

Tax update

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1. Private client

1.1 HMRC's consultation on raising standards in tax advice

HMRC has published a summary of the responses to its consultation on raising standards in tax advice, focusing on protecting individuals claiming tax repayments. The Government will now take steps to improve transparency in the repayment agent market and protect those individuals using repayment agents

Responses to the consultation were largely in line with previous complaints made to HMRC. This included feedback that some repayment agents charge overly high fees, have unclear terms and conditions and do not make it clear enough that the agent is a third party and not HMRC. In response to the consultation, the Government will disallow assignments of income tax repayments, so that the taxpayer and not the agent will receive the repayment in the first instance. Repayment agents will also be required to register, comply with new transparency requirements and provide more evidence that an individual has consented to the claim.

www.gov.uk/government/consultations/raising-standards-in-tax-advice-protecting-customers-claiming-tax-repayments/outcome/raising-standards-in-tax-advice-protecting-customers-claiming-tax-repayments-summary-of-responses

1.2 Child benefit charge: failure to notify penalty cancelled

The FTT has cancelled a failure to notify penalty for the high income child benefit charge (HICBC), as the taxpayer had not been notified by HMRC to stop claiming.

The taxpayer's wife had been claiming child benefit since 2005. From 2012, HMRC ran press campaigns about the introduction of the HICBC, and included information on the HMRC website. The taxpayer was ineligible for child benefit in 2018/19, by £1,000, and only partially entitled in 2019/20, but the claim was not stopped until 2021 when HMRC wrote to the taxpayer for the second time. The taxpayer stated that he had not received a nudge letter in 2019, despite HMRC records showing this as sent.

The taxpayer paid the HICBC incurred, and penalties, then appealed the penalties. HMRC cancelled the 2018/19 penalty before the hearing. The FTT cancelled the 2019/20 penalty as the taxpayer had a reasonable excuse for his error. He was not in the self-assessment regime, had no reason to seek out the information on the HMRC website, and HMRC had not proved that he had received the purported 2019 nudge letter. The judge believed his statement that he had not done so, for reasons including that he rushed to pay the charge when made aware by the second letter, borrowing money to do so.

Goodall v HMRC [2023] UKFTT 18 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08680.html

1.3 Child benefit penalties cancelled, but charges upheld

The FTT cancelled failure to notify penalties for the high income child benefit charge (HICBC), but upheld the assessments. It did however ask HMRC to consider cancelling the assessments voluntarily, as HMRC's incorrect initial advice that the penalties could not be appealed had caused the taxpayer to lose the chance of making specific technical arguments used in other cases.

HMRC issued HICBC assessments and penalties for three tax years. The FTT allowed the taxpayer to make a late appeal, which HMRC did not object to, as HMRC had incorrectly told him that he could not appeal the assessments at tribunal. The delay to his appeal did however mean that he had not made an appeal against the assessments by 30 June 2021, although he did appeal the penalties before that date. Taxpayers who made their HICBC assessment appeal before 30 June 2021, and had the case stayed behind *Wilkes*, as this case was, are allowed to use the same technical arguments as Mr Wilkes, and therefore generally win their case. As the taxpayer had not appealed the assessments before the 30 June date, the assessments were upheld. The FTT did however ask HMRC to consider using its care and managements powers to cancel the assessments, and put the taxpayer in the position he would have been had he not followed the HMRC advice not to appeal at first.

The FTT cancelled the failure to notify penalties. The taxpayer had been on PAYE for over forty years, with his only communications from HMRC about PAYE coding notices. His partner had been claiming child benefit for over a decade before the introduction of the HICBC. He stated that he was not aware of its introduction, and that he had not received a 2013 letter from HMRC about it, nor a 2019 nudge letter. On receiving a second 2019 nudge letter he rang HMRC, but after being told how to check, and doing so, believed that he had no HICBC liability. The assessments were raised in 2021. The FTT accepted that he was an honest taxpayer who had done his best to comply, so had a reasonable excuse for failing to notify.

Kensall v HMRC [2023] UKFTT 11 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08673.html

Wilkes v HMRC [2022] EWCA Civ 1612

www.bailii.org/ew/cases/EWCA/Civ/2022/1612.html

2. PAYE and employment

2.1 Easement on pandemic-related changes to work location extended

HMRC may disregard a change to work location caused solely by the pandemic for social security purposes.

A1 certificates state that a posted or detached worker, and their employer in the case of employees, do not need to pay social security contributions in another country and are issued by HMRC to employees and the self-employed who work in other EU

jurisdictions. During the pandemic, changes to work location caused solely by the pandemic may have been disregarded by HMRC when determining the country of insurance. The period for HMRC considering such applications was due to end on 31 December 2022 but has been extended to 30 June 2023. Note that the maximum period an A1 can be obtained for under the post-Brexit rules is generally 24 months for posted or detached workers, including remote workers, and this ICAEW article does not suggest this period is under review.

www.icaew.com/insights/tax-news/2023/jan-2023/A1-certificates-pandemic-related-changes-to-work-location-can-still-be-disregarded

2.2 Appeal dismissed on deductibility of subsistence expenses

The FTT has found that agency workers were at permanent rather than temporary workplaces, so travel and subsistence expenses were not deductible.

