Smith & Williamson

Tax update

A round-up of recent issues

2 February 2021

1. General

1.1 Scottish Budget 2021-22 published

The Scottish Budget sets out the Scottish Government's tax and spending plans for the next tax year. Income tax bands will rise slightly in line with inflation, but the rates will not change.

In recent years, the Scottish Government has been given powers to set most income tax rates and bands for Scottish taxpayers independently. Collection and management remain the responsibility of HMRC.

No major changes were made this year, but the rate bands will increase in line with inflation from 6 April. Taxpayers with income under £27,393 will pay less if resident in Scotland than in the rest of the UK, but more if their income exceeds this figure, due to Scotland's lower basic rate of income tax (19%).

Further changes to Scottish taxes may be made following the UK Budget on 3 March.

www.gov.scot/publications/scottish-budget-2021-22/

www.tax.org.uk/media-centre/press-releases/chartered-institute-taxation-comment-scottish-budget

1.2 HMRC digital services updates

HMRC has issued two updates on various digital services.

These cover:

- an update on progress with making tax digital;
- updated guidance on trust registration and managing a trust's details;
- the extension of the trust registration service;
- agent forum usage; and
- the cyber-aware campaign.

www.tax.org.uk/policy-technical/technical-news/hmrc-digital-services-updates-0

1.3 HMRC agent update: Brexit edition

HMRC has published an extra edition of Agent Update to cover matters related to Brexit. It provides an overview of the recent issues of which tax agents should be aware, including trading rules.

The guidance covers:

- the new rules for trading with Europe, and how to help clients comply;
- the new rules for business travellers;
- cash declaration rules;
- the new rules on social security coordination; and
- postponed VAT accounting for importers.

www.gov.uk/government/publications/agent-update-january-2021-brexit-edition

1.4 Nudge letter to non-resident UK property owners

HMRC has written follow-up letters to non-resident companies that it believes may have omitted to file an ATED return. This is the latest in a series of 'nudge' letter campaigns, sent to taxpayers that HMRC believes may have omitted to report an event, as a way of encouraging them to get their affairs in order without starting a formal enquiry.

Letters were previously issued by HMRC to non-resident corporate taxpayers recorded as owning UK properties to encourage them to register for ATED (Annual Tax on Enveloped Dwellings) using the ATED online service or, alternatively, file an ATED paper return or to let HMRC know why they do not need to file an ATED return.

This letter is going to those that did not respond. It advises them that if they do not file an ATED return online or on paper and do not tell HMRC why they do not need to file an ATED return, a Revenue Determination may be issued.

www.tax.org.uk/policy-technical/technical-news/hmrc-letter-annual-tax-enveloped-dwellings-ated-non-filers

1.5 HMRC clarifies late filing penalty waiver

The waiver of late filing penalties will apply to trust, partnership, and non-resident company income tax returns as well as returns for individual taxpayers filed by 28 February.

Further to the announcement last week that late filing penalties would not be applied to returns for individual taxpayers that are filed online by 28 February, HMRC has now clarified the extent of the waiver to other self-assessment returns.

It applies to returns for individual taxpayers, partnership returns, and trustee returns if they are filed online by 28 February. The penalty waiver does not apply to those returns if filed on paper in February, as the deadline for paper forms was 31 October.

The waiver will also apply to income tax returns for non-resident companies and returns for trustees of registered pension schemes filed on paper by 28 February. There is no facility to file these forms online.

All other self-assessment obligations stand, and the tax payment due date remained 31 January.

www.tax.org.uk/policy-technical/technical-news/31-january-self-assessment-deadline-and-filing-penalties-%E2%80%93-further

2. Business tax

2.1 Call for input on the UK funds regime

HMT is seeking input on possible reforms to the asset management and funds regimes.

The call for input follows a consultation in 2020 on the tax treatment of asset-holding companies. The review aims to make the UK a more attractive location for asset management and particularly for funds. It covers the taxation and regulation of funds, as well as opportunities for wider reform. The specific tax issues addressed include:

- the taxation of balanced funds, which do not always benefit from tax neutrality;
- reducing the complexity and barriers in the real estate investment trust regime; and
- the tax treaty benefits available to UK-domiciled funds.

The proposals include lowering tax rate for authorised funds or introducing tax exemptions for authorised funds. The taxation of asset-holding companies and the VAT treatment of fund management services will be addressed in separate consultations.

