

Tax update

A round-up of recent issues

7 April 2020

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1. General

1.1 Tax Update and Easter

Tax Update will be taking a break next week for the Easter holiday.

The next issue will be on 21 April. We wish you a safe, healthy and happy Easter holiday.

1.2 Happy New Tax Year!

Monday 6 April marks the start of the 2020/21 tax year, and the time to start thinking about filing your 2019/20 tax return. A number of changes have now come in, including major changes for those selling UK residential property.

Monday 6 April marked the start of the 2020/21 tax year, and a number of new measures have been introduced from then or from 1 April for companies. The major changes are:

- A new 30 day reporting and payment deadline for sales of residential property.
- Corporate non-resident landlords are now within the charge to corporation tax.
- Increases to various rates and allowances, including the final planned increase in the residential nil rate band for IHT.
- Yearly pension contribution limits for high earners have changed.

1.3 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.



1.4 Global responses to the COVID-19 economic crisis

The OECD has compiled a database of the measures implemented by tax authorities in response to the COVID-19 crisis.

The database provides a high-level overview of the emergency tax measures in force in different countries. It contains data from both OECD member countries and non-member countries.

www.oecd.org/tax/tax-policy/tax-database/

2. Private client

2.1 HMRC refused permission to appeal 'staleness' decision

In a case where the FTT cancelled 'stale' assessments, it has refused HMRC permission to appeal, as regardless of HMRC policy, staleness is currently valid legal concept, and it is open to the courts to act on it.

Recently, the FTT cancelled assessments for over £140,000 on a taxpayer, on the grounds that the discovery was 'stale'. The closure notices were issued over two years after the discovery was made, so although the taxpayer did not raise the staleness issue, the FTT found the assessments invalid on that ground.

The FTT has now refused HMRC permission to appeal this decision. HMRC's application was made on the grounds that the discovery was not stale as staleness cannot apply to discovery assessments, that the FTT did not explain its decision to find it stale, and that it was not open to the FTT to find it stale. HMRC acknowledged that the first ground was contrary to the current state of the law, so it was refused. The other grounds were also refused, as the judge considered that the explanation given was adequate, and that the FTT had acted within its powers.

If HMRC wishes to pursue its appeal, despite the refusal from the FTT, it can apply to the UT for permission to appeal.

Bashir Ahmed Jafari v HMRC [2020] UKFTT 134 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2020/TC07623.html

2.2 Penalties cancelled by FTT based on HMRC guidance

The FTT has cancelled penalties for a taxpayer who failed to notify liability for the high-income child benefit charge (HICBC). HMRC guidance for when the penalties would be cancelled applied to him, as his income had only exceeded the threshold after the charge was introduced.

In 2018, HMRC alerted the taxpayer to the fact that his wife had received child benefit, though his income was too high for them to be fully eligible for the benefit. He accepted the assessments, but appealed against the penalties on the grounds that he was unaware of the HICBC. He had never previously needed to complete a return, as all his tax was deducted at source under PAYE. He also noted that as his income had only exceeded the threshold after the introduction of the HICBC the latest HMRC guidance implied that he should not be charged penalties.

HMRC contended that the HICBC had been introduced with a publicity campaign, and that they had a record of a standard letter sent to the taxpayer when it was introduced telling him to check whether or not he was liable. It argued that the guidance did not apply to him due to the issue of the letter, though the taxpayer stated that he had not received the letter.

The FTT concluded that the taxpayer clearly fell within scope of the HMRC guidance for when penalties would be cancelled, as the exclusion only applied to those liable for HICBC at the time the letter was received. The taxpayer became liable for the charge in the following year, so the FTT cancelled the penalties.

Clarke v HMRC [2020] UKFTT 144 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2020/TC07637.html

2.3 NRCGT: concessionary treatment for double tax treaty relief

HMRC has updated its non-resident CGT (NRCGT) guidance to note that it is applying concessionary treatment where the disposal has an 'appropriate connection to a Collective Investment Vehicle (CIV)'. This will exempt the requirement to file a NRCGT return simply to make a treaty claim to double tax relief.

