

Tax Update

Contents

1. General	2
1.1 Budget date set as 30 October	2
1.2 Tax documents released alongside Chancellor's spending statement	2
1.3 HMRC interest rates to be cut	2
2. Private client	3
2.1 Nudge letters on child benefit	3
2.2 Nudge letters for dog and cat breeders	3
2.3 Nudge letters on investors' relief	3
2.4 Nudge letters on cryptoassets	3
2.5 FTT sets aside late filing penalty	3
2.6 Late filing taxpayer refused appeals against penalties	4
2.7 HMRC gives national insurance refunds in error	4
2.8 Self-employed income support claimed incorrectly	4
2.9 FTT finds that a taxpayer's disclosure was unprompted.	5
3. Trusts, estates and IHT	5
3.1 Appeals on business property relief and reduced IHT rate for charitable giving	5
3.2 HMRC loses IHT avoidance case on a technicality	6
4. PAYE and employment	6
4.1 Workplace nurseries: guidance from HMRC	6
5. Business tax	6
5.1 CA rule in HMRC's favour in partnership allocation case	6
6. VAT and Indirect taxes	7
6.1 Collagen drinks not food for VAT purposes	7
7. Tax publications and webinars	8
7.1 Tax publications	8
7.2 Webinars	8
8. And finally	8
8.1 All change	8

1. General

1.1 Budget date set as 30 October

The Chancellor has announced that the new Government will give its first Budget on Wednesday 30 October.

Forecasts from the Office for Budget Responsibility will be published alongside the Budget. Labour had previously indicated a preference for Autumn Budgets.

www.gov.uk/government/collections/chancellor-statement-on-public-spending-pressures

1.2 Tax documents released alongside Chancellor's spending statement

Alongside the 30 July spending statement, various tax documents were released giving updates on matters including the non-dom changes and furnished holiday lettings (FHL) regime.

These include:

A policy paper setting out the Government's plans for changes to the non-domicile regime from 6 April 2025. The remittance basis will be replaced with a residence-based regime giving 100% tax relief on foreign income and gains for new arrivals in their first four years of tax residence, if they were non-UK tax resident for the 10 years before arrival. The proposed 50% relief in year one as a transitional arrangement will not be introduced.

Protections for settlor-interested trusts will be withdrawn from 6 April 2025 if the individuals is not in the first four years of residence. The transfer of assets abroad and settlements legislation will be reviewed. Changes are not anticipated before the start of the 2026/27 tax year. Overseas workday relief will be kept in some form. The relevant IHT rules are being reviewed.

The Government has published a policy paper on the abolition of the FHL regime. This will apply from 6 April 2025 for individuals and trusts, and 1 April 2025 for corporates. Income and gains from current FHLs will thereafter form part of the normal UK or overseas property business, and be treated like all other property income or gains.

In line with this, finance costs will be restricted to basic rate, capital allowances for new expenditure will not be given, replacement of domestic items relief will be introduced, earnings will not count towards pensionable earnings, and capital gains reliefs will not apply. There are some transitional rules, but also anti-forestalling measures.

On VAT and private schools, the Government has confirmed that fee payments from 29 July 2024 relating to terms starting in January 2025 and onwards will be subject to VAT. The Government is asking for comments on the draft legislation.

A call for evidence on the taxation of carried interest has been announced.

www.gov.uk/government/collections/finance-bill-2024-25-draft-legislation-and-technical-tax-documents

1.3 HMRC interest rates to be cut

HMRC yearly interest rates on overdue tax will decrease by 0.25%, following the Bank of England base rate cut from 5.25% to 5%.

The rate applied to the main taxes will become 7.5%. The rate of interest on repayments from HMRC will become 4%.

This change applies from 12 August for quarterly instalment payments and 20 August for non-quarterly instalment payments.

www.gov.uk/government/news/hmrc-late-payment-interest-rates-to-be-revised-after-bank-of-england-cuts-base-rate

2. Private client

2.1 Nudge letters on child benefit

HMRC is writing to individuals who may have declared the wrong amount of child benefit, or omitted to declare it entirely.

