JUNE 2024

Tax Update

Contents

1. General

1.1 General Election 2024: what are the tax policies on offer?

As the 4 July General Election approaches, most of the parties have published their manifestos, giving more detail about their plans for tax if elected. We have been covering the tax policies of various parties in a series of articles, which you can read on our website Election Hub at the link below, where you can also register for our post-election webinar.

Our articles summarise the manifesto tax announcements and include some more in-depth analysis of what they could mean for the Conservative and Labour parties.

We will also be running a webinar the day after the election, 5 July at 12 noon, where we will consider the result of the election and possible implications. Our panel will discuss what they mean for you and your family, along with how you could take advantages of beneficial changes and mitigate the impact of others on your personal finances. You can register to attend here:

https://us02web.zoom.us/webinar/register/6417139507135/WN_7kaaZthCSlCle_Mx5HwO0w#/registration

www.evelyn.com/good-advice/the-uk-general-election-2024/

1.2 Nudge letters on electronic sales suppression

In its latest One to Many campaign, HMRC is writing to businesses that may not have paid the right amount of IT, CT, or VAT due to misusing till systems.

The letter asks the business to disclose undeclared sales, or confirm that its tax affairs are in order, within 30 days of the date on the letter. It tells taxpayers to use the online disclosure service, but if another route is more appropriate then they should use that. The letter also sets out the penalties that could be incurred by failing to comply.

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-electronic-sales-suppression

2. Private client

2.1 Taxpayer loses appeal on business investment relief

A UK resident non domiciled individual incorporated a UK company and became the sole shareholder and director. He invested £1.5m in it, which was overseas income he brought into the UK a week before incorporation. Having taken advice in advance, he claimed business investment relief (BIR), but this was denied by HMRC, as the taxpayer had drawn on his director's loan account with the company to pay personal expenses. The total loan was just over £70,000, drawn in the tax year after the investment.

The taxpayer argued that he should be eligible for BIR, because although he had extracted value from the company he had not extracted net value, as the interest free loan was subject to tax. In addition, the director's loan was provided in the ordinary course of business on arm's-length terms.

HMRC argued that extraction of value meant simply that. It did not mean adding a word to become net extraction of value. Despite the difference between the £1.5m investment and £71,000 loan, even a single payment from the company to the taxpayer for personal expenses was a receipt of value. Alternatively, the taxpayer was better off financially due to the loan so had received net value.

There was no dispute about the taxpayer's honesty, he had chosen to use funds from overseas rather than available funds in the UK because he believed that the relief would be available. He had used the director's loan in the same way as at his previous employer, without realising that the relief could be compromised. Sometimes he paid company expenses personally, sometimes he used the company cards for his expenses, despite having other funds available. He intended to reimburse the company, but this had not happened by the end of the tax year.

The FTT agreed with HMRC and dismissed the taxpayer's appeal. Extraction of value did not mean net value on the natural reading of the legislation. Acknowledging that this could lead to strange outcomes with trivial extractions of value, it considered whether or not this accorded with the purpose of the legislation, and concluded that it did. There was no minimum set in the legislation, and the language was too strong to justify departing from it because of a strange outcome. In this case, the loan was not on arm's-length terms, as an interest-free unsecured loan on an informal basis.

D'Angelin v HMRC [2024] UKFTT 462 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09186.html

2.2 UT strikes out £14m penalty

HMRC applied to the UT for it to impose a tax related penalty on the taxpayer. He successfully applied for HMRC's application to be struck out.

The background to the case was that the taxpayer, who has previously been involved in a number of tax cases as an adviser, was issued with an information notice. After a year of non-compliance HMRC imposed a penalty for failure to comply, then sought to impose the tax related penalty.

The taxpayer argued that the application was out of time, contending that due to various extensions the penalty for failure to comply was technically imposed before he had run out of time, and that now too much time had elapsed since his non-compliance for HMRC to apply for the penalty.

He also argued that as his appeal against the first penalty was outstanding, the second could not be imposed until that appeal was completed.

The FTT considered the case law and legislation, and agreed that HMRC's application for the second penalty had no reasonable prospect of success. HMRC's application was struck out.

Baxendale-Walker v HMRC [2024] UKUT 154 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2024/154.html

2.3 Taxpayer win on discovery assessment

The FTT has found that a taxpayer who did not declare payments from a business had not appreciated that they were self-employment income. His behaviour was not deliberate, and the discovery assessment was cancelled as out of time.

This case was about the correct taxation of large payments from the business to the taxpayer in 2012. At the time he was director and sole shareholder but not an employee, and the payments were not declared on his return.

The taxpayer's agent stated that the money was repayment of a loan, which was a purely verbal agreement. The taxpayer, in his 80s and seriously ill, told HMRC that he did not remember receiving it, and that if there had been a mistake in tax treatment then perhaps his accountants had erred. He later explained that it had been a personal loan that went through company accounts for unknown reasons. HMRC contended that it was a payment to him as a consultant, and taxable as self-employment income, as he had remained involved with the business throughout. A discovery assessment and penalties were issued.

