Smith & Williamson

Tax update

A round-up of recent issues

9 February 2021

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1. General

1.1 Evaluation of HMRC powers published

HMRC has published an evaluation of its implementation of its powers, obligations, and safeguards. The report includes 21 commitments from HMRC to address the findings.

In 2019, as part of a series of actions to maintain and develop trust in HMRC operations, an evaluation of the powers and safeguards introduced in 2012 was announced. This report was produced by HMRC with its conclusions, following consultation with taxpayer representative bodies.

The report is lengthy, but concludes that overall HMRC's approach to implementing powers is broadly consistent with the principles of the pre-2021 powers review. It notes that in some cases HMRC could have approached cases differently, highlighting the need to ensure a consistent approach and level playing field for taxpayers.

Key commitments from HMRC include that it will consider what further steps should be taken as part of the wider review of the tax administration framework, improve the range and methods of communication

it uses, make guidance as useful and accessible as possible, and raise awareness amongst taxpayers of their rights in relation to several HMRC powers.

www.gov.uk/government/publications/evaluation-of-hmrcs-implementation-of-powers-obligations-and-safeguards

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: 06536061 and 83642132.

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

1.3 Advisory Panel opinion: loans to participators scheme is abusive

The General Anti Abuse Rule (GAAR) Advisory Panel has opined that a scheme involving a loan to a participator is not a reasonable course of action. The scheme involved generating an artificial loan repayment by establishing a new company with uncalled share capital to create value equal to the outstanding loan.

The scheme was designed to prevent a loan to participator charge arising on an outstanding loan to a participator. The shareholder who owed the debt to the company incorporated a second company that issued £2m of new shares that were not called up. The individual personally guaranteed the uncalled share capital. He also agreed to retain that obligation even after the shares were transferred to a different entity. The shares were initially held by offshore nominee companies on behalf of the individual. The shares were subsequently transferred to the original company in satisfaction of the outstanding loan. Thus, the loan to the participator was technically repaid before a loan to participator charge arose. Uncalled share capital does not constitute a debt.

The GAAR Advisory Panel found that the scheme was contrived and abnormal. The funding arrangements lacked economic substance. The net result of the scheme was that the individual effectively still owed the money to the company: he retained the obligation to contribute the share capital when it was called. Although some of the characteristics of the scheme may not be contrived in isolation, in this context, the overall scheme was not a reasonable course of action to take.

www.gov.uk/government/publications/gaar-advisory-panel-opinion-of-16-december-2020-artificial-repayment-of-a-loan-or-advance-to-a-participator

2. Private client

2.1 Regulations on the taxation of Coronavirus support payments published

Regulations have been published to ensure that self-isolation payments made to self-employed individuals will be taxable as part of their self-employment income.

The regulations cover payments made under the Test and Trace Support Payment Scheme in England, the Self-Isolation Support Grant in Scotland, and the Self-Isolation Support Scheme in Wales.

This will come into force on 22 February 2021, but have effect on payments made before and after that date.

www.legislation.gov.uk/uksi/2021/92/contents/made

2.2 Income tax indexation order enacted

The Statutory Instrument setting income tax bands and allowances for the tax year beginning on 6 April 2021 has been enacted. These increases are linked to inflation.

The Order sets allowances and limits for 2021/22 as follows:

- the basic rate limit to £37,700;
- the personal allowance is increased to £12,570;
- the Blind Person's allowance to £2,520;
- the minimum amount for tax reductions for married couples and civil partners to £3,530;
- the amount by which the married couple's allowance is calculated to £9,125; and
- the adjusted net income limit for the married couple's allowance to £30,400.

www.legislation.gov.uk/uksi/2021/111/contents/made

2.3 Call for evidence on use of third party data

The Office of Tax Simplification (OTS) has requested input on its review of third party data use, from taxpayers in general as well as agents and third parties

In December, the OTS outlined the scope of its planned review of smarter ways to use third party personal tax data. This is focussing on potential pre-population of tax returns with data from various sources such as banks paying interest and charities receiving gift aid donations.

To aid in the review, the OTS is conducting a formal call for evidence alongside a taxpayer survey. Taxpayers and agents are asked to comment on what third party data sources they use to prepare tax returns, what, if any, areas can cause problems with the timeliness and accuracy of returns, and their concerns on third party data use. Third parties are asked to comment on how they currently provide data to taxpayers, what issues there would be in providing this to HMRC, and for any suggestions.

The deadline to respond is 9 April 2021.

www.gov.uk/government/consultations/making-tax-easier-through-smarter-use-of-third-party-data

2.4 Arrangements to create tax-free dividend defeated

The FTT has found that arrangements designed to avoid a tax charge on a dividend were ineffective. Diverting the distribution through a settlor-interested trust did not leave the liability with the settlor company, as the company shareholders retained ultimate control and on a purposive interpretation they received the distribution.

The taxpayers entered into arrangements whereby funds left a company (A) of which they were the sole shareholders and directors, and reached their hands indirectly. A subscribed for shares in a new subsidiary (B), and settled them on trust for the shareholders, though the company was to receive a portion of any trust income, and the trust property was to revert to it. B reduced its share capital and declared a dividend, which was paid to the trust beneficiaries. This was the lead case for several appeals on similar arrangements.

