

23 March 2022

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1. General

1.1 HMRC agent update 94

HMRC has published agent update 94, 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:

- the end of an easement on employee home office expenses;
- how to make an extended loss carry back claim;
- HMRC planned action on overpaid self-employment income support scheme grants;
- the end of the easement on working in the UK for those stranded by COVID-19 travel restrictions;
- the end of the easement on the qualifying journey condition for cycle to work schemes;

- issuing of 2021/22 self-assessment returns;
- the official rate of interest for 2022/23, remaining at 2%;
- the process of statutory reviews;
- guidance on notification of uncertain tax treatments by large businesses; and
- links to help and support for agents.

www.gov.uk/government/publications/agent-update-issue-94

1.2 HMRC late payment interest rate to increase again

Following the Bank of England base rate rise, the rate of interest HMRC charges on late tax payments will be increased again. This will be the third increase in 2022 for non-quarterly instalment payments.

HMRC will increase yearly interest rates on overdue tax by 0.25%, following the Bank of England base rate increase from 0.5% to 0.75%. The rate applied to the main taxes will therefore become 3.25%, and the rate applying to quarterly instalment payments will become 1.75%. The rate of interest on repayments from HMRC will remain unchanged at 0.5%.

The change will apply from 28 March 2022 for quarterly instalment payments and 5 April 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--3

2. Private client

2.1 FTT upholds discovery assessments on underdeclared income

The FTT has found that HMRC's assessments on a self-employed taxpayer were valid. The court agreed with its methods of calculating underdeclared income and gains. The taxpayer's evidence was not found to be particularly reliable.

The taxpayer registered with HMRC as a self-employed property developer from 2006/07 onwards, and declared small profits or losses each year. HMRC investigated, and issued him with discovery assessments for the nine tax years from 2005/06 on the grounds that he had underdeclared his profits and rental income, and failed to declare a capital gain on the sale of land.

The taxpayer argued that he earned nothing from his self-employment, and that the property purchases and renovations were funded by inheritances and re-mortgaging. He set out some evidence in support of this, but was generally found not to be a particularly reliable witness. In relation to the quantum of the assessments, he argued that these were significantly overcalculated. The FTT preferred HMRC's clear evidence of its calculation methods to his, and upheld these. He also failed to prove that the land sold had not generated a gain, or that it had been part of a main residence. His appeals against the assessments and penalties were dismissed

Nash v HMRC [2022] UKFTT 91 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08422.html

3. PAYE and employment

3.1 COVID-19: disregard for tests paid for by employer extended

An easement will continue during 2022/23 for COVID-19 antigen tests provided by an employer, or where an employer has reimbursed the cost. These will remain exempt from IT and NICs.

This disregard was introduced from 2020/21, and the Treasury has power to extend the measure by issuing regulations. These diagnostic tests will now be exempt from IT and NICs for a third tax year.

www.gov.uk/government/publications/income-tax-exemption-and-national-insurance-contributions-disregard-for-employer-provided-and-employer-reimbursed-covid-19-diagnostic-tests-measure-n

3.2 Settlement payment of £6m found to be termination payment

The FTT has found that a payment made by a bank to an ex-employee was a termination payment, and taxable as such. It was made to settle employment tribunal (ET) proceedings brought by the employee, who had argued that this was a settlement payment relating to her discrimination claims, so non-taxable.

A bank entered into a settlement with its regulator under which it was ordered to pay a penalty of \$600m and sack several employees. In consequence, the taxpayer's employment with the bank was terminated the following week. The bank offered her compensation 'for the termination of her employment'. She refused the initial offer but settled with her former employer for £6m after commencing ET proceedings prior to a hearing.

The taxpayer argued that the payment was in relation to her case against the employer. She believed that the ET might have awarded her a small amount for injury to feelings, but nothing for financial loss or unfair dismissal. Instead, she held that the payment was in relation to her 'moral claim', based on discrimination, as the bank's reluctance for this to be publicised led to the settlement. Essentially, she argued that the payment was unrelated to the termination of employment.

The FTT dismissed her appeal, finding for HMRC. The termination was an integral part of her claim, the trigger for it, and the reason she was able to negotiate from a strong position. The payment was made at least 'otherwise in connection' with the termination, so the amount over the £30,000 limit was subject to tax. The settlement agreement drawn up at the time referred to termination payments, and was structured to take advantage of the exemption for legal costs, and with reference to the £30,000 tax-free limit.

Mathur v HMRC [2022] UKFTT 88 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2022/TC08419.html

4. Business tax

4.1 UT rules on interaction between UK and EU group relief claims

The UT has allowed HMRC's appeal and found that the UK's restriction on the surrender of losses from a UK permanent establishment (PE) is a justified restriction on the EU principle of freedom of establishment. The restriction, however, operates disproportionately and that element is incompatible with EU law.

A non-UK resident company that has a PE in the UK is permitted to surrender losses associated with the PE to other members of the group. UK legislation restricts this ability to surrender losses of the PE if that loss was deductible or otherwise allowable against non-UK profits.

