

Tax update

A round-up of recent issues

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1. General

1.1 Tax Update and the Early May Bank Holiday

Tax Update will be taking a break next week. The next issue will be on 19 May.

1.2 COVID-19: Consultation deadlines extended

Deadlines for several tax policy consultations and calls for evidence have been extended by three months.

The Government has announced a three month extension to several of the current tax policy consultations and calls for evidence, due to the disruption caused by the pandemic. This is intended to give stakeholders a full opportunity to engage with the issues, at a time when many are focussed on other matters. The publication of some expected discussion documents will be delayed until the Autumn.

The affected tax policy documents include the call for evidence on raising standards in the market for tax advice (new deadline 28 August) and the consultation on notification of uncertain tax treatment by large businesses (new deadline 27 August).

www.gov.uk/government/news/covid-19-update-on-tax-policy-documents

www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-04-28/HCWS211/

1.3 ICAEW calls for delays to tax changes

The ICAEW has called on the Government to delay some of the changes in the Finance Bill (FB), including changes to property taxation, and to reconsider others, in order to support the economy in the current crisis.

The ICAEW has made representations to Government on four aspects of the FB, most of which will be effective from 6 April 2020. It argues that the property tax changes, which include reducing the final period exemption from 18 to 9 months, should be delayed by a year to help stimulate the property market.

The FB also provides for changes to HMRC's recovery of debts from insolvent companies, and new rules to make directors personally liable for tax debts in some cases. The ICAEW notes that these changes may deter lending and discourage entrepreneurship.

The ICAEW has also raised concerns about changes to the IHT rules for excluded property, which it believes should be subject to consultation before implementation.

www.icaew.com/insights/tax-news/2020/apr-2020/icaew-calls-for-withdrawal-of-finance-bill-clauses

2. Private client

2.1 Film partnership appeal on penalties dismissed by CA

The CA has upheld the decisions of the UT and FTT, regarding the case of a member of Ingenious Film Partners LLP. It held that partner payment notices (PPNs) could not be challenged at the FTT, as they are a matter of public law, and that they cannot be indirectly challenged by means of a penalty appeal.

The taxpayer, a member of a film partnership whose losses have been reduced following HMRC enquiries, was issued with a PPN, and later a penalty notice for non-payment. He lost appeals to the FTT and UT, as they found that they did not have jurisdiction to assess the lawfulness or validity of PPNs. He had attempted to challenge the PPN by appealing the associated penalty, but the tribunals would not allow this indirect challenge, and held that his belief that the PPN was invalid was not a reasonable excuse for non-payment. The partnership could appeal the underlying assessment, but PPNs can only be challenged by judicial review.

At the CA the taxpayer appealed on the grounds that collateral challenges to PPNs by way of penalty appeals are valid at the FTT, and that consideration of reasonable excuses should include the invalidity, or perceived invalidity, of the PPN. The CA followed the FTT and UT in dismissing the appeal, agreeing that the statutory limits of the FTT exclude public law challenges, such as to PPNs. It also held that permitting non-payment while penalties were challenged would subvert the intention of PPNs, which are designed to

allow immediate collection of tax before appeals against the assessments are resolved. It also agreed that the taxpayer had no reasonable excuse for late payment, and there were no special circumstances.

Beadle v HMRC [2020] EWCA Civ 562

www.bailii.org/ew/cases/EWCA/Civ/2020/562.html

3. Trusts, estates and IHT

3.1 COVID-19: Temporary changes to conditional exemption rules

HMRC has confirmed that national heritage assets exempt from IHT on condition that they are available for public viewing will remain exempt if viewing conditions are not met due to the pandemic.

Some assets of national importance are granted conditional exemption from IHT, resulting in an IHT deferral, on condition that they are available for the public to view. Exact conditions are agreed with HMRC for each particular national heritage asset, but, for example, would generally include regular opening times for historic buildings.

HMRC has confirmed that if conditions cannot be met due to the effects of the pandemic, the exemption will not be lost. Withdrawal of public access to objects on loan to exhibitions, or available to be seen by appointment, is acceptable, as are difficulties with publicity. Where a national heritage property is currently closed, HMRC will expect the lost days to be made up later in the year, if possible, when Government advice changes.

www.gov.uk/government/publications/capital-taxation-and-tax-exempt-heritage-assets

4. PAYE and employment

4.1 HMRC warns over umbrella companies

A warning has been issued over the use of umbrella companies marketed through comparison and broker websites, as HMRC believes that some are tax avoidance arrangements that will expose users to penalties.

HMRC has issued Spotlight 55, drawing attention to the risk to taxpayers of working through an umbrella company rather than as an employee. It notes that many arrangements are legitimate, but is concerned that promoters of tax avoidance schemes are using comparison and broker websites to recruit taxpayers to non-compliant arrangements. HMRC has listed things to look out for that could indicate that it is a tax avoidance scheme likely to be non-compliant, including points to look out for in adverts, and explained the risks of use, including penalties and additional tax.