The FTT found that the payment was not in relation to a personal loan, and that it was likely for services to the business. However, the insufficiency of tax in the self-assessment was not deliberate on the taxpayer's behalf, so the discovery assessment was out of time. HMRC had not proved that the taxpayer knew that the money was self-employment income, and he left all matters to his accountant. The penalty was also cancelled.

Yip v HMRC [2024] UKFTT 434 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09180.html

2.4 FTT finds that remittances were taxable

The FTT ruled that remittances were taxable. The fact that the taxpayer did not benefit personally from the money did not change the tax position.

HMRC enquired into the return of a UK resident but non-UK domiciled taxpayer who had claimed to be taxed on the remittance basis. It considered taxable remittances were made, which had not been reported on his tax return. These include:

- Transfer to the taxpayer's son's account (over 18) for his son's personal use
- Transfers to friends and family in the UK, who were not relevant persons, for their own use
- Direct payment of his son's university expenses
- Gift of jewellery for a UK resident who was not a relevant person
- Jewellery purchased for the taxpayer's wife

Some were transfers from his overseas bank direct to a recipient, others were purchases made using his offshore credit card. The overseas accounts were mixed funds with foreign income and gains, so HMRC argued that these were remittances of those amounts.

The taxpayer appealed against the discovery assessment issued by HMRC and the closure notice that followed. He argued first that he derived no personal benefit from these transactions. The FTT dismissed this, finding that personal benefit was irrelevant in these circumstances and the key point was if he had 'brought to', 'received' or 'used' money or other property in the UK.

The FTT also found in favour of HMRC in relation to the payments made by credit card and purchases of jewellery.

The taxpayer argued that as it is established that a bank account is a debt owed to the account holder by the bank, money received from a bank is new property, rather than the original property, and no money therefore passes in an electronic bank transfer. It would follow that these automatic transfers could not be remittances of his property. The FTT also dismissed this argument, applying a purposive interpretation to the legislation. The FTT was satisfied that he had brought money to the UK when he initiated the bank transfers from his non-UK account into the UK accounts of non-relevant persons.

The FTT did however find that the discovery assessment could not be upheld as HMRC had not shown that the taxpayer's behaviour was careless or deliberate. This meant that that year fell out of charge, so only the period covered by the closure notice could be assessed.

Alimahomed v HMRC [2024] UKFTT 432 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09178.html

2.5 CIOT says HMRC could have missed out on tax from football transfers

An update to HMRC guidance could result in HMRC looking back at transfers, as it has potentially missed out on millions in tax.

Football agents are able to offer 'dual representation' services to both players and the selling or buying club. HMRC has updated its previous guidance, so the current version states that the dual representation agents must provide a breakdown of what percentage of work was carried out for the player and for the club. A 50/50 default position is not accepted. The new regulations could result in HMRC looking back at previous transfers, especially those that are high profile.

www.tax.org.uk/millions-in-taxes-missed-in-football-transfers

2.6 Nudge letters on late tax returns

The latest batch of nudge letters targets taxpayers who have 'skipped' a year or two, filing returns before an after, so may need to file a return for the missed years.

HMRC has written to taxpayers it classes as wealthy that it believes have not filed all their tax returns. One batch have filed for 2020/21 and 2022/23, but are missing 2021/22, and the other batch filed for 2019/20 and 2022/23, but are missing the two returns in between. HMRC has asked them to submit these returns by 12 July 2024, but penalties and interest may be charged unless they have a reasonable excuse. HMRC will send determinations if this deadline is missed. The letter also explains what action taxpayers should take if they do not believe that a return is due,

www.icaew.com/insights/tax-news/2024/may-2024/hmrc-asks-wealthy-taxpayers-to-submit-late-returns

2.7 HMRC reminders on business asset roll-over relief

HMRC has reminded taxpayers that provisional claims will become invalid unless updated.

HMRC has sent letters to taxpayers who made provisional claims for this relief on assets sold in 2020/21. The deadline for updating this to a final valid claim is 31 January 2025, so these are simply reminder letters, as the provisional claims will be withdrawn automatically ii not amended. The letter also recommends what actions taxpayers should take,

www.icaew.com/insights/tax-news/2024/may-2024/hmrc-reminds-taxpayers-about-roll-over-relief-claims

2.8 One to many letters on business asset disposal relief

Those identified as possibly overclaiming business asset disposal relief (BADR) have been asked to amend their returns.

