TAXwire: 970

This is a summary of the key tax events for the week ended 14 July 2019.
It has been compiled by Lindsey Wicks.

This newswire contains all the individual postings we have made to the Tax Faculty website over the past seven days. It includes both news items (ion.icaew.com/taxfaculty) and new discussions (ion.icaew.com/Taxforum).

CONTENTS

VAT: changes to the reduced rate for energy-saving materials

The UK is making changes to restrict the reduced rate of VAT on energy-saving materials (ESMs) in response to infraction proceedings which the UK lost in 2015.

HMRC issued a policy paper on 10 July 2019 to provide more information about changes that will remove the reduced VAT rate of 5% from the installation of certain ESMs with effect from 1 October 2019. Affected items will become subject to the standard VAT rate of 20% with effect from that date.

The installation of wind and water turbines will become standard rated in all cases.

The reduced rate will remain fully available (except on wind and water turbines) for supplies of services of installing ESMs in residential accommodation where the supply is made to a person who is aged 60 or over or is in receipt of certain benefits, a relevant housing association or where the residential accommodation is a building or part of a building used solely for a relevant residential purpose.

Otherwise, the reduced rate will be available (except on wind and water turbines) provided that the value of the ESMs does not exceed 60% of the total value of the supply of installing the ESMs. If the value of the ESMs exceeds 60%, then only the labour cost element will qualify for the reduced rate, with the supply of the materials being standard rated.

The legislation confirms that supplies that have been paid for before 1 October 2019, or supplies made under contracts entered into prior to that date, are unaffected by these changes.

Report and pay as you go by self-employed workers?

The Office of Tax Simplification (OTS) has set out the scope of its latest project, Scoping paper: simplification of tax reporting and payment arrangements for the self-employed, which will consider easier ways to report taxable income by the self-employed and landlords of private residential property. The work will look at whether the processes involved could be made easier to understand and improved and builds on earlier work where the OTS considered the impact of the platform economy on how people manage their tax.

Some gig workers who had found most of their work through platforms suggested they might prefer to have their tax deducted by the platform as they went along, using something looking like a PAYE system. Some workers rarely, if ever, use cash in their businesses, while others use it extensively so clearly, one size of tax system does not suit all and the possibility of doing things differently might be feasible.

The OTS Technology discussion paper published in January 2019 considered how new technology could be used to bring efficiency and cost savings to the tax system and suggested more use could be made of the current Personal Tax Account.

The Tax Faculty is immediately mindful that Making Tax Digital (MTD) for income tax is still moving in the background and it will be essential that any further developments affecting small businesses are made in conjunction with MTD, allowing enough time for the rules changes, the IT systems changes and for human beings to keep up.

Finance Bill 2019-20 – publication of draft clauses and other background material

The government has published draft clauses, explanatory notes and TIINs (Tax Information and Impact Notes) for measures which are expected to find their way into Finance Act 2020.

The current draft clauses are open for comment until 5 September 2019 and are expected to then be republished, as part of Finance Bill 2019-20 after the Budget. If plans go ahead for an emergency Budget in September, the impact on the timing of the Bill is unknown.

The items highlighted in the press release accompanying the draft bill included:

- Off-payroll working
- Digital services tax
- Protecting our taxes in an insolvency

If any readers have comments on the current proposals then do please get in touch with the Tax Faculty so that we can reflect your comments and/or concerns in the representations we make.

April 2020 changes to private residence relief

The draft Finance Bill clauses and consultation outcome published on 11 July 2019 confirmed the government's plans to:

- reduce the final period exemption from 18 months to nine months (although the special cases in which the 36-month period applies remain unchanged); and
- restrict lettings relief to cases where the owner is in shared occupancy.

Both of these changes will apply to disposals on or after 6 April 2020. ICAEW had responded to the consultation as ICAEW Rep 52/19, pointing out that these changes were retroactive. In the consultation outcome, the government justified its approach by stating that adding other rules, such as valuing the property at the point is marketed or retaining previous eligibility for lettings relief would add significant complexity. In terms of lettings relief, the consultation outcome suggests that taxpayers could rearrange their affairs under the current rules before 6 April 2020 to trigger the relief.

