Smith & Williamson

Tax update

A round-up of recent issues

31 March 2020

1. General

1.1 COVID-19 hub

Our Coronavirus hub is designed to answer your key questions and will be updated regularly over the next few months. It contains a number of detailed articles on the measures introduced to help with the financial impact of COVID-19.

1.2 Changes to HMRC and RS procedure during the COVID-19 disruption

HMRC and RS have changed some tax administration processes in response to limited access to postal services.

The changes include:

- applications for non-statutory clearance are now to be submitted by email. HMRC currently cannot handle applications made by post;
- stamp duty payments must be made electronically, and notified to HMRC by email rather than by post;
- applications for stamp duty reliefs, exemptions and opinions must be made by email rather than post;
- original copies of stock transfer forms should no longer be sent to HMRC in the post. Instead, electronic copies should be email to HMRC; and
- RS currently cannot accept paper LBTT returns or paper repayment claims in respect of the Additional Dwellings Supplement. Taxpayers should use the Scottish Electronic Tax System instead.

Non-statutory clearance applications: *www.gov.uk/government/publications/non-statutory-clearance-service-guidance-annexes*

How to pay stamp duty: *www.gov.uk/guidance/pay-stamp-duty*

Relief from stamp duty when documents effect intra-group transfers of stock or marketable securities: *www.gov.uk/government/publications/relief-from-sd-when-documents-effect-intra-group-transfers-of-stock-or-marketable-securities*

Stamp Duty: reliefs and exemptions on paper shares: *www.gov.uk/guidance/stamp-duty-reliefs-and-exemptions-on-paper-shares*

Stamp Duty: getting an opinion about a payment or penalty: *www.gov.uk/guidance/stamp-duty-getting-an-opinion-about-a-payment-or-penalty*

Stamp Duty and Stamp Duty Reserve Tax: transfer schemes of arrangement: *www.gov.uk/government/publications/stamp-duty-and-stamp-duty-reserve-tax-transfer-schemes-of-arrangement*

Completing a stock transfer form: *www.gov.uk/guidance/stamp-duty-on-shares*

RS COVID-19 news: *www.revenue.scot/news/covid-19*

1.3 All FTT proceedings stayed

FTT proceedings have effectively been suspended until 21 April. Time limits in current proceedings are extended by 28 days.

Due to the pandemic, the Chamber President of the FTT has given directions that all FTT proceedings are stayed for 28 days from 24 March 2020. All time limits in current proceedings are extended by the same period. This is further to previous measures such as telephone hearings and judges working from home.

www.tax.org.uk/policy-technical/technical-news/covid-19-%E2%80%93-first-tier-tribunal-tax-chamber-practice-statements-and

1.4 New COVID-19 helpline telephone number for businesses

HMRC has changed the telephone number of its COVID-19 helpline for businesses and the self-employed. It is now 0800 024 1222.

The telephone number has been changed to accommodate an increased volume of callers. Calls made to the old telephone number will be redirected to the new one. The helpline is open Monday to Friday, excluding bank holidays, from 8am to 4pm.

www.gov.uk/government/news/tax-helpline-to-support-businesses-affected-by-coronavirus-covid-19

1.5 Revenue Scotland cuts late payment interest to 0.1%

Following the second base rate cut RS will charge late payment interest at 0.1% from 25 March.

Following the most recent Bank of England rate cut to 0.1%, RS has reduced its late payment interest rate to match. This applies from 25 March. On 17 March the rate was cut from 0.75% to 0.25% due to the previous base rate cut. The reduction to 0.1% brings RS in line with HMRC.

www.revenue.scot/news/news/revenue-scotland-amends-interest-rates-line-bank-england-rate2

1.6 HMRC interest rates amended

The rates for late tax payments changed on 30 March. The main rate used is 2.75%, but this differs for underpaid quarterly instalment payments.