HMRC has written to a number of those who claimed BADR in their 2022/23 self-assessment returns. These are individuals who have exceeded the £1m lifetime limit, either during 2022/23 or prior to it. The recipients are asked to amend their return within 30 days of the date on the letter, to avoid HMRC amending the return for them and potentially charging penalties.

www.tax.org.uk/one-to-many-letters-concerning-the-badr-lifetime-limit

3. Business tax

3.1 Treaty advantage found not to be the main purpose in withholding tax case

The UT has upheld the FTT decision, ruling against HMRC in a case regarding withholding tax deducted at source. The arrangement was not designed to take advantage of the UK/Ireland double tax treaty (DTT), so anti-avoidance rules did not apply.

The Irish resident company had bought, from a Cayman Islands resident company, a debt claim in the administration of Lehman Brothers. When the interest was discharged, UK IT was withheld at source from the payment, HMRC refused to refund the withholding tax on all of the interest payments. It considered that the DTT did not apply to exempt some of the payments from UK tax as at least one of the companies had had a main purpose of taking advantage of the relevant interest article by means of the assignment of debt.

The FTT found that the interest payment did qualify for the exemption from UK withholding tax in the DTT. On consideration of the overall arrangement, and the motives of the parties, tax avoidance was not a main purpose of the arrangement.

The UT agreed with the approach taken by the FTT in considering the overall arrangement, and concluded that having consideration of a tax treaty and its inherent reliefs did not on its own amount to a tax avoidance main purpose.

Burlington Loan Management DAC v HM Revenue & Customs [2024] UKUT 152 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2024/152.html

4. VAT and Indirect taxes

4.1 SDLT appeal dismissed on property transfer to company

The FTT has dismissed an appeal from a taxpayer who accidentally incurred a 15% SDLT charge after a property chain collapsed. Placing his home in a company he incorporated while still living in it meant that the charge was due, despite him not knowing about the charge and having done this to secure a mortgage for his onward purchase.

The taxpayer was attempting to sell his family home, and move to a larger house, but at the last minute their purchaser pulled out and the chain collapsed. To allow them to still move, the taxpayer took his mortgage adviser's advice to transfer the original property into a company, then take out a mortgage in the company, as this made it possible to borrow enough money rather than trying in his own name.

The company was incorporated, purchased the original home, and paid SDLT. The taxpayer remained living there for almost a year, including a few months after a new property was purchased as works were carried out. HMRC investigated the first SDLT return, and issued a closure notice such that the higher rate of SDLT was due for a property transferred to a company which a non-qualifying person was allowed to inhabit.

The taxpayer accepted that he had lived in the property after transfer to the company, but said that he would never have done so had he known about the potential charge. Neither his mortgage adviser not his solicitor mentioned it. He had paid full market rent to the company on their advice, and had only stayed there as he could not find another suitable property to rent until the new one was purchased. His mortgage required the property to be rented out from day one. He argued that the lack of a grace period meant that the law was unfair.

The FTT agreed with HMRC and dismissed his appeal. As sole shareholder and director of the company owning the property, his occupation of it meant that the charge was due. The fact than he did not understand the rules did not prevent them from applying. Parliament had chosen not to provide for a grace period in the legislation, and the FTT could not go behind that, and did not have the statutory powers to consider fairness in this case.

Mayfair Avenue Ltd v HMRC [2024] UKFTT 430 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09176.html

5. Tax publications and webinars

5.1 Tax publications

The following Tax publications have been published.

- General Election 2024: Reform UK tax policy
- General Election 2024: Green party tax policy
- Tax policy comparison: Labour Conservative Parties
- General Election 2024: Labour tax policy
- Credit card charges subject to VAT, and not exempt under financial services exemption
- General Election 2024: Conservative tax policy
- General Election 2024: Liberal Democrats
- Employers of Record
- IPT part 3 - common, but expensive IPT errors
- Compulsory purchase impacts for rural landowners
- What is the right entity for your farming business?
- Court of Appeal overturns decision in Hotel la Tour on VAT costs on share sale
- IPT part 2 - insurance intermediaries: who's on the hook for IPT when errors arise
- IPT part 1 - the little known, big cost: insurance premium tax (IPT) and insurance intermediaries
- UK opens 2024 customs duty suspension application window

5.2 Webinars

The following client webinars are coming up soon.

- 3 July - Editions by Evelyn Partners: Patent Box Regime

6. And finally

6.1 Caught out

Articles 2.1 and 4.1 above are the sort of cases that can alarm anyone relying on a relief. Regardless of the amount at stake, making a decision based on one tax treatment, then discovering that your subsequent actions have excluded you from claiming it, is a difficult situation to be in. In particular in 2.1, the fact that a loan of £71,000 cancelled relief on £1.5m must be hard to swallow, with the lowest personal expenses listed being a 79p monthly subscription, that the taxpayer could easily have funded himself had he known of the issue.

Without the full background to a case it is impossible to know where any blame falls, but they both illustrate the point that while taking advice can always be valuable, situations are not always fixable if the correct advice is taken too late.

D'Angelin v HMRC [2024] UKFTT 462 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09186.html

Mayfair Avenue Ltd v HMRC [2024] UKFTT 430 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09176.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	