

Tax Update

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1. General

1.1 Deadline to make voluntary NIC contributions for past years extended again

Individuals will now have until 5 April 2025 to fill gaps in their contribution record going back to 2006.

Currently, individuals can make voluntary NIC contributions to fill gaps in their NIC record dating back to April 2006, paying class 2 or 3 as appropriate to their circumstances. It is usually only possible to fill gaps for the previous six years - the extended window is currently a concession.

This extension will now end on 5 April 2025. The window was due to close on 31 July this year.

This change will help many taxpayers who have not yet realised that they need to fix a gap in their record, including those who have worked overseas.

www.gov.uk/government/news/deadline-for-voluntary-national-insurance-contributions-extended-to-april-2025

1.2 Nudge letters on the Pandora Papers

HMRC has started compliance action in relation to UK residents named in a leak of documents from offshore services providers. If affected, it is important to respond promptly while understanding which of the different options to disclose is best for you.

In 2021 and 2022, investigative journalists released records from 14 providers of offshore services, which became known as the 'Pandora Papers'. Some of these records are believed to indicate tax non-compliance.

UK tax residents named in the documents may receive a letter from HMRC inviting them to check their tax position within 30 days from the date of the letter. The letter notes that those with nothing to disclose need take no action, but those who need to update HMRC should make contact. Taxpayers can use the worldwide disclosure facility or contractual disclosure facility as appropriate, and it is important to understand the difference between these two facilities and how best to proceed depending on the individual's fact pattern.

The letter explains the potential for penalties of up to 200% of any tax due, and recommends that recipients seek professional advice.

If affected, you can speak to one of our tax dispute resolution specialists, who can review your situation and advise on the best course of action. You can contact us through our Tax Dispute Resolution Helpline 0203 8334 101 or by emailing us at taxdisputes@evelyn.com.

www.gov.uk/government/news/hmrc-gives-offshore-customers-chance-to-come-clean

2. Private client

2.1 CA dismisses appeal on £1.4m late payment surcharge

The CA has found that a taxpayer who waited until well after his appeals against assessments were dismissed before paying the tax in dispute was liable to late payment surcharges. Some delay was reasonable while the judicial review was started, but by the time the CA had dismissed it, at the latest, he should have made the payments.

The taxpayer had entered into marketed tax avoidance schemes later found to be ineffective by the CA. This case was that of another taxpayer in the scheme, so this taxpayer was issued with follower notices. He applied for judicial review of HMRC's decision to commence bankruptcy proceedings. At first, HMRC agreed not to enforce payment, but later issued advance payment notices (APN), which he did not comply with. Once his proceedings were dismissed, he paid the tax and interest due. HMRC issued surcharge notices calculated as percentages of the outstanding tax due to the late payment.

The taxpayer argued that he had a reasonable excuse for non-payment, as he believed no payment to be due, as the closure notices did not amend his self-assessments, or that he had a real prospect of success on appeal, or that in fairness he should not have been expected to pay the tax before the judicial review proceedings concluded.

The CA found for HMRC, though did not accept all its arguments, including that an APN should always be complied with even if there are open proceedings. It found that the very latest the taxpayer should have paid the tax by was when the CA found against him first. His appeal to the SC was refused in those proceedings. Not paying initially was reasonable, but the length of delay in the latter part of his appeals process meant that the surcharges were valid.

Archer v HMRC [2023] EWCA Civ 626

www.bailii.org/ew/cases/EWCA/Civ/2023/626.html

2.2 Child benefit win for taxpayer with severance payment

The FTT has found that a taxpayer was not liable to the high income child benefit charge (HICBC) as a severance payment relating to disability should not be counted as part of her 'adjusted net income' (ANI). She was therefore fully eligible for the benefit.

The taxpayer earned less than £50,000 in the tax year in question, but on losing her job she was given a severance payment that took her total income over this threshold. The documentation expressed the payment as for loss of employment, but she had left following an occupational health report and it was clear that the underlying reason related to her disability.

HMRC argued that as the severance payment was made on account of other matters as well as disability, none of the disability payment qualified for the disability exemption. The FTT disagreed. It found that the purpose of the disability exemption is to exempt from tax any payment which is made on account of a disability, irrespective of whether other payments are being made to the employee as part of the same deal.

