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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



COVID-19: HMRC guidance on implications of crisis-driven changes to trading activities

In response to the COVID-19 outbreak, HMRC has published guidance in its Business Income Manual on the implications of crisis-driven changes to trading activities. The guidance sets out how HMRC will respond in situations where a crisis has resulted in changes to normal business activities. In particular, it notes that:

- A business that starts carrying on a new activity that is broadly similar to its existing trade should not be treated as commencing a separate trade. This, however, depends on the facts. The guidance includes an example of a restaurant business starting to manufacture gowns and face masks, which should be treated as the commencement of a separate trade, compared to a business that already manufactures clothing articles starting to manufacture gowns and face masks using the same staff and premises, which should be treated as an extension of the same trade.
- Temporary breaks in trading activity do not constitute a permanent cessation of a trade for tax purposes, provided the trading activities that resume are the same as, or similar to, those before the break.
- Donations of money to meet revenue expenditure or supplement trading income are trading receipts. If a business makes donations of goods or services, the impact on taxable trading profits should be considered. For example, the cost of gifts and donations is generally (although not always) disallowable. Where stock is donated to a charity, the trader does not have to record any receipt for the donation, but this does not apply to donations to a non-charitable business, in which case market value must be considered taking into account the effect of the relevant circumstances. A company does not need to record income for donations of medical supplies or equipment (including face masks and hand sanitiser) from its trading stock for humanitarian purposes (whether to a charity or not), but this does not apply to sole traders or partnerships. Incidental costs of packaging and distribution are also allowable.
- Partial refunds offered to customers (for example, on gym memberships) should be allowable as expenses.

Taxpayers will welcome this clarification at a time when many businesses are having to adapt in order to survive during the COVID-19 pandemic.

The guidance can be viewed [here](#).



Draft insolvency regulations published: HMRC debts to have preferential status

