



Edition 15
05 August 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



HMRC produce new guidance for seeking statutory clearance

HMRC has shared a new statutory clearance **checklist** with the Chartered Institute of Taxation that sets out in some detail what should be included in applications for statutory clearance. Some details are required for all applications whereas others are specific to applications for particular types of clearance.

The guidance covers statutory clearances for individuals and businesses and explains how to contact HMRC during the process and the precise wording to use in the application. It sets out all the information that is required to make an application, including evidence, explanations and diagrams.



HMRC to resume tax debt collection from September 2021

HMRC has confirmed in a **policy paper** that it will be resuming its debt collection work from September 2021. HMRC will begin to contact taxpayers who currently have tax debts in order to arrange payment of those debts as soon as possible. HMRC acknowledges that many businesses are still struggling as a consequence of the Covid-19 pandemic and it is willing to agree time to pay arrangements, deferrals or government-backed loans to support taxpayers where necessary.

The Debt Respite Scheme will also offer additional support to taxpayers, in line with a government statement that it will use its debt enforcement powers "fairly and carefully".



HMRC publishes updated guidance on claiming extended carry-back loss relief

HMRC has published guidance in a **policy paper** on extended carry-back loss relief claims. The guidance now includes a useful link allowing companies or their agents to submit claims of up to £200,000 (if a claim is for more than £200,000 it should be made in a tax return).

The guidance on extended carry-back loss relief for groups has also been updated. Groups should make claims totalling more than £200,000 in a tax return, and the nominated group company must then submit a loss carry-back allocation statement in writing and include specific details as set out in the guidance.



OECD Framework for international tax reform

HM Treasury has published a **press release** confirming that at the July 2021 G20 Finance Ministers and Central Bank Governors meeting in Venice, the G20 Finance Ministers endorsed the statement agreed by 132 members of the OECD/G20 Inclusive Framework on a two-pillar plan to reform international tax rules.

The Framework represents a two-pillar scheme designed to ensure that multinational enterprises pay tax in the jurisdiction where they carry out business and earn profit.

The first pillar aims to distribute the right to tax multinationals, including some of the biggest tech companies, more evenly amongst countries where they generate business activities. This will apply even where the company does not have a physical presence in that country.

The second pillar sets a global minimum level corporation tax rate of 15%.

The secretary-general of the OECD, Mathias Cormann, said that this agreement accommodates the various interests of countries around the globe, including developing economies, without eliminating tax competition. Certain jurisdictions, including the UK, will seek exemption from the minimum tax level for certain industries such as financial services.

The OECD hopes to finalise the Framework for the agreement by the autumn, with implementation in 2023.



HMRC publishes new guidance on its compliance approach to large businesses

HMRC has updated its **guidance** on its compliance approach for large businesses. The guidance includes new sections on the compliance risk management framework, business risk reviews and large business consultation forums. The programme is part of HMRC's attempt to build an in-depth knowledge of taxpayers' businesses, so that it can learn more about their approach to risk and internal governance.

Case reports



Perring – Burden of proof for establishing that documents are 'reasonably required' in taxpayer information notice appeal is on HMRC

In *Perring v HMRC* [2021] UKFTT 110, the First-tier Tribunal (FTT) held that the burden of proof for establishing that documents are 'reasonably required', for the purposes of a taxpayer notice issued under paragraph 1, Schedule 36, Finance Act 2008, lies with HMRC.

This decision is at odds with the recent decision of a differently constituted FTT in *Hargreaves and others v HMRC* [2021] UKFTT 80 (TC) (our blog on the *Hargreaves* decision can be viewed [here](#)), where it was decided that HMRC bears the burden of establishing that information requested in a taxpayer information notice is reasonably required, after which the burden of proof then passes to the taxpayer to establish that the information was not reasonably required. The two different approaches adopted by the FTT has created some uncertainty in this important area of the law and it would be helpful if the issue could be determined by a higher court.

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



Golamreza – HMRC assessments and the burden of proof

In *Golamreza Qolaminejite (aka A Cooper) v HMRC* [2021] UKUT 118 (TCC), the Upper Tribunal (UT) allowed the taxpayer's appeal in part on the basis that the FTT had erred in law in failing to take all of the taxpayer's case into account in arriving at its decision.

Although the UT highlighted that even if HMRC had not advanced any case at all, the FTT could have reached the conclusion that the taxpayer had not met the necessary burden of proof (the burden of proof being on him), it decided that the FTT had erred in law. In its view, the FTT had not properly balanced the probability of HMRC's case that the deposits were trading income. It had not considered the whole of the taxpayer's case, which included the proposition that the income could not have been trading income because no trading activity had taken place. The UT remitted the matter to the FTT for determination.

The UT has provided some helpful commentary on how the burden of proof, in particular the balance of probabilities, should be applied in practice in tax appeals of this nature.

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



Siddiqui - No proper ground for setting aside summons in private prosecution

In *R (on the application of Siddiqui and another) v Westminster Magistrates' Court* [2021] EWHC 1648 (Admin), the Administrative Court held, on an application for judicial review, that there was no proper ground for a summons in a private prosecution to be set aside in circumstances where a settlement agreement, purporting to settle "all claims" between the parties, had not been disclosed.

This case provides helpful guidance in relation to the threshold necessary for a summons in a private prosecution to be set aside due to procedural irregularities involving disclosure, and when such irregularities will constitute an abuse of process. The court noted that while a failure to disclose material can prejudice a defendant's right to a fair trial, this will not always be the case. This is particularly relevant in relation to private prosecutions where both parties may already have sight of the same documents. Where this right has been prejudiced due to failure to disclose, then the proceedings should be stayed. However, where this is not the case, there is a balancing exercise to be undertaken by the court between (i) the public interest in continuing with a prosecution; (ii) the integrity of the criminal justice system; and (iii) the court's sense of justice and propriety. A stay is not to be imposed as a disciplinary measure against a prosecutor except in the most serious of circumstances.

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



And finally...

With financial pressure mounting on the Government, and with an additional 1000 new fraud investigators announced in the last budget, many expect the number of HMRC dawn raids to increase considerably. In an adrenaline fuelled and extremely stressful dawn raid scenario, you need to understand your rights, the process and how to ensure you take the right action on the day.

Have a listen to our podcast on the subject [here](#).

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