These are not the only changes to the ancillary reliefs that are included in the draft legislation. It also legislates:

- extra-statutory concession D21 which allows for a late nomination of a main residence outside of the normal two-year window in certain circumstances; and
- extra-statutory concession D49 which allows relief where there is a short delay in occupation in two cases.

ICAEW Rep 52/19 suggested some additional changes that could be made such as excluding properties in which an individual has no significant interest from the scope of private residence relief and covering the almost universal gap between exchange and completion on a property purchase. However, the government commented in its consultation outcome that in legislating these concessions, it does not plan to extend their scope.

Job-related accommodation relief is to be extended to members of the armed forces who receive an armed forces accommodation allowance instead of being required to live in service accommodation. This change won't apply from 6 April 2020 and will instead take effect when the income tax exemption for the armed forces accommodation allowance comes into force.

The final change is to the way in which the spousal transfer rules apply. Currently, the recipient spouse or civil partner only inherits the transferring spouse's ownership history if the property is their main residence at the time of the transfer. Where the transfer takes place on or after April 2020, the recipient will inherit their spouse's ownership history regardless of whether the property is their main residence at that time. The rules will not retrospectively apply to transfers before that date. Therefore, where there is a disposal of a property on or after 6 April 2020 and there has been a prior inter-spousal transfer, care will be needed to consider which set of rules applied at the time of the inter-spousal transfer.

The draft legislation is open for comment until 5 September 2019. If you would like to contribute to any submission made by ICAEW, please contact sue.moore@icaew.com.

Off payroll working in the private sector (IR35)

Draft Finance Bill clauses published on 11 July 2019, together with accompanying explanations and a policy paper, confirm changes to the off-payroll working rules with effect from April 2020. Rules introduced for public sector engagements from April 2017 will be extended to the private sector from next year although they will not apply where the end client is small, a population estimated at 1.5m businesses. The old IR35 rules will continue to apply to workers contracting with such clients through their own personal service companies (PSCs).

As proposed in the consultation published in March 2019, the rules for determining whether a client is small will rely on the small companies regime set out in Companies Act 2006. For non-corporate clients, the rules will be based on turnover alone (£10.2 million).

From 6 April 2020, medium and large organisations which use contract labour will need to consider whether the new off-payrolling rules apply. In doing so, they must review all contracts for work and make a status determination accordingly for each. This decision and the reasons for it must be passed to the first agency in any engagement chain and also to the worker directly. The information must be passed down the supply chain, from agency to agency, until it reaches the payer. There is no obligation for the payer to be informed directly by either the client or the worker.

ICAEW Tax Faculty made strong representations in ICAEW Rep 54/19 that small client organisations should also be required to make their size clear to contract workers, who would then know with certainty that the status assessment was that worker's own responsibility. It is unfortunate that workers in such cases, who hear nothing, will not know whether it is because the client is small or that it has simply not made a determination. Communication is going to be critical.

A new status disagreement process is being legislated, enabling a worker or fee-payer to dispute a determination and the reasons on which it was based. Although the engager will be required to respond to a dispute within 45 days there is no independent review process being incorporated. The only sanction will be against a client who fails to respond.

Any outstanding liability for tax and NIC can be transferred up the chain to the top agency and then on to the engager if it cannot be collected from the fee-payer.

It is important to appreciate that the underlying rules for determining employment status are themselves unchanged. However, the subjective nature of their application and the attitude to risk of those involved may result in a different outcome for many who work through their own personal service company who could now find themselves being paid through a payroll.

HMRC has addressed this concern in an accompanying compliance statement Fact sheet published alongside the draft legislation, stating HMRC will not carry out targeted campaigns into previous years when individuals start paying employment taxes for the first time.

The Tax Faculty will be running a webinar to explain the new rules and their application in further detail on 7 August. We will also be publishing further details and guidance in due course. Why not Join the Tax Faculty today and access the Tax Faculty guidance already available on IR35 contract reviews and our recent webinar covering the latest IR35 cases. You do not have to be a member of ICAEW to join the Tax Faculty.

Share loss relief and CGT relief for loans to traders go global

Share loss relief can be claimed on the disposal of certain shares by individuals and investment companies. For individuals, this can be particularly valuable as it allows the loss to be offset against income which is generally taxable at higher rates than capital gains. One of the conditions for shares to qualify for share loss relief is that the company (in which the shares were held) carries on its business wholly or mainly in the UK.

