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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

HMRC issues guidance on joint and several liability notices

HMRC has updated its **guidance** on anti-avoidance legislation, which targets the use of corporate insolvency to avoid paying tax or penalties following evasion or avoidance. Those in control of the relevant company can now become personally liable for its tax debts.

Directors (including shadow directors) and other individuals connected to a company may be issued with joint and several liability notices for tax owed by the company. Under the Finance Act 2020, those in control of the company may become liable for its tax liabilities in the event of an insolvency, where the company has been involved in tax avoidance or evasion or has been issued with penalties for facilitating the same.

HMRC's guidance explains how this legislation works in practice, and offers examples of how the legislation would work in specific scenarios. Additionally, the guidance indicates how the provisions interact with other penalties and legislation, and outlines the safeguards in place.

Corporate re-domiciliation

The Department for Business, Energy and Industrial Strategy (BEIS) has published a consultation **paper** requesting views on the proposal to introduce a corporate re-domiciliation regime. The regime would enable foreign-incorporated companies to change their location of incorporation to the UK, whilst maintaining their legal identities as foreign corporate bodies.

Specifically, the BEIS is seeking views, by 7 January 2022, on:

1. the advantage and demand for this regime;
2. the appropriate eligibility criteria (currently the government is proposing that re-domiciliation would be available to all bodies corporate, so long as they are comparable with UK forms and have complied with all legal requirements for the transfer);
3. insolvency issues and protections for creditors in the event that a company becomes insolvent after re-domicile;
4. the merits of an outward re-domiciliation regime, and conditions for re-domiciliation; and
5. any tax changes necessary to facilitate inward and outward re-domiciliation.

HMRC will not enforce the 30 day deadline for updating details on trusts registration service

From October 2020, trustees and trust agents registered on the trusts registration service have had to update details relating to relevant trusts within 30 days of becoming aware of a change. The government is planning to legislate to increase the deadline to 90 days later this year.

In the meantime, HMRC has **stated** that it will not enforce the 30 day reporting requirement, despite the requirement continuing to apply until the

legislation is amended.

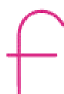
HMRC issues 'nudge' letters for foreign tax credit relief

Following a recent **briefing**, HMRC has issued a new batch of 'nudge' **letters** encouraging taxpayers to contact HMRC where foreign tax credit relief may have been incorrectly claimed.

The letters were sent in November to taxpayers whom HMRC believes received foreign investment income in 2019/20 and claimed the wrong rate of foreign tax credit relief. Taxpayers will be asked to check the relevant article of the double tax treaty between the country in which their investment income arose and the UK and make any appropriate corrections to their return.

See our recent **Alert** on this subject for more details.

Case reports



Shinelock – payment not deductible as a loan relationship debit

In *Shinelock Ltd v HMRC* [2021] UKFTT 320 (TC), the First-tier Tribunal (**FTT**) decided that a payment made by a company to its former shareholder was not deductible as a loan relationship debit and accordingly there was no non-trading loan relationship deficit to offset the chargeable gain realised on the disposal of a property.

If Shinelock's accounts had been drawn up on the gross basis, rather than the net basis, the payment would have been recognised in its accounts in determining its profit or loss for the relevant period. This decision underlines the importance of considering the interaction between accounting principles and tax legislation. The decision is also a timely reminder of the importance of formally documenting any arrangements entered into and of seeking appropriate professional advice when drafting such documentation.

You can read our commentary on the decision **here**.

Fashion on the Block – taxpayer successful with substance over form argument

In *Fashion on the Block Ltd v HMRC* [2021] UKFTT 0306 (TC) the FTT held that an Enterprise Investment Scheme (**EIS**) compliance statement erroneously submitted instead of a Seed Enterprise Investment Scheme (**SEIS**) compliance statement should be rectified.

EIS and SEIS are underpinned by detailed and prescriptive provisions, which create a series of potential bear traps for the unwary. This decision will therefore be welcomed by those taxpayers who have to navigate the SEIS legislation. It is to be hoped that HMRC will take on board the FTT's comments as to its discretion to overlook minor errors and in similar cases taxpayers will not be put to the trouble of having to seek redress from the FTT. Finally, the irony of HMRC relying on a literal approach to statutory construction in this case (as opposed to a purposive construction), will not be lost on taxpayers.

You can read our commentary on the decision **here**.

GC Field & Sons – SDLT discovery assessments held to be invalid

In *GC Field & Sons Ltd and others v HMRC* [2021] UKFTT 297 (TC), the FTT held that discovery assessments issued in respect of a stamp duty land tax avoidance arrangement were invalid as HMRC had not discharged the burden of proving that either the taxpayers, or their advisers, had been negligent.

This is the latest in a string of decisions relating to the validity of discovery assessments. Although a change of reasoning by HMRC regarding an insufficiency of tax did not invalidate the discovery assessments, HMRC's failure to demonstrate that the appellants, or those acting on their behalf, had been negligent did. The decision confirms that HMRC may change its reasoning for an insufficiency of tax after it has issued a discovery assessment and this aspect of the decision will be welcomed by HMRC.

You can read our commentary on the decision **here**.

And finally...

*HMRC has recently announced a campaign of educational 'nudge' **letters** aimed at UK taxpayers who may have failed to pay tax due in respect of their cryptoassets.*

The letters follow the receipt of information HMRC has obtained from third parties. The letters explain what qualifies as a disposal of a cryptoasset and highlight when capital gains tax may be payable.

*For more information, you can read our recent Alert on this subject **here**.*

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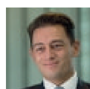

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