The letters are in reference to the 2022/23 tax year. Recipients are asked to check if there is a child benefit claim in their household, use the HMRC online calculator to check their liability to the high income child benefit charge, and amend their tax returns by the end of September. This is ahead of the statutory deadline of the end of January.

www.tax.org.uk/hmrc-one-to-many-letter-high-income-child-benefit-charge-inaccuracies-2022-23

2.2 Nudge letters for dog and cat breeders

HMRC is writing to individuals that it has identified as animal breeders who may be failing to declare income from this activity, or even to register for self-assessment.

The letters set out how to make a voluntary disclosure, and how to register for self-assessment. They also explain that individuals whose gross trading income is £1,000 or more in a tax year, from one or more trades, must inform HMRC.

www.tax.org.uk/hmrc-one-to-many-letter-dog-and-cat-breeders-downstream

2.3 Nudge letters on investors' relief

HMRC is investigating potentially erroneous claims for investors' relief (IR).

HMRC is writing to some taxpayers who claimed IR in their 2022/23 tax returns. One set of letters is to those HMRC believes do not qualify for the relief. They are asked to check their returns and make any corrections within 30 days. No action is needed if they believe that the claim is correct. The second set is going to taxpayers who did not include enough information on their return. They are asked to remove the claim, or supply HMRC with fuller details, including the name of the company issuing the shares, the dates of acquisition and disposal, and the cost and proceeds. Again, they have 30 days to act.

www.tax.org.uk/hmrc-one-to-many-letters-for-investors-relief-claims

2.4 Nudge letters on cryptoassets

HMRC is investigating potential instances of taxpayers failing to report disposals of cryptoassets.

Following the receipt of information from cryptoasset trading platforms, HMRC has written to a number of taxpayers that it believes have disposed of cryptoassets without declaring the disposal. The letter explains what a disposal is, including that it can include exchanging one cryptoasset for another. It directs taxpayers to guidance, and asks them to inform HMRC if they have anything to declare.

Anyone who believes they have nothing to pay is asked to contact HMRC to explain the reason why and provide any supporting information.

www.tax.org.uk/hmrc-one-to-many-letter-crypto-digital-platform

2.5 FTT sets aside late filing penalty

The FTT has allowed an appeal made by the taxpayer against HMRC in respect of a late payment penalty issued as the taxpayer had tried to meet their tax obligations.

A taxpayer requested permission from the FTT to make a late appeal against a penalty issued by HMRC for the late payment of tax. The taxpayer had tried to appeal the penalty within the 30 day time limit however used the incorrect form. They followed up with the correct form, however HMRC rejected the appeal as it was late.

The FTT found that although there was a delay in the taxpayer making the application to appeal, the delay was not serious, and it then took HMRC over a month to advise that the incorrect form had been submitted. Once the rejection was received by the taxpayer, they made an almost immediate appeal to the FTT. The FTT allowed the late appeal.

They then went on to establish whether the appeal would be allowed. This was the taxpayers first time submitting a tax return and they sought advice from HMRC's digital assistants. As the taxpayers self assessment record was only set up in January, they confirmed the taxpayer had until April to file their return. The return was filed on time, with the payment made on the same day. HMRC stated that the taxpayer was late in notifying chargeability to income tax and that the due date for payments is readily available. The taxpayer argued that it was their first return, they genuinely believed they had settled the tax within the permitted time and was trying to comply with their tax obligations. The FTT stated that it was clear the taxpayer was trying to meet their obligations and that they believed they had settled their tax liability within the allowable time limit. As a result, the FTT set aside the late filing penalty.

Cohen v HMRC [2024] UKFTT 707 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09254.html

2.6 Late filing taxpayer refused appeals against penalties

The CA has found that penalties were valid as the taxpayer's argument that an officer had to be involved in the process was not correct.

