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Tax Bites

We are pleased to announce that all your tax-related updates will soon be found on our new website, Tax Take+. The site will host practical guidance to help you navigate everything from the Tax Tribunals system to HMRC 'dawn raids'. You will also find important filing dates and the latest news on all things tax-related. We will contact you again shortly before the launch in June to let you know how you can access this new and exciting tool kit.

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 guidance on Finance Act 2022 penalties for UK entities facilitating avoidance schemes involving offshore promoters

HMRC has recently published **guidance** on its new power, introduced in section 91 and Schedule 13, Finance Act 2022, to charge an additional penalty on a UK entity for facilitating a tax avoidance scheme involving a non-UK resident promoter. The new power took effect from 24 February 2022.

The guidance covers the amount of additional penalty payable, which can be up to 100% of the total fees received by all members of the promotion structure in connection with the scheme. Such fees do not include VAT, but fees paid to another person (such as a separate management company) under an arrangement with a member of the promotion structure are included. The power to assess the additional penalty applies only where the UK entity's activities giving rise to the original penalties were carried out on or after 24 February 2022. However, the guidance confirms that where an additional penalty is assessed, its amount will be determined by reference to all fees received by members of the promotion structure in connection with the scheme, whether they were received before or after 24 February 2022.



HMRC publishes updated guidance on settling disguised remuneration scheme use and paying the loan charge

HMRC has recently published an updated version of its **guidance** on settling disguised remuneration (**DR**) scheme use and paying the loan charge.

There are some notable amendments included in the new guidance, including when HMRC will take into account expenses of a trade or employment when looking at settlement agreements for DR schemes. HMRC will take allowable expenses into account, but will consider these on a case by case basis, and in addition require detailed evidence in support of the claim. Another important amendment is in relation to when HMRC will not collect residual tax liabilities for loans that were subject to the loan charge. Where the loan charge has been paid, the annual income provided to the taxpayer through DR schemes is £75,000 per tax year or less and no litigation has commenced in relation to the residual tax or the loan charge, HMRC will not seek to collect the residual liability.

In addition, the guidance contains detailed information on how the annual income amount through DR schemes is calculated.



At the request of the G20, the OECD has released a public **consultation** document on proposals concerning the exchange of information about crypto assets. At present, the framework in place for jurisdictions to exchange financial information on taxpayers automatically captures only limited information on cryptoassets. The framework proposed by the OECD provides for the collection and exchange of tax-related information between tax administrations in respect of certain transactions. The proposals would apply to electronic money products, digital currencies, and indirect investments in cryptoassets that can be held and transferred in a decentralised manner.

The consultation seeks comments on proposals for a global framework for the automatic exchange of information on cryptoassets and closed on 29 April 2022. A public consultation meeting will be held at the end of May 2022. The OECD intends to report back to the G20 on the framework at its October 2022 meeting.



HMRC updates guidance on uncertain tax treatment notification requirements

New statutory guidance has been introduced to HMRC's Uncertain Tax Treatments by Large Businesses **Manual** specifying what must be included in a valid uncertain tax treatment notification, under paragraph 8(2), Schedule 17, Finance Act 2022.

The notification must include the reference period affected by any uncertainty and confirmation of whether notification is being made under paragraph 10(2) (where a provision has been recognised in the accounts to reflect the probability that a different tax treatment will apply) or paragraph 10(3) (where the taxpayer takes an interpretation that is different to HMRC's) of Schedule 17, Finance Act 2022. The notification must also include the transaction or position that created the uncertainty, the uncertainty and alternatives to the tax treatment, any relevant statute, case law and HMRC guidance relating to the uncertainty and an indication of the amount of tax relating to the uncertainty.

Case reports



Taxpayer successfully appeals information notices as information requested not reasonably required

In *Yerou and another v HMRC* [2022] UKFTT 79 (TC), the First-tier Tribunal (FTT) allowed the taxpayers' appeals against information notices as the information requested was not reasonably required.

HMRC had argued that the information requested was needed in order to prove that the taxpayers did not beneficially own certain shares or use the dividends. In allowing the appeal, the FTT said that as the discovery assessments were under appeal, no useful purpose would be achieved by ordering compliance with the information notices.

The FTT's conclusion that the information requested by HMRC was not reasonably required is to be welcomed. It is difficult to see how information requested of a taxpayer can be reasonably required in order to check the taxpayer's tax position when HMRC has formed a clear view of the taxpayer's liability and issued a discovery assessment setting out that conclusion. Taxpayers in a similar position to the taxpayers in this case who receive an information notice from HMRC should consider appealing the notice to the FTT on the ground that the information requested is not reasonably required in order to check the taxpayer's tax position.

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



Tribunal dismisses third party application for disclosure of documents

In *Cider of Sweden Ltd v HMRC and another* [2022] UKFTT 00076 (TC), the FTT dismissed an application by Ernst & Young LLP (EY) for disclosure of documents which related to appeal proceedings before the FTT between Cider of Sweden Ltd (CSL) and HMRC.

In *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38, the Supreme Court confirmed that the reference to courts includes tribunals. However, there is no equivalent to CPR 5.4C in the FTT Rules. Although FTT hearings are normally held in public and full written decisions published online and available to the general public, the documents submitted by the parties to the FTT are not publicly available. CSL's appeal had not been listed for a

hearing when EY made its application and, unlike in the civil court system where there is a public register of claims made (which any member of the public can search for a fee), there is not a publicly available register of appeals notified to the FTT.

Disclosure of documents that have been filed with the FTT to third parties is an important issue (the decision records that HMRC itself considers this issue to be of importance, especially given the wider issues surrounding taxpayer confidentiality) and it will be interesting to see whether EY seeks permission to appeal to the Upper Tribunal.

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



Tribunal confirms television presenter not subject to IR35 rules

In *Basic Broadcasting Ltd v HMRC* [2022] UKFTT 48 (TC), the FTT held that hypothetical contracts between the BBC/ITV and a personal service company were contracts for services and not employment contracts, despite a sufficient framework of control and mutuality of obligation being established. Accordingly, the presenter was not subject to the off-payroll working rules (commonly referred to as IR35).

The intermediaries legislation has proved an area of legal uncertainty in recent years, with a number of cases reaching the FTT. Whilst this case was heavily fact-dependent, the decision is a timely reminder of the importance of the third 'negative' condition of the *Ready Mixed Concrete* test, which will be welcomed by taxpayers, especially at a time when HMRC appear to attach great weight to the first two 'positive' conditions in that test.

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



And finally...

In a much-anticipated podcast, we analyse the Economic Crime Transparency and Enforcement Act, which came into force in March of this year after it was fast-tracked through Parliament in response to calls for the UK's economic crime laws to be tightened. The new legislation introduces further sanctions powers and aims to tackle financial crime by revealing the identities of overseas beneficial owners of UK property. Tom Godfrey, of 23 Essex Street Chambers, discusses whether this important piece of legalisation is likely to be effective and achieve its aim.

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

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