CGT relief is available on certain loans to traders where there is no reasonable prospect of the loan being repaid. One of the conditions for this relief is that the borrower must be UK resident.

On 24 January 2019, the European Commission issued infringement decisions stating that both share loss relief and the tax relief on loans to traders imposed an unjustified restriction on the free movement of capital (Article 63 of TFEU) and gave the UK two months to respond before the commission would make a decision to bring cases before the Court of Justice of the EU.

The draft Finance Bill clauses include changes to both the share loss relief rules and the loans to traders rules that will apply from 24 January 2019.

In the case of share loss relief, the requirement that the company carries on its business wholly or mainly in the UK will be repealed and will apply to disposals on or after 24 January 2019. An additional reporting requirement will be introduced whereby claimants will have to tell HMRC the tax residency of the issuing company, although this reporting requirement is not reflected in the draft clause.

For loans made on or after 24 January 2019, the requirement that the borrower is UK resident will no longer apply for CGT loss relief on loans to traders.

Draft legislation on tax in insolvency

Included in the draft Finance Bill clauses published on 11 July 2019 are two measures aimed at protecting tax revenues in insolvency:

- Changes to protect tax in insolvency cases and
- Tax abuse using corporate insolvencies

Changes to protect tax in insolvency cases

The impact of this measure, which is expected to apply from 6 April 2020, is that when a business enters insolvency, HMRC will be a secondary preferential creditor in respect of certain tax debts held by a business (this includes individuals and partnerships).

The measure will apply to the following taxes:

- VAT
- PAYE income tax
- employee National Insurance contributions
- student loan deductions
- construction industry scheme deductions

The rules will remain unchanged for taxes owed by businesses themselves, such as:

- corporation tax
- employer National Insurance contributions

The government has also published a summary of the responses to the consultation which ran from 26 February 2019 to 27 May 2019. Disappointingly the measure is being enacted as originally proposed and does not take into account the concerns raised by ICAEW in its representation 53/19 and others. The ICAEW representation stated that “This proposal is at odds with government efforts to foster an enterprise culture in recent years. It can be expected to deter lending and have other adverse consequences that have not been sufficiently considered in the proposal.”

Tax abuse using corporate insolvencies

The object of this measure is to prevent the abuse of corporate insolvencies by making directors and other persons connected to those companies jointly and severally liable for the avoidance, evasion or phoenixism tax debts of the corporate entity. The measure is expected to be operative from the date of Royal Assent.

The government published a discussion document on this measure on 11 April 2018 and a summary of responses on 7 November 2018. ICAEW responded to the proposals in representation 72/18.

The draft legislation sets out five conditions that must be met where an authorised HMRC officer issues a joint liability notice to an individual and three conditions that need to apply in repeated insolvency and non-payment cases for a notice to be issued. There is provision for an individual to appeal against a notice to the First Tier Tribunal.

ICAEW will review the legislation in detail and make representations as appropriate. Please send any comments on the draft legislation to caroline.miskin@icaew.com.

Structures and Buildings Allowance: legislation finally live

The new structures and buildings allowances regime was announced on 29 October 2018 and applies to qualifying construction projects from that date.

Enabling legislation for the allowance was included in Finance Act 2019 with the detail to follow in secondary legislation. On 17 June 2019, HMRC published revised draft legislation together with a summary of responses to the consultation around the draft legislation (first published in March of this year). The regulations received parliamentary approval on 4 July, and came into force on 5 July 2019. No changes were made to the draft regulations published on 17 June.

However, we still await HMRC guidance which is due to be published later this summer to provide clarity around the new rules.

Draft Finance Bill 2019-20 includes legislation for a new corporate capital loss restriction

The amount of capital gains realised by companies that can be relieved by carried-forward capital losses will be limited to 50 percent from 1 April 2020. The deductions allowance of £5 million per group per year that was introduced in 2017 will also be available to cover capital gains that can be offset with carried-forward capital losses.

This measure was subject to consultation and ICAEW made representations at this point indicating concerns around the potential for trapped capital losses and further complexity around the use of losses including the need to ‘split’ accounting periods straddling April 2020.

