

Tax Update

Contents

1. General	1
1.1 One month left for certificates of tax deposit scheme	1
2. Private client	2
2.1 HMRC nudge letters on discrepancies in 2021/22 returns	2
2.2 Proceeds of crime qualifying condition met	2
2.3 Taxpayer loses appeal on £40m 'presents'	2
2.4 First UT case on salaried member legislation	3
3. Trusts, estates and IHT	4
3.1 IFS publishes report on options for IHT reform	4
4. PAYE and employment	4
4.1 No taxable benefit for reimbursement of electric car charging costs	4
5. VAT and Indirect taxes	4
5.1 Mixed-use SDLT dismissed on house with field	4
5.2 Evelyn Partners responds to plastic packaging tax consultation	5
6. Tax publications and webinars	5
6.1 Tax publications	5
6.2 Webinars	5
7. And finally	6
7.1 Anyone got any ideas?	6

1. General

1.1 One month left for certificates of tax deposit scheme

Under an old scheme, HMRC allowed taxpayers to deposit money against future tax liabilities, the main purpose being to mitigate late payment interest that would otherwise arise when the future tax liability crystallised. Existing CTD holders should contact HMRC before 23 November 2023, to either advise how the CTD should be used or claim a refund.

HMRC stopped allowing new purchases of these certificates in 2017 but still has £89m worth of these certificates registered. If HMRC cannot repay the balance, for example if HMRC is unable to contact the holder, the balance could be forfeited. It may also be preferable to transfer the balance as a specific payment on account against a pending liability, rather than to receive a

repayment. Anyone still holding a CTD should contact HMRC to arrange a refund or confirm what they would like to do with the CTD.

www.gov.uk/guidance/certificate-of-tax-deposit-scheme

2. Private client

2.1 HMRC nudge letters on discrepancies in 2021/22 returns

HMRC is writing to agents who have filed multiple returns where there is a discrepancy between the information on the return and the information HMRC holds on the client's child benefit records or the benefits they have received from their employers shown on a P11d.

HMRC's aim is for the agents to agree voluntary amendments with their clients. The letter notes that HMRC will call the agent in the next three weeks with further details, though an earlier time for discussion can be arranged. This is not a formal enquiry nor compliance check. HMRC would like to agree a date with each agent by which the amendments will be submitted, to aid workload management before peak filing season. Returns not amended by 31 January 2024 may be subject to discovery assessments.

www.tax.org.uk/hmrc-one-to-many-agent-letter-discrepancies-in-clients-2021-22-self-assessment-tax-returns

2.2 Proceeds of crime qualifying condition met

The FTT upheld assessments issued to a taxpayer by the National Crime Agency (NCA), finding that the condition that the behaviour was criminal had been met.

Following a criminal investigation into allegations of drug trafficking and money laundering, which included the arrest of one of the taxpayers, the NCA issued the taxpayers with a notice that it suspected that "income arising or a gain accruing to a person in respect of a chargeable period is chargeable to income tax or is a chargeable gain (as the case may be) and arises or accrues as a result of the person's or another's criminal conduct". This notice was followed by tax assessments and penalty determinations dating back many years, as is possible in a case of deliberate behaviour. These assessments could only be upheld if the initial notice was correct, but the taxpayers contended that the income and gains were lawfully obtained from business.

The FTT found that the qualifying condition in the notice, that the behaviour was criminal, was established. It considered the investigation into the activities, as well as the validity of the various notices. The behaviour was deliberate, so all notices were valid, and it considered that the quantum was correct.

Begum & Butt v HMRC [2023] UKFTT 785 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08938.html

2.3 Taxpayer loses appeal on £40m 'presents'

The UT has upheld an FTT decision that payments of £40m to a lawyer were nearly all taxable income, rather than gifts, based on an analysis of the facts. HMRC had also discharged the burden of proof to justify the discovery assessments.

The taxpayer, a lawyer, was for many years involved in the business affairs of a wealthy family. He received over £40m in payments that he did not regard as taxable income. HMRC contended that all the payments were made by virtue of his service to the family interests. Some payments were described as inducements to leave his former employment, which the FTT found were trading income based on contemporary documentation. Other payments were described as presents from one of the family members due to their friendship. These were also found to be taxable income, based on the FTT's view of the business relationship between the parties and services provided. One payment of EUR217,000, for a holiday, was accepted to be a genuine gift.

