



Edition 2
04 June 2020

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



Spotlight 55 - umbrella company warning

On 27 April 2020, HMRC published Spotlight 55, setting out further warnings and advice on the use of umbrella companies.

HMRC states that it is concerned that some promoters of tax avoidance schemes use comparison and broker websites to introduce taxpayers to umbrella companies engaging in tax avoidance. It warns that, although many comparison websites and third-party brokers offer umbrella arrangements that are tax compliant, others do not. HMRC advise potential users to be wary of umbrella arrangements described as "advanced" or "enhanced", which offer higher rates of take-home pay, or which purport to be "approved" by HMRC.

Any arrangement that includes side-agreements and payments described as loans, bonuses, annuities, credit facilities, shares, advances or bonuses may involve tax avoidance. HMRC warns that it never approves such arrangements.

Whilst HMRC spotlights discouraging entry into tax avoidance are frequently published, this spotlight will be of particular interest in light of the upcoming changes to IR35, where engaging some umbrella company services can be an attractive method of avoiding compliance concerns for some taxpayers. Whilst some had hoped that those changes would be delayed or scrapped all together in light of the House of Lord's recent report, the Treasury has recently confirmed that the rollout will go ahead as planned, in April 2021.

Spotlight 55 can be viewed [here](#).



DAC 6 delay

On 8 May 2020, the European Commission published a proposal to amend Directive 2011/16/EU (the Directive), delaying disclosure deadlines imposed by Directive (EU) 2018/822 (DAC 6), by three months. This reflects the difficulties faced by businesses and member states as a result of COVID-19. The Directive is amended so that:

- The deadline under DAC 6 for filing information by intermediaries and taxpayers regarding historical cross-border arrangements, where the first step was implemented between 25 June 2018 and 30 June 2020, will be 30 November 2020.
- The date for the beginning of the period of 30 days for reporting, under DAC 6, cross-border arrangements made available for implementation, which are ready for implementation or where the first step is taken between 1 July and 30 September 2020, or where intermediaries provide aid, assistance or advice between 1 July and 30 September 2020, will be 1 October 2020. The first periodic reports of marketable arrangements will need to be made by intermediaries by 31 January 2021.
- The deadline for the first automatic exchange of information between member states concerning reported cross-border arrangements will be 31 January 2021.

The time limit for exchanges of information on Reportable Finance Accounts under DAC 2, will be deferred by three months, until 31 December 2020.

The proposal only defers the reporting deadlines, and the beginning of application of DAC 6 remains 1 July 2020. Similarly, information on financial accounts to be exchanged under DAC 2 during that period must be reported after the deferment period. Authority is delegated to the Commission to extend the deferral period for a further three months.

The proposed amendment will enter into force on the day after it is published in the Official Journal of the EU.

The proposed amendment can be viewed [here](#).



Temporary exemption for Covid-19 employee expenses

On 13 May 2020, the Financial Secretary to the Treasury, Jesse Norman, stated that a temporary exemption from income tax and National Insurance contributions (NICs) will be introduced for expenses reimbursed by an employer to an employee where the following two conditions are satisfied:

- The expenses are incurred on the purchase of equipment that is obtained for the "sole purpose" of enabling the employee to work from home due to COVID-19.
- Had the equipment been provided directly by the employer to the employee, it would have been exempt from income tax under section 316, ITEPA 2003.

The measure will be introduced by a statutory instrument (to be laid "in due course") and will come into force the day after the regulations come into force.

The measure will cease to have effect at the end of the 2020/21 tax year. It was also confirmed that HMRC will exercise its collection and management discretion and not collect tax and NICs on any such reimbursed expenses from 16 March 2020, until the date that the regulations come into force.

The Financial Secretary's statement can be viewed [here](#).

Case reports



Henkes - Tribunal determines domicile on application for closure notice

In *Henkes v HMRC* [2020] UKFTT 159 (TC), the First-tier Tribunal (FTT) decided that it has jurisdiction to determine mixed questions of fact and law on an application for a closure notice and appeal against an information notice.

This decision concerns important jurisdictional issues, as well as the law relating to an individual's domicile. This is one of those rare cases where the FTT has been persuaded that the taxpayer lost his 'adhesive' domicile of origin and acquired a domicile choice in the UK. In circumstances where the taxpayer lived in the UK since 1967, it is perhaps not altogether surprising that the FTT concluded that he acquired a UK domicile of choice. As always, in cases involving disputed domicile, the issue will turn on the specific facts of the case under consideration and the evidence before the FTT will be crucial in determining the issue.

Our commentary on the decision can be viewed [here](#).



Looney - Termination payments were trading receipts

In *Looney & Anor v HMRC* [2020] UKUT 0119 (TCC), the Upper Tribunal (UT) has dismissed an appeal against the FTT's decision that a termination payment and other payments made under a contract entered into by a partnership to provide management training, were trading receipts of the partnership.

This decision demonstrates the importance of evidence when bringing an appeal before the FTT. A party wishing to rely upon a contested fact at an appeal hearing must establish that fact by adducing lawful evidence which the FTT will then evaluate before deciding whether the fact in issue has been established. In this case, Mr Looney failed to produce satisfactory

evidence of the alleged unwritten contract, or the alleged payment for intellectual property. Both tribunals therefore concluded that these claims were not supported by the evidence which was before them and dismissed the appeals.

Our commentary on the decision can be viewed [here](#).



Coyle - Upper Tribunal refuses permission to appeal out of time

In *Michael Coyle t/a Coyle Transport v HMRC* [2020] UKUT 0113 (TCC), the UT set aside the decision of the FTT, but reached the same conclusion as the FTT and refused the taxpayer permission to appeal out of time.

In this case, it was the taxpayer's prior correspondence with HMRC, which influenced both the FTT and the UT in concluding that a reasonable recipient, in the taxpayer's circumstances, would have understood the assessments to be directed to the person conducting the business at the relevant address. The UT held that, while the FTT was entitled to take into account the correspondence between the taxpayer and HMRC, when applying the reasonable recipient objective test, and to conclude that the taxpayer had not provided good reason for the delay, the FTT went further than it needed to. It only had to assess the merits of those issues in line with the application to appeal out of time, and not to determine them substantively.

Our commentary on the decision can be viewed [here](#).



And finally...

On 18 March 2020, following its interim ruling that "Cum-Ex" trading was illegal, a German court found two former London-based investment bankers guilty of tax evasion offences in the first criminal trial related to Cum-Ex trades in a landmark ruling which could lead to hundreds more cases.

Cum-Ex transactions involve multiple reclaims for a single payment of dividend withholding tax. In certain European countries, most notably Germany, withholding tax certificates for tax deducted at source on share dividend payments were issued by either the company paying the dividend or the bank in which the shares were deposited. The withholding tax certificates could be used to offset an income tax liability.

Shortly before the dividend was issued, the shares would be traded rapidly and deposited into multiple banks obscuring the identity of the true owner; the buyer or the seller. The dividend would be issued, less the withholding tax, which, due to confusion around the ownership of the shares, would create uncertainty as to which person would be considered to have "paid" the withholding tax. The result being withholding tax certificates would be issued to multiple persons in respect of a single dividend. The overall tax loss has been estimated to be in the region of €55bn, with Germany being the hardest hit.

Our commentary on the implications of the recent ruling for financial institutions in the UK can be viewed [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
Associate
+44 20 3060 6583



ADVISORY | DISPUTES | REGULATORY | TRANSACTIONS

Tower Bridge House St Katharine's Way London E1W 1AA
T +44 203 060 6000 F +44 203 060 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



