

Tax Update

Contents

1. General	1
1.1 FTT finds that a company was careless when entering into a tax scheme	1
1.2 HMRC defers additional data collection until April 2026	2
2. Private client	2
2.1 HMRC nudge letters to non-filers	2
2.2 Guidance update on remittances following divorce	2
2.3 Compensation and interest chargeable to IT	2
2.4 HMRC nudge letters in relation to the remittance basis charge	3
2.5 ATT response to draft FHL legislation	3
2.6 Taxpayer's appeal dismissed by UT on taxpayer's residency status	3
3. VAT and Indirect taxes	4
3.1 Tourist passes outside scope of VAT at point of sale	4
3.2 FTT rules that property consisted of two dwellings	5
4. Tax publications and webinars	5
4.1 Tax publications	5
4.2 Webinars	5
5. And finally	6
5.1 KC or ATM?	6

1. General

1.1 FTT finds that a company was careless when entering into a tax scheme

The FTT has found that a company's careless behaviour resulted in a loss of tax and the filing of inaccurate tax returns.

A company which was run by a sole shareholder entered into a tax scheme that did not provide the anticipated tax savings. The aim of the scheme was to provide tax free amounts to employees via the use of an offshore employee benefit trust. HMRC found that the returns of the company were incorrect and issued determinations and penalties. This was appealed on the basis that the relevant loss of tax and the inaccuracies in the return were not brought about carelessly.

The shareholder stated they did not understand the tax mechanisms involved but trusted that the person introducing them to the scheme did. It was found that the company did not seek tax advice regarding the scheme.

The FTT ruled that a reasonable individual would have sought advice into this type of scheme and a competent tax adviser would have identified flaws in the structure and therefore the behaviour was careless. They also ruled that the loss of tax was brought about by the company's failure to take reasonable care and that the errors in the company returns were caused by the company's failure to seek tax advice.

Janet Bray Limited v HMRC [2024] UKFTT 787

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09277.html

1.2 HMRC defers additional data collection until April 2026

Due to the election, HMRC has decided to defer some additional data collection from the anticipated April 2025 introduction date.

HMRC is planning to collect additional data from employers via PAYE RTI returns. This was planned to be from April 2025, but due to delays caused by the general election this has been deferred.

There have currently been no changes announced to the expected April 2025 implementation for additional data collection via SA returns – including start and end dates of self-employment and dividends paid to company owner-managers.

www.tax.org.uk/deferral-of-hmrc-data-collection-requirements

2. Private client

2.1 HMRC nudge letters to non-filers

A batch of nudge letters encourages those HMRC believes have failed to file a required return to bring their filings up to date.

A team at HMRC has written to a number of taxpayers it has identified as earning over £200,000 a year who either

- have a dormant account with HMRC but are not currently registered for self-assessment;
- failed to comply with a notice to file issued for 2021/22; or
- have never been registered for self-assessment.

Recipients are asked to check the submission criteria and if necessary file a tax return for any outstanding years. Failure to comply may result in being sent a notice to file or determination.

www.tax.org.uk/hmrc-s-one-to-many-letters-for-non-submission-of-tax-returns

2.2 Guidance update on remittances following divorce

HMRC has confirmed to the FTT that it has not changed its position on remittances following divorce.

Following an FTT decision, HMRC has reconfirmed to the CIOT that its position has not changed from guidance issued in 2012. Though a materially different set of facts may lead to a different conclusion, remittances to the UK made pursuant to and following a divorce, in the specific scenario outlined in the correspondence, would not be chargeable.

www.tax.org.uk/hmrc-confirm-treatment-of-remittances-upon-divorce

2.3 Compensation and interest chargeable to IT

The FTT has found that HMRC was correct to tax money paid out for mis-selling of interest rate hedging products as compensation.

A pair of brothers purchased interest rate hedging products (IRHPs) from a bank, to protect themselves against potential interest rate fluctuations on loans that they had taken out. The payments were deducted as expenses from their property business profits. Ultimately, it turned out that they had been mis-sold these IRHPs. They were given redress payments

consisting of a basic sum, the difference between the cost of the product and the cost of a more appropriate product, plus interest.

HMRC raised closure notices on the basis that the compensation and interest was taxable. The brothers argued that as the payments were made for the "opportunity cost in losing the ability to invest in different hedging products" rather than as compensation, they were not taxable.

The FTT found that the payments were compensation for business expenditure that the brothers would not have made but for paying the higher price for mis-sold products, putting them back in the correct position. The fact that they were calculated by reference to the cost of the correct product did not make them payments for loss of opportunity, this was simply the way the FCA set up the scheme. The FTT dismissed the appeals and found that income tax applied to the whole of the payments and interest.

Hackett & Anor v HMRC [2024] UKFTT 749 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09267.html

2.4 HMRC nudge letters in relation to the remittance basis charge

HMRC is sending out letters to less than 100 taxpayers, who it believes should have paid the remittance basis charge in 2022/23.

There are separate letters for those who have been resident for 7/9 years and 12/14 years. Action should be taken within 60 days of receiving the letter and failure to correct any errors could be met with prompted disclosure penalties, additional tax and interest.