A UK resident non-dom remitted a capital gain. His tax adviser informed HMRC during that tax year. The tax was paid then, so that the taxpayer could claim the tax as a credit against his US tax liability. He did not file the tax return for several more years, and in the interim HMRC issued assessments and penalties based on the original tax estimate supplied by his adviser.

When the return was filed, HMRC rejected it as it was over four years late. It contained a lower figure of CGT, and an EIS claim that further reduced the tax due. He challenged HMRC's refusal to accept the reduced figures. The FTT found for HMRC that it was entitled to reject the later claims and that its assessments were valid.

Before the CA, the taxpayer was challenging the penalties. He argued that HMRC had not proved the involvement of an officer in the process, but HMRC argued that under the legislation the notice just had to be sent by HMRC. The CA found for HMRC on the point, and upheld the penalties.

Marano v HMRC [2024] EWCA Civ 876

www.bailii.org/ew/cases/EWCA/Civ/2024/876.html

2.7 HMRC gives national insurance refunds in error

Some taxpayers received unexpected refunds of Class 2 voluntary NICs for 2022/23.

This has given rise to concerns about the matters that NIC payments affect, such as state pension eligibility and other benefit entitlements.

HMRC has confirmed that this was due to a processing error. However, it is unable to identify who has been affected so will not be making taxpayers who could have been affected aware of the problem. Those affected should however have received a 'customer service message' advising that their contributions were paid late. Taxpayers and agents should check any tax calculations where Class 2 voluntary contributions should have been made.

www.att.org.uk/technical/hmrc-voluntary-class-2-nics-error-check-your-202223-record

2.8 Self-employed income support claimed incorrectly

The FTT has upheld an assessment issued by HMRC to a taxpayer who incorrectly claimed under the self-employment income support scheme (SEISS).

A taxpayer appealed HMRC's attempt to reclaim SEISS payments, though they accepted that they were not entitled to them. The taxpayer ran their business through a company of which they were the sole director, shareholder and employee. During the pandemic, they applied for support payments under the SEISS however, as they were an employee and not self employed, they were not entitled to receive this support. The taxpayer argued this was an innocent mistake and pointed out that they

would have been eligible to receive payments under the Coronavirus Job Retention Scheme (CJRS) which would have been greater than the amount received.

The taxpayer was unable to work throughout lockdown, as they worked in beauty treatments, and therefore the company was not generating income from which wages could be paid. It was found that the taxpayer did not reasonably expect to be paid a salary in the lockdown period. The taxpayer believed they were self employed and would therefore not receive salary from the company. There was also no evidence to show that the taxpayer had been furloughed. The FTT found that the company would not have been entitled to make a claim under the CJRS and therefore the appeal was dismissed.

Lorenzo v HMRC [2024] UKFTT 588 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09227.html

2.9 FTT finds that a taxpayer's disclosure was unprompted.

Penalties have been reduced for a taxpayer who made an unprompted rather than prompted disclosure.

A taxpayer appealed against an income tax assessment and penalties for failure to notify for 9 tax years in relation to rental income. HMRC had requested details from the taxpayer including properties bought and sold, statements of income expenses and capital gains tax computations, none of these were provided. HMRC estimated the rental income based on other properties available to rent at the time and expenses at 15%. The taxpayer argued expenses were higher than this and one of the properties was occupied by his brother however did not provide proof that no income was received. When documents were provided, they were poorly kept.

The FTT found that HMRC made valid discovery assessments and the taxpayer provided no evidence to show they had been overcharged. They also found that the taxpayer deliberately failed to notify HMRC, however, the FTT changed the penalties from prompted to unprompted as the taxpayer had told HMRC he wanted to do the let property campaign and that notifying HMRC of the failed obligation was sufficient.

Khan v HMRC [2024] UKFTT 615 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09236.html

3. Trusts, estates and IHT

3.1 Appeals on business property relief and reduced IHT rate for charitable giving

The FTT has found for HMRC on the questions of whether or not business property relief (BPR) and the reduced IHT rate for charitable giving applied to an estate.

