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Tax Bites

Welcome to the latest edition of RPC's Tax Bites - providing monthly bite-sized updates from the tax world.

As always, if there are any areas on which you would like more information (or if you have any questions or feedback), please let us know or get in touch with your usual RPC contact.

News



HMRC updates its off-payroll working manual

HMRC has updated its Employment Status Manual dealing with the extended off-payroll working rules for the private sector. In particular, guidance is provided as to when a business will be a small entity, by reference to its balance sheet, turnover, and number of employees. Guidance is also provided concerning status determination statements, offshore entities, and when HMRC will use its powers to recover unpaid tax from others in the labour chain.

The updated manual can be viewed [here](#).



EU updates its list of non-co-operative jurisdictions

The EU has updated its list of non-co-operative jurisdictions for tax purposes.

- The Cayman Islands and Oman have been removed from Annex I (the principal list of non-operative jurisdictions), following Cayman's recent reforms to its collective investment fund regulation and the steps Oman has taken to ratify and implement measures for the automatic exchange of information.
- Anguilla and Barbados have been added to Annex I following the downgrading of their ratings by the OECD Global Forum.
- Mongolia and Bosnia and Herzegovina have been removed from the watch-list following their ratification of the OECD Convention on Mutual Administrative Assistance in Tax Matters.

The EU Council's press release can be viewed [here](#).



HMRC finalises its guidance on offshore receipts from intangibles

HMRC has published guidance on the taxation of offshore receipts in respect of intangible property referable to the sale of goods, or provision of services, in the UK. While the guidance is very similar to that issued in draft form in October last year, more detail is provided on the procedure for taxpayers to notify a liability, to submit a (paper) return, and to claim treaty relief.

The updated manual can be viewed [here](#).

Case reports



Wired Orthodontics: FTT refuses application for disclosure

In *Wired Orthodontics Ltd and others v HMRC* [2020] UKFTT 290 (TC), the First-tier Tribunal (**FTT**) refused an application for disclosure of documents and information passing between the solicitors for HMRC and their

appointed expert witness.

Although the application was ultimately unsuccessful, in dismissing the application, the FTT noted its "*considerable concern*" regarding the circumstances which had given rise to the application. The strength with which the learned judge expressed her concerns is striking. The judge noted that there was evidence of, at the very least, potential inappropriate interference by HMRC's solicitor with the independent evidence of an expert witness. The judge commented that the perception given is that there was a "*serious transgression*" and that such a perception is "*seriously prejudicial to HMRC's position in cases such as these and should be avoided at all costs*".

Our commentary on the decision can be viewed [here](#).



Box: FTT rules that high-income child benefit charge constitutes income for the purpose of discovery assessment

In *Martin Richard Box v HMRC* [2020] UKFTT 353 (TC), the FTT dismissed the taxpayer's appeal against an assessment to pay high-income child benefit (**HICB**) charge, on the basis that the charge constituted income for the purpose of discovery assessments.

This decision is one of a number of recent decisions relating to the HICB charge (see the conflicting decisions in *Mark Haslam v HMRC* [2020] UK FTT 304 (TC) and *Jason Wilkes v HMRC* [2020] UKFTT 256 (TC)). The FTT has again applied a purposive interpretation to the legislation in order to treat the HICB charge as 'income', so that HMRC is able to assess taxpayers by issuing a discovery assessment under section 29, Taxes Management Act 1970. The appeal in *Wilkes* is proceeding on appeal to the Upper Tribunal (UT) and that tribunal may provide some much needed clarification regarding the HICB charge and HMRC's assessing powers in relation thereto.

Our commentary on the decision can be viewed [here](#).



Irish Bank Resolution Corporation: Court of Appeal confirms disallowance of interest deductions compared by UK permanent establishments

In *Irish Bank Resolution Corporation Ltd (in special liquidation) and another v HMRC* [2020] EWCA Civ 1128, the Court of Appeal upheld the decisions of the FTT and the UT and confirmed that HMRC was entitled to disallow interest deductions claimed by the UK permanent establishments (**PEs**) of two Irish companies.

This judgment will be of interest to any non-UK companies who conduct business through UK PEs, especially those in a jurisdiction whose double tax treaty with the UK pre-dates 2010. The appellant taxpayers applied for permission to appeal to the Supreme Court and it will be interesting to see what view that Court takes should permission be granted.

Our commentary on the decision can be viewed [here](#).



And finally...

Fancy some insights into the tax appeals process? Listen to our latest *Taxing Matters* podcast [here](#) to hear Alice Kemp and Costa Christofi offering some practical tips on the steps involved in appealing an HMRC decision.

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