Tax update

A round-up of recent issues

30 March 2022

1. General

1.1 HMRC Digital Services Update

HMRC has issued an update on its digital services.

This covers:

- progress on the Making Tax Digital project;
- cyber security;
- progress on the liabilities and payments viewer; and
- an update on the Agent Forum.

www.tax.org.uk/hmrc-digital-services-update-march-2022

1.2 Office of Tax Simplification opens review of property income

As part of its planned review of property income, the Office of Tax Simplification (OTS) has published a call for evidence. This seeks views on how the taxation of property income could be simplified.

The call for evidence asks for comments on the technical and practical operation of the system for taxing property income. It looks at the furnished holiday let rules as well as typical rental income. It seeks to identify problematic areas, and perhaps suggest solutions.

Alongside the call for evidence, an online survey is available for those with personal experience of property income taxation, but less professional expertise, to share their views. This is aimed at individual landlords as well as small businesses.

www.gov.uk/government/consultations/review-of-property-income-survey-and-call-for-evidence

2. Private client

2.1 Spring statement: NIC and IT changes

From July, the lower NIC threshold will increase to £12,570 to match the personal allowance for IT. The basic rate of IT will be cut by 1% from April 2024. Low earning sole traders will also have class 2 liabilities cut to zero, but retain national insurance credits.

The Chancellor set out a new 'Tax Plan' in his Spring Statement. The key points for personal tax were on IT and NICs.

The NIC primary threshold and lower profits limit will both increase to £12,570 from 5 July 2022 to match the income tax personal allowance. These are currently £9,568, and will rise to £9,880 from 6 April as previously planned, until the July increase applies. Due to two separate thresholds applying, in the 2022/23 tax year overall the yearly thresholds will be £11,908. This is more relevant for the self-employed, who calculate NIC on an annual basis.

Class 2 NIC liabilities will also be reduced to nil for self-employed individuals with profits between the small profits threshold and the lower profits limit. Although no payments will be due, they will continue to accrue NIC credits.

The basic rate of IT will be cut to 19% from 20% for the 2024/25 tax year, so starting in April 2024.

No changes were announced to the Health and Social Care Levy, which increases NICs and IT on dividends by 1.25% from 6 April.

www.gov.uk/government/publications/spring-statement-2022-factsheet-on-personal-tax

3. PAYE and employment

3.1 Spring Statement: increase in employment allowance

The employment allowance will increase by £1,000 from £4,000 to £5,000 from 6 April 2022.

4. Business tax

4.1 Trade profits in accordance with GAAP accounts for corporation tax purposes

The taxpayers' group employment benefit trust granted share options to employees of two group employer companies. The companies took a profit and loss deduction for the accounting expense under IFRS 2. The SC confirmed that the accounting expense was deductible for CT purposes.

HMRC sought to disallow the deductions on any of four grounds. Its earlier challenge on the disallowance for the cost of the shares under specific CT relief for employee options as originally introduced in 2003 had been dropped after the UT hearing.

In a case described by the SC as being of considerable importance, the SC found unanimously for the taxpayer. The first ground was that there was a specific adjustment authorised by law, based on the HL decision in *Lowry*. HMRC also argued that the deduction in the profit and loss account was to preserve the integrity of the balance sheet. The SC found there was no basis for either approach. The SC also looked at the importance of prior case law such as *Lowry* and interpretation on consolidation and rewrite legislation. The SC did not, however, need to pronounce on this aspect because here the word of the statute was already plain.

The second ground was that the expenses were not incurred wholly and exclusively for the trade because the companies suffered no loss in relation to them, or the debits were not for the purposes of the trade.

The third was that the debit was in fact of a capital nature.

The fourth was that the grant of the options was caught by the employee benefit contributions rules because the options were held under an employee benefit scheme.

The SC agreed with the lower courts and rejected the HMRC approach on all grounds.

