



Edition 20
03 February 2022

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 factsheets on penalties for non-compliance with stop notices

HMRC has published a number of factsheets on penalties charged where individuals who are subject to a stop notice fail to comply with it.

Stop notices are issued by HMRC to individuals who HMRC suspects of promoting arrangements that fall within the promoters of tax avoidance schemes (**POTAS**) regime. Such notices require the person engaged in the activity set out within the notice to stop promoting such arrangements immediately.

Factsheet CC/FS61 **Penalties for failure to comply with a stop notice** explains the penalties (which can be up to £250,000) applicable when promoters fail to comply with a stop notice.

Factsheet CC/FS63 **The Human Rights Act and penalties for not complying with a stop notice** explains an individual's rights under the Human Rights Act 1998, in relation to the charging of penalties for non-compliance with a stop notice. These rights include a right (i) not to answer questions; (ii) to appoint a professional adviser; and (iii) to have the matter dealt with without unreasonable delay.

Factsheet CC/FS62 **Information notices – promoters of tax avoidance schemes** sets out the background to the information notices that can be issued under the POTAS regime.



HMRC updates its coronavirus job retention scheme guidance

HMRC's coronavirus job retention scheme **guidance** has been updated by the inclusion of a new section. The new section ***If you've not paid your employees enough*** confirms that, for each claim period where businesses have claimed a grant, they must have paid their employees (for hours not worked) the lower of either 80% of their wages or £2,500.

Where businesses have not paid employees the appropriate amount they will have to return the grant, or top up their wages to the required amount. Wages must be topped up within a reasonable period (usually by the tax return filing deadline for the relevant tax year). Additional time will be allowed where reasonable provisional figures are set out in a return.

The guidance also includes further clarification on offsetting overclaimed amounts against underclaims for other employees in the same claim period.



HMRC updates its guidance on subsidised costs for research and development claims

HMRC has expanded its Corporate Intangibles Research and Development Manual to set out additional **guidance** on the definition of "subsidised expenditure" for small and medium enterprise (**SME**) research and development (**R&D**) claims. The guidance has also been updated in relation to activities contracted to a SME.

R&D tax reliefs under the SME scheme are not available for "subsidised expenditure" under HMRC's renewed guidance. The definition includes expenditure that is met, directly or indirectly, by someone other than the company.

The new guidance confirms that there needs to be a "clear and direct link" between the payment received and the qualifying expenditure to fall within this definition. What is considered to be a 'clear and direct link' will depend on the facts in each case and four examples have been provided in the guidance. For example, payment received for undertaking a contract will be considered to meet expenditure incurred in undertaking that contract.

With regard to subcontracted activities, any expenditure incurred in carrying out activities that are contracted to a SME by another person will not be qualifying expenditure under the guidance. The aim of the updated guidance is to prevent multiple parties to a contract claiming relief for the same activity. The guidance confirms that where R&D continues after the contract has been fulfilled, post-contract activities will not be precluded from relief.



OECD releases its pillar two model rules for the implementation of the 15% global minimum tax rate

The Organisation for Economic Co-operation and Development (**OECD**) has released its pillar two model **rules**. The rules set out the details of the 15% global minimum tax rate (**MTR**) agreed upon in October 2021 by 137 countries and jurisdictions under the OECD/G20 Inclusive Framework on BEPS.

The rules aim to limit international tax avoidance and ensure that large businesses pay an appropriate amount of tax, being at least 15% of profits in each country in which they operate.

The rules provide a template for governments implementing the two-pillar model. The MTR will apply to multinational enterprises (**MNEs**) that have revenue of over €750m. The MTR will, in effect, top-up tax collected on income where the tax rate on income profits falls below 15% in each of the jurisdictions in which the MNE operates.

Commentary on the model rules will be released early this year and will be followed by the development of an implementation framework for administration, compliance and co-ordination issues for pillar two.

On 11 January 2022, the UK government launched its **consultation** seeking views on how the worldwide 15% minimum corporation tax should be implemented in the UK. The consultation closes on 4 April 2022, with draft legislation likely to follow this summer. The main focuses of the consultation are (i) a UK income inclusion rule for MNEs with consolidated annual revenues over €750m that are headquartered in the UK but have entities abroad where the effective tax rate is below 15%; and (ii) a UK undertaxed profits rule for groups with the same revenue but which are headquartered outside the UK (it would apply to the group's overseas profits as these are not subject to a minimum level of tax). The consultation also provides for a consistent implementation of the rules to avoid double-taxation or double-non-taxation where different countries employ different rules. The consultation seeks views on the rules on allocating profits between jurisdictions, and any strong reasons why the UK legislation should not, as closely as possible, follow the OECD model rules as well as posing several other questions.

Case reports



JTC - Escrow agreement set aside on basis of mistake

In *JTC Employer Solutions Trustees Ltd v Ramin Khadem* [2021] EWHC 2929 (Ch), the High Court granted rescission of an escrow agreement entered into on the basis of incorrect advice which had been received, which would have resulted in a substantial tax charge.

This judgment provides useful commentary on the equitable remedy of rescission and is a timely reminder that such a remedy might be appropriate in a tax context as an alternative to the more traditional remedies normally relied upon by taxpayers.

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

Kishore – Court of Appeal rejects HMRC's strike out application



In *HMRC v Dhalomal Kishore* [2021] EWCA Civ 1565, the Court of Appeal rejected HMRC's application to strike out the taxpayer's grounds of appeal against penalties for inaccuracies contained in VAT returns, as the application was an abuse of process.

The Court rejected HMRC's arguments, concluding that there was a difference between cases where an appeal on the substantive issue had been heard and decided against a taxpayer, and cases such as this one, where an appeal had been struck out on procedural grounds but there had been no findings of fact against the taxpayer.

This decision clarifies the law in relation to abuse of process and provides helpful guidance in this important area of the law.

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



The Medical Defence Union – insurance premium rebates not taxable receipts

In *The Medical Defence Union Ltd v HMRC* [2021] UKUT 249 (TCC), the Upper Tribunal (UT) held that adjustments to an insurance premium were not taxable, as the refunds were mere adjustments to member contributions.

This case demonstrates the importance of determining the exact relationship between a mutual fund and its members in order to assess the tax implications for insurance premium rebates. Of particular interest is the discussion of the mutuality concept at paragraphs [48]–[78], which provides a detailed analysis of the law in this area.

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



And finally...

On 31 January 2022, RPC hosted a webinar on judicial review: *Challenging HMRC decisions by way of Judicial Review: pointers and pitfalls*.

The panel discussed judicial review proceedings and shared practical tips on commencing and managing a judicial review against HMRC, with a particular focus on the jurisdictional issues that arise when seeking to commence proceedings.

A recording of the webinar, which is 1 hour in length, can be accessed [here](#).

Details of the panellists can be found [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

