

### 12 January 2022

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# 1. General

## 1.1 HMRC late payment interest rate rises

***Following the Bank of England interest rate rise, the rate of interest HMRC charges on late tax payments has increased.***

HMRC has increased yearly interest rates on overdue tax by 0.15%, following the Bank of England base rate increase from 0.1% to 0.25%. The rate applied to the main taxes is now therefore 2.75%. The rate applicable to corporation tax quarterly instalment payments is 1.25%. The rate of interest on repayments from HMRC remains unchanged at 0.5%.

The change applied from 27 December 2021 for quarterly instalment payments and 4 January 2022 for non-quarterly instalment payments.

[www.gov.uk/government/news/hmrc-late-payment-interest-rates-to-be-revised-after-bank-of-england-increases-base-rate](https://www.gov.uk/government/news/hmrc-late-payment-interest-rates-to-be-revised-after-bank-of-england-increases-base-rate)

## 1.2 HMRC agent update 91

***HMRC has published Agent Update 91, which provides an overview of the recent issues of which tax agents should be aware. It includes updates on HMRC services, and forthcoming changes.***

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

- explanations of how to report COVID-19 support payments on tax returns;
- the latest measures to combat tax avoidance, including a plan to name tax avoidance promoters;
- guidance on the intangible fixed asset regime;
- an explanation of the new IHT reporting requirements for non-taxpaying estates that came into force on 1 January;
- notice of a planned improvement to the trust registration service intended to improve ease of viewing; and
- a request for feedback on HMRC manuals.

[www.gov.uk/government/publications/agent-update-issue-91](https://www.gov.uk/government/publications/agent-update-issue-91)

## 1.3 SDLT assessment found to be valid

***The FTT has rejected a taxpayer's argument that the SDLT return it has submitted was voluntary, so incapable of being enquired into. Although this type of scheme had failed by means of retrospective legislation, the FTT found that this scheme was invalid at the date of the transaction, so the discovery assessment and closure notice were found to be valid.***

The taxpayer implemented a subsale relief scheme with the aim of reducing SDLT on the purchase of a property by granting a third party the option to buy the property at the same time as the purchase, and holding that the first contract had therefore not been fully performed. This type of scheme has previously been defeated, using retrospective legislation, so the issue in this case was validity of the closure notice and discovery assessment.

The appellant argued that the return enquired into was a voluntary return, into which HMRC had no power to enquire. It stated that the onward option contract meant that no SDLT return was required in relation to the transfer of the property to the appellant, so it had been submitted as a voluntary nil return. For SDLT purposes no transaction had occurred.

The FTT considered the legislation, and reached the conclusion that the scheme was ineffective at the date of the transaction, before the retrospective legislation, as the contract was substantially performed. The acquisition was therefore a notifiable transaction requiring a return.

*Redmount Trust Company Limited v HMRC* [2021] UKFTT 443 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2021/TC08327.html](http://www.bailii.org/uk/cases/UKFTT/TC/2021/TC08327.html)

## 1.4 Update on tax simplification work for individuals and smaller businesses

***The Office of Tax Simplification (OTS) has published a note on its work on simplifying everyday tax for individuals and smaller businesses. It focuses on tax education and awareness, those starting out in business, and small companies. This summarises work to date, and considers progress and areas for further work.***

The note highlights points at which awareness of relevant taxes could be raised, such as tax training at colleges, and encouraging conveyancers to provide a link to HMRC guidance on selling property. The OTS raises concerns about the support available for those starting out in business; particularly, that many may only encounter tax guidance after making initial decisions, such as forming a company. It noted the long timescales for work on simplifying tax reporting for smaller companies.

[www.gov.uk/government/publications/ots-everyday-tax-evaluation-paper](http://www.gov.uk/government/publications/ots-everyday-tax-evaluation-paper)

## 2. Private client

### 2.1 HMRC announces grace period for self-assessment penalties

***Late filing penalties for self-assessment tax returns will not be charged on online tax returns filed up to a month late, though the filing deadline has not changed. Late payment penalties will also not be charged until a month later than normal. This measure is similar to that introduced in January 2021.***

HMRC has announced that, although the tax return filing deadline remains 31 January, late filing penalties will not be charged for 2020/21 returns filed online by 28 February. This applies to personal tax returns, trust returns, partnership returns and non-resident company income tax returns. No extension is offered for paper filers, apart from SA700s as these can only be filed on paper.

