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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 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



HMRC publishes consultation on OECD pillar 2 proposals

As mentioned in our February 2022 **update**, HMRC has published a **consultation** on the UK's implementation of the OECD pillar 2 proposals from 2023. The pillar 2 proposals provide for a minimum rate of tax (15%) for multinational groups. The consultation also provides for a domestic minimum tax (**DMT**) to be introduced for larger companies from 2024 at the earliest. The consultation does not cover pillar 1 or the treaty-based subject-to-tax rule of pillar 2.

The undertaxed profits rule and the income inclusion rule will closely follow the OECD model rules published in December 2021. Whilst this will provide for a more consistent implementation of the rules throughout the jurisdictions implementing the OECD model rules, it limits the scope for changes to the policy outcomes under the new regime. Consultation respondents may consider focussing on the more practical and technical issues raised.

Pillar 2 changes to the base erosion and profit shifting measures (including Controlled Foreign Company rules) are limited to those that reduce the compliance burden without posing a material risk to the UK tax base. Respondents have more scope for influencing the DMT proposals. However, amendments may be restricted to ensure preferential treatment is granted by other countries in their application of the minimum tax rules.

The commentary on the model rules published in December 2021 is due at the end of March 2022. It is likely that the implementation framework will follow at the end of the year, with a public **consultation** launched earlier this month that closed on 18 February 2022.



HMRC updates uncertain tax treatment guidance

HMRC has published its revised **guidance** on the notification obligation applying to large businesses taking uncertain tax positions from 1 April 2022. The consultation on this guidance closed on 1 February 2022.

Draft legislation on the notification obligation is set out in the Finance Bill 2022, with original draft guidance published in August 2021. The revised guidance follows the revised draft legislation and indicates that HMRC will exercise its discretion of not imposing penalties on taxpayers who take a reasonable approach to establish HMRC's view of a transaction. Reasonable approaches are not defined in the revised guidance.

The revised guidance also confirms that certain tax advantages (for research and development tax credits, and tonnage tax) are potentially notifiable. The notification regime does not cover offshore receipts for intangible property, withholding tax advantages and the digital services tax.

The revised guidance illustrates how the exemption from notification for transactions that HMRC is aware of, will operate. Taxpayers may wish to inform HMRC that they are providing information to avoid a notification obligation under the regime. HMRC has confirmed that the information will trigger the exemption from a notification; this provides taxpayers with an opportunity to avoid making notifications.

Notification triggers are to be expanded so that large taxpayers will need to notify transactions where there is a substantial possibility that a court may disagree with its tax position. A consultation on this is yet to be announced.



House of Commons' research briefing on disguised remuneration loans

The House of Commons has published its 2019 loan charge (**Loan Charge**) research **briefing**. The briefing covers the introduction of the legislation to address disguised remuneration (**DR**), and the debate over the fairness of HMRC's approach.

The research briefing sets out the government's introduction of legislation to amend the Loan Charge in Finance Act 2020. The briefing details the main legal challenge to the operation of DR loan schemes and considers HMRC's actions to tackle the marketing of schemes by promoters, concerns regarding the Loan Charge's retroactive nature, and HMRC's settlement opportunities for scheme users.

The briefing also reviews developments following the introduction of the Loan Charge in April 2019 and the changes announced by the government in December 2019, in response to the **Independent Review** by Sir Amyas Morse.



HMRC updates its cryptoassets manual

HMRC has updated its cryptoassets manual **HMRC Cryptoassets Manual: CRYPTO60000**. The update sets out HMRC's approach to decentralised finance (**DeFi**). DeFi transactions provide products similar to traditional financial services through Distributed Ledger Technology. DeFi platforms can offer services including derivatives.

The manual clarifies the tax position for parties lending and staking in DeFi transactions, and indicates the various situations in which tax may become payable.

HMRC's position is that cryptoassets (especially cryptocurrencies) are not currency or money. The update therefore indicates that HMRC does not view earned income (for example, when a lender provides a DeFi loan that requires a return on the loan, in the form of a cryptoasset or cryptocurrency) or the rate of return, as interest. HMRC's position is that lending and borrowing cryptoassets and providing collateral and repayments are disposals for chargeable gains purposes.

Case reports



Expenses incurred in defending partners against criminal charges were incurred "wholly and exclusively" for the business and were deductible

In *TR, SP and SR Rogers v HMRC* [2021] UKFTT 0458 (TC), the First-tier Tribunal (**FTT**) decided that expenses incurred defending two of the partners of a partnership against criminal charges were incurred "wholly and exclusively" for the business of the partnership and were therefore deductible.

Although cases relating to "wholly and exclusively" are fact-specific, HMRC's long-standing position of not allowing businesses to deduct legal expenses incurred in defending directors or partners in criminal proceedings may now be challenged in circumstances similar to this case.

You can read our commentary on the decision [here](#).



Tribunal reduces scope of Schedule 36 Information Notices

In *Metropolitan International Schools Ltd v HMRC* [2021] UKFTT 438, the FTT partly allowed the taxpayer's appeal against information notices issued under paragraph 1, Schedule 36, Finance Act 2008.

As this case demonstrates, it is important that the recipient of an information notice carefully considers whether all the statutory requirements for the issue of a Schedule 36 information notice have been met. HMRC often issue wide-ranging information notices and if the relevant statutory requirements have not been satisfied, there will be grounds for challenging the notice on appeal.

HMRC confirmed in this case that, as is its usual practice, it had not advised the taxpayer of the issues that indicated a potential loss of tax. This practice makes it difficult for a taxpayer to assess whether information is reasonably required. Accordingly, taxpayers should press HMRC for disclosure of such information.

We acted for the taxpayers in this case and you can read our commentary on the decision [here](#).



Entrepreneurs' relief applied to disposal of business premises

In *Christopher Thompson v HMRC* [2021] UKFTT 453, the FTT held that entrepreneurs' relief (**ER**) was available on the sale of business premises, notwithstanding that the sale was part of a business sale that took place over more than 20 years.

While the facts of this case were unusual, it nonetheless provides useful commentary on the test for ER (now business asset disposal relief), in particular, the confirmation that the relief will not apply to the disposal of a single asset held by a business, as distinct from a disposal of part of the business, should be borne in mind.

You can read our commentary on the decision [here](#).



And finally...

Our very own Michelle Sloane and Michel Goodwin QC of Red Lion Chambers teamed up to publish an **article** in *The Accountant* on the government's drive to investigate suspected abuse and fraud relating to the coronavirus support relief schemes, particularly the Coronavirus Job Retention Scheme (**CJRS**).

In November 2021, HMRC estimated £5.8bn had been lost to fraud and error through the coronavirus support schemes. HMRC can claw back any CJRS payments made to businesses that were not entitled to receive those payments.

Michelle notes *"It is critical all businesses, many of whom may have implemented claims in haste when the scheme was first introduced, take the time now to carefully review any claims they have made under the furlough scheme to ensure they have acted in compliance with all the rules and can evidence this with a clear audit trail"*.

A link to the full article is available [here](#).

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