HMRC has published full details of the new interest rates that will be charged on late tax payments from 30 March. For most taxes this is 2.75%, but for underpaid quarterly instalment payments rate is 1.1% from 30 March, and 1.25% from 23 March to 29 March. The repayment interest rate remains at 0.5%.

www.gov.uk/government/publications/rates-and-allowances-hmrc-interest-rates-for-late-and-early-payments/rates-and-allowances-hmrc-interest-rates

2. Private client

2.1 Making tax digital for income tax

Further details about making tax digital (MTD) for income tax have been released. Using this system is currently optional.

HMRC has published more details about how MTD for income tax will work. As part of the expansion of digital services, HMRC plans to make this compulsory for landlords and the self-employed, though this is not expected to be before April 2021. The system is however open for registrations, and taxpayers can be signed up by their agents or sign up themselves.

Instead of a yearly self-assessment return, MTD will require taxpayers to keep digital records, and submit them to HMRC quarterly, as well as filing a yearly confirmation. Tax payment dates are not expected to change.

www.gov.uk/guidance/follow-the-rules-for-making-tax-digital-for-income-tax

2.2 Chancellor announces support package for the self-employed

After some pressure, the Chancellor has announced measures to support the self-employed that are roughly on par with the support offered to employees. They will however be permitted to continue trading while claiming the support.

Those who are self-employed, and have lost income due to COVID-19, may be eligible for a taxable cash grant from the Government. This is broadly available to those with trading profits under £50,000, and will be up to 80% of average monthly earnings, capped at £2,500 per month.

Only those who were shown as self-employed on their 2018/19 tax returns will be eligible, but if they have not yet filed the return they have until 23 April to file if they wish to claim income support. The scheme will run for three months initially, and payments are expected to be made in June.

www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme

2.3 Taxpayers warned over triggering high income child benefit charge

The Low Incomes Tax Reform Group (LITRG) has warned that taxpayers accessing their pension funds to aid cashflow may trigger tax charges.

The LITRG notes that, although some taxpayers are eligible to draw cash free lump sums from their pension, drawing a taxable element can affect tax on the rest of your income. if this takes taxable income over £50,000, the high income child benefit charge is triggered for those claiming child benefit.

The threshold at which child benefit starts to be clawed back, £50,000 is the same as the threshold above which self-employed trading profits are too high to qualify for income support under the new COVID-19 measures. It is also the point above which higher rate income tax applies, raising questions about the combined impact of these and other thresholds on a subset of taxpayers.

www.litrg.org.uk/tax-guides/coronavirus-guidance/coronavirus-taking-money-your-pension

www.accountancydaily.co/covid-19-taxpayers-urged-weigh-savings-withdrawals

2.4 Losses under derivative contract scheme found not to be trading

The FTT has found for HMRC in a case involving a complex scheme of losses made under derivative contracts financed by loans. The arrangements were found not to amount to a trade, and would not have been on a commercial basis if they had been a trade.

The taxpayers entered into contracts, which amounted to bets on whether the value of the FTSE 100 would be above or below a set point at a set time. Their investments were largely funded by interest-free loans with up to 50 year terms. The contracts resulted in losses, which the taxpayers claimed to set against income as losses arising from their trade in derivatives. HMRC contended that the arrangements did not amount to a trade.

The FTT considered the arrangements in relation to the badges of trade and found that, although the activities did involve speculation, this did not amount to a trade. Furthermore, the basis on which the arrangements were carried on was not commercial nor with a view to a profit. It considered the taxpayers' previous activities. Each had made purchases and sales of low value derivatives in their own names prior to entering the main scheme, but this was not held to amount to ongoing trades. In addition, the losses had not been calculated under generally accepted accounting practice.

Sherrington & Ors v HMRC [2020] UKFTT 128 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2020/TC07629.html

3. PAYE and employment

3.1 New guidance issued on the Job Retention Scheme

HMRC has published guidance on the Job Retention Scheme (the Scheme) to support businesses affected by COVID-19. It confirms that payments under the Scheme are chargeable to either IT or CT as business income.

