

# Tax update

A round-up of recent issues

16 June 2020

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## 1. General

### 1.1 HMRC agent update 78

*HMRC has published Agent Update 78, which provides an overview of the recent issues of which tax agents should be aware.*

The latest Agent Update summarises various recent issues and changes, including guidance on:

- Coronavirus and the Statutory Residence Test;
- the tax consequences of waiving remuneration;
- current scams and how HMRC is working to counter them;
- deferring tax payments as a result of COVID-19;
- technical details of the changes to top-slicing relief;
- the new CGT 30 day reporting and payment rules;

- reporting employee expenses and benefits;
- filing requirements when closing a company; and
- the Trust Registration Service.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/891078/agent\\_update\\_78.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/891078/agent_update_78.pdf)

## 1.2 UT rules on Advanced Payment Notices

*The UT has upheld an FTT decision that Advanced Payment Notices (APNs) may be issued in respect of PAYE determinations. It also clarified how the reasonable excuse defence against penalties applies in relation to APNs where a taxpayer holds a genuine belief that the APN is invalid.*

The taxpayer had been issued an APN in relation to arrangements notified to HMRC under DOTAS. It took professional advice, and made a claim for judicial review of the validity of the APNs. No payment was made to HMRC. HMRC subsequently issued penalties. The FTT upheld those penalties on appeal.

The first issue before the UT was whether or not an APN could be validly issued in respect of a PAYE determination. Since PAYE is a tax collection mechanism rather than a tax in its own right, the taxpayer argued that it did not meet the statutory qualifications of a 'tax appeal' necessary for an APN. The UT found that, on a correct statutory construction, disputed tax arising under a PAYE determination could be demanded through an APN.

The second issue was whether or not the taxpayer's belief that the APN was invalid amounted to a reasonable excuse against penalties. The UT held that a taxpayer's belief that an APN is invalid because the tax is not due or has been calculated incorrectly cannot be a reasonable excuse. A taxpayer's belief that the APN is invalid because it has not been issued in compliance with the law was, however, found to be capable of being a reasonable excuse. This would only be possible in limited circumstances. The UT found, however, that in this case the taxpayer believed the tax was not due; there was therefore no reasonable excuse. The appeals were dismissed.

*Sheiling Properties Limited v HMRC* [2020] UKUT 175 (TCC)

[www.bailii.org/uk/cases/UKUT/TCC/2020/175.html](http://www.bailii.org/uk/cases/UKUT/TCC/2020/175.html)

## 2. PAYE and employment

### 2.1 New HMRC guidance on the impact of COVID-19 on share schemes

*HMRC has published a bulletin detailing the impact of COVID-19 on employment-related securities.*

The guidance sets out HMRC's position on each of the following issues:

- Enterprise Management Incentive Scheme (EMI): HMRC is currently exploring issues raised by stakeholders in relation to the EMI scheme and will update taxpayers as soon as possible;
- Save As you Earn (SAYE): if participants in this scheme are unable to contribute because they are furloughed or on unpaid leave during COVID-19, HMRC will extend the payment holiday terms;
- Share Incentive Plan (SIP): payments of Coronavirus Job Retention Scheme to employees who have been furloughed may constitute salary. If so, SAYE and SIP contributions can be deducted from these payments;
- Company Share Option Plan (CSOP): employees and full-time directors who are now furloughed may have been granted share options before COVID-19. In such cases, those options will remain qualifying on the basis that the individual was a full-time director or qualifying employee at the time of the grant of the option; and
- valuations: ordinarily, where valuations are agreed by HMRC the options would need to be granted within 90 days. Where the Coronavirus leads to delays in granting EMI options such that the 90 day

deadline is exceeded, and provided particular conditions are met, extensions may be provided by HMRC.

[www.gov.uk/guidance/employment-related-securities-bulletin-35-june-2020](http://www.gov.uk/guidance/employment-related-securities-bulletin-35-june-2020)

## 3. VAT

### 3.1 UT overturns FTT ruling on the bonded warehouse regime

*The UT has clarified the operation of the warehousing exemption from acquisition VAT. It ruled that where goods are kept under a bonded warehouse regime, it is not necessary for the warehouse to be located in the UK when considering whether or not the exemption applies.*

The taxpayer was a UK VAT-registered alcohol wholesaler that had been approved to own excise duty-suspended alcoholic goods in tax warehouses located in the UK. It had purchased alcohol from an EU supplier and provided its UK VAT number to allow the supply to be zero-rated. The alcohol was delivered to a bonded warehouse in a different EU Member State and the taxpayer did not take delivery of the products. The alcohol was then sold to a buyer in a third EU Member State.

The taxpayer relied on the rules covering warehousing regimes and therefore did not account for acquisition VAT in the UK on the basis that the goods did not enter the UK. HMRC argued that, since the taxpayer had not accounted for acquisition VAT anywhere in the EU, the 'fallback' provisions of EU legislation applied. HMRC believed that these rules allowed for the assessment of acquisition VAT in the Member State to which the VAT number used in the supply belonged, with no associated input tax credit. In this case, the VAT number was from the UK, so HMRC maintained that acquisition VAT was due in the UK. The FTT had found in favour of HMRC.