Her former employer had supplied a breakdown in a letter, so the amount specified as for disability was exempted, bringing her ANI below the threshold for the HICBC.

Howard-Ravenspine v HMRC [2023] UKFTT 471 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08831.html

2.3 Income threshold for self-assessment to rise

HMRC has updated its guidance on the criteria for registering for self-assessment. The maximum income that a taxpayer can have without being required to complete a tax return is to rise by 50%.

Currently, one of the criteria stated in HMRC's guidance is that a taxpayer must register for self-assessment if their income is £100,000 or over. From the 2023/24 tax year, this threshold will be increased to £150,000.

Taxpayers who meet any of the other self-assessment criteria must stay in self-assessment, but those with incomes between £100,000 and £150,000 who do not meet these criteria may be able to stop filing. HMRC will try to identify these taxpayers and remove them from self-assessment once their 2022/23 tax return is filed. These criteria are not set out in legislation.

www.gov.uk/government/publications/agent-update-issue-108/issue-108-of-agent-update

2.4 HMRC closing self-assessment helpline for summer

The main line for those completing tax returns has closed for three months on a few days notice.

From 12 June to 3 September this year, callers to the general HMRC self-assessment helpline will be directed to use online services instead, while the helpline is closed. The agent helpline will remain open.

The rationale is that the helpline is less busy over the summer, so the approximately 350 staff will be more useful on other helplines and working on answering correspondence. HMRC believes that many of the redirected queries can be resolved by taxpayers themselves using online services. Extra staff will be put on webchat, the online service helpline and the extra support team helpline to resolve the remainder of the queries.

This move has been strongly criticised in the press, including by the tax professional bodies.

www.gov.uk/government/news/hmrc-to-trial-seasonal-self-assessment-helpline--2

3. Business tax

3.1 Obligation to withhold IT on payment of UK source interest

The UT upheld the decision of the FTT, which found that interest paid by a UK-resident company under a series of short-terms loans was subject to deduction of IT at source. The interest had a UK source, was yearly interest and the obligation to withhold IT was not overridden by the UK/Guernsey tax treaty.

The taxpayer was the ultimate parent of a group of companies engaged in property investment in the UK. Informal loans from persons connected to the group were replaced by a complex financing structure involving a series of short-term loans from the same lenders, with the interest and principal assigned to a Guernsey-resident company or a Guernsey trust shortly before repayment. In some cases, the interest was re-assigned to a UK resident company. The purpose of the refinancing was to preserve CT relief for the interest payments while ensuring the interest income was not subject to UK tax by the recipients.

The FTT found that the interest had a UK source. The provision in the loan agreement requiring interest to be paid outside the UK was completely outweighed by the fact that the debtor was UK resident, the interest payments were funded out of assets situated, and the profits of activities carried out, in the UK. Even if any proceedings to recover debt had to be taken outside the UK, any judgment obtained would need to be enforced against UK assets and UK profits. That was the underlying commercial reality of the arrangements. Very little weight was given to the three points linking the loans to overseas: that the loans were governed by the laws of a jurisdiction outside the UK, the location of the creditor, and the source of the funds giving rise to the loan. These did not change the commercial reality of UK source loans.

Notwithstanding the short-term nature of each loan, the FTT found that the loans provided the taxpayer with a measure of permanence, which had 'a tract of future time' and was in the nature of an investment for the lender. The interest arising was therefore yearly in nature.

The FTT dismissed the taxpayer's argument that it was entitled to rely on the treaty to make gross payments of interest without the necessity for any claim or direction. The FTT also found that there was no business purpose for the inclusion of the UK company in the refinancing structure. It was therefore not the beneficial owner of the income received.

The taxpayer appealed the upholding of the income tax assessments to the UT, but lost. The UT found that the FTT had made no error of law, was entitled to make the decision, and had taken everything relevant into account.

Hargreaves Property Holdings Ltd v HMRC [2023] UKUT 120 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2023/120.html

3.2 UT rejects taxpayer appeal on treatment of a payment as a loan relationship

In this property related case, the taxpayer argued a payment from a company to its owner following the sale of the property should be characterised as a non-trade loan relationship debit that could offset the gain on disposal.

