

Tax update

A round-up of recent issues

9 June 2020

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1. Private client

1.1 Extension to deadlines for reclaiming higher rates of SDLT

Taxpayers can in some circumstances reclaim the higher rates of SDLT charged on additional dwellings after the usual deadlines, if the sale of their previous main residence is delayed. These measures are intended to support taxpayers who may have been unable to sell their previous main residence due to the COVID-19 crisis.

The extension in England and Northern Ireland applies where taxpayers purchased a home on or after 1 January 2017 and was unable to sell their previous home within three years. The reason it took longer than three years to sell the property must have been outside the taxpayer's control. HMRC's guidance confirms that the impact of the COVID-19 crisis would be considered a reason outside the taxpayer's control. The previous home must be sold once the circumstances preventing the sale have ended. They must then write to HMRC and explain why they were unable to sell their previous home within three years.

The deadline in Scotland has been extended by 18 months for all purchases of a new main residence with an effective date of between 24 September 2018 and 24 March 2020. No other change to the eligibility criteria for reclaims in Scotland has been made.

www.gov.uk/guidance/stamp-duty-land-tax-buying-an-additional-residential-property

www.revenue.scot/news/covid-19/ads-repayment-claims

1.2 Company buyback of shares confirmed as distribution

The taxpayer took over a company with a view to winding it up over two years, by way of purchasing shares then selling almost all of the shares back to the company. The UT has upheld the FTT's conclusion that this was a distribution, refusing to treat this as a composite transaction.

The taxpayer, who acted as management accountant to the company for many years, agreed to take it over with a view to then winding it up after attempts at a sale failed. The original deal was that the company would purchase the vendors' shares, and sell a proportion to the taxpayer. The vendors were concerned, however, about a potential loss of Entrepreneurs' Relief. The taxpayer instead purchased the vendor's shares directly, and sold back all but one share to the company at the same price.

The FTT found that this was not a trading transaction. The taxpayer accepted this, but appealed to the UT on the ground that the purchase and sale should be treated as a composite transaction. Under this, he would be taxed only on the one share he retained, rather than paying income tax on the full amount received from the company.

The UT dismissed the appeal, finding that the purchase and sale were separate agreements. It also found that there was a distribution made to the taxpayer, not a form of loan under which the company vendors were the true recipients of the distribution.

Khan v HMRC [2020] UKUT 168 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2020/168.html

1.3 Late filing taxpayer refused appeals against assessment based on his own estimate.

A taxpayer who made an in-year payment on account but never filed a return has lost an appeal against a discovery assessment assessing him to that amount of tax. Having failed to file a return in time the FTT held that HMRC was entitled to reject his later claims that the amount of tax should have been lower than his initial estimate, and upheld tax geared penalties based on that amount, though it had been paid prior to penalties becoming due.

A UK resident non-dom remitted a capital gain. His tax adviser informed HMRC during that tax year. The tax was paid then, so that the taxpayer could claim the tax as a credit against his US tax liability. He did not file the tax return for several more years, and in the interim HMRC issued assessments and penalties based on the original tax estimate supplied by his adviser.

When the return was filed, HMRC rejected it as it was over four years late. It contained a lower figure of CGT, and an EIS claim that further reduced the tax due. He challenged HMRC's refusal to accept the reduced figures. The FTT first found that the discovery assessment was not stale, as although issued over a year after HMRC was aware of the tax that ought to be assessed, it was issued less than five months after his adviser had confirmed that the return was unlikely ever to be filed, which was the true point of the discovery. Although the FTT disagreed with the concept of staleness, it followed the precedent set by higher courts in considering it. A number of technical challenges to the assessment and penalties were also dismissed.

The taxpayer also argued that the tax geared penalties for late filing should be reduced, as he had paid tax in advance. This was rejected, as he had not filed a valid return on time.

Marano v HMRC [2020] UKFTT 199 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2020/TC07685.html

2. Business tax

2.1 R&D tax credits and COVID-19

HMRC has provided an update on how R&D tax credits will be applied in light of the COVID-19 crisis along with an update on notified State Aid status for COVID-19 support schemes.

HMRC has clarified that where tax is deferred for a specific regime to support businesses during COVID-19, such as the VAT deferral, the R&D Expenditure Credits (RDEC) or the repayable tax credit may not be set against any liabilities for those taxes before the revised due date.