The taxpayer was an umbrella company supporting temporary workers at a number of employment agencies by providing a salary service, so the workers were actually engaged by the taxpayer. The taxpayer argued that, as it engaged each worker on an ongoing contract, every place where they carried out an assignment was a temporary workplace, and so reimbursements for travel and subsistence were deductible against IT and NIC for each worker. It also argued that it was entitled to reimburse round sums or in accordance with a set scale without evidence of the expense from the worker, despite not having a dispensation.

The FTT upheld HMRC's PAYE determinations and NIC decision notices, agreeing with HMRC that each assignment was a separate employment at a permanent workplace, so the expenses were not deductible at all. In the absence of a dispensation, the taxpayer was not allowed to reimburse in that way it had done, with no evidence.

The case predates two important 2016 changes. First, most agency or umbrella workers are unable to claim relief for such travel expenses, as specific legislation was introduced to prohibit claims in specific circumstances

Second, dispensations have been replaced by 'approval notices'. HMRC has been focussed on tax relief claimed on travel expenses by agency or umbrella company workers for a number of years and many businesses are now reviewing any such claims to ensure they remain compliant.

Mainpay Limited v HMRC [2023] UKFTT 16 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08678.html

3. Business tax

3.1 New consultation on research and development tax reliefs

As part of an ongoing research and development (R&D) tax review, the Government has launched a consultation on simplifying the tax reliefs by merging the two current schemes into one.

Currently, two schemes offer R&D tax relief, one for small to medium sized enterprises that gives a deduction for profitable companies, and the other the R&D expenditure credit (RDEC). Following changes in the Autumn Statement 2022, these schemes are now of very similar generosity, so the Government is considering merging them. The Government's aim is for an above the line credit, modelled on the RDEC scheme, which is simple, removes boundaries between company size and ensures value for money for the UK taxpayer.

The consultation sets out the various options for a new single scheme and seeks views from stakeholders, including claimants, on the impact each option would have, and any problem areas. The consultation will close on 13 March 2023, and we will be submitting a response.

If the Government decides to go ahead, the new scheme will be implemented from 1 April 2024.

www.gov.uk/government/consultations/rd-tax-reliefs-review-consultation-on-a-single-scheme

3.2 Date goodwill acquired based on facts, not contract dates

The FTT has allowed amortisation relief for goodwill on the transfer of a dental business to a limited company based on the date of an oral agreement and other evidence, rather than the later date when contracts were signed.

Before December 2014, the taxpayers ran their dental practice as a partnership, and decided to incorporate. The company claimed an amortisation debit on the goodwill purchased from the partnership on the basis it had been acquired on or before 1 December 2014, when it started trading. Changes in FA2015 restrict relief for goodwill acquired after 3 December 2014. HMRC contended that the date of goodwill transfer was 23 October 2015 and denied amortisation relief.

The FTT was shown a board minute detailing an oral agreement to transfer the business, property and NHS contracts dated 30 November 2014. There was no written agreement for the transfer of goodwill. HMRC had denied amortisation relief on the basis that the property was not formally transferred on 1 December 2014, and that the transfer of NHS contracts from the partnership to the company was dated 23 October 2015. The FTT agreed that an oral agreement was not an effective transfer of the goodwill under the law. It confirmed, however, that an intention to transfer a business that is subsequently realised, can as a matter of law, effect a transfer earlier than realisation even where there is no legally binding agreement. This will be a question of fact.

In this case, the FTT found there was substantial contemporaneous evidence that the actual transfer of the business, including the goodwill, occurred on 1 December 2014, with formal transfers following. The amortisation deduction for the company was allowed.

2 Green Smile Limited & Dr Ameeka Patel v HMRC [2023] UKFTT 15 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08677.pdf

4. Indirect taxes

4.1 LBTT appeal dismissed as property was not taxpayer's main residence

A taxpayer who did not manage to move into a property as planned due to the pandemic has been refused repayment of the additional dwelling supplement (ADS) as the property was never occupied as a main residence.

The taxpayer decided to downsize her home. She purchased a smaller property in Edinburgh in March 2020 while still owning the first property. The start of the pandemic prevented her from renovating the second property until early 2021, so she was not able to move in, instead selling both properties in October 2021. She sold the first on the same day she purchased a new home, and the second was sold 11 days later.

The taxpayer had paid the ADS on the purchase of the second property, but requested a repayment on the grounds that she had not intended to own the two properties for over 18 months, and her plans had been delayed by the pandemic. The tribunal agreed with RS's decision to refuse repayment. Despite unforeseen circumstances, the fact that the taxpayer had never occupied the second property prevented repayment. Both HMRC and the Tribunal judges agreed the position was unfair and unfortunate but the Tribunal did not have to "arrogate to itself a jurisdiction which Parliament has chosen not to confer on it"

Tan v RS [2022] FTSTC 10

[www.taxtribunals.scot/decisions/\[2022\]%20FTSTC%2010.pdf](http://www.taxtribunals.scot/decisions/[2022]%20FTSTC%2010.pdf)

5. And finally

5.1 Bit unfair

Ten years on from the introduction of the high income child benefit charge, the tax tribunals are still regularly hearing cases from those who have only recently become aware of it, incurring failure to notify penalties. Whilst well within the tribunals' power to determine whether or not these should stand, the assessment for the charge in 1.3 above had to stand. Why? Well, because HMRC had told the taxpayer he could not appeal it, so he had missed a vital deadline. Taxpayers should be able to rely on HMRC's advice on such an unambiguous point, so we very much hope that HMRC follows the tribunal's urging that it should cancel the assessment itself.

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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