Under the Scheme, the Government will pay up to 80% of an employee's wages where the employee is on furlough. The support is capped at £2,500 per month, plus employer's NICs and minimum auto-enrolment employer pension contributions on that sum. The guidance explains which employers are eligible for the Scheme and how much financial support they can claim from the Government. It confirms that the payments should be treated as taxable income of the business. This substantially reduces the benefit to the business, which is likely to be subject to 19% CT or marginal IT rates on any amounts received.

The guidance also provides information on how the Scheme operates in respect of public sector workers, individuals on maternity leave, and those made redundant after 28 February 2020. Payments under the Scheme can be backdated to 1 March 2020 or the date the employee was put on furlough, whichever is later. IT and NICs will apply to these wages in the usual way.

www.gov.uk/guidance/check-if-you-could-be-covered-by-the-coronavirus-job-retention-scheme

www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme

https://smithandwilliamson.com/en/insights/covid-19-self-employed-income-support-scheme/

4. Business tax

4.1 Business rates holiday extended to more businesses

The Government has announced that the 12 month business rates holiday is now available to estate agents, lettings agents and bingo halls.

The exemption from business rates for 2020/21 was previously available to businesses in the retail, leisure and hospitality industries. It has now been extended to estate agents, lettings agents and bingo halls that have closed as a result of COVID-19 measures to stop the spread of the virus.

www.gov.uk/government/news/covid-19-estate-agents-lettings-agencies-and-bingo-halls-to-pay-no-business-rates-this-coming-financial-year

4.2 Expenses of employees working from home

HMRC has published guidance on the tax treatment of expenses related to employees working from home.

Many employees are working from home as a result of the spread of COVID-19. Businesses and individuals are therefore likely to have incurred additional expenses to enable work to be carried out remotely, such as broadband, laptops and office supplies. The new guidance clarifies whether or not such expenses are taxable benefits for the employee. It also explains how to report these expenses on a PAYE Settlement Agreement.

www.gov.uk/guidance/check-which-expenses-are-taxable-if-your-employee-works-from-home-due-to-coronavirus-covid-19

4.3 FTT rules against a claim for cross-border group relief

Seven companies have been denied cross-border group relief (CBGR) by the FTT following rulings by the CJEU in other cases. The CJEU has clarified that CBGR is only available where the intermediate companies linking the loss-making company to the claimant are resident in the same EU Member States as the loss-making company.

The taxpayers were profitable UK companies within a large multinational group with a US ultimate parent company. A Danish group company made significant losses. The taxpayers made CBGR claims of £228.7m over the three years to 31 December 2003. The primary issue was that the UK companies and the Danish company were indirectly linked through the Danish company's immediate parent, which was resident in Luxembourg.

HMRC argued that CBGR was not available based on two recent rulings by the CJEU. The cases of *Holmen* and *Memira* refined the concept of CBGR and the requirement for losses to be 'final' as established in *Marks & Spencer*. In these two cases, it had been found that CBGR is not available where the intermediate companies linking the claimant and the loss-making company are not resident in the same Member State as the loss-making company. This restriction was deemed necessary to prevent double use of losses and cherry-picking of the jurisdiction in which the losses would be relieved. Since the immediate parent of the Danish loss-making company was resident in Luxembourg, the claims for CBGR were denied.

The FTT went on to rule on several other issues, but this did not change the outcome of the case. It found that European law was not directly engaged in this case, and that CBGR was also not available because the losses were not definitive at the date of the claim.