Late payment penalties will not be charged if tax due on 31 January is paid by midnight on 1 April, or a time to pay arrangement is set up by the same date. Interest will be charged as usual from 1 February.

Returns submitted after the 31 January deadline will still be classed as late, as the easement only applies to penalties. This means that they will be subject to an extended enquiry window. The deadline for claims and elections due by 31 January has not been changed.

[www.gov.uk/government/news/hmrc-gives-self-assessment-taxpayers-more-time-to-ease-covid-19-pressures](http://www.gov.uk/government/news/hmrc-gives-self-assessment-taxpayers-more-time-to-ease-covid-19-pressures)

### 2.2 HMRC update on self-assessment repayment verification letters

***Following long waits for repayments where HMRC has chosen to carry out additional checks, HMRC has increased the resources it uses on these checks, and was planning to issue a holding letter to those waiting by the end of December.***

HMRC states that it had worked through its post on the repayment letters by the end of November, and is now up to date in handling this post. From now on taxpayers should expect to receive a response to their letter within 30 days. In some cases, an issue has been identified with the return, so the repayment is further delayed. These taxpayers were to have received a holding letter by the end of December, informing them that they would receive a further letter within the month to tell them what the issue was.

[www.tax.org.uk/hmrc-self-assessment-repayment-claim-verification-letters-update](http://www.tax.org.uk/hmrc-self-assessment-repayment-claim-verification-letters-update)

### 2.3 HMRC ‘nudge’ letters: digital platform non-filers

***HMRC has announced a new campaign of ‘nudge’ letters, sent to taxpayers that HMRC has identified as having “an online presence which is likely to generate income”, and notified HMRC that they will file a 2020/21 tax return as their first return but have not yet done so. The letters remind them of***

***how to submit a return, explain how to declare income from digital sources, and signpost them to guidance.***

These letters will be sent to taxpayers HMRC has identified as having “an online presence which is likely to generate income”, and notified HMRC that they will file a 2020/21 tax return as their first return but have not yet done so.

The letters were to be sent in November 2021, with agents copied in where a taxpayer was represented.

[www.tax.org.uk/hmrc-one-to-many-letter-digital-platform-population-non-filers](http://www.tax.org.uk/hmrc-one-to-many-letter-digital-platform-population-non-filers)

## 2.4 HMRC guidance on online CGT on property returns published

***HMRC has published a new manual section with guidance on CGT on UK property returns for taxpayers and agents.***

The guidance can be found at appendix 18 in the HMRC CGT manual. It has been developed in consultation with the professional bodies.

[www.tax.org.uk/hmrc-publishes-manual-guidance-on-cgt-on-uk-property-returns](http://www.tax.org.uk/hmrc-publishes-manual-guidance-on-cgt-on-uk-property-returns)

## 2.5 Payments during training found to be earnings

***The FTT has found that payments made to a midwifery trainee were earnings rather than scholarship income. Her employment during training by the hospital was continuous with her employment beforehand as a nurse.***

The taxpayer applied to HMRC for a refund of PAYE and NICs on payments made to her by an NHS trust during her midwifery training, and appealed to the FTT on refusal. She argued that this should be classed as exempt scholarship income. At the time, she had been on a university course, which included training on the wards. The hospital in which she completed trainee shifts made payments to her. She had been employed by the hospital as a nurse prior to enrolling on the course for further training, and was employed after the course as a midwife.

HMRC argued that her employment at the hospital was continuous. The FTT agreed, rejecting her case that she was not an employee when a student. Evidence included the fact that she had remained in the pension scheme throughout. The fact that she had relied on unclear HMRC guidance, which was subsequently updated, and that colleagues had successfully claimed refunds in the same situation, did not alter the law. All her income was therefore earnings subject to PAYE and NICs.