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.tax.org.uk/hmrc-one-to-many-letter-remittance-basis-charge

2.5 ATT response to draft FHL legislation

The ATT has submitted a response to the draft legislation on the abolition of the FHL regime. The response includes a number of queries and calls for robust guidance to assist taxpayers with the changes.

The points raised, where clarification and guidance is needed, include:

- Abolishing FHL status reintroduces uncertainty over the dividing line between property letting as a passive investment activity and when it can amount to a trade
- If a landlord begins a short term let in 2024/25, there is currently uncertainty around the first letting period and in particular how this will impact claims for capital allowances
- Potential deemed cessation of existing FHL businesses for CGT
- Treatment of FHL losses within a partnership
- Highlighting importance of 'form 17' for spouses/civil partners who currently own FHLs in unequal shares. If there is no form 17 declaration, this would result in profits/losses from former FHLs being split 50:50 for tax purposes between co-owning spouses/civil partners
- Rollover relief and qualifying reinvestment after 6 April 2025
- Anti-forestalling rules

www.att.org.uk/technical/submissions/att-responds-abolition-furnished-holiday-lettings-regime

2.6 Taxpayer's appeal dismissed by UT on taxpayer's residency status

The UT has found that the decision made by the FTT in relation to a taxpayer's residency status should be upheld.

A taxpayer, who was born and raised in the UK, moved to Belgium in early 2006 to develop his European business further. He returned to the UK in 2013. HMRC argued that he remained a UK resident for tax purposes.

Initially he had rented a flat in Belgium and then purchased a property which he moved into in November 2006. His wife visited, but largely lived in the UK. He took some steps to transfer his life to Belgium, such as closing some UK bank accounts and opening Belgian ones, resigning from UK clubs, and notifying his new address to organisations and contacts.

The FTT however found for HMRC that he remained UK tax resident under the old common law rules that applied at the time, as this was prior to the statutory residency test being introduced. His wife remained in the UK family home, which he visited despite staying in hotels overnight. He saw friends in the UK, and attended sporting fixtures there. Although he spent relatively little time in the UK and there had been a clear change in the pattern of his life, his visits were frequent and there was not a sufficient loosening of his ties with the UK.

The FTT also found that for the purposes of the double tax treaty, his UK property remained his permanent home. The fact that he had transferred it solely into his wife's name and did not stay there overnight was an artificial step that carried no weight. His personal and economic interests remained in the UK, which was his centre of vital interests, meaning that he was treaty resident in the UK under the double tax treaty.

The taxpayer appealed at the UT who agreed with the FTT's decision and dismissed the taxpayer's appeal.

McCabe v HMRC [2024] UKUT 280

www.bailii.org/uk/cases/UKUT/TCC/2024/280.html

3. VAT and Indirect taxes

3.1 Tourist passes outside scope of VAT at point of sale

This case revolves around the VAT treatment of passes sold by Go City Ltd, which allow customers to access various attractions and transport services in exchange for credits, without additional payment. The FTT ruled in favour of the taxpayer that the supply of the passes was outside the scope of VAT at the point the passes/ credits packages were sold.

Go City Ltd sells passes that enable purchasers to enter multiple tourist attractions and use certain forms of transport, without further payment. The passes were sold for a set value and time period, within which a customer could enter as many tourist attractions as it wished, until either the value of the pass had been consumed, or the time period had expired. The passes have been the subject of previous VAT litigation which found them to be multi-purpose vouchers (MPVs), for VAT purposes, which meant that no VAT was due on their sale, and VAT was only accounted for each time the pass was used to enter an attraction.

In response to changes in the VAT rules, prompted by the EU Voucher Directive 2016/1065, HMRC advised the taxpayer that from 1 January 2019 onwards its supplies would no longer be classed as MPVs, which would mean that VAT was due on the full amount received for each Pass, and not (as had historically been the case) on the value of the pass which was consumed.

In response to this, the taxpayer amended the nature of its supply so that it became the Principal in the supply of access to tourist attractions and transport, and supplied its customers with a credits package, which could be exchanged for access to the various attractions. This change to the nature of the supply ensured that the initial sale remained outside the scope of VAT. HMRC raised several 'protective assessments', arguing that the supply was akin to a ticket (with VAT due on the total consideration received), whereas the taxpayer argued that VAT was only due on the value of the credits used.

The FTT's decision addressed four main points:

- **Validity of protective assessments:** The FTT found that HMRC's officers had not formed a view that the relevant VAT returns were incorrect before raising the assessments. The assessments were issued to protect HMRC's position under the two-year time-limit rule, which the FTT deemed invalid.
- **Classification as MPVs:** The FTT held that the passes were vouchers under the rules applying from 2019 onwards. They were not excluded by being 'tickets', and the CJEU's judgment in DSAB (Case C-637/20) supported this classification. As MPVs, the initial supply of the passes would be outside the scope of VAT.
- **Preliminary transaction argument:** The taxpayer argued that the supply of the passes was a preliminary transaction and not an aim in itself for customers. The FTT agreed that the initial transaction was for the purchase of credits, and it was not until those credits were used to enter an attraction or access transport that there was a taxable supply.