Esso Exploration and Production Limited and others v HMRC [2020] UKFTT 139 (TC):

www.bailii.org/uk/cases/UKFTT/TC/2020/TC07620.html

Skatteverket v Memira Holding AB C-607/17: *http://curia.europa.eu/juris/liste.jsf?num=C-607/17*

Skatteverket v Holmen AB C-608/17: *http://curia.europa.eu/juris/liste.jsf?num=C-608/17*

Marks & Spencer plc v Halsey C-446/03: *https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A62003CJ0446*

5. VAT

5.1 HMRC issues guidance on VAT deferral

A deferral of VAT payments for all businesses was announced as part of the COVID-19 economic support package. Guidance on the deferral has now been published.

The deferral applies to all payments due from 20 March 2020 to 30 June 2020. The deferred liabilities will be due for payment on 31 March 2021. The guidance confirms that businesses do not need to notify HMRC of their decision to defer payment. HMRC will not charge penalties or interest on deferred payments, but VAT returns must be submitted as usual. The deferral does not apply to payments under the VAT Mini One Stop Shop scheme.

www.gov.uk/guidance/deferral-of-vat-payments-due-to-coronavirus-covid-19

5.2 Disapplication of an option to tax

The UT has upheld an FTT decision that an option to tax (OTT) was not disapplied under anti-avoidance legislation. It clarified that the correct test to apply in regard to the anti-avoidance provisions is to consider the grantor's intention at the time of the grant.

The taxpayer sold a property that it had previously opted to tax, but failed to charge VAT on the disposal. It argued that the OTT should be disapplied under the complex anti-avoidance legislation such that no VAT was due on the sale. The property was let out to a connected party that did not occupy the property for wholly eligible purposes, which, the taxpayer argued, meant that the OTT should be disapplied. The issue was complicated by the circular argument found in the OTT anti-avoidance rules. If the OTT is disapplied, the supply becomes exempt. The property is then treated as a capital asset, so it no longer falls within the anti-avoidance legislation. The OTT is therefore effective, and the argument begins again.

The FTT had ruled that the supply was taxable by virtue of the original option. The UT agreed with the FTT, clarifying that the anti-avoidance rules must be applied at the time of the grant. At that point, the taxpayer did not expect that the sale would put the purchaser in possession of a capital asset. The OTT was therefore not disapplied, and the appeal was dismissed.

David Moulsdale t/a Moulsdale Properties v HMRC [2019] UKUT 72 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2020/72.pdf

5.3 Making Tax Digital: deadline extensions

HMRC has confirmed that the deadline for implementing digital links for Making Tax Digital (MTD) for VAT has been delayed to 1 April 2021.

This is an additional measure to support businesses affected by the COVID-19 disruption. All businesses will now be required to have implemented digital links by their first VAT return period starting on or after 1 April 2021. For most businesses, this is a delay of one year from the original deadline of 1 April 2020.

https://ion.icaew.com/taxfaculty/b/weblog/posts/covid-19-hmrc-extends-mtd-digital-links-deadline-until-

6. And finally

6.1 Keeping calm, carrying on

These past few weeks have seen the most dramatic changes to daily life that most of us have experienced in our lifetimes. From social distancing and Skype meetings to shortages of tinned tomatoes and toilet paper, we are facing a brave new world of uncertainties. But while COVID-19 may have overhauled our working lives – and, to some extent, the regular functioning of the entire world – it cannot, apparently, defeat the inexorable administrative functioning of HMRC.

Last week, between new COVID support guidance, HMRC also published an updated farm stock valuation helpsheet for 2019/20, and added 'IFRS' to the abbreviations list in the Corporate Intangibles Research and Development Manual. The public health crisis has not prevented the publication of the synthesised UK/Cyprus Double Taxation Agreement, which simply combines into two existing documents into one. And despite all the current travel restrictions, HMRC has provided us with the updated scale rate expenses for accommodation and subsistence for employees who travel outside the UK.

It is comforting to know that not even a global pandemic can stand in the way of HMRC's administrative process.

HMRC 1 - 0 Coronavirus

www.gov.uk/search/all?organisations%5B%5D=hm-revenue-customs&order=updated-newest

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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