Generally, under NRCGT, a return needs to be filed and payment made within 30 days of completion, regardless of whether or not a gain arises. There is however a specific exemption for disposals of interests in property-rich CIVs, and broadly there is no filing requirement where there is no liability to CGT. Where treaty relief applies to exempt the gain from UK tax, the treaty relief strictly still needs to be claimed on the NRCGT return. HMRC's concessionary treatment will mean that a NRCGT return will no longer be required simply to claim this treaty relief. This concessionary treatment is subject to review.

www.gov.uk/guidance/capital-gains-tax-for-non-residents-calculating-taxable-gain-or-loss#disposals-to-which-relief-is-available-under-a-double-taxation-treaty

3. Trusts, estates and IHT

3.1 IHT charge on gift to political party compatible with EU law

The UT has found that UK legislation restricting the IHT exemption on gifts to political parties to those parties that met the criteria is compatible with the European Convention on Human Rights (ECHR). Although parties without MPs elected at the last election were treated differently, this was not discrimination on the grounds of political opinion, but a legitimate means of giving tax relief to parties participating in Parliamentary democracy.

Generally, gifts to political parties are exempt from IHT, but this is only the case if the party meets criteria set out in legislation. The taxpayer, via a company, made donations to a party that did not meet them, as none of its candidates had been elected to Parliament at the last general election. HMRC duly

charged IHT on the donations, and the taxpayer appealed, citing discrimination on the grounds of his political opinions, though he accepted that tax was due under the legislation. The FTT dismissed his appeal, finding that although the legislation was not compatible with his ECHR rights, the tribunal had no power to rewrite the legislation.

The UT also dismissed his appeal, the grounds being that the FTT was in error in stating that it could not rewrite the legislation, but went further, finding that the differential treatment of political parties was compatible with the ECHR. The aim of the IHT legislation is '*to provide tax relief on donations to political parties that are participating in Parliamentary democracy by being represented in the House of Commons, and not in respect of individual independent MPs*'. The exemption was found to be a proportionate way of achieving this legitimate aim, so IHT remained due. In reaching this conclusion, the UT looked at records of Parliamentary debates from the time the legislation was brought in.

Banks v HMRC [2019] UKUT 0024 (TCC)

https://assets.publishing.service.gov.uk/media/5e8b3f8486650c18c82f0702/Arron_Banks_v_HMRC.pdf

4. PAYE and employment

4.1 HMRC Spotlight 54 on tax avoidance promoters targeting returning NHS workers

HMRC repeats its warning about PAYE avoidance schemes using umbrella payroll companies in the light of scheme promoters targeting returning NHS workers.

HMRC has become aware of promoters targeting workers returning to the NHS under the current emergency for the use of avoidance schemes. Some of these are like the loan schemes recently the subject of Sir Amyas Morse's recent review, while others will use a similar structure still involving an umbrella PAYE payroll company but with other forms of allegedly non-taxable payment such as shares and various capital advances.

HMRC advises that those offered the scheme should check their tax on its online tax calculator and to ask for a breakdown of deductions being made to see if tax and NIC is being deducted.

Realistically, however, in our view, returning employees, and others would be best advised simply avoiding these particular schemes altogether.

www.gov.uk/guidance/tax-avoidance-promoters-targeting-returning-nhs-workers-spotlight-54

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854387/Independent_Loan_Charge_Review_-_final_report.pdf

www.gov.uk/guidance/hmrc-tools-and-calculators

4.2 Human Rights challenge to loan charge legislation fails

In representative cases for both employees and the self-employed, the taxpayers were unable to establish that they had 'possessions' for the purposes of the Human Rights Act 1998 (HRA) and therefore their claim for judicial review of the loan charge legislation failed. The HC anyway went on to consider whether, if they had succeeded, the interference with their peaceful enjoyment of the possessions was lawful and proportionate or not for the purposes of the European Convention on Human Rights. The HC held that it was.