The consultation closes on 20 April 2021.

www.gov.uk/government/publications/review-of-the-uk-funds-regime-a-call-for-input

2.2 Enterprise Investment Scheme Relief denied on preferential shares

The UT has upheld the FTT's decision to refuse an application under the Enterprise Investment Scheme (EIS). One class of the company's shares had an excluded preferential right to dividends.

The company had obtained non-statutory advanced assurance from HMRC that EIS authorisation would be granted. The authorisation was denied, however, on the basis that excluded preferential rights were attached to one class of shares.

The FTT had denied the taxpayer's appeal. The B shares were entitled to 44% of the distributable profits in preference to the other shareholders. This priority entitlement to dividends did not disqualify the company from the EIS; the right was fixed and could not be altered by a director or member. The Articles of Association did not, however, fix a date or event for when dividends become payable on the B shares. The date on which the dividends were payable was held to be dependent on the decision of the company, a shareholder or some other person. The UT therefore upheld the FTT decision, dismissing the company's arguments that other events were potential triggers for dividends becoming payable.

Foojit Limited v HMRC [2021] UKUT 14 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2021/14.html

3. VAT

3.1 CA rules against zero-rating digital newspapers

The CA has overturned the UT and found that digital news services were not 'newspapers' for VAT purposes. Consequently, online newspapers were not eligible for zero-rating until new legislation came into effect on 1 May 2020.

The taxpayer argued that the zero-rating for physical newspapers that has applied since 1972 also extended to digital newspapers. The FTT had found in favour of HMRC, but the UT reversed this decision. The central issue was the interpretation of the statute providing for zero-rating of newspapers. When it was drafted, digital newspapers did not exist. The treatment of these supplies therefore depended upon whether or not 'newspapers' should be interpreted as including digital newspapers. The CA overturned the UT's decision and held that 'newspapers' did not include digital newspapers at that time. The correct approach was to consider both the 'always-speaking' doctrine of law, and the need to interpret strictly the statutes providing for zero-rating. The CA found that the zero-rating provisions only covered physical supplies.

Zero-rating was specifically extended to digital newspapers from 1 May 2020 under new legislation. This decision therefore only directly affects supplies prior to that date, but means many protective claims made for pre 1 May VAT recoveries may fall if the case goes no further.

HMRC v News Corp UK & Ireland Limited [2021] EWCA Civ 91

www.bailii.org/ew/cases/EWCA/Civ/2021/91.html

3.2 HMRC delays changes to early termination fees and compensation payments

The changes to the VAT treatment of early termination fees and compensation payments will be delayed. The new treatment will apply from a future date that has not yet been announced.

Revenue and Customs Brief 12 (2020) (the Brief) was issued in September 2020. It set out HMRC's change in policy on the VAT treatment of early termination fees and compensation payments following decisions by the CJEU. Prior to those decisions, HMRC believed that such supplies were outside the scope of VAT. The updated guidance stated that these payments were and had always been liable to VAT.

Many businesses, business representatives and agents expressed concern over the decision to change the VAT treatment for past supplies. In response, HMRC has updated the Brief to confirm that the change in treatment will only apply from a future date. That date has not yet been specified.

Further guidance will be issued to explain what businesses need to do. It will also explain what to do if a business has already changed how they treat these payments because of the original Brief. Until the new guidance is issued, businesses can either continue to treat such payments as further consideration for the contracted supply or treat them as outside the scope of VAT if that is what they did before the Brief was issued.

www.gov.uk/government/publications/revenue-and-customs-brief-12-2020-vat-early-termination-fees-and-compensation-payments

4. Tax publications and webinars

4.1 Webinars

The following client webinars are coming up over the next week.

- Pension allowances for high earners - 3 February

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

5. And finally

5.1 Educated guesses

One of the perils of working in tax is the unwarranted assumption that we have a magical insight into what will be in the next Budget. Will CGT rates go up? Will I save tax if I sell my business now? Will the SDLT holiday be extended?

We don't know. If we had that kind of clairvoyant foresight, we would have retired early to a sunny beach, not be recuperating after another January in tax.

But, if you want to make some of your own Budget predictions, tinker around with HMRC's ready reckoner tables. A quick play around with the numbers brings us to the one prediction we are comfortable to make: tax will still be complicated after the Budget.

www.gov.uk/government/statistics/direct-effects-of-illustrative-tax-changes

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		