*Johnson v HMRC* [2021] UKFTT 462 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2021/TC08346.html](http://www.bailii.org/uk/cases/UKFTT/TC/2021/TC08346.html)

# 3. Trusts, estates and IHT

## 3.1 COVID-19: Changes to conditional exemption rules extended

***HMRC has extended an exemption to public access rules on national heritage assets exempt from IHT until April 2022. The conditional exemption will continue to apply if viewing conditions are not met due to the pandemic until then.***

Some assets of national importance are granted conditional exemption from IHT, resulting in an IHT deferral, on condition that they are available for the public to view. Exact conditions are agreed with HMRC for each particular national heritage asset, but, for example, would generally include regular opening times for historic buildings.

HMRC had previously confirmed that if conditions could be met due to the effects of the pandemic, the exemption would not be lost. Withdrawal of public access to objects on loan to exhibitions, or available to be seen by appointment, is acceptable, as are difficulties with publicity. The original announcement stated that where a national heritage property was closed, HMRC would expect the lost days to be made

up later in the year, if possible, when Government advice changes. This part of the guidance has now been removed

[www.gov.uk/government/publications/capital-taxation-and-tax-exempt-heritage-assets](http://www.gov.uk/government/publications/capital-taxation-and-tax-exempt-heritage-assets)

### 3.2 HMRC Trusts and Estates Newsletter

***The latest edition of the HMRC Trusts and Estates Newsletter has been released, with information about recent announcements.***

Points raised include:

- the changes to online CGT reporting for property disposals announced at the Budget;
- the changes to IHT reporting for non-taxpaying estates that apply from 1 January 2022; and
- guidance on processing times for IHT forms and probate applications.

[www.gov.uk/government/publications/hm-revenue-and-customs-trusts-and-estates-newsletters/hmrc-trusts-and-estates-newsletter-december-2021](http://www.gov.uk/government/publications/hm-revenue-and-customs-trusts-and-estates-newsletters/hmrc-trusts-and-estates-newsletter-december-2021)

## 4. Business tax

### 4.1 Pension contribution not wholly and exclusively for the trade

***The FTT concluded that substantial pension payments made on behalf of key employees as part of a tax scheme were not incurred wholly and exclusively for the purposes of the trade. No corporate tax deduction was available as a result.***

Two separate taxpayer companies set up unfunded unapproved retirement benefit schemes to provide directors and key employees with a future pension. The contributions were calculated with reference to the estimated pre-tax profits of the businesses, and in both cases the aggregate amount of pension was set at 80% or 100% of estimated profits. The taxpayers claimed tax deductions for the liability to make future payments into the scheme.

HMRC raised enquiries and disallowed the pension contributions on the grounds that either they were not incurred wholly or exclusively for the trade or, as no employee benefits were provided, the amounts were not allowable employee benefit contributions. The taxpayers appealed.

The FTT dismissed the appeal finding that the primary purpose of the payments was to reduce the taxpayers' tax liability without incurring any actual expenditure. The scheme was brought to the taxpayers as a tax planning scheme, the engagement letters with the accountant implementing the scheme referred to the scheme as aggressive tax planning and at no stage was pension advice sought. The contributions were calculated by reference to profits, regardless of the level of those profits, rather than future benefit needs. The FTT concluded that the provision of pensions to directors was only an incidental aim of the taxpayers when establishing the pension arrangements. The liability to pay future pensions was not therefore incurred wholly and exclusively for the purposes of the trades.

The FTT went on to consider whether or not the arrangement amounted to an employee benefit contribution. It found that as the arrangement was unfunded the employee benefit contribution rules did not apply.

*A D Bly Groundworks and Civil Engineering Limited & CHR Travel Limited v HMRC* [2021] UKFTT 445 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2021/TC08329.html](http://www.bailii.org/uk/cases/UKFTT/TC/2021/TC08329.html)

## 4.2 New Plastic Packaging Tax regulations and guidance

***The new regulations revise the definition of packaging component and the products that will be subject to the new tax. HMRC has also published new guidance on record keeping requirements.***

Plastic Packaging Tax (PPT) comes into force on 1 April 2022 and will apply to manufacturers and importers of plastic packaging that contains less than 30% recycled plastic. It will not apply to manufacturers and importers of less than 10 tonnes of packing each year.