In order to establish a case under the HRA, the taxpayers first had to show that they had a 'possession' for this purpose. It held that, although money was a possession in the simple sense it was not one for this purpose because HMRC also had a claim to the money where there was an existing liability to tax. Broadly, in this case, the court found that the decision in *Rangers*, which had found similar loans to the taxpayers' taxable as income, established that this was the case here as well. The taxpayers did not have a possession for the purposes of the HRA.

Although not strictly necessary for the disposal of the case, the court went on to examine the position if the taxpayers had a possession that they could not peaceably enjoy. The right to enjoy was not an

absolute one, but interference with it must be lawful and proportionate. The court held that even though the legislation could potentially result in hardship in an individual case, that did not of itself mean it was disproportionate. The court held that all that the legislation did was to alter the timing of the charge to tax and it was well within the discretion of Parliament to decide to legislate as it did.

RFC 2012 plc (In liquidation) (formerly The Rangers Football Club plc) v Advocate General for Scotland [2017] UKSC 45, [2017] 1 WLR 2767 ('Rangers')

Le Roux Zeeman & Ors v HMRC [2020] EWHC 794

www.bailii.org/ew/cases/EWHC/Admin/2020/794.html

5. Business tax

5.1 HMRC releases new guidance on the Digital Services Tax

The new guidance explains how to register, calculate and pay the Digital Services Tax (DST).

The DST came into force on 1 April 2020. It imposes a 2% tax on particular types of revenue of very large businesses that derive value from UK users of search engines, social media services and online marketplaces. The guidance provides information on what businesses are subject to the DST, how to register with HMRC, the amount of tax due, how to pay the liability and how to file the return.

Check if you need to register for Digital Services Tax: www.gov.uk/guidance/check-if-you-need-to-register-for-digital-services-tax

Register for Digital Services Tax and change your details: www.gov.uk/guidance/register-for-digital-services-tax-and-change-your-details

Work out your Digital Services Tax: www.gov.uk/guidance/work-out-your-digital-services-tax

Pay your Digital Services Tax: www.gov.uk/guidance/pay-your-digital-services-tax

Submit a Digital Services Tax return: www.gov.uk/guidance/submit-a-digital-services-tax-return

6. VAT

6.1 Import VAT exemption for vital medical supplies

The Government has announced that import VAT will be temporarily waived on imports of supplies needed to fight the COVID-19 crisis.

NHS suppliers will not be subject to import VAT or customs duties on imports of essential medical goods needed in the current public health emergency. The exemption covers items such as ventilators, testing kits and protective clothing. The waiver came into effect on 27 March 2020, and will apply until 31 July 2020. In order to benefit from the relief, the importing company must first be approved by HMRC.

www.gov.uk/government/news/chancellor-waives-duties-and-vat-on-vital-medical-imports

7. Tax publications and webinars

7.1 Tax publications

The following Tax publications have been published

- [UK Farming – the impacts of a lower Entrepreneurs' Relief limit](#)

8. And finally

8.1 Avoid that, buster

We were dismayed this week from the release of HMRC Spotlight 54 (see article 4.1 above) to see that promoters were offering returning NHS staff snake oil medicine in the form of PAYE avoidance schemes. The heart sinks; we tax people know that this can only end in one way for them: in tears. The schemes will not escape scrutiny and counteraction. The mills of HMRC are grinding very slowly indeed at present, but they still grind exceedingly small.

Sadly, it seems likely that very few of those returning NHS folk will read And finally; and even if they do, they probably haven't got time to do so right now. Time for us, then, to offer an alternative approach and one that has the curious effect of the NHS also helping HMRC.

Many of the staff will have the very best of selfless motives, so that money will not be their first concern, although we all agree they must be properly remunerated. We don't imagine that they are returning for the opportunity to do some adventitious remuneration tax planning. It would do no harm for HMRC to nudge the NHS administrators to ensure this does not happen.

If it is not already the case, all the NHS needs to do is to ensure that all returning staff are put on PAYE by them without fail.

This will save HMRC from having to chase down both the promotion of the schemes and the staff lured into them. NHS can rest assured they are not inadvertently leading their people into hazard.

And once the PAYE is paid, that will be it.

www.gov.uk/guidance/tax-avoidance-promoters-targeting-returning-nhs-workers-spotlight-54

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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