The taxpayers contended that under the settlements legislation, as B retained an interest in the trust it settled, the income of trust was taxable solely on B. HMRC argued that under a purposive construction of the legislation, the income was simply a distribution from A to the taxpayers. The FTT agreed with HMRC and dismissed the appeal. Before the year in which this marketed tax arrangement was used, A had made yearly distributions to the taxpayers in the normal way. The taxpayers did not dispute that the main purpose of the arrangements was to negate tax on the dividend. Under the *Ramsay (WT Ramsay Ltd v Inland Revenue Commissioners [1982] AC 300*) principle, the income was a direct dividend rather than income from a settlement.

HMRC also suggested that the taxpayers were the true settlors, so taxable on the income, as they had retained full control over A. The judge made an extensive analysis of the settlements legislation, but

concluded that the directors were not settlors, as they had not provided an element of bounty to the trust.

Clipperton & Anor v HMRC [2021] UKFTT 12 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2021/TC07998.html

2.5 House with annexe one property for SDLT

Multiple dwellings relief has been refused on the purchase of a house with an annexe, as the living and bathing facilities were not sectioned off from the main house. The annexe was not suitable for use as an independent dwelling.

The taxpayers initially filed an SDLT return for a single dwelling. Their later amendment to claim multiple dwellings relief was accepted by HMRC, but an enquiry concluded that the annexe was not a separate dwelling, as it did not have a self-contained bathroom. The previous occupants had used the whole property as a single dwelling.

The annexe had a separate entrance, kitchen, and garden, but the bathroom was accessed through the main house. It was not used by the occupants of the main house, and there were plans to split it off to form part of the annexe. The FTT agreed with HMRC and dismissed the appeal. The annexe was not suitable for use as a separate dwelling, and plans for future adaptation did not affect the position at time of purchase.

Partridge v HMRC [2021] UKFTT 6 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2021/TC07991.html

3. Business tax

3.1 CA upholds UT's ruling on the interpretation of capital allowances legislation

Two exclusion provisions in the capital allowances legislation should be read as mutually exclusive, ruled the CA. If an industrial building is not excluded from being eligible for capital allowances by the first provision, there is no need to go on to consider the second provision.

The taxpayer made a very significant capital allowances claim relating to the construction of a hydroelectric power scheme. The claim was disputed by HMRC on several grounds. The primary issue before the CA was the correct interpretation of two particular exclusion provisions for structures, assets and works. Generally, items of plant are eligible for capital allowances unless specifically excluded. Section 22(1)(a) of the Capital Allowances Act 2001 excludes, within List B, expenditure on structures other than industrial buildings. Section 22(1)(b) excludes any works involving the alteration of land. HMRC argued that the two sections overlap such that an industrial building not excluded by section 22(1)(a) could be excluded by section 22(1)(b). The CA rejected this approach and upheld the UT's decision: the two sections are mutually exclusive. Industrial buildings not excluded by section 22(1)(a) are allowable; there is no need to consider if they are caught by section 22(1)(b).

The CA also clarified the definition of 'tunnel' and 'aqueduct'. Overall, HMRC's appeal was rejected other than in respect of one procedural point.

HMRC v SSE Generation Limited [2021] EWCA Civ 105

www.bailii.org/ew/cases/EWCA/Civ/2021/105.html

4. Tax publications and webinars

4.1 Tax publications

The following Tax publications have been published.

- *HMRC confirms repeal of DAC6 in line with the Free Trade Agreement*

4.2 Webinars

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

- 25 February: MTD Phase 2 - Are you ready?

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

5. And finally

5.1 Read all about it

Apart from being a big amount of money, it didn't really matter much. We can't, though, let last week's News Corp decision just go by. We were intrigued to discover the VAT fate of our fellow online news giants and the VAT on our online newspapers. It all turned on the strict interpretation of zero-rating. The judgement is closely argued and we have no issue with it. Except that the outcome, unimpeachable as it is, is back to front in the way only VAT can be.

Newspapers historically carried zero-rating. But, what is a newspaper? Well, put simply, it isn't the paper; it's the news. Fish and chip wrapping aside, the used paper is worse than useless. All the value is in the words, the information they represent; so it must be the words that are or are not taxed. And, we are pretty sure that was the whole point of the zero-rating, that such information should be tax-free. Indeed, once the decision about online supplies of exactly the same words and information came to be made last year, it was not really surprising that the joke was held to be finally over, the same decision was reached and those online supplies were also zero-rated.

Such obvious and trivial observations must be set aside. What are we thinking? VAT could not possibly work like that. The beauty of the case is that we could write a judgement that went entirely the other way (like indeed the UT pretty much did) and we are not sure anyone other than the parties would really be able to tell which was the right one - if they didn't know their VAT.

But we would notice. We can't have VAT reaching decisions on the basis of common sense. It would lose all its friends.

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

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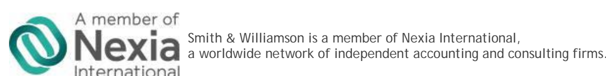

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