Smith & Williamson

Tax update

A round-up of recent issues

10 February 2022

1. General

1.1 Penalty delay also applies to overclaimed COVID-19 grants

Some unincorporated businesses should have reported COVID-19 grant overclaims by 31 January. In line with the one month penalty waiver for late filing, HMRC has confirmed that penalties will not be charged if the report is made by 28 February.

Previously, HMRC had announced that late filing penalties would not be applied to tax returns due on 31 January if they were filed by 28 February, and that late payment penalties would also be delayed by a month. HMRC has now confirmed to the CIOT that this also applies to overclaimed COVID-19 support grants. These are payments made under the Self-employment Income Support Scheme, the Coronavirus Job Retention Scheme, and Eat Out to Help Out.

Unincorporated businesses should have reported overpaid support payments, and under some circumstances the final deadline for doing so was 31 January. If, however, the overclaim is reported on a tax return filed by 28 February penalties will not be levied, as long as the failure to report earlier was not deliberate.

www.tax.org.uk/extra-month-to-repay-overclaimed-covid-grants

1.2 HMRC late payment interest rate to rise

Following the Bank of England interest rate rise, HMRC has announced a forthcoming increase in the rate of interest it charges on late tax payments.

HMRC has increased the yearly interest rates on overdue tax by 0.25%, following the Bank of England base rate increase from 0.25% to 0.5%. The rate applied to the main taxes will therefore be 3%. The rate of interest on repayments from HMRC remains unchanged at 0.5%.

The change applies from 14 February 2022 for quarterly instalment payments and 21 February 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--2

1.3 Update to HMRC disclosure of tax avoidance schemes guidance

HMRC has updated its disclosure of tax avoidance schemes (DOTAS) guidance for the FA2021 changes, including its new power to issue scheme reference numbers to those suspected of being involved in promoting or supplying a scheme.

The updated guidance details how HMRC's power to issue scheme reference numbers has been extended, such that it can issue them to a person suspected of being involved in the promotion or supply of a scheme. That person is then obliged to pass the number on to clients. Suppliers and promoters can also be named publicly if involved in the supply or promotion of an undisclosed scheme after 9 June 2021, whether or not they are UK resident. They are given an opportunity to make representations before this step is taken.

HMRC may choose not to publish information about a supplier. Each case will be decided individually. Lawyers cannot be named as promoters due to legal professional privilege rules.

www.gov.uk/government/publications/disclosure-of-tax-avoidance-schemes-guidance

1.4 Health and social care levy guidance published

HMRC has published new guidance setting out how the levy applies for employers, as well as employees, the self-employed, and those of them over state pension age.

The guidance does not contain new information, but sets out how the changes will apply, both in the year from 6 April 2022 and after 6 April 2023, when it will be separated from national insurance contributions. The guidance is divided into sections for employees, the self-employed, and those over state pension age who have not retired. Various scenarios are set out for how the levy applies at different income levels and ages.

www.gov.uk/guidance/prepare-for-the-health-and-social-care-levy

2. Private client

2.1 Military service found not to exempt taxpayer from LBTT residence requirement

Repayment of the additional dwelling supplement (ADS) has been refused, on the grounds that the property sold shortly after the purchase of a new dwelling was not the taxpayer's only or main

residence. The taxpayer had not owned another property, but due to military service overseas had been unable to occupy the first property.

While the taxpayer was on military service overseas, accompanied by his family, his wife purchased a UK property that the family intended to live in on their return from the posting. In the interim, it was rented out for some years, while containing some of their chattels. On return to the UK, the taxpayer was posted to Scotland, so was unable to reside in the property. He therefore purchased a house in Scotland and paid LBTT, with the ADS. The first property was sold a year later, and he applied for a refund of the ADS. Revenue Scotland (RS) refused, on the grounds that the first property had never been his main residence at any point in the 18 months before purchase of the second property.

The taxpayer contended that military service overseas should be accepted as a reason for not meeting the residency requirement. He argued that the LBTT legislation would not have intended this result, particularly as the UK CGT and SDLT legislation recognise the impact of military service on residence. In addition, the Armed Forces Covenant states that serving personnel should face no disadvantage, and that the tax system may be adapted for their circumstances.