The UT rejected his appeal, finding that the FTT's approach to deciding whether or not these payments were taxable was correct, and that HMRC had met the burden of proof. The only burden of proof HMRC had to meet was the initial discovery of a loss of tax, there was no additional burden of proof for the 20 year time limit as argued by the taxpayer.

His appeals against penalties were also rejected, as the UT found that these were correctly issued, in accordance with his behaviour.

Mullens v HMRC [2023] UKUT 244 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2023/244.html

2.4 First UT case on salaried member legislation

The UT has considered whether or not the salaried members legislation applied to a group of LLP members. It upheld an FTT judgment that the legislation requires a member to have significant influence over the affairs of the LLP as a whole, rather than just a part, but found that the legislation applied to some members.

Members of LLPs are generally taxed as self-employed, rather than employees, which can give a significant saving in NICs. The salaried members legislation, introduced in 2014, deems members to be taxable as employees in some circumstances, generally where their work relationship is similar to an employment relationship.

HMRC issued the taxpayer LLP with PAYE and NIC determinations covering five years, on the grounds that some of its members were within the salaried members legislation. In this case, this only applied where at least 80% of remuneration was disguised salary that did not vary with LLP profit, or the members did not have significant influence in the LLP.

The FTT examined the day to day running of the LLP, which had an informal approach to management, with reference to the investment portfolio managers whose tax position was disputed. It found that, contrary to HMRC's assertion, an individual did not have to demonstrate significant influence over the LLP as a whole, but just over one or more aspects of the affairs of the LLP. This could include financial influence, based on a large capital contribution. It allowed the LLP's appeal in relation to some members, including the heads of areas in the firm, and those who managed portfolios over a certain size. The others did not have significant influence, and the bonuses paid to all did not vary enough with profit to be anything other than disguised salary.

The UT upheld this decision in full, dismissing an appeal and cross-appeal. The legal tests were applied correctly, and it could not, even if it wanted to, overturn FTT findings of fact.

The judgement has materially widened HMRC's current interpretation of significant influence beyond just management of the LLP and extends it to include financial and operational influence. It is therefore important to consider whether a firm draws a line of distinction between an appropriately senior level of employee and member, with records maintained to document a member's significant influence over the financial or operational aspects of the business, so as to not be deemed an employee under the salaried member legislation.

While other factors can influence an individual's final profit allocation, there needs to be a clear link maintained between the individual's profit share and overall profit of the firm, with any variable element needing a 'top down' approach when considering the test for disguised salary.

For both conditions, it's important to have clear supporting documentation in place at the outset showing all decisions made, as lack of evidence could be the difference between meeting or failing a condition.

Given the widening of the interpretation of significant influence, this also raises the question as to whether HMRC may look to require LLP members to fail 2 conditions in the future in order to retain self-employment status, which could have a significant impact on professional services firms.

Bluecrest Capital Management (UK) LLP v HMRC [2023] UKUT 232 (TCC)

www.bailii.org/uk/cases/UKUT/TCC/2023/232.html

3. Trusts, estates and IHT

3.1 IFS publishes report on options for IHT reform

The Institute for Fiscal Studies, IFS, an independent economics research institute, has published a new report with facts and figures on how IHT works now, and the options for reform, with its own recommendations.

It notes the widening impact of IHT with frozen thresholds, and that wealth growth is outstripping that of earnings. In order to keep the proportion of deaths resulting in IHT at 4%, the NRB would need to increase to £380,000, at an exchequer cost of £900m.

The report questions whether it is appropriate to keep or abolish IHT, before going on to recommend reform if IHT is retained as follows.

- Combining the RNRB with the NRB, to remove the disproportionate benefit received by those in areas with higher property values. Retaining a taper for high value estates would lower the cost of this.
- Abolishing APR and/or BPR, which it considers costly and inequitable. Separately, Labour is rumoured to be considering this.
- Including 80% of the value of bequeathed pensions in the taxable death estate.
- Abolishing the exemption for gifts out of surplus income, and taper relief, and looking at the feasibility of moving to a system that taxes all lifetime gifts within IHT, or an annual gift tax.
- Abolishing the CGT uplift on death.
- Charging IT on withdrawals from inherited pension pots, regardless of the age on death of the deceased.

