

Tax update

A round-up of recent issues

11 August 2020

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1. General

1.1 Increase in HMRC information gathering powers

Finance Bill 2020-21 will give HMRC a new power to obtain information about taxpayers' affairs. The new Financial Institution Notice (FIN) can force financial institutions to provide information about a specific taxpayer to HMRC without approval from the tribunal.

Currently, HMRC can only obtain details about a taxpayer from financial institutions such as banks with the approval of the tribunal. In order to speed up the process of obtaining information, HMRC is to be granted a new power to obtain this information in the 2020-21 Finance Bill. HMRC will be able to issue the third party with a FIN, and issue penalties if the information is not provided.

FINs can only be issued if various criteria are met, as a 'taxpayer safeguard'. The main ones are:

- the information requested must be reasonably required to check the specific taxpayer's tax position;
- documents to which legal professional privilege applies cannot be requested;
- HMRC must tell the taxpayer why the information is requested, unless the tribunal allows an exception;
- FINs must be approved by an authorised HMRC officer with the relevant experience and training; and
- financial institutions have a right of appeal against penalties for non-compliance with an FIN.

Information gathered using FINs can be used for debt collection purposes as well as checking the taxpayer's tax position. HMRC will report to Parliament each year on the use of FINs.

www.gov.uk/government/publications/amendments-to-hmrcs-civil-information-powers

1.2 Tax avoidance schemes: Accelerated Payment Notices

HMRC has updated its list of the avoidance scheme reference numbers (SRNs) whose users may be issued with an accelerated payment notice (APN).

HMRC confirms that this list is under continual review to ensure that only current and newly-disclosed schemes whose users may receive an APN are included.

Two new scheme reference numbers have been added: 01926446 and 74910569.

No scheme reference number has been removed.

www.gov.uk/government/publications/tax-avoidance-schemes-on-which-accelerated-payments-may-be-charged-by-hmrc/reviewed-tax-avoidance-scheme-reference-numbers

2. Business tax

2.1 HC allows HMRC to take General Electric to trial over tax fraud

The HC has ruled that HMRC may pursue its claim that the General Electric group (GE) had acted fraudulently in relation to the tax treatment of an international lending arrangement. The case will therefore go to trial. It is reported that approximately \$1 billion of tax is at stake.

GE had made a settlement agreement with HMRC in 2005 regarding the UK anti-arbitrage rules in relation to a number of transactions. During this process, GE had also obtained clearance from HMRC in respect of ongoing activities of the GE group. One of these transactions included the acquisition of an Australian LLP by a UK company. The LLP was treated as transparent for UK tax purposes but opaque for Australian tax purposes. This acquisition involved a complex lending structure, through which the group obtained interest deductions on the same sum in both the UK and Australia. This arrangement would have been caught by the UK anti-arbitrage rules if the main or one of the main purposes of the arrangement was to obtain a UK tax advantage. At the time of the clearance, HMRC understood that this condition was not met by GE. The anti-arbitrage rules have since been abolished and replaced by the anti-hybrid regime.

HMRC subsequently obtained information that, it argued, showed that GE did not correctly present the facts when the clearance was provided. HMRC purported to rescind the settlement agreement made in 2005, and then applied to the courts for a declaration that the rescission had been valid. It also claimed that GE had deliberately misstated facts, and fraudulently misrepresented that it had made a full disclosure of the facts.

The HC in this case was only considering whether or not HMRC could pursue the case; it was not determining if GE had in fact acted fraudulently. It held that, if GE had falsely represented that full disclosure of the facts had been made, then the prospect of that misrepresentation being fraudulent was not merely fanciful. HMRC is therefore allowed to take the case to trial.

IGE USA Investments Limited and others v HMRC [2020] EWHC 2121 (Ch)

www.bailii.org/ew/cases/EWHC/Ch/2020/2121.html

www.ft.com/content/02a6fa1b-8b62-4e1e-9100-fe620c8ec96c

2.2 FTT rules on limited partnerships arrangement

A Cayman company was found to be liable to UK CT on its share of profits in a UK limited partnership (LP), to which it was indirectly entitled through a Cayman LP. The FTT also held that individual partners in the UK LP were subject to UK IT on allocations of 'special capital', which were analogous to taxable bonuses.

This is a very complex case involving a detailed cross-border partnership structure. Broadly, a Cayman company was incorporated to acquire a 19% interest in a UK LP, and it incurred interest expenses on a loan to facilitate that acquisition. The company then contributed its interest in the UK LP as capital to a Cayman LP, in which it became the general partner. The FTT ruled that the company alone, rather than all the partners of the Cayman LP, was subject to UK CT on the share of profits allocated to the Cayman sub-LP by the UK LP. It also held that the interest expense on the loan to acquire the interest in the UK LP was not tax-deductible.

The UK LP had also established an incentivisation plan under which profits were allocated to a corporate partner that reinvested those amounts into the UK LP as 'special capital'. Shares in the special capital were awarded to the individual partners in accordance with their performance in the business. The FTT found that the awards of capital amounted to miscellaneous income subject to UK IT in the hands of the individual partners.

BCM Cayman LP and others v HMRC [2020] UKFTT 298 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2020/TC07782.html

3. Tax publications and webinars

3.1 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. And finally

4.1 Baby on board

We were befuddled this week by some new HMRC guidance. The guidance itself was clear; that was not the problem. It was this instruction: *'use this form to ask HMRC to verify that you had a new child'*.

We have always known HMRC to be an administrative behemoth capable of great feats of paperwork that do not always have an obvious point. Perhaps we should not have been so surprised. If anyone could invent a form to confirm a baby's existence to his own parents, it would be HMRC.

So, just in case you aren't entirely sure of the answer for yourself, rest assured that HMRC can apparently confirm your parental status for you. But only if you're self-employed or a member of a partnership. And only if you ask before 5 October 2020.

www.gov.uk/guidance/ask-hmrc-to-verify-you-had-a-new-child-which-affected-your-eligibility-for-the-self-employment-income-support-scheme

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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