Taxpayers considering using an umbrella company are advised to read the Government guidance before entering into arrangements, and those currently using an arrangement that could be non-compliant are advised to seek independent advice.

www.gov.uk/guidance/comparison-and-broker-websites-marketing-umbrella-companies-are-not-always-what-they-seem-spotlight-55

4.2 HMRC April Employer Bulletin

The April issue of HMRC's Employer Bulletin focusses mainly on measures introduced to combat the economic effects of COVID-19, with other updates including changes to the official rate of interest.

The employer bulletin sets out guidance on matters including:

- the Coronavirus job retention scheme;
- the COVID-19 Statutory Sick Pay rebate scheme;
- deferral of VAT payment;

- provision of equipment for homeworking;
- delay to off-payroll working rule changes;
- a note on the independent loan charge review;
- the reduction in the official rate of interest;
- a reminder to report expenses and benefits in kind by 6 July 2020; and
- a note on changes to termination awards and sporting testimonials effective from 6 April.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881098/Employer-Bulletin-83_-_April_2020_-_English.pdf

4.3 House of Lords calls for an overhaul of the off-payroll working reforms

The House of Lords has recommended that the Government uses the 12 month delay of the IR35 reforms to reconsider the entire framework of the rules. It has criticised the IR35 regime as being 'riddled with problems, unfairnesses, and unintended consequences'.

The House of Lords Economic Affairs Finance Bill Sub-Committee has released a report on the proposed reform of the IR35 off-payroll working rules to the private sector. The report notes that the IR35 regime has not worked satisfactorily since its introduction, and the entire framework of the rules needs to be reconsidered. It welcomes the delay of the reform by 12 months in response to the COVID-19 crisis, but calls on the Government to use this time to change its approach fundamentally. The Committee explains that businesses adversely affected by COVID-19 will not be in a position to implement the rules in 12 months' time, and warns that the delay has not prevented the creation of 'zero-rights' employees. These are individuals who are treated as employees for tax purposes but do not enjoy the rights that come with employment.

www.parliament.uk/business/committees/committees-a-z/lords-select/economic-affairs-finance-bill-sub-committee/news-parliament-2019/fbsc-report-published/

5. VAT

5.1 Sudden announcement on zero-rating of e-publications

The Chancellor has accelerated the planned cut of VAT on e-publications in response to the COVID-19 crisis. These products are now zero-rated, effective from 1 May 2020.

In the 2020 Budget, the Government announced that VAT on e-publications would be reduced from December 2020. These products have historically been generally standard-rated for VAT, but would be zero-rated under the new rules. This proposal was brought forward and came into force on 1 May 2020, with less than 24 hours' notice. It is intended to reduce costs for individuals and provide a boost to the publishing industry during the COVID-19 lockdown. The historical application of zero-rating to electronic publications of newspapers is a matter of controversy as HMRC has not changed its policy on the matter since the UT decision in the *News Corp* case that found for the taxpayer.

News Corp UK & Ireland Limited v HMRC [2019] UKUT 404 (TCC)

www.gov.uk/guidance/zero-rate-of-vat-for-electronic-publications

www.bailii.org/uk/cases/UKUT/TCC/2019/404.html

6. Tax publications and webinars

6.1 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.

<https://smithandwilliamson.com/en/insights-landing/covid-19-hub/>

6.2 Webinars

The following client webinars are coming up over the next month.

- 5 May 2020: S&W Sessions: Developments in COVID-19 business support measures

<https://smithandwilliamson.com/en/events/>

7. And finally

7.1 Fringe Benefits

As our more assiduous readers will already know, the black swan that is Covid-19 has, it seems, yet to hit the air passenger duty (APD) figures significantly, if the just-published APD Bulletin is anything to go by.

When it does, we imagine the taking from APD will fall as quickly as that swan swooping down to land. What to do? Well; the reduced rate for narrow seats seems pretty redundant in a world where we sit two metres from each other. But will it really matter where it seems there are reports that air travel will not recover for years? If air travel is down, the need for any environmental benefits of the tax will diminish too.

Are we left with something of a wig powder tax; a tax of its time whose relevance is, how shall we say, at least temporarily diminished?

Time for abolition, then, of APD, for the near future at least? Your imagination is requested for the replacement. Has wig powder tax's time come again? Shall we reintroduce it, slightly amended, as a hairdressing tax? All the money saved on airfares will be going straight to the haircuts we all desperately need right now. Scruffy hair: tax avoidance and easily detected. What could possibly go wrong?

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881784/2020_Mar_APD_Commentary.pdf

https://en.wikipedia.org/wiki/Duty_on_Hair_Powder_Act_1795

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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