The new regulations remove three existing product categories from the definition of packaging component and add one new category.

Further guidance issued by HMRC explains what records and accounts must be kept by businesses to support the submission of PPT returns.

[www.legislation.gov.uk/uksi/2021/1417/made](http://www.legislation.gov.uk/uksi/2021/1417/made)

## 4.3 Draft regulations on derivatives used to hedge share transactions

***HMRC has launched a technical consultation on draft regulations that will extend the scope of the disregard regulations to cover derivative contracts used to hedge foreign exchange risk where there is an anticipated future acquisition or disposal of a substantial shareholding.***

Under current rules such derivatives are treated as income items during the life of the hedging contract. This creates a tax mismatch with the treatment of the shares, which will not be taxed or relieved until disposal or may be covered by the substantial shareholding exemption.

The draft regulations will apply to derivative contracts entered into on or after 1 April 2022 where the derivative is designed to hedge foreign exchange risk on an anticipated future acquisition or disposal of a substantial shareholding. The profits and losses arising from such derivatives will be disregarded throughout the lifetime of the hedging instrument.

The consultation runs until 24 January 2022.

[www.gov.uk/government/consultations/draft-regulations-derivatives-used-to-hedge-foreign-exchange-risks-in-share-transactions](http://www.gov.uk/government/consultations/draft-regulations-derivatives-used-to-hedge-foreign-exchange-risks-in-share-transactions)

## 4.4 OECD releases model rules for implementation of 15% global minimum tax rate

***The OECD has published Pillar Two model rules to help countries implement a 15% global minimum tax rate for multinational enterprises from 2023.***

The Pillar Two model rules provide governments with a template for taking forward the implementation of the historic political agreement reached by 137 countries and jurisdictions in October 2021, designed to address the tax challenges arising from an increasingly global and digital economy. The minimum tax will apply to multinational enterprises with global turnover of at least €750 million.

The rules define which multinational enterprises will be within the scope of the minimum tax; set out how to calculate a multinationals effective tax rate on a jurisdictional basis and how to determine the amount of top-up tax payable; and impose the top-up tax on a member of the multinational group in accordance with an agreed order.

The OECD plan to release commentary on the new rules in early 2022, followed by an implementation framework focused on the administrative, compliance and co-ordination issues of Pillar Two.

[www.oecd.org/tax/oecd-releases-pillar-two-model-rules-for-domestic-implementation-of-15-percent-global-minimum-tax.htm](http://www.oecd.org/tax/oecd-releases-pillar-two-model-rules-for-domestic-implementation-of-15-percent-global-minimum-tax.htm)

## 4.5 Revised guidance on subsidised costs for R&D claims

**HMRC's Corporate Intangibles Research and Development Manual has been expanded to provide additional guidance on the meaning of subsidised expenditure for SME R&D claims. It has also updated its guidance on activities contracted to an SME.**

R&D tax reliefs under the SME scheme are not available for expenditure that is subsidised. Expenditure that it is otherwise met directly or indirectly by a person other than the company is included in the definition of subsidised. The new guidance confirms that there needs to be a clear and direct link between the payment received and the qualifying expenditure to fall within this definition. What is considered to be a 'clear and direct link' will depend on the facts in each case and some examples have been provided.

HMRC has also updated its guidance on subcontracted activities. Expenditure incurred in carrying out activities contracted to an SME by another person is not qualifying expenditure. This is intended to prevent both parties to a contract from claiming relief for the same activities. The guidance confirms, however, that where R&D continues after the contract has been fulfilled, the post-contract activities will not be precluded from relief.

