



**Edition 24**  
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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



#### HM Treasury invites views on potential reform of capital allowances

HM Treasury recently issued an **invitation** to comment on potential reforms to the UK's capital allowances regime. The overriding objective is to increase investment and growth in UK business. To meet this objective, HM Treasury seeks views on how businesses make investment decisions and the role of capital allowances in those decisions, the impact of the super-deduction, and the perception of the current UK capital allowances regime.

The invitation comes after an announcement in the 2022 Spring Statement that the government would engage in this area ahead of the scheduled end of the temporary super-deduction.

Responses to the invitation are requested by 5pm on 1 July 2022 and will inform any announcements in this area in the 2022 Budget.



#### Venture capital market: Treasury Committee call for evidence

On 28 April 2022, the House of Commons Treasury Committee published an **invitation** to contribute to its inquiry on the venture capital market.

Matters on which the Committee seeks evidence include:

- The current state of the venture capital industry in the United Kingdom, including opportunities and threats.
- The operation and effectiveness of the regulatory regimes concerning venture capital.
- The operation and effectiveness of the current tax incentives (such as the Enterprise Investment Scheme, the Seed Enterprise Investment Scheme and Venture Capital Trusts) in the venture capital market, including any options for change.

The deadline for submissions is 7 June 2022.



#### HMRC publishes framework for large businesses for co-operative compliance

HMRC has published an addition to its **Tax Compliance Risk Manual** entitled Framework for Co-operative Compliance. The framework sets out the principles to which both HMRC and large businesses (those whose tax compliance is managed by HMRC's Large Business Directorate) should adhere.

A draft framework was published in December 2015, with HMRC originally intending the framework to be introduced in April 2016. Other than transfer pricing issues being dealt with separately, the final version of the framework is substantively the same as the draft version.

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#### Changes made to NICs DOTAS regulations



New **regulations** have been introduced amending the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868) (**Disclosure Regulations**), to align the NICs disclosure rules with changes that were made to the direct tax disclosure rules by Finance Act 2021. These are substantively the same as the draft regulations published for consultation in February 2022, save that they came into force on 1 June 2022, rather than on 25 May 2022.

The regulations amend the Disclosure Regulations to allow HMRC to allocate a scheme reference number (**SRN**) to an arrangement or a proposal for an arrangement that has not been disclosed to HMRC, but which HMRC has reasonable grounds for suspecting is notifiable. The regulations set out the process that HMRC must follow, the applicable time limits, the persons to whom notices and SRNs must be notified, their appeal rights and their obligations on receipt of a SRN. The regulations also contain information gathering powers and commencement provisions.

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## Case reports



### Accounting rules prevail following HMRC loss in the Supreme Court

In *HMRC v NCL Investments Ltd and another* [2022] UKSC 9, the Supreme Court dismissed HMRC's appeal and confirmed that the granting of share options through an employee benefit trust (**EBT**) can be treated as a deduction from trading profits for corporation tax purposes.

Although the decision will be of particular interest to employers who have rewarded their employees with similar benefits in accounting periods ending prior to 20 March 2013, the judgment has a broader relevance as it provides helpful guidance on the interpretation of section 54, Corporation Tax Act 2009 (**CTA**) and, in particular, on the meaning of 'incurred'.

The judgment also provides helpful guidance on the correct interpretation of the definition provided in section 1291, CTA, of property held under an employee benefit scheme.

The judgment contains some interesting comments in relation to legislation rewritten as part of the Tax Law Rewrite Project (**TLRP**). The rule governing deductibility of expenses was amended as part of the TLRP, and the words 'laid out or expended' were replaced by 'incurred'. HMRC argued that the rewrite was not intended to change the law and that decisions of the courts on the original wording were relevant when construing the new wording. The Supreme Court did not agree and suggested that where the interpretation of legislation created under the TLRP is in issue, it may be necessary in future to consider whether, and when, it is appropriate to rely on earlier case law.

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



### Tribunal confirms documents sought by HMRC were legally privileged

In *Colin Wiseman v HMRC* [2022] UKFTT 00075 (TC), the First-tier Tribunal (**FTT**) confirmed that certain documents which were requested by HMRC under paragraph 1, Schedule 36, Finance Act 2008, were subject to legal professional privilege (**LPP**) and should not be disclosed.

Under Schedule 36, Finance Act 2008, HMRC has wide-ranging powers to require the disclosure of documents from taxpayers and third parties. Although there are limited rights of appeal against these powers, the right of taxpayers to withhold documents from HMRC on the basis they are legally privileged represents an important check on these powers. This decision reinforces the position that communications between a lawyer and their client will generally attract LPP.

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



### Changes made to top slicing relief held not to apply retrospectively

In *Sally Judges (as representative for the late R Young) v HMRC* [2022] UKFTT 77 (TC), the FTT found that the taxpayer was entitled to adopt a more beneficial method of calculating top slicing relief and disagreed with HMRC who had argued that amendments made by the Finance Act 2020 to the Income Tax (Trading and Other Income) Act 2005, which prevented the more beneficial method of calculation being adopted, applied retrospectively.

The FTT did not look favourably upon HMRC's attempt (by reference to the Explanatory Notes to the legislation) to effectively substitute its own "wishes

and desires" relating to the scope of the legislation, for the will of Parliament.

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



### **And finally...**

*In our latest interactive webinar, Constantine Christofi, Keziah Mastin and Laurent Sykes QC share practical tips on litigating against HMRC, with a particular focus on litigation strategies, how to bring finality to ongoing disputes, and the role of ADR in the dispute resolution process.*

Please visit [here](#) for a recording of the webinar.

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