or allowances, and reforming various tax reliefs, such as entrepreneurs' relief. There are also themes around reducing business rates and introducing measures to ensure that landowners, rather than tenants, are subject to tax on the value of land. As with previous General Elections, tackling tax avoidance and evasion remains a key pledge for the main parties. For full details, see our dedicated Election 2019 website page.

<https://smithandwilliamson.com/en/insights-landing/election-2019/>

<https://smithandwilliamson.com/en/insights/conservative-manifesto-2019/>

<https://smithandwilliamson.com/en/insights/labour-manifesto-2019/>

<https://smithandwilliamson.com/en/insights/liberal-democrats-manifesto-2019/>

<https://smithandwilliamson.com/en/insights/brexit-party-contract-with-the-people-2019/>

<https://smithandwilliamson.com/en/insights/plaid-cymru-manifesto-2019/>

2. Private client

2.1 Taxpayers were entitled to rely on HMRC's representations to an industry body

A claim for enterprise zone allowances (EZAs) has been partially upheld. Although an element of the purchase price was strictly ineligible for relief, the UT found that relief should be given on the basis of legitimate expectation.

The two limited liability partnerships (the LLPs) had acquired an assignment of rights under a construction contract. Two data centres were constructed, but no tenants were ever found. The LLPs were denied EZAs on the purchase price.

The UT found that the LLPs were carrying on business with a view to a profit, even though their primary purpose was to obtain EZAs for their members. The LLPs should therefore have been treated as partnerships for tax purposes, and the expenditure had been made in time to qualify for EZAs. The sums paid, however, were not paid wholly 'for' the relevant interest in the sites. The consideration for rental support agreements qualified for EZAs; the consideration attributable to the expenses support arrangements, capital repayment support arrangements, and the arrangement fee were not. HMRC did, however, have to grant EZAs for the expenses support arrangements on the basis that the LLPs had a legitimate expectation that it would qualify. HMRC had set out its position on EZAs in correspondence with an industry body, and knew that this correspondence would be relied upon by investors. Those representations were clear, unambiguous and devoid of relevant qualification. The LLPs had rightly understood that HMRC would not deny EZAs on elements of a purchase price that were paid 'for' rental support agreements. The expense support arrangements also fell within this meaning. The UT found no good or proportionate reason to allow HMRC to resile from its guidance.

The Queen (oao Cobalt Data Centre 2 LLP and others) v HMRC [2019] UKUT 342 (TC)

www.bailii.org/uk/cases/UKUT/TCC/2019/342.html

3. Business tax

3.1 Enterprise Investment Relief denied on preferential shares

The FTT has upheld HMRC's decision to refuse to authorise an application for the Enterprise Investment Scheme (EIS). One class of the company's shares had an excluded preferential right to dividends.

The company had obtained non-statutory advanced assurance from HMRC that EIS authorisation would be granted. The authorisation was denied, however, on the basis that excluded preferential rights were attached to one class of shares. The B shares were entitled to 44% of the distributable profits in preference to the other shareholders. The FTT found that the profit allocation did not disqualify the company from the EIS; the right was fixed and could not be altered by a director or member. The Articles of Association were, however, silent on the date of payment and suggested that payment in stages was possible. The date on which the dividends were payable was therefore held to be dependent on the decision of the company, a shareholder or some other person. The appeal was dismissed.

Foajit Limited v HMRC [2019] UKFTT 0694 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2019/TC07467.html

4. VAT

4.1 UT clarifies the application of the financial services exemption

The UT has agreed with a FTT decision to deny VAT exemption to a loan account administrator. It examined the difference between deposit, current and loan accounts, and clarified that withdrawals must be possible for an account to be one of the former two account types.

The taxpayer provided loan account administration services to a bank as an undisclosed agent. The FTT had ruled that the taxpayer's supply did not qualify for a VAT exemption. Although the transactions fell under the definition of 'transactions concerning payments', they also fell within the carve-out for debt collection. The supply was therefore taxable.

The UT upheld this decision. First, the taxpayer did not qualify for the financial services exemption because the loan accounts it administered were not current or deposit accounts. For an account to be a current or deposit account, the customer must be able to deposit and withdraw funds in varying amounts. Since the accounts administered by the taxpayer did not allow for withdrawals, the supply did not fall within the exemption. Second, although the overall transactions were transfers concerning payments, transfers or debts, the taxpayer's role in those transactions was limited. The taxpayer merely passed on information to enable the transfer, it did not effect the transfer.

The UT received an unofficial translation of the CJEU decision in the *Cardpoint* case before the decision was published. It was satisfied that its decision was consistent with the CJEU's decision in that case. This is one of many decisions regarding the availability of the exemption in such circumstances. It is very difficult to see that any party other than a bank itself can benefit.

Target Group Limited v HMRC [2019] UKUT 0340 (TCC):
www.bailii.org/uk/cases/UKUT/TCC/2019/340.html

Case C-42/18 Finanzamt Trier v Cardpoint GmbH: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62018CC0042>

5. And finally

5.1 Rabbiting on

It's not often we take a little bit of an issue with the CIOT but we need to pick up last week's Press Release on good political policy making. What? Are we objecting to apple pie? Well, we could, we think, make a case that wanting tax law that was Clear Certain Equitable Just Accessible Joined-up Inclusive is all very well, right up to the moment you try to do it thoroughly in a tax context. No; we'll live with that. And what is the position if being clear certain and simple, means you cannot be equitable? No; we'll live with that too.

It's just the rabbits. Politicians should avoid 'rabbit out of the hat' tax policies. Why? We're not talking nasty bombshells; we are talking nice fluffy white rabbits. Who hasn't enjoyed Budget rabbits? And which Chancellor is really going to give up the opportunity for so much prestidigitatory cleverness and fun? No one minds unexpected pleasant surprises, even when, in tax terms, they turn out a bit hasty or daft: like the rabbits they are. We love them. Rabbit on.

www.tax.org.uk/media-centre/press-releases/press-release-don%E2%80%99t-forget-principles-good-policy-making-election

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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