- Allocation of consideration: The FTT favoured the taxpayer's position that the consideration for the passes should be apportioned between the attractions visited by the customer. Any unused credits were not subject to VAT as that part of the sum paid for the pass was not exchanged for the supply of a service.

The decision helps clarify the treatment of vouchers, particularly in relation to multi-purpose vouchers and the treatment of unused credits but also highlights an important procedural point around HMRC's use of protective assessments.

Go City Ltd v HM Revenue & Customs [2024] UKFTT 745 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09263.html

3.2 FTT rules that property consisted of two dwellings

The FTT has ruled that a taxpayer was entitled to multiple dwellings relief (MDR) on a building as it was capable of occupation as two separate dwellings, with their own entrances, kitchens, and bathrooms.

A taxpayer bought a property and claimed MDR on the grounds that it consisted of two dwellings.. HMRC challenged the SDLT return, arguing that this was one dwelling.

The FTT was supplied with a full bundle of evidence with photos and plans showing the use of the property.

The property was internally subdivided into one one bedroom and one four bedroom home. Each had a separate outside entrance, and each had full facilities including kitchen and bathroom. They had independent fuse boxes, though from one electricity cable. The boiler was shared, and there were two electricity meters but one bill, as for the oil supply. The water supplies were separate. There was only one postal address and council tax account, and they shared the same title number.

The property had been marketed as a sole dwelling. It had been used most recently as holiday lets but before that as one family unit. The new owner intended to let out one of the purported dwellings.

The FTT found that the property consisted of two dwellings, each suitable for use as a single dwelling. The physical configuration and facilities were very important to this finding. Internal doors between the two dwellings existed, but were substantial and lockable so did not make this one dwelling.

Winfield v HMRC [2024] UKFTT 734 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09259.html

4. Tax publications and webinars

4.1 Tax publications

The following Tax publications have been published.

- [Becoming a Senior Accounting Officer \(SAO\) – key things you need to consider](#)
- [A beginner's guide to Machine Learning and Large Language Models](#)
- [Inheritance tax reliefs - what can be done ahead of the 2024 Autumn Budget](#)
- [The Business Risk Review \(BRR+\) – Are you ready?](#)
- [Update on Plastic Packaging Tax August 2024](#)

4.2 Webinars

The following client webinars are coming up soon.

- 19 September – [Editions by Evelyn Partners: What's on your tax agenda?](#)
- 24 September - [Recent changes to the R&D tax legislation and how best to maximise your R&D benefit?](#)
- 9 October - [Business Exit - Pre-exit planning for business owners - October 2024](#)
- 16 October - [Business Exit: Post-exit planning for business owners - October 2024](#)
- 31 October – [The UK 2024 Autumn Budget – Your business](#)
- 31 October- [The UK 2024 Autumn Budget - Your personal wealth](#)

- 31 October - [Understanding the impact of VAT on private school fees](#)

5. And finally

5.1 KC or ATM?

For fans of the works of John Mortimer and Sarah Caudwell, this month's case examining the inner workings of a barristers' Chambers is a must-read. More especially as it addresses a point so original that the judge commented: *"As the practice of barristers grouping together to occupy sets of chambers is not a recent one, [Note: from the medieval inns of court] it might have been expected that any question about the manner in which their occupation should be rated would long since have been resolved. But we have been shown no authority dealing specifically with this form of occupation and the issue appears to be a novel one."*

Yes, you guessed it, this month's thrill is a matter of business rates. More specifically, whether the Chambers as a whole is a hereditament (marvellous word) or each barrister's own room is a separate hereditament. Although the Chambers lost, with the judge explaining that a barrister in his or her own room is really much like a partitioned off ATM, (para 74), the case takes us through really fundamental points of the rules, and how they apply to modern methods of working, with cases referenced going back to 1891.

Our commiserations to Chambers, and our thanks to the judge for an unforgettable definition of a room as a space where *"Someone entering one ... and closing the door would find themselves in a self-contained space which could be depicted on a plan."* Finally, a tax point capable of being empirically tested.

Prosser v Ricketts [2024] UKUT 264 (LC)

www.bailii.org/uk/cases/UKUT/LC/2024/264.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	

Evelyn.com

Offices: For details of all Evelyn Partners' offices, check our locations [here](#).

Evelyn Partners LLP: Regulated by the Institute of Chartered Accountants in England and Wales for a range of investment business activities. Evelyn Partners LLP is an independent network member of CLA Global Limited. See <https://www.claglobal.com/disclaimer/>.



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. Tax legislation as at September 2024.

We have taken care to ensure the accuracy of this publication, which is based on material in the public domain at the time of issue. However, the publication is written in general terms for information purposes only and in no way constitutes specific advice. You are strongly recommended to seek specific advice before taking any action in relation to the matters referred to in this publication. No responsibility can be taken for any errors contained in the publication or for any loss arising from action taken or refrained from on the basis of this publication or its contents. © Evelyn Partners 2024.