The UT considered whether or not the 'fallback' provisions applied in the case of goods supplied in bonded warehouses outside of the UK. It found that the rules covering warehousing regimes did apply and took priority over the 'fallback' provisions such that these provisions were not engaged. It therefore found in favour of the taxpayer, agreeing that acquisition VAT was not due in the UK.

*Ampleaward Ltd v HMRC* [2020] UKUT 0170 (TCC)

[https://assets.publishing.service.gov.uk/media/5ed0e089e90e0754d2437c84/Ampleaward\\_v\\_HMRC.pdf](https://assets.publishing.service.gov.uk/media/5ed0e089e90e0754d2437c84/Ampleaward_v_HMRC.pdf)

### 3.2 Taxpayer wins case on the surrender of an option to acquire land

*The FTT has ruled that the surrender of an option to acquire land was exempt from VAT. The case is notable because HMRC argued that its long-standing, published VAT Notice and Manuals were incorrect and subject to change.*

The taxpayer was a company that had acquired an option over land, over which no option to tax had been exercised. The taxpayer later received a large payment from the landowner in order to release the landowner from the option. Under existing HMRC guidance, the surrender of the option was considered an exempt supply of an equitable interest in land. In accordance with this guidance, the taxpayer did not account for output VAT on the surrender.

Following a review from HMRC, the taxpayer was assessed as owing output VAT on the transaction. HMRC based its view on the 1990 ECJ decision *Staatssecretaris van Financiën v Shipping and Forwarding Enterprise Safe BV (SFES)*. It argued that, even though the taxpayer held an option, it did not actually have a right to dispose of the underlying interest in land or similar tangible property as the owner. HMRC therefore concluded that this was the receipt of taxable income.

The FTT found for the taxpayer. The judgement identified practical issues such as the disparity of treatment where property is purchased under an option rather than purchased outright.

*Landlinx Estates Limited v HMRC* [2020] UKFTT 220 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2020/TC07706.html](http://www.bailii.org/uk/cases/UKFTT/TC/2020/TC07706.html)

### 3.3 VAT treatment of property search fees

*Revenue and Customs Brief 6 has been published, which explains HMRC's position on property search fees charged by solicitors and conveyancers.*

The brief announces the formal withdrawal of the postal concession as of 1 December 2020 in relation to these fees.

The postal concession was informally agreed between HMRC and the legal profession in 1991. It allows solicitors and conveyancers not to charge VAT on fees for property searches conducted by post. Due to changes in industry practices, HMRC considers that postal searches have become obsolete. HMRC argues that the withdrawal of the concession is necessary so that the VAT treatment of property searches is correct and consistent.

[www.gov.uk/government/publications/revenue-and-customs-brief-6-2020-vat-treatment-of-property-search-fees-charged-by-solicitors-and-conveyancers](http://www.gov.uk/government/publications/revenue-and-customs-brief-6-2020-vat-treatment-of-property-search-fees-charged-by-solicitors-and-conveyancers)

### 3.4 Input tax disallowed on opted to tax property

*The FTT has ruled that HMRC correctly disallowed input tax claims in relation to a property that had been opted to tax. The taxpayers were not carrying on the economic activity of letting the property, and the occupants of that building did not have an obligation to pay rent.*

The taxpayers opted to tax an industrial warehouse. Throughout the time that the taxpayers let the property, the tenants did not pay any rent. The property was sold a few years later, and VAT was charged on the sale of the property. HMRC disallowed the claim of input tax on the final VAT return. In that return, the taxpayers had declared the output tax charged on the sale of the property.

The FTT considered whether or not the tenants were required to pay rent, and, if not, whether or not the taxpayers expected the occupants to pay rent. It found that none of the occupants had an obligation to pay rent, nor did the taxpayers have an expectation that rent would be paid. The taxpayers were held not to be carrying on the economic activity of letting the property. The FTT also found that some of the claimed expenses were clearly unrelated to the property, and the taxpayers failed to meet the burden of proof in relation to a number of the expense items. As a result, none of the claimed expenses related to the economic activity of letting or selling the property. The FTT dismissed the taxpayers' appeal and upheld HMRC's assessments.

*Slaymark & Anor v HMRC [2020] UKFTT 223 (TC)*

[www.bailii.org/uk/cases/UKFTT/TC/2020/TC07709.html](http://www.bailii.org/uk/cases/UKFTT/TC/2020/TC07709.html)

## 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 Tax publications

*The following Tax publications have been published*

- [New notification process for large businesses](#)

## 5. And finally

### 5.1 Read the manual

Most conscientious readers of the HMRC manuals have, at one time or another, been struck by an oddity amongst the multitude of helpful advice. Though missing 'not's are rare amongst their commandments, less rare is guidance based on a creative reading of the legislation. Take the example below, submitted by a scandalised colleague. Surely, in the first eight words, HMRC has missed something??

*Generally HMRC must apply the law correctly but the Commissioners may exercise limited managerial discretion in the collection of the taxes and duties in their care. In exercising this discretion the Commissioners usually seek to ensure they obtain the highest net return to the Exchequer (ADML3300).*

[www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg13024](http://www.gov.uk/hmrc-internal-manuals/capital-gains-manual/cg13024)

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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