HMRC v NCL Investments Ltd & Anor [2022] UKSC 9

www.bailii.org/uk/cases/UKSC/2022/9.html

Lowry v Consolidated African Selection Trust Ltd [1940] ac 648

www.bailii.org/uk/cases/UKHL/1940/TC_23_259.html

4.2 Spring Statement: business rates exemption for green technology

The Government is bringing forward the introduction of green energy relief to 1 April 2022 from the originally intended date of 2023.

A business rates exemption is to be introduced for eligible plant and machinery used in onsite renewable energy generation and electricity storage, such as rooftop solar panels, wind turbines, and battery storage, plus electricity storage from any source where it is being used for electric vehicle charging points. This exemption will be available from 1 April 2022 until 2035.

In addition, to support the decarbonisation of buildings, a 100% rate relief will be available from 1 April 2022 for eligible low-carbon heat networks that have their own rating assessment.

www.gov.uk/government/publications/spring-statement-2022-business-support-factsheet/spring-statement-2022-business-support-factsheet

4.3 Spring Statement: potential changes to the capital allowances regime

The Government is considering reforms to the capital allowances regime to encourage capital investment further once the temporary super-deduction ends in April 2023.

The Spring Statement provides examples of the types of changes that could be made to the capital allowances regime. These include:

- increasing the permanent level of the annual investment allowance to £500,000;
- increasing the rate of writing down allowances (WDA) for main and special rate assets to 20% and 8%;
- introducing a first year allowance for main and special rate assets where businesses can deduct a higher amount in the first year, with the remaining expenditure then written down at standard WDA rates;
- introducing an additional first year allowance of 20% to allow the overall amount of relief that can be claimed to be more than the original cost of the asset; or
- introducing full expensing, to allow businesses to write off the costs of qualifying investments in one go.

These changes relate to capital expenditure on plant and machinery but other allowances including Structures and Buildings Allowance and enhanced capital allowances within Freeports may also be reviewed. The Government will consult with businesses on these options ahead of the Autumn Budget.

www.gov.uk/government/publications/spring-statement-2022-documents

4.4 Spring Statement: R&D tax relief reform

R&D reliefs will be reformed to boost productivity growth in the UK. The support will remain focused towards innovation in the UK, while broadening the scope of the relief to remain relevant to the UK economy.

The Government made three announcements:

- while it remains committed to focusing the relief on UK innovation, the Government has recognised that in some cases R&D must take place overseas. Legislation will therefore be introduced so that expenditure on overseas R&D activities can qualify where material factors such as geography, environment or population or regulatory requirements mean those activities must take place overseas;
- the definition of R&D will be extended to include pure mathematics as a qualifying cost; and
- as part of its commitment to include data and cloud computing costs within the scope of the relief, definitions will be extended to include all cloud storage costs.

Draft legislation will be published later this year prior to these measures coming into effect in April 2023.

The Government also confirmed that it is continuing its review of R&D tax reliefs and further announcements will be made in the autumn.

www.gov.uk/government/publications/spring-statement-2022-documents

5. Tax publications and webinars

5.1 Tax publications

The following Tax publications have been published.

- *The Corporate Criminal Offence – Where are we now?*

5.2 Webinars

The following client webinars are coming up soon.

- 31 March - Introduction to the Partnership
- 6 April - S&W Sessions: Managing business tax risk: a proactive approach

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

6. And finally

Finally. After five years going through four levels of courts and perhaps as long in dispute beforehand, the dust has finally settled on the *HMRC v NCL Investments* case (see article 4.1 above). Surely, never again will we have the opportunity of reading such insightful court judgments about ourselves. We had one last chance and Lord Hamblen and Lady Rose did not let us down. Sure enough, they felt they had to refer to the findings of the FTT on skilled and motivated professionals. Those would be the skilled and motivated professionals on whom the success of the taxpayers' businesses depended. There may be those who find some of the comments of the judges through the various decisions a bit repetitive, but we can live with it. We have the professional skills. And the motivation.

HMRC v NCL Investments Ltd & Anor [2022] UKSC 9

www.bailii.org/uk/cases/UKSC/2022/9.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	LBTT - Land and Buildings Transaction Tax	

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