At the FTT, whether or not the restriction on the surrender of losses was compatible with the EU principle of freedom of establishment came down to two previous decisions of the CJEU: *HMRC v Philips Electronics UK Limited* [2013] STC 41 and Case C-28/17 *NN A/S v Skatteministeriet*, EU:C:2018:526. Based on those cases, in particular the similarity of the facts in the *Philips Electronics* case, it was concluded that the UK group relief restriction was contrary to the freedom of establishment. The FTT ruled that the restriction was to be disapplied. HMRC subsequently appealed that decision.

The UT concluded that, although the UK rules do impose a restriction on the freedom of establishment, this restriction is justified to prevent the double claiming of losses. The restriction, however, operates disproportionately and it is this that makes it incompatible with EU law. Unless an interpretation of the rules could be found that would allow them to be applied proportionately, the restrictions would be disapplied.

The UT would adopt a conforming interpretation of the wording of the restriction with ‘deductible from or otherwise allowable against’ instead taken to mean ‘deducted from or otherwise allowed against’. As an example, it set out if only £10,000 of a £1m loss can be deducted against non-UK profits, the restriction applies only to the extent of £10,000 and not the full £1m.

The UT invited the parties to agree the precise extent to which relevant claims for group relief are to be disallowed between themselves.

HMRC v VolkerRail Plant Limited and others [2022] UKUT 78 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2022/78.pdf

4.2 Implementation of the global minimum tax rate

The OECD has released further technical guidance on the Global Anti-Base Erosion (GloBE) rules, which are designed to ensure that large multinational enterprises (MNEs) pay a minimum 15% rate of tax. It has also launched a public consultation on the Implementation Framework that will be developed to support tax authorities implement and administer GloBE.

The GloBE rules will apply to MNEs with annual revenue of €750m or more. The new guidance provides detail on the operation and intended outcomes of the new rules, clarification of specific terms and illustrative examples.

The public consultation on the Implementation Framework is seeking feedback on mechanisms that will ensure tax administrations and MNEs can implement the GloBE rules in a consistent manner while minimising compliance costs. The consultation closes on 11 April 2022.

www.oecd.org/tax/beps/oecd-releases-detailed-technical-guidance-on-the-pillar-two-model-rules-for-15-percent-global-minimum-tax.htm

4.3 HMRC policy paper published on derivatives used to hedge share transactions

Following the consultation on enhancing the UK’s competitiveness as a location for asset management and investment funds, HMRC has published a policy paper on extending the scope of the Disregard Regulations. The extension will cover derivative contracts used to hedge foreign exchange risks related to acquisition costs or disposal proceeds of a ‘substantial shareholding’.

Under the current rules, gains and losses from derivative contracts used to hedge foreign currency risks are treated as income items and subject to tax during the life of the hedging contract. Where a hedge relates to foreign currency risks linked to the acquisition or disposal of a shareholding, there is a mismatch with the tax treatment of the underlying shares. A gain or loss on the shares will not be taxed or relieved until disposal, or may be exempt from tax if the substantial shareholding exemption applies.

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

www.gov.uk/government/publications/corporation-tax-the-disregard-and-bringing-into-account-of-profit-and-losses-on-derivative-contracts-hedging-acquisitions-and-disposals-of-shares-re

4.4 Residential Property Developer Tax - allocation of allowance regulations

Regulations setting out how to allocate the £25m Residential Property Developer Tax (RPDT) allowance between group companies have now been published.

The Residential Property Developer Tax (RPDT) will be effective from 1 April 2022 and applies to companies with profits from UK residential property development. Companies and groups will have an allowance of £25m for every 12-month accounting period, with profits exceeding this allowance taxed at 4%.

The £25m allowance is automatically shared equally between all group members that are subject to UK corporation tax, unless the group nominates an allocating member and submits to HMRC an allocation statement. The Residential Property Developer Tax (Allocation of Allowance) Regulations 2022 set out

these requirements. The group's allocating member can allocate the allowance between one or more residential property developers within the group. The regulations set out the information to be included in the allocation statement, and the rules for the allocation of a notional allowance, where the structure includes a joint venture company.

www.legislation.gov.uk/ukxi/2022/266/contents/made

5. Tax publications and webinars

5.1 Tax publications

The following Tax publications have been published.

- [The Corporate Criminal Offence - Where are we now?](#)
- [HMRC enquiries: Why a strong tax risk management framework is critical for businesses](#)
- [The impact of the OECD's Pillar 1 and Pillar 2 approach on businesses](#)

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

6.1 Spring forward

It's almost that time of year: the birds are singing, the trees are blossoming, and the clocks are about to go forward. Glossing over the other sign of Spring, a Chancellor speaking up, as you turn the hands on your watch spare a thought for when it would have been taxed.

Yes, between 1797 and 1798 William Pitt charged an annual Clock Tax on every watch and clock owned, and charged makers and dealers for new licences. As you may have guessed from the duration, this was wildly unpopular. So many people stopped buying watches that the industry crashed, and Pitt gave up on the tax after 9 months. An admirably swift response, if a failure of economic forecasting in the first place. A modern day clock tax would be faced with the additional challenge of clocks on electronic devices, so thank goodness he did drop it: you can put your watch forward on Sunday in peace.

https://en.wikipedia.org/wiki/Duties_on_Clocks_and_Watches_Act_1797

| Glossary | | | | |
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| 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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