The taxpayer's husband died leaving a will trust. The taxpayer held an interest in possession (IIP) in the trust, and on her death the capital was to be divided 25:75 between a charity and relations. During the taxpayer's life, the trustees exercised their power to appoint funds out of the trust to the relations.

On the death of the taxpayer, the lesser amount remaining in the IIP trust meant that the 25% share for the charity amounted to less than 10% of her total estate. The reduced rate of IHT (36%) is only available for estates where at least 10% of the total estate is left to charity.

The executors claimed that the 36% rate should apply to the whole estate, the combined free estate of the taxpayer with the will trust. They argued that the value of the charitable legacy should be counted as 25% of the will trust value when set up, not the actual amount paid out on winding-up. On analysis of the documents, the FTT agreed with HMRC that the appropriate test was the value on the second death, despite the fact that the trustees had not appreciated that this would be the outcome. There was debate over whether or not the deeds of appointment had been intended as such, rather than as advances, but they had to be taken in accordance with their terms.

The executors also claimed BPR on a portion of the estate, a flat used as a holiday let. They argued that the additional services provided took it above the level of an investment. The taxpayer had made most of the arrangements herself, and greeted every guest in person. It was a kosher flat let exclusively to Orthodox Jews, the taxpayer could arrange for food deliveries from an appropriate shop and provided appropriate utensils and a kosher welcome pack.

The FTT agreed with HMRC that despite the personal involvement of the taxpayer the business was still wholly or mainly of holding investments, as the executors had not demonstrated that the case was exceptional. The executors lost both points in their appeal.

Marks v HMRC [2024] UKFTT 706 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09253.html

3.2 HMRC loses IHT avoidance case on a technicality

Despite finding that an IHT avoidance scheme was ineffective, the FTT did not permit HMRC to recover the loss to the revenue, as a certificate of discharge had previously been issued.

The taxpayer entered into an IHT avoidance scheme before her death. The theory was that the estate would have deductible liabilities of over £1.4m, as the taxpayer gave a personal guarantee. This would put the value of her estate below the nil rate band for IHT. The FTT agreed with HMRC that the scheme was ineffective.

The taxpayer's estate, however, did not have to pay the IHT, as an officer in another part of HMRC had issued a certificate of discharge confirming that no more IHT was due on her death.

As another avenue, HMRC tried to argue that the scheme had resulted in a chargeable lifetime transfer, in the giving of the guarantee, in which case it could recover the IHT. The FTT rejected this, as the scheme failed overall because the value of the guarantee was not deductible from the estate. There was no real transfer.

Carvajal & Anor v HMRC [2024] UKFTT 651 (TC)

www.bailii.org/uk/cases/UKUT/TCC/2024/651.html

4. PAYE and employment

4.1 Workplace nurseries: guidance from HMRC

HMRC is asking employers who are grouping with others to provide childcare support and claiming the workplace nursery tax exemption on this to check that they meet the partnership requirements for the income tax exemption. These include rules around premises, financial responsibility, and management responsibility.

The conditions are complex, but HMRC lists some examples of matters that would not meet the conditions These include:

The 'responsibility for financing' requirement would not be met by only paying fixed costs of '£x' (such as a notional £100 per month per employee's child) to a commercially run nursery already in existence.

The 'active part in management' requirement would not be met by:

- an employer occasionally being consulted by nursery providers on broad childcare-related policies;
- an employer having an occasional call with the nursery for a general update; and
- an employee having a place on a committee that has no particular brief.

www.gov.uk/government/publications/agent-update-issue-121/issue-121-of-agent-update#workplace-nursery-partnership

5. Business tax

5.1 CA rule in HMRC's favour in partnership allocation case

The CA has ruled in HMRC's favour finding 'special capital' reallocated to individual partners from a corporate partner should be taxed on them as miscellaneous income.

In October 2010 an investment management firm restructured by transferring the business of its foreign currency trading team to an LLP. As part of this restructuring a Capital Allocation Plan (CAP) was set up under which a proportion of the profits were

allocated to a corporate partner, which invested them in funds managed by the group. Over several years those funds were sold, and the net proceeds reallocated to individual members as special capital.

