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1. General

1.1 HMRC agent update 82

HMRC has published Agent Update 82, which provides an overview of the recent issues of which tax agents should be aware, focusing on forthcoming changes, and how to use Coronavirus support schemes.

The latest Agent Update summarises various recent issues and changes, including guidance on:

- what details of furlough scheme claims will be published;
- the new VAT payment deferral scheme;
- preparing for changes to off-payroll working rules;
- the VAT reverse charge on construction and building services;
- disguised remuneration;
- HMRC efforts to tackle Research and Development fraud and error;
- encouraging clients to apply for marriage allowance; and

- using the Trust Registration Service, and its planned extension to non-taxable trusts.

www.gov.uk/government/publications/agent-update-issue-82/agent-update-issue-82

1.2 Electronic signatures on agent authorisation forms acceptable

HMRC has announced that digital or electronic signatures will be accepted on marriage allowance claims, claims for tax relief on employment expenses (form 87) and agent authorisation forms (64-8s).

Taxpayers must have provided the signatures themselves for the claims to be valid. Electronic signatures are only accepted for these three claim types according to this announcement. All other claims and paper tax returns will still require an original signature. The announcement defines electronic signatures as those signed on the screen of a digital device, or displayed in a keyboard-typed font.

Following the Law Commission guidance that electronic signatures should be considered equivalent to handwritten ones, the limited scope of this confirmation from HMRC is disappointing, particularly given the challenges arising in obtaining physical signatures during the pandemic.

www.gov.uk/government/publications/agent-update-issue-82/agent-update-issue-82

www.lawcom.gov.uk/electronic-signatures-are-valid-confirms-law-commission/

1.3 Consultations to be published on 23 March, not with Budget

The Treasury has announced that a number of tax-related consultations and calls for evidence will be published at the end of March. Traditionally these would be announced on Budget Day.

The rationale given for the decision is that this will allow tax professionals a better opportunity to feed into the consultations and policy discussions, and allow more transparency and scrutiny.

HMT has confirmed that “none of the announcements will require legislation in the next Finance Bill or have an impact on the Government’s finances” and that any announcement that will have an impact will still be announced on Budget Day.

Several of these consultations are said to be part of the Government’s 10 year strategy for the tax administration system.

www.gov.uk/government/news/government-to-publish-range-of-tax-consultations-and-calls-for-evidence-on-23-march

2. Private client

2.1 National Insurance indexation order enacted

The Statutory Instrument setting national insurance rates, limits, and thresholds, 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 small profits threshold for Class 2 contributions – from £6,475 to £6,515 per year;
- the voluntary Class 3 NIC amount – from £15.30 to £15.40 per week;
- the lower limit for Class 4 NICs – from £9,500 to £9,568 per year; and
- the upper limit for Class 4 NICs – from £50,000 to £50,270 per year.

The rate at which Class 2 NICs are payable by self-employed earners remains the same as £3.05 per week.

www.legislation.gov.uk/uksi/2021/157/made

2.2 Late payment penalty easement for self-assessment taxpayers

HMRC has announced that the 5% late payment penalty due to be charged on 3 March on unpaid self-assessment tax liabilities has been postponed to 1 April. In addition, those who have set up payment plans with HMRC by 1 April will not be charged late payment penalties.

The self-assessment tax payment deadline remains unchanged from 31 January. Where payment is made after this date, interest will still apply. HMRC previously confirmed that the late filing penalty of £100 would only be charged where returns were filed after 28 February. HMRC has now also confirmed that the 5% late payment penalty will only apply where tax is not paid, or a payment plan is not arranged, by midnight on 1 April.

www.gov.uk/government/news/more-help-for-self-assessment-taxpayers

2.3 HMRC wins appeal on Entrepreneurs' Relief for trusts

The UT has found in favour of HMRC in an Entrepreneurs' Relief (ER) case, as it was then known. It found that the FTT made an error in law in concluding that a beneficiary did not need to have been a qualifying beneficiary for a year prior to disposal.

The three taxpayers were each granted an IIP in three separate settlements in July 2015. A relation gave an equal number of trading company shares to each settlement in August 2015, and the trusts disposed of them less than four months later. The three taxpayers were officers of the trading company, and their holdings were sufficient to meet the personal company rules as individuals. This case related only to the shares in which they held an interest in possession. HMRC denied ER on the disposals, on the grounds that the beneficiaries were qualifying beneficiaries for under a year. The FTT found for the taxpayers, holding that a qualifying beneficiary only has to hold an interest in possession under the trust at the time of the trustees' disposal of the shares.