The property had been acquired by the company but was treated interchangeably as an asset of the company and the owner, who had funded the acquisition alongside a bank loan. The UT considered three points on appeal, including its jurisdiction in examining the characterisation of the payment as a loan relationship, whether or not the payment was a distribution and whether or not it led to a tax deduction that could offset the disposal gain.

On appeal, the outcome of the FTT was upheld but for different grounds. The UT dismissed both taxpayers' appeals on the treatment of the payment and HMRC's cross appeal on the FTT's jurisdiction to opine on these matters. It did however overturn the FTT finding on whether or not the payment constituted a distribution, meaning that the character of the payment was outside the loan relationship rules such that no deduction was available to offset the gain.

This UT decision differed from the FTT, which had found the payment could not be a distribution within the meaning of the relevant legislation, as HMRC argued, as it found the company was contractually liable to make the payment to the owner. The FTT had nevertheless rejected the payment as a deductible loan relationship debit. A key point in the FTT's decision was that it did not accept that a payment to discharge a contractual obligation can be said to be made "out of the assets" of a company for the purposes of the legislation. This point was conceded on appeal.

The UT further found the FTT had failed to fully consider whether or not the payment was in respect of the securities held in the company. Given the finding of the payment as a distribution the further arguments about its treatment as a loan relationship fell away and the appeal was dismissed.

The decision reinforces the importance of formally documenting arrangements and of seeking appropriate professional advice when drafting documentation and subsequent accounting records.

Shinlock Ltd v HMRC [2023] UKUT 107 (TC)

www.bailii.org/uk/cases/UKUT/TCC/2023/107.html

3.3 SC upholds ruling on the interpretation of capital allowances legislation

Expenditure claimed as plant in constructing a hydroelectric power scheme was not structures and works for capital allowance purposes.

The taxpayer made a very significant capital allowances claim relating to the construction of a hydroelectric power scheme. The claim was disputed by HMRC on several grounds. The issue under dispute in this appeal was whether or not items constructed to collect and transmit water to, through and from the hydro-electric power station are a 'tunnel' or 'aqueduct' within the meaning of the legislation. If they are, then capital allowances would not be available.

Generally, items of plant are eligible for capital allowances unless specifically excluded. Section 22(1)(a) excludes, within List B, expenditure on structures other than industrial buildings and s22(1)(b) excludes any works involving the alteration of land. List C within s23 sets out 33 items that limits the application of those exclusions.

HMRC criticised the interpretation reached by the Court of Appeal which narrowed the meaning of the words in List B by reference to context. It argued that the correct approach is to disqualify all items in List B and only save from disqualification the limited assets mentioned in List C. It also argued that any thematic connections identified in List B, which groups items together, does not justify limiting the ordinary meaning of the words.

The SC rejected this approach. The meaning of the words depends on its context. That context identifies which ordinary meaning of the word is intended. The SC held that the items in dispute did not constitute tunnels or aqueducts and dismissed HMRC's appeal.

HMRC v SSE Generation Ltd [2023] UKSC 17

www.bailii.org/uk/cases/UKSC/2023/17.html

4. Tax publications and webinars

4.1 Tax publications

The following Tax publications have been published.

- [Biodiversity net gain and the tax issues for landowners](#)
- [How are ESG considerations affecting real estate?](#)

4.2 Webinars

The following client webinars are coming up soon.

- 28 June - [What lies ahead for Hospitality & Leisure?](#)
- 29 June - [Pre-exit planning for business owners](#)
- 4 July - [Post-exit planning for business owners](#)

5. And finally

5.1 We're all going on a summer holiday

We completely understand why HMRC is closing the phone line (article 2.4). The staff are urgently needed elsewhere, and traditionally fewer returns are filed over the summer (though has everyone forgotten that quarterly reporting will come in someday?). A three month closure though? On four days' notice? Not brilliant for taxpayer service.

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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Tax legislation is that prevailing at the time, is subject to change without notice and depends on individual circumstances. You should always seek appropriate tax advice before making decisions. HMRC Tax Year 2023/24.

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