The two issues to be decided by the CA were whether or not the allocation of profits to the corporate partner should be considered an allocation to the individual partners, and whether or not the reallocation of special capital should be taxed as miscellaneous income or the sale of occupation income.

The CA had considered the first point in a previous case, *BlueCrest Capital Management* [2023] EWCA Civ 1481. There the Court found against HMRC, ruling that the allocation of profits to the corporate partners should not be taxed on the individual partners. This point was not considered further in this case, but HMRC reserves its right to appeal to the SC.

To be taxed as miscellaneous income an amount must be income and from a source. There was no debate that there was income, so the Court focussed on the issue of whether or not there was a source, ruling that the individuals' rights under the partnership deed combined with the properly exercised discretion of the corporate partner was the source of the income and so the reallocations were taxable on the individuals as miscellaneous income.

HFFX LLP v HM Revenue & Customs [2024] EWCA Civ 813

www.bailii.org/ew/cases/EWCA/Civ/2024/813.html

6. VAT and Indirect taxes

6.1 Collagen drinks not food for VAT purposes

The FTT have ruled that a liquid collagen supplement taken as a drink is not food for VAT purposes, and so should be standard rated. In making their decision they considered a range of factors including how the product is marketed, and its nutritional value.

Skinade is a liquid collagen drink sold in 150ml bottles or travel sachets and is intended to be taken every day as part of a 90-day course. The product is sold via the taxpayer's website, or through cosmetics clinics, beauty salons and private medical practices. It is not available on the high street or other online retailers. The taxpayer treated the product as zero-rated on the basis it is a food supplement, with a nutritional value and packaged in a similar way to probiotic shots which are generally zero-rated for VAT purposes. HMRC argued that Skinade was a beauty product and so should be standard rated.

The FTT considered that how the product was packaged and marketed was key, with white packaging and scientific logos it looked more like something you would find in the chemists. With distribution through beauty clinics, and marketing aimed at the beauty industry not food retailers being indicators that Skinade was a beauty product not a food.

It went on to consider the nutritional value, and whilst the FTT agreed that it did have a nutritional value, this was low and not the primary purpose of the product. In addition, the bottle advised customers to consume the product 'ideally after breakfast', suggesting it does not constitute part of a meal.

The FTT stated that this had not been an easy issue to resolve but taken in the round it considered that 'a well-informed, broad-minded VAT payer's answer to the question whether Skinade is a food would be no Skinade is not a food.' The taxpayer's appeal was dismissed.

This case is another example of how VAT legislation drafted decades ago is being tested by innovative food and nutritional products.

Bottled Science Ltd v HM Revenue & Customs [2024] UKFTT 592 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2024/TC09231.html

7. Tax publications and webinars

7.1 Tax publications

The following Tax publications have been published.

- [Labour's capital gains tax plans explained](#)
- [Changes to Energy Profits Levy \(EPL\) what you need to know](#)
- [An update on Labour's non-dom tax policy](#)
- [The Urgency of Carbon Emissions Data for UK Exporters of CBAM Goods](#)
- [Labour policy on Inheritance Tax \(IHT\) explained](#)
- [CIS for businesses as HMRC pressures](#)

7.2 Webinars

The following client webinars are coming up soon.

- 19 September - [Editions by Evelyn Partners - What's on your tax agenda?](#)
- 9 October - [Business Exit - Pre-exit planning for business owners - October 2024](#)
- 16 October - [Business Exit: Post-exit planning for business owners - October 2024](#)

8. And finally

8.1 All change

The surprise document release referenced in 1.2 is an interesting insight into Government thinking on tax. While none of the changes were unanticipated, it is a relief that we will not be waiting until the October Budget for these details. It confirms that the Government is not moving away from campaign pledges such as applying VAT to school fees, but is also carrying on with changes initiated by the previous Government such as to the furnished holiday letting regime.

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 August 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.