[www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird81650](http://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird81650)

[www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird84250](http://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird84250)

## 5. VAT

### 5.1 FTT issues ruling in respect of VAT recovery on share sales

***The taxpayer won its appeal regarding the recovery of VAT in relation to the sale of shares in a subsidiary***

The taxpayer had sold the shares in a subsidiary in order to finance the construction of a new hotel. It had incurred VAT on professional costs associated with share sale and recovered the VAT on its VAT returns. HMRC contended that as the sale of shares was exempt from VAT, the taxpayer was not entitled to reclaim this VAT and raised an assessment accordingly.

The FTT held that as the purpose of the share sale was to raise funds for the downstream activities of the business, that is the development and operation of a new hotel, the VAT incurred on professional costs associated with the share sale was recoverable.

*Hotel La Tour Ltd v Revenue and Customs Commissioners* [2021] UKFTT 451 (TC)

[www.bailii.org/uk/cases/UKFTT/TC/2021/TC08335.pdf](http://www.bailii.org/uk/cases/UKFTT/TC/2021/TC08335.pdf)

### 5.2 Claiming VAT on the cost of charging electric vehicles

***HMRC is considering the situation where an employee is reimbursed by the employer for the actual cost of electricity used in charging an electric vehicle for business purposes***

The motoring expense VAT Notice 700/64 has recently been updated to confirm that VAT incurred by businesses when charging electric vehicles can be recovered on the business use of those vehicles, if the vehicles are charged at work or at public charging premises. How much of the cost of charging an electric vehicle is for business is calculated by keeping mileage records. If, however, an employee charges an electric vehicle at home, the overall supply of electricity is made to the employee and not the employer and the employer is not entitled to recover the VAT on the cost of charging the electric vehicle.

Given that the current rules are more burdensome and restrictive than those for more polluting vehicles, Revenue and Customs Brief 1(2022) announces a review of how input VAT is claimed on the cost of charging electric vehicles, particularly where an employee is reimbursed by the employer for the exact cost of electricity used in charging an electric vehicle for business purposes. Once the review is complete, guidance will be published to confirm the updated policy.

[www.gov.uk/government/publications/revenue-and-customs-brief-1-2022-reviewing-how-to-claim-vat-when-charging-electric-vehicles-for-business-purposes](https://www.gov.uk/government/publications/revenue-and-customs-brief-1-2022-reviewing-how-to-claim-vat-when-charging-electric-vehicles-for-business-purposes)

[www.gov.uk/guidance/vat-on-motoring-expenses-notice-70064](https://www.gov.uk/guidance/vat-on-motoring-expenses-notice-70064)

## 6. Tax publications and webinars

### 6.1 Tax publications

*The following Tax publications have been published.*

- [Farming companies - just how super is the new super deduction?](#)
- [Import and export of goods between the UK and the EU: updates to the Border Operating Model](#)

### 6.2 Tax podcasts

*The following Tax podcasts are available now.*

- [HMRC enquiries into Coronavirus Job Retention Scheme claims](#)

### 6.3 Webinars

*The following client webinars are coming up soon.*

- 18 January 2022: S&W Sessions: Under HMRC's spotlight: CJRS claims and other employer related matters

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

## 7. And finally

### 7.1 Too Long Didn't Read

We couldn't help feeling for the judges in the *Bly* case reported at 4.1 above. They were presented with a heart-sinking electronic case bundle of some 2,830 pages, only a tiny fraction of which was of any use to them and with some documents unnecessarily duplicated. In a heartfelt plea, they suggested that parties should resist the temptation to include documents simply because it is easy and convenient.

Amen to that. As they acknowledged, there are usually clear practical advantages in electronic versions over lever arch files. Here, not. Indeed, if the parties had been required to produce those paper bundles minds might have been concentrated a bit harder.

Or perhaps the judges might just send the thousands of pages back, marked 'TLDR'.

We would.

*A D Bly Groundworks and Civil Engineering Limited & CHR Travel Limited v HMRC [2021] UKFTT 445 (TC)*

[www.bailii.org/uk/cases/UKFTT/TC/2021/TC08329.html](https://www.bailii.org/uk/cases/UKFTT/TC/2021/TC08329.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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