

Tax update

A round-up of recent issues

30 June 2020

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1. General

1.1 DAC6 reporting delayed by six months

Due to disruptions caused by the pandemic, the Government is delaying DAC6 reporting by six months. The HMRC online system will not be available on 1 July as planned.

All DAC6 reporting deadlines have been moved back by six months, with the earliest of these new deadlines being in late January 2021. HMRC will delay opening of the online reporting system in line with this.

The HMRC manual has been updated with the new deadlines, and it has been confirmed that if the new regulations are not in effect before the original reporting deadline then no action will be taken over unfiled reports.

The delay is designed to ease the burden on taxpayers and intermediaries dealing with the impact of the pandemic, and is in line with measures in several other jurisdictions.

www.tax.org.uk/policy-technical/technical-news/dac-6-deferral-reporting-deadlines-message-hmrc

www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim800010

2. Private client

2.1 FTT finds properties do not qualify for private residence relief (PRR)

The FTT has found that there was not enough evidence to prove that three properties were owned with the required degree of permanence to qualify for PRR.

The taxpayer owned at least five properties during the three tax years under review. Three of the properties were the subject of the case, all of which were listed for sale within short periods from acquisition.

The FTT found that there was no evidence that the taxpayer lived in the properties. She was unable to produce satisfactory evidence of occupation such as bank statements or insurance documentation, and only very limited utility bills. She also undertook significant improvement works, and the FTT noted that the photographs provided would have made one of the properties unsuitable for habitation by her young family. During this period, she also continued to own a further property which HMRC argued was her main home.

The FTT found that there was insufficient evidence that the three properties in question were lived in with a degree of permanence and so PRR was not available. The taxpayer's appeal was dismissed. The FTT also noted that there were short periods between the acquisition and disposal of each property and improvement works were carried out before sale: the taxpayer was clearly trading in property.

The FTT did not appear to consider the CGT rule that removes CGT relief where the property is purchased wholly or partly for the purpose of realising a gain.

Hashmi v HMRC [2020] UKFTT 229 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2020/TC07715.html

2.2 CGT due on transfer of land to relative's company

The FTT has found that a transfer of property amongst family members was a disposal, though it was later transferred back. There was no evidence that a trust was created by the first transfer, and an understanding among the family over communal ownership did not override the legal contract of sale.

In 2012, the taxpayer was in financial difficulty following a conviction, and though he owned a property was unable to obtain a mortgage. He transferred the property to a relative's company, and the relative took out a mortgage on it to pay the sum due. In 2018, the property was transferred back to a company owned by the taxpayer.

HMRC raised an assessment for CGT on the first transfer. The taxpayer appealed on the grounds that he had retained beneficial ownership, and the relative held the property on an implied trust. The mortgage repayments were met from the rent, with any shortfall made up by the taxpayer, and he had dealt with tenants and maintenance himself. The same value was used for both transfers, though two flats had been added at the taxpayer's expense.

The FTT agreed with HMRC that no trust had existed. There was no reference to it in the transfer documents, the recipient company had declared it on its balance sheet, and rents had been declared in the corporation tax return, not the taxpayer's personal return. The property transfer was made for consideration, by agreement between the parties with the intent to create legal relations, and so was a valid disposal. The assessment and associated penalties were upheld.

Bhiki v HMRC [2020] UKFTT 243 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2020/TC07728.html

2.3 Change in journey time not 'substantial' for travel expenses

The FTT has disallowed travel expenses for an employee who worked at a number of sites in one area. It found that as there were no substantial changes in his travel time to different sites, they were one workplace, at which he had therefore worked too long for it to be considered temporary.

The taxpayer worked at a number of construction sites in London. He lived in the area on weekdays, although his main home was elsewhere. Each would qualify as a temporary place of work on length of time worked there, so he claimed travel expenses between each workplace and his temporary accommodation in the area. HMRC raised assessments of almost £20,000 over two tax years. It argued that as the sites were all in the London area, there was no substantial change to the taxpayer's travel on change of workplace for the purposes of the legislation.

The FTT considered the journey times to each of sites from his accommodation, and found that, as no travel time differed by more than half an hour from another, nor cost varied by more than £14, the change of worksites was not substantial. All the sites were therefore treated as one workplace, at which he had worked too long for it to be considered temporary. The appeal was dismissed.

Sambhi v HMRC [2020] UKFTT 231 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2020/TC07717.html

2.4 Member of LLP found to be liable for NICs

Payments made by an LLP to a member were found to be made to him as a member, not an employee, so subject to self-employed NICs for which he was liable. The documents appointing him as a member of the LLP determined the tax treatment.

The taxpayer, who had been appointed as a member of an LLP, held that payments from the LLP were made to him as an employee rather than under the partnership profit sharing arrangement. The Court was asked to determine the status of the payments for NIC purposes, with the IT treatment to be resolved separately.

The FTT went through the details of his appointment to the partnership, and the duties undertaken whilst working for the partnership. It was unable to rely on the taxpayer's evidence, but looked at the documents signed by him on joining the firm, which clearly showed intention to appoint him as a member. It found that the payments were made to him as partner, as treatment for tax purposes is determined by the LLP provisions. It dismissed his contention that he was not treated as a member but as an employee. He had filed two tax returns based on being a self-employed member, before filing as an employee, and given that he was a professional tax adviser he would have understood the difference.

Wilson v HMRC [2020] UKFTT 230 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2020/TC07716.html

3. Business tax

3.1 R&D relief claim fails for lack of evidence

The FTT has ruled against a taxpayer that failed to provide enough evidence to support its claim for R&D relief.

The taxpayer provided human resources services and systems, including relating to the recruitment of new employees. It claimed R&D relief in respect of the development of new software that would analyse and assess the soft skills of applicants during the recruitment process. HMRC denied this claim on the basis that there had not been any evidence provided by the company that qualifying R&D activity had taken place.

The taxpayer needed to provide evidence on in three areas. First, it had to prove that the technology it sought to develop was not already readily available. Second, it had to show evidence that the technology it sought to develop to achieve the project's aims amounted to an advance of technology and,

specifically, that this amounted to more than 'routine... copying or adaptation of an existing product or process.' Third, there had to be technical uncertainties which a competent professional working in the field could not have readily resolved. The FTT held that the taxpayer had not provided sufficient documentary evidence to fulfil the first two requirements. It also failed to support its claim with evidence from a competent professional who was contemporaneously involved in the project.

The FTT also found that, even if the evidence had demonstrated to HMRC that qualifying activities had been carried out, the taxpayer had failed to prove that the costs claimed related to the R&D activities undertaken.

www.bailii.org/uk/cases/UKFTT/TC/2020/TC07718.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

- [*A few thoughts on VAT for commercial property landlords*](#)
- [*Succession planning and alternative exits: is an EOT the next step in your company's growth journey?*](#)

5. And finally

5.1 In good company

Tax, whatever the wider populace may think, is not a field entirely grounded in the expected. Case in point: this week's judgment in *Wilson v HMRC*. The FTT had the unfortunate task of distilling the jumble of evidence down to the facts relevant to a taxpayer's employment status. And finally's pick of the lot was the position of his desk. Apparently, the fact that his desk was adjacent to the desks of the members of the LLP bore some relevance to the question of whether or not the taxpayer was also a member.

In more normal times, we would expect a flurry of head-turning; your desk mates not only affect the noise levels and food smells that you must put up with, they may also affect your NIC position. Hot-deskers face a terrible conundrum that we cannot begin to untangle. But even more confusingly, what do we do now that we all work at home?

www.bailii.org/uk/cases/UKFTT/TC/2020/TC07716.html

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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