<https://ifs.org.uk/publications/reforming-inheritance-tax>

4. PAYE and employment

4.1 No taxable benefit for reimbursement of electric car charging costs

HMRC has updated its guidance to state that it accepts that if an employer reimburses an employee for the costs of charging a company owned electric car then no benefit in kind arises, even if the car is available for private use. HMRC expects employers to be able to demonstrate that the electricity was used to charge the company car or van.

The legislation has not changed, simply HMRC's view, so individuals who have previously been charged for this may be able to challenge the treatment, although any impact is likely to be minimal. The online HMRC tool for checking tax on electric cars has yet to be updated.

www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim23900

5. VAT and Indirect taxes

5.1 Mixed-use SDLT dismissed on house with field

The FTT has found that a property with a field under an informal grazing agreement with a third party was not mixed use. The arrangement was not on a commercial basis until after the purchase, as the contract to formalise and modify it was not signed until a month later.

After buying a house with a field, the taxpayer amended her SDLT return from declaring it as a residential property to a mixed-use property, on which SDLT is charged at lower rates. The house and some of the surroundings, including stables, paddock, and garden, were accepted by the taxpayer to be residential, but she argued that an eight acre field was not part of the grounds, the total plot being ten acres. The field is adjacent to the rest of the property, accessed from the garden by a gate.

The FTT determined on the balance of probabilities that the previous owners had not used this as a paddock for horses, despite indications the other way in the estate agent listing.

The previous owners allowed a third party to mow the grass once a year and sell the hay, with no money changing hands. The FTT accepted that the taxpayer had continued the arrangement, but held that the previous arrangement was not commercial, so it was still not commercial at the sale date, the key point for SDLT. The fact that a month later a contract was signed requiring the third party to make a monthly payment, which could have made this commercial, did not change the position at purchase. The taxpayer's appeal was dismissed.

Modha v HMRC [2023] UKFTT 783 (TC)

www.bailii.org/uk/cases/UKFTT/TC/2023/TC08936.html

5.2 Evelyn Partners responds to plastic packaging tax consultation

We have responded to the Government consultation on chemical recycling and adoption of a mass balance approach. It is not yet known when the Government will publish its findings.

The consultation was extensive, but the key points from our response are as follows:

- Allowing chemically recycled material to qualify as recycled material is important to help increase the use of recycled material. This is particularly the case for food contact packaging and medical packaging as mechanically recycled material cannot be used for this for regulatory reasons.
- Measuring and monitoring the amount of recycled material is a complex issue and some of HMRC's proposals are extremely complicated. These would be burdensome for businesses to comply with and difficult for HMRC to check compliance. We have recommended simplicity and clarity of tax administration as the tax is already significantly more burdensome to businesses than HMRC had anticipated it would be.
- To incentivise investment properly in both chemical and mechanical recycling and the supply of good quality material, the rate of plastic packaging tax needs to increase. The rate is currently fairly immaterial to most businesses and the administrative costs of compliance exceed the tax in many cases. We have recommended a pre-announced escalator to increase the tax rate and threshold over a set trajectory. We recommended that HMRC should consult with industry to determine the level at which the tax should be set in order that any rate increase acts only to drive investment rather than being punitive.

This is an evolving area, and we recently ran a webinar on navigating plastic packaging tax and Extended Producer Responsibility and what you need to know, which is linked below.

www.gov.uk/government/consultations/plastic-packaging-tax-chemical-recycling-and-adoption-of-a-mass-balance-approach

www.evelyn.com/insights-and-events/events/esg-101-how-to-navigate-the-plastic-packaging-tax-and-epr-regulations/

6. Tax publications and webinars

6.1 Tax publications

The following Tax publications have been published.

- [Agricultural property relief and planning for pitfalls](#)
- [Assessing HMRC's approach to Research and Development tax reliefs](#)

6.2 Webinars

The following client webinars are coming up soon.

- 31 October - [Talking Tax: Succession planning for rural businesses](#)
- 16 November - [Business Exit - Pre-exit planning for business owners - November 2023](#)

7. And finally

7.1 Anyone got any ideas?

As before many fiscal events, the Government has opened a portal for policy suggestions ahead of the Autumn Statement.

On the one hand, we completely support consultations and engagement with experts before bringing in changes. On the other, the closing date is barely a month before the Statement – will policies really have a chance to get in?

It is very tempting to pop in a few of our pet peeves though, and we encourage anyone who does have a good idea to send it in.

www.gov.uk/government/publications/autumn-statement-2023-representations

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](https://www.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. HMRC Tax Year 2023/24.

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 2023.