The tribunal reluctantly upheld the RS decision. It recognised that the taxpayer had no choice about his postings, but as he had not met the terms of the legislation to classify the property as his only or main residence his appeal could not be allowed. The tribunal could only apply the law as enacted, so could not take the Armed Forces Covenant into account, nor consider fairness in its decision. It noted that a consultation on the ADS is currently open.

Christie v Revenue Scotland [2022] FTSTC 2

http://taxtribunals.scot/decisions/[2022]%20FTSTC%202.pdf

2.2 New cohabitants refused repayment of additional dwelling supplement

Two taxpayers who sold their own properties to purchase one together, but paid additional dwelling supplement (ADS) as one property was sold after the purchase, have been refused ADS repayment, as the property had only been the main residence of one.

Two taxpayers purchased a property together. They had previously lived separately, and one (C) sold this property on the day of the purchase, and one (S) afterwards, within the 18 month period for ADS repayment. They paid LBTT and ADS on the purchase. On sale of S's property, they applied for an ADS repayment. Revenue Scotland (RS) rejected the claim on the grounds that that property had never been the main residence of C, and that both purchasers had to meet the conditions for repayment. A worked example on its website allowed for ADS repayment in this situation when both taxpayers sold main residences after the purchase, but it held that this was not equivalent.

The tribunal disagreed with the taxpayers' argument that the RS interpretation of the legislation was incorrect, and dismissed their appeal. It held that the legislation was tightly drawn, and did not allow any leeway in a case like this. Both purchasers had to satisfy the residence condition for the sold property.

Crawford v Revenue Scotland [2022] FTSTC 3

http://taxtribunals.scot/decisions/[2022]%20FTSTC%203.pdf

3. Trusts, estates and IHT

3.1 New HMRC guidance on IHT valuations

A new guidance page on valuing stocks and shares on death for IHT sets out the procedure for different types, including some definitions, examples, and practical advice.

HMRC has published a new guidance page on valuing stocks and shares for IHT. This sets out the process that should be followed to value different types of stocks and shares, along with examples, definitions such as explaining what an unlisted share is, and practical advice such as what information should be obtained from a fund manager.

www.gov.uk/guidance/valuing-stocks-and-shares-for-inheritance-tax

4. PAYE and employment

4.1 Bonus replacement scheme fails

The FTT has found that payments made to employees were earnings from employment, ignoring contracts structured to make them exempt from tax as restricted securities under contracts for difference.

The companies entered into arrangements with some employees under which they would make payments to them if the company profits exceeded a threshold, but the employees would make payments to the company if profits were under a separate threshold. The thresholds varied by employee grade and for directors. On entering into the contract, each employee made a payment to the company, theoretically calculated as the value of the rights they obtained under the contract, which happened to be £10 in each case. HMRC contended that were artificial tax avoidance arrangements designed to allow the company to give money to employees that escaped IT and NICs, and issued PAYE determinations.

The companies held that the rights acquired were restricted securities acquired under a contract for differences, and exempt from liability to IT on grant. On consideration of the evidence and case law, FTT supported HMRC's view that the arrangements were simply a device to deliver earnings tax free, so the appeals were dismissed. Documents from the time the company implemented the arrangements described them as a replacement for the bonus plan. They were not a further incentive for employees, and the chance of them having to make payments to the employer was practically nil; this element was put into the contracts solely to achieve a tax advantage. The threshold over which the company would make payments was so low as to make these likely in the view of an expert witness. Employees ineligible for the scheme were paid bonuses instead. The arrangements were artificial, and the payments not realistically subject to fluctuation. The payments should be taxed as cash earnings, as they were paid as a result of the employment.

Jones Bros Ruthin (Civil Engineering) Co Ltd & Anor v HMRC [2022] UKFTT 26 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08378.html

5. Business tax

5.1 New guidance on claiming creative industry tax reliefs

HMRC has published a guidance note that explains how to provide evidence to support claims for these reliefs. One option is to complete an online form.