If, however, tax is deferred under a time to pay (TTP) arrangement, HMRC will offset any R&D tax credit against any TTP liability, not just the liability outstanding at the time the credit was paid. Any R&D credit that is expected by the taxpayer should be disclosed to HMRC during TTP discussions and HMRC will factor this in to the TTP arrangement.

It is not HMRC's intention to change temporarily the legislation that requires any RDEC remaining at the relevant step in the calculation to be offset against liabilities owed to HMRC. It will therefore usually seek to offset credits against liabilities owed to HMRC before paying out a credit. HMRC will, however, consider this on a case-by-case basis.

HMRC has also provided confirmation as to which Government support schemes are notified State Aid, which potentially prevents a claim for the purposes of SME R&D relief. The Bounce Back loans, Coronavirus Business Interruption Loan Scheme and Coronavirus Large Business Interruption Loan Scheme are all notified State Aid. The Future Fund, however, is not a form of State Aid.

www.tax.org.uk/policy-and-technical/covid-19/business-tax

2.2 Consultation on taxation of COVID-19 support grants

The Government is seeking views on the technical effectiveness of draft legislation to introduce rules on the taxation of COVID-19 business support grants, which will be included in Finance Bill 2020.

The measure is intended to ensure that government grants provided during COVID-19 are treated as taxable income, within the scope of either income tax or corporation tax. It will apply to individuals, businesses, individual members of a partnership and employers who receive payments from:

- Self-Employment Income Support Scheme (SEISS);
- Coronavirus Job Retention Scheme (CJRS);
- the Small Business Grant Fund, the Retail, Hospitality and Leisure Grant Fund, the Discretionary Grant Fund, or their parallel schemes in the devolved administrations;
- other payments made by public authorities to businesses in response to COVID-19; and
- any other COVID-19 support scheme specified or described in regulations made by the Treasury.

This measure will also provide HMRC with the power to raise income tax assessments to recover amounts from a recipient of a SEISS or a CJRS payment to which they are not entitled or for example where a CJRS payment has not been used to pay furloughed employee costs. HMRC will also be able to charge penalties in the cases of deliberate non-compliance.

The consultation closes on 12 June 2020.

www.gov.uk/government/consultations/draft-legislation-taxation-of-coronavirus-covid-19-support-payments

3. VAT

3.1 Further delay in the Domestic Reverse Charge (DRC) VAT for construction services

The introduction of the DRC VAT for construction services, which was intended to combat fraud in the construction chain by removing the payment and recovery of VAT through the supply chain via a 'reverse charge', has been delayed from 1 October 2020 to 1 March 2021. The delay is due to the impact of coronavirus on the construction sector.

There will also be an amendment to the original legislation to make it a requirement that if businesses wish to be excluded from the reverse charge because they are end users or intermediaries, they should notify their subcontractors in writing accordingly.

www.gov.uk/government/publications/revenue-and-customs-brief-7-2020-domestic-reverse-charge-vat-for-construction-services-delay-in-implementation?utm_source=75b07870-680d-4d6e-8731-80576ee6a981&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

4. Tax publications and webinars

4.1 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/covid-19-hub/>

4.2 Webinars

The following client webinars are coming up over the next few months.

- 10 June 2020: Audit Independence

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

5. And finally

5.1 It wasn't me!

Like the rest of us, HMRC's complaints office is surely dealing with all the difficulties of the COVID-19 crisis on top of its usual workload. It is terribly ironic, then, that of all the years for the Annual Report from the Adjudicator's Office to contain unwanted surprises it was this year.

It starts off well. In 2019/20, the number of complaints against HMRC fell slightly, though the proportion of upheld complaints increased. Fewer complaints were made, but those that complained got it right more often. Congratulations complainers, you were more efficient than last year.

But hiding in the colour-coded infographics is this unfortunate outcome: in 2019/20 there were 207 'out of remit' complaints against HMRC, compared to zero for 2018/19. In comparison, the Valuations Office Agency had only 22 such complaints, and the Home Office had 1.

The principal takeaway from this report isn't the slight improvement in overall complaints figures. It's the fact that, somehow, HMRC managed to excel spectacularly at attracting blame for things it didn't do.

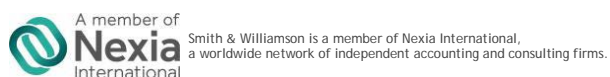
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/889793/The_Adjudicator_s_Office_annual_report_2020.pdf

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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