

Tax update

A round-up of recent issues

18 August 2020

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1. General

1.1 Tax residence and COVID-19: new guidance released

HMRC has provided new guidance on how COVID-19 restrictions impact the statutory residence test (SRT) for individuals, as well as company residence, domicile, the remittance basis, and double taxation.

HMRC had previously published guidance clarifying the circumstances in relation to COVID-19 that could be considered as exceptional under the SRT, for example days in self-isolation can count.

The new guidance is structured as questions and answers, some of which contain no new information, but a number of points have been clarified. Some of the more important points are as follows:

Individuals under the SRT

- if exceptional circumstances are claimed due to the closure of international borders, individuals must be able to demonstrate that they made every effort to leave once those restrictions had been lifted;
- days spent working in the UK for over 3 hours will count as UK workdays, even if they would have been disregarded under exceptional circumstances;

- those who are normally non-resident, but came to the UK to assist a vulnerable relative in the pandemic, may qualify for exceptional circumstances depending on the facts of the case; and
- children in full-time education will qualify as such even when schools are closed, as education continued at home.

Companies

- HMRC has confirmed that where travel restrictions have impacted company management, this will not necessarily result in a change of a company's tax residence, or cause there to be a UK permanent establishment.

Other

- HMRC has confirmed that treaty residence will not change due to a 'temporary dislocation';
- those who normally work abroad, but have been working in the UK, will have those earnings taxed as UK earnings and taxed on the arising basis; and
- there is no relief under the deemed domicile rules for an unexpected year of residence.

www.gov.uk/hmrc-internal-manuals/residence-domicile-and-remittance-basis/rdrm13410

1.2 HC refuses judicial review of share buyback decision

A taxpayer who was paid nine times higher than the market value for his shares in a company buyback has been denied permission for a judicial review. The HC held that an appeal to the FTT was the appropriate means of dealing with the issue.

HMRC had given statutory clearance in respect of a company purchase of own shares. This confirmed that the retiring shareholder would be subject to CGT, not IT, on the transaction. On enquiry into the taxpayer's return, HMRC concluded that the market value per share was £66,900; significantly lower than the £600,000 per share paid by the company. HMRC argued that the overpayment demonstrated that the buyback was not for the benefit of the company's trade and it therefore failed to meet one of the requirements necessary for obtaining capital treatment. HMRC treated the clearance as void, on the basis that it was made without full and accurate disclosure of facts and circumstances, and the individual was assessed to approximately £1 million of additional tax.

The individual and the company jointly sought permission to bring a judicial review claim of HMRC's decision to treat the clearance as void, on grounds of unfairness, public interest, legitimate expectation and irrationality. An appeal against the closure notice had also been made to the FTT, but it had not yet been established if that appeal was late or if an extension of time would be granted. The HC accepted that the discrepancy between the market value and the price paid could potentially have a bearing on whether or not the transaction qualified for capital treatment. It also noted that the parties may benefit from expert valuation evidence. The HC denied the application for judicial review on the grounds that an appeal to the FTT was the appropriate avenue for dealing with the issue.

R (oao Boulting and another) v HMRC [2020] EWHC 2207 (Admin)

www.bailii.org/ew/cases/EWHC/Admin/2020/2207.html

2. Private client

2.1 Penalties now in force for CGT property returns

Late filing penalties apply to CGT on UK property returns that are not filed within 30 days of completion. HMRC delayed the introduction of penalties due to the pandemic, but they are now fully in force.

HMRC did not charge late filing penalties for transactions completed between 6 April and 30 June, provided that the tax was paid and the return filed by 31 July. This was a concession as the new online filing regime was introduced during lockdown.

The late filing penalties are now in force, and transactions completed from 1 July 2020 will receive a late filing penalty if they are not reported within 30 calendar days. Interest on late paid tax has applied throughout.

www.gov.uk/guidance/managing-your-clients-capital-gains-tax-on-uk-property-account

2.2 Applications open for second self-employed support grant

From 17 August the self-employed, including partners of partnerships, can apply for the second grant under the self-employment income support scheme (SEISS). This is slightly less than the first grant, and the business must have been adversely affected on or after 14 July 2020 - the first grant related to the earlier period.

The taxable grant will be worth 70% of average monthly trading profit over the last three tax years, capped at £6,570. It is calculated in the same way as the first grant, though that was set at 80% and capped at £7,500. Most traders eligible for the first grant will be eligible for the second, as the income level conditions are the same, but it is possible for a trader to be eligible only for the first or the second depending on the months in which their business was adversely affected by coronavirus.

The deadline for claiming this grant is 19 October 2020. Penalties will apply to excessive claims.

www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme

3. PAYE and employment

3.1 Employer wins PAYE dispute

The FTT has ruled in favour of an employer that correctly applied a tax code, even though the full amount of tax was not withheld. HMRC had not provided information on previous pay in a clear manner, and the company had acted with reasonable care.

The company had employed a new individual and implemented her new tax code as instructed by HMRC. In the following tax year, HMRC changed her tax code and informed the company of income she had earned in a previous employment. This was not clearly explained, and the company did not factor the previous income into her PAYE calculation. HMRC then sought to recover the underpaid tax.

The FTT upheld the company's appeal on three grounds. First, the determination was issued under a regulation that did not apply to companies required to operate Real Time Information (RTI). As the company operated RTI, the determination was invalid. Second, the company had not failed to comply with the obligation to operate the tax code issued by HMRC, as HMRC argued. The information about previous pay was not part of the tax code. Third, the company had acted in good faith and taken reasonable care, so HMRC should have directed under its regulatory powers that the company was not liable to pay the excess.

Sci-Temps Limited v HMRC [2020] UKFTT 314 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2020/TC07796.html

3.2 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 Commerce and Culture

It is a truth universally acknowledged that a barrister, in possession of a difficult brief, must be in want of a quotation. Some favour classical texts, some Dickens and a sensible few, Jane Austen. This is of course the case of *BlueCrest Capital Management Cayman Ltd & Ors v HMRC*, in which, as the legal teams struggled through extremely complex arguments, the taxpayer reverted to Regency references to establish precisely what could be described as professional income.

Although careful study of *Pride and Prejudice* has not uncovered the precise words attributed to the Janeite barrister, it was a delightful way of making his point. Unfortunately, he may have given HMRC an idea. We have seen the Government 'nudging' towards 'correct' behaviour - see the renaming of 'Entrepreneurs' relief' to 'BAD relief'. So many individuals are keen to prove to HMRC that they are trading; change the definition to '*merely in commerce*', and will they be so keen?

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

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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