The UT accepted HMRC's appeal, finding that a qualifying beneficiary must be so for a year before disposal of their interest. In making its decision, it considered the historical basis for ER, looking at its predecessors and the rationale behind the relief. It found that the availability of ER to a trust beneficiary was closely linked to that beneficiary, rather than looking solely at the trust. The FTT had believed that by adding the IIP provision Parliament was extending the entrepreneurial connection to IIP disposal cases, but in fact a trust beneficiary also had to have this entrepreneurial connection, including the qualifying period. Otherwise, the relief for trustees would be a 'tick-box exercise'.

HMRC v (1) The Quentin Skinner 2005 Settlement L (2) The Quentin Skinner 2005 Settlement R (3) The Quentin Skinner 2005 Settlement B [2021] UKUT 29 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2021/29.html

3. PAYE and employment

3.1 HMRC loses appeal in TV presenter contractor case

The UT has remade an FTT decision on the nature of payments to a contractor through a personal service company, finding that the hypothetical contract had different terms. It did however come to the same ultimate conclusion as the FTT, finding that the relationship between the contractor and the BBC was not within the scope of the off-payroll working rules.

The intermediary, a personal service company, appealed successfully at the FTT against HMRC determinations on IT and NICs on payments under two BBC contracts. The parties agreed that the correct approach to determine the tax treatment was to construct a hypothetical contract between the presenter and the BBC, as though the services had been provided directly by her, not the intermediary. If that hypothetical contract was an employment contract, rather than a contract for services, the actual earnings would be characterised as employment income for tax purposes. The FTT found that the terms of the hypothetical contract between the BBC and Ms Adams should be regarded as being the terms of the actual agreement between the BBC and the intermediary, and on this basis she was not an employee.

On detailed consideration of the contracts, the UT remade this decision. It ultimately came to the same conclusion as the FTT, but found an error of law in the judgment on its interpretation of the contract. The written agreement should have held more sway in the FTT decision, and the UT found that the hypothetical agreement had additional terms. The UT decision was that on the control and mutuality of obligation tests the presenter would have been an employee, but based on the presenter's work history she would have been entering into business on her own account at the outset of the contract.

HMRC v Atholl House Productions Limited [2021] UKUT 0037 (TCC)

https://assets.publishing.service.gov.uk/media/602fa8f6d3bf7f721b700f18/HMRC_v_Atholl_House_.pdf

3.2 HMRC explains compliance approach for off-payroll working rules

HMRC has set out its approach for compliance activity relating to the new off-payroll working rules due to come in from 6 April 2021.

The change in rules means that rather than a contractor's personal service company being responsible for determining whether or not the contractor should be treated as an employee of the organisation engaging the company, it will be the organisation's responsibility. If the rules apply the organisation must account for employment taxes and NICS.

The briefing sets out the basis for HMRC's planned compliance activity around this change, including example case studies. HMRC plans to support taxpayers trying to comply, and challenge deliberate non-compliance and avoidance schemes.

www.gov.uk/government/publications/hmrc-issue-briefing-supporting-organisations-to-comply-with-changes-to-the-off-payroll-working-rules-ir35

4. Tax publications and webinars

4.1 Tax publications

The following Tax publications have been published.

- [Don't forget the cost of partial exemption](#)
- [What will the Budget hold for businesses?](#)
- [Spring Budget and personal tax: what's in the box?](#)
- [Budget 2021 wish list: Seven areas for change](#)

4.2 Webinars

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

- 10 March 2021: S&W Sessions: The Budget
- 24 March 2021: Private Client Tax Conference
- 25 March 2021: Land agent tax update webinar

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

5. And finally

5.1 Health and wealth

Last week, it was reported that Imperial College and others are recruiting young, healthy volunteers for a new study: to be infected with COVID-19 so that researchers can observe a case in controlled conditions.

Better treatments for COVID-19 are dearly wished for, but naturally our minds sank straight to the tax treatment, given that £4,500 is on offer. Surely the noble volunteers should not be taxed for getting COVID, you may ask?

Well, that depends: a peek at the HMRC manuals reveals that payments to medical trial participants are only tax-free in so far as they reimburse reasonable expenses. £4,500 may not sound like much for being infected with COVID-19, quarantined in hospital for 17 days, and undergoing follow-up tests over the course of a year, but a portion could end up taxed as miscellaneous income (what else?).

If anyone has the Chancellor's ear, do point out for us that making this tax-free in the 3 March Budget would get him lovely headlines, and at least save the volunteers a tax headache. It's the least they deserve.

www.bbc.co.uk/news/health-56097088

www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim71105

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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