A new guidance note explains how to provide evidence to support these relief claims, by sending in additional evidence with the corporation tax return or by completing an HMRC form. It sets out what details taxpayers need to provide as evidence to claim the reliefs, with practical guidance such as what would constitute core costs.

The guidance pages for each relief have been updated to add a link to this new guidance note.

www.gov.uk/guidance/support-your-claim-for-creative-industry-tax-reliefs

5.2 Decision on capital allowances for uranium enrichment facility to be remade

The UT has reached a different conclusion from the FTT in a capital allowances case. It found that some safety structures at a uranium processing facility could qualify as plant, despite having the appearance of buildings, as they were essential to obtain regulatory approval to run the business.

The taxpayers operated facilities in Cheshire that processed radioactive material as part of the wider group's trade of producing enriched uranium for the civil nuclear industry. The construction of the nuclear deconversion facilities cost approximately £1bn. The FTT agreed with HMRC on denying £192m of capital allowances on part of the facility. The majority of the disputed assets provided safety functions of

shielding, containment and protection against seismic events. Although the FTT agreed that two out of five structures were capable of being plant, it determined that all of the disputed assets were ineligible for allowances because they were buildings, and none of the exemptions applied.

The UT considered the case law in detail, along with the regulatory background, and decided that the FTT decision must be remade in part. The FTT had decided that the fact that the business would not meet the regulatory requirements without having these safety features did not mean that they were plant, as the business functions could still theoretically be carried out. The UT held that, as the business could not operate without regulatory approval, these safety features were essential to the business. It only accepted the appeal on whether or not the disputed expenditure was 'on the provision of plant' in one other structure, finding that the FTT decision that the other structures were not plant was correct. It overturned the FTT conclusion that the structures were buildings, putting a different interpretation on the word.

The case was remitted to the FTT for remaking, as the UT decided that it was more appropriate for the FTT to apply the correct legal principles to the facts, considering the errors of law identified. The parties might wish to present additional arguments or evidence.

(1) Urenco Chemplants Limited and (2) Urenco UK Limited v HMRC [2022] UKUT 22 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2022/22.html

6. VAT

6.1 VAT claim for bad debt relief denied

The CA has ruled that where a taxpayer makes a claim for bad debt relief, but does not comply with the records keeping requirements, HMRC is entitled to disallow such a claim.

The taxpayer had made a bad debt relief claim in respect of VAT unpaid by its customers. Due to the nature of the business, it was unable to allocate payments received by customers to particular invoices and as such, monitored bad debt by reference to individual client accounts, rather than a single bad debt relief account, as prescribed by the relevant legislation.

The CA found that as the taxpayer had not fully adhered to the bad debt relief requirements in maintaining a single bad debt relief account, it was not entitled to make a claim in these circumstances. The CA also noted that the legislation allows HMRC discretion in respect of these claims, but that it was not within the CA's remit to determine whether or not HMRC should have applied discretion in these circumstances. As a result, the appeal by the taxpayer was dismissed.

Regency Factors Plc v HMRC [2022] EWCA Civ 103

www.bailii.org/ew/cases/EWCA/Civ/2022/103.html

7. And finally

7.1 Romantic(?) verse

Mid-February brings a season of cards and chocolate but over at *And finally*, of course, we are all about the tax. And what does 14 February mean in tax? Why, #TaxValentines season again of course! We recommend looking at Twitter for the best efforts, and inspiration to send your own*. For our effort, having scrapped a worryingly fervent sonnet (*How do I love IHT? Let me count the ways…*) out of concern for public opinion, we offer the following less effusive verse:

Roses are red,
For saving IHT[1] I have fervour,
There's that marriage allowance[2] too -
Would you contemplate a merger?

*Given the events of last year, the editorial team would like to reiterate that it accepts no liability for any adverse consequences for your personal relationships.

[1] IHTA1984 s8A

[2] ITA2007 Chapter 3A

https://twitter.com/search?q=%23TaxValentines&src=typed_query

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 & Buildings Transaction Tax	