



Edition 12
06 May 2021

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



New SDLT surcharge for non-UK residents

Following the Chancellor's announcement in his Spring Budget 2021, HMRC has released **guidance** on the new 2% surcharge for non-UK residents who acquire residential property in England and Northern Ireland. The guidance includes advice on residence tests, potential reliefs, exceptions, refunds and record keeping. The rules came into effect on 1 April 2021 and apply to companies as well as individuals, including UK companies controlled by individuals not resident in the UK.



HMRC publishes new Employment-Related Securities Bulletin

HMRC's Employment-Related Securities **Bulletin 38** provides an update on recent developments including enterprise management incentive work time requirements. The bulletin also considers issues such as HMRC's continued review of the impact of the pandemic on tax-advantaged share schemes, how to contact HMRC for share scheme enquires, a reminder of the Non-Statutory Clearance process and confirmation of an extension to the payment holiday for SAYE participants.



OECD invites comment on its proposed changes to the Commentary on Article 9 of its Model Tax Convention

The OECD has **invited** comment from interested parties on a public discussion draft regarding their proposed changes to the Commentary on Article 9 and other related articles of its **Model Tax Convention**. The changes are intended to clarify the application of Article 9, which deals with the taxation of transactions between associated enterprises and provides for adjustments in the taxable profits of an entity where profits differ from those that would have accrued to it in an arm's length situation. The deadline for responses is 28 May 2021.



HMRC amends its Employment Income Manual

HMRC has announced amendments to its Employment Income Manual **EIM13877**, **EIM13886** and **EIM13888** to reflect changes contained in the Finance Bill 2021, to the provisions on post-employment notice pay (PENP). These changes came into effect on 6 April 2021.

The primary change is to ensure that non-resident individuals, whose employment is terminated on or after 6 April 2021, are charged income tax and NICs on PENP, to the extent that their notice period would have been worked in the UK. The amendments also provide an alternative calculation method for employees who are paid monthly but whose PENP is less than a whole number of months. This type of calculation has been allowed by HMRC since October 2019, but is now legally enforceable.

Case reports



Ball Europe - Accounting entry not included in tax return sufficient to preclude discovery assessment

In *Ball Europe Ltd v HMRC* [2021] UKFTT 23 (TC), the First-tier Tribunal (FTT) has held that the presence of amounts in a taxpayer's accounts but not its tax return was sufficient for a 'hypothetical officer' of HMRC reasonably to be expected to be aware of a tax insufficiency and this prevented HMRC from issuing a valid discovery assessment.

The knowledge to be attributed to a hypothetical officer has always been a difficult issue because the FTT, when considering this test, cannot take account of the actual knowledge of a specific HMRC officer and has to consider generically what a notional hypothetical officer might be expected to know. Historically, the FTT has been generous to HMRC when applying the hypothetical officer test and this decision will no doubt come as a disappointment to HMRC. Given the importance of HMRC's discovery assessment powers, it is anticipated that it will seek to appeal this decision to the Upper Tribunal (UT).

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



Eastern Power Networks – Court of Appeal confirms that HMRC does not need to close its enquiries

In *Eastern Power Networks plc and others v HMRC* [2021] EWCA Civ 283, the Court of Appeal (CofA) has upheld the UT's decision that it was not appropriate to direct HMRC to issue closure notices.

It is not uncommon for HMRC to seek to continue with its enquiries notwithstanding that it has been supplied with a great deal of information and documentation. Where that information and documentation is sufficient to enable it to form a view on the underlying facts and close its enquiries, taxpayers should consider making an application to the FTT for a direction that HMRC closes its enquiry. However, any such application must be well-formulated. The CofA has made it clear that whilst the FTT does have jurisdiction to determine an incidental point of law in an application for a closure notice direction, the point of law should be capable of bringing the enquiry to a halt if decided in a particular way.

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



Outram – Tribunal prevents HMRC from relying on new argument

In *Outram and another v HMRC* [2021] UKFTT 29 (TC), the FTT has prevented HMRC from relying on a new argument contained in its skeleton argument which had not been included in its statement of case.

This decision is a timely reminder that points that form part of a party's case must be properly pleaded in its statement of case or grounds of appeal, as the case may be. The inclusion of a new argument for the first time in a skeleton argument is not likely to be looked upon favourably by the FTT. It is important to carefully consider an opposing party's skeleton argument to ensure that it does not raise a new ground or argument which is 'disguised' as mere elaboration of an existing ground. This issue is more pronounced where allegations of deliberate conduct are being made. In such cases, the accused party must be permitted an adequate opportunity to prepare its case in response to such serious allegations.

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



And finally...

Whilst not strictly speaking tax-related, much is happening in the world of financial crime that may affect you or your business. We have produced a new publication called 'Crime Time', which aims to provide an easily digestible overview of issues that may be of interest in the world of financial crime.

You can read our latest edition [here](#).

*If this email has been forwarded to you,
you can sign up to RPC Tax Bites here:*

[Subscribe](#)

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

RPC is the trading name of Reynolds Porter Chamberlain LLP, a limited liability partnership,
registered number OC317402.
We are authorised and regulated by the Solicitors Regulation Authority.
A list of members' names is open to inspection at the office.

[London](#) [Bristol](#) [Hong Kong](#) [Singapore](#)