However, the draft legislation reflects the original plans with the 50% restriction only applying to gains arising in the period after 1 April 2020. Claims can be made regarding pre-entry and connected party losses to utilise them in preference to unrestricted ‘in year’ capital losses. However, the latter will then become restricted when carried forward.

Corporation tax deferral available on certain transactions with EEA member states

Transfers of assets between two group companies within the charge to UK tax generally take place without an immediate tax charge. However, where the transfer is to a member of the group outside the charge to UK tax, the transfer is treated as taking place at market value and any profit or loss is taxable in the accounting period in which the transfer takes place.

Following a recent First-tier Tribunal decision *Gallaher v HMRC* [2019] UKFTT 207, it was decided that denying tax relief in respect of a transfer of a chargeable asset to an EEA member state was contrary to the Freedom of Establishment under EU law which could not be justified unless the UK company was given the option to pay the extra tax over five years. While the case remains under appeal, this draft legislation has been released that is proposed to take effect from 11 July 2019 to remove uncertainty around whether such transactions will be taxed in the UK. HMRC has published draft legislation and further guidance on this measure here.

From 11 July 2019, companies may apply to defer payment of tax on profits or gains attributable to group transfers where the due and payable date has not yet expired. In effect, this means that group transfers during accounting periods ended on or after 10 October 2018 can be the subject of an application for deferral.

Companies will be able to defer payment to six equal annual instalments commencing on the normal due date for payment (nine months and one day after the year-end). Late payment corporation tax interest will apply on this deferral at the standard rates. The provisions for entering into a corporation tax payment plan will be included in Sch 3ZC, TMA 1970 and will be similar to rules regarding exit charges incurred by a company that migrates to a relevant EEA state.

These rules will relate to transfers of chargeable assets, intangible fixed assets, loan relationships and derivative contracts where the transferor is resident in the UK (or is a permanent establishment within the charge to UK tax) and the transferee is a group member resident in another EEA/EU member state. The rules will apply where the only reason that the transfer is not treated as tax neutral by one of the group transfer provisions, is that the transferee company is not within the charge to UK corporation tax in respect of the asset or liability. The tax will also become payable immediately if certain events occur, including if the transferor and transferee companies cease to be members of the same group.

Disguised remuneration, contractor loans and the 2019 loan charge revisited

Since recording our first webinar for Tax Faculty members in August 2018, several key milestones have passed, more is now known about the information which must be provided, the potential penalties and what help is available. In this webinar, Rebecca Benneyworth reprises the earlier recording and brings viewers up to date.

The charge on outstanding disguised remuneration loans, the loan charge, was introduced to tackle the use of disguised remuneration schemes. It came into effect on 5 April 2019 and applies to all loans made since 6 April 1999 if they were still outstanding on 5 April 2019 and the recipient has not settled the tax due.

Webinar 24 July: Devolved taxes

Join us at 11:00 on 24 July 2019 for our upcoming webinar on devolved taxes

The devolution of tax powers to Scotland, Wales and Northern Ireland differ – in timing and in nature. They also offer a surprisingly complex set of arrangements. This webinar sets out to provide an overview of the devolved tax powers and pointers to areas where care needs to be taken when advising clients across the UK.

Charlotte Barbour, Director of Taxation for ICAS, Charlotte Barbour, will explain the developments in Scottish taxation and Frank Haskew, Head of Tax for ICAEW, will cover the developments in Wales. We will also look at the wider policy questions about tax devolution and where it might lead.

Book your place here

This webinar is exclusively available to members of the Tax Faculty and ICAS members.

To join the Tax Faculty visit www.icaew.com/jointf for our latest rates and promotional offers.

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About ICAEW

ICAEW connects over 149,000 chartered accountants worldwide, providing this community of professionals with the power to build and sustain strong economies.

Training, developing and supporting accountants throughout their career, we ensure that they have the expertise and values to meet the needs of tomorrow's businesses.

Our profession is right at the heart of the decisions that will define the future, and we contribute by sharing our knowledge, insight and capabilities with others. That way, we can be sure that we are building robust, accountable and fair economies across the globe.

ICAEW is a member of Chartered Accountants Worldwide (CAW), which brings together 11 chartered accountancy bodies, representing more than 1.6 million members and students globally.

About the Tax Faculty

Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from more than 130 volunteers, many of whom are well-known names in the tax world.