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Tax Bites

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

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

News



Taxpayers permitted to make late elections to spread Loan Charge payments

HMRC has issued a statement of practice explaining how taxpayers who are subject to the Loan Charge can make a late election to spread their outstanding disguised remuneration loan balance evenly across three tax years (2018/19, 2019/20 and 2020/21).

As of 1 January 2021, HMRC will only accept late elections where the circumstances were beyond the taxpayer's control, including if the taxpayer was prevented from making the election before 1 January 2021 due to illness or other good reason and nobody else could have made the election on their behalf.

The statement of practice can be viewed [here](#).



Research and Development credit cap introduced to prevent abuse

HMRC has published a policy paper explaining the measures which have been introduced to prevent abuse of Research and Development (R&D) tax relief for small and medium-sized enterprises (SMEs). The R&D tax credit SMEs can claim will be limited to £20,000 plus 300% of their total PAYE and National Insurance Contributions liability for the period. SMEs are exempt from the R&D limit if their business involves creating or managing IP, or if it does not spend more than 15% of its qualifying R&D allowance on subcontracting out R&D activities.

The policy paper can be viewed [here](#).



HMRC commences interest rate review

Following the 2019 independent review into the loan charge, which recommended, amongst other things, that HMRC review its interest rates policy, HMRC has announced that it will commence a review into how it will continue to set interest rates and charge and pay interest in the future on underpaid/overpaid tax. The review will also look at how HMRC has improved its communication with taxpayers who have incurred interest over several years and the steps it will take to continue its contact with such taxpayers.

The policy paper can be viewed [here](#).



Proposed changes to Follower Notices penalties

HMRC has begun a consultation and published draft legislation regarding penalties for failing to take corrective action in response to Follower Notices. The legislation proposes a reduction in the penalty rate from 50% to 30% of the "denied advantage". However, a new penalty of 20% of the "denied advantage" will apply if an existing penalty is charged and the First-tier Tribunal (FTT) either strikes out the taxpayer's substantive appeal

on the grounds that there is no reasonable prospect of success, or if there has been an abuse of process, or if it makes a statement that the taxpayer was unreasonable in bringing or conducting the appeal.

The consultation document can be viewed [here](#).



Consultation launches on treatment of asset-holding companies

HM Treasury has published a second consultation concerning the tax treatment of asset-holding companies (AHCs) in alternative fund structures.

The initial consultation on AHCs closed on 19 August 2020. The government believes that there is a strong case for change in this area and it has therefore launched a second stage consultation on detailed design features of a new regime for AHCs which will close on 23 February 2021. The consultation will also consider targeted changes to the real estate investment trusts regime. The government intends to publish draft legislation during 2021, allowing for a period of technical consultation ahead of its inclusion in the Finance Bill.

The consultation is expected to consider the eligibility criteria and tax relief for AHCs such as capital gains relief and enhanced deductibility of distributions. The proposals may also include producing more detailed guidance on transfer pricing, taxation of investors and, stamp duty and SDRT exemptions, group relief, relief for non-UK property income and reporting requirements. The intention is to make the UK a more attractive location for AHCs following Brexit.

The second consultation can be viewed [here](#).



HMRC chooses to ignore decisions on retrospective penalties

HMRC has published guidance in the form of a Stamp Taxes Newsletter in which it confirms its view that notices imposing daily late filing penalties can be retrospective and do not need to be issued in advance of the date from which the penalty is payable. HMRC state that there is no statutory requirement to file notices prospectively under paragraph 4 of Schedule 55 to FA 2009. This view is contrary to that expressed by the FTT in *Advantage Business Finance Ltd* [2019] UKFTT 30 and *Heacham v HMRC* [2020] UKFTT 406, which HMRC did not appeal.

Given the uncertainty HMRC's position creates, it is to be hoped that this issue will be considered by the Upper Tribunal (UT) in order to provide some much needed certainty to taxpayers.

The newsletter can be viewed [here](#).

Case reports



RT Rate: Legitimate expectation rights not engaged

In *RT Rate Ltd and Others v HMRC* [2020] UKFTT 392 (TC), the FTT has held that it does not have jurisdiction to consider claims for repayment of VAT based on the EU law principle of legitimate expectation.

The FTT commented that there was force in the appellants' arguments, but that it considered itself bound by previous cases to hold that it had no jurisdiction in relation to legitimate expectation, whether under EU or domestic law. As we commented in our blog (*Boulting*), as the FTT has no inherent jurisdiction to hear public law arguments, including in relation to a breach of a taxpayer's legitimate expectation, the High Court should generally be willing to hear such arguments but unfortunately, in practice, this is not always the case.

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



McCabe: HMRC not required to disclose documents relating to discussions with the Belgian tax authority

In *Kevin McCabe v HMRC* [2020] UKUT 266 (TC), the UT has held that the FTT was correct not to order HMRC to disclose documents relating to discussions it had had with the Belgian tax authority, as the documents had no probative value and the tax authorities had raised confidentiality issues.

This decision suggests that the tax tribunals will attach significant weight to

the issue of inter-jurisdictional co-operation and confidentiality and it is unlikely that taxpayers in a similar position will be able to persuade them to order disclosure of documents relating to the Mutual Assistance Procedure.

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



Total - Court of Appeal considers meaning of "just and reasonable" apportionment of profits

In *Total E&P North Sea UK Ltd and Another v HMRC* [2020] EWCA Civ 1419, the Court of Appeal (CoA) allowed the appellant companies' appeal and decided that the basis of the companies' apportionment of adjusted ring-fence profits was "just and reasonable", for the purposes of an election under section 7(5), Finance Act 2011 (FA 2011).

Although this case specifically concerns the application of section 7, Finance Act 2011, the CoA's decision may provide useful guidance in relation to other situations where a "just and reasonable" apportionment is required. Given that HMRC was successful before the UT, it would not be surprising if it sought to appeal to the Supreme Court.

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



And finally...

Why not listen to Keith Gordon give his view on the Loan Charge in a recent edition of our Taxing Matters podcast ...

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If you have any queries or comments, please contact:



Adam Craggs
Partner
+44 20 3060 6421



Constantine Christofi
Senior Associate
+44 20 3060 6583



ADVISORY | DISPUTES | REGULATORY | TRANSACTIONS

Tower Bridge House St Katharine's Way London E1W 1AA
T +44 20 3060 6000 F +44 20 3060 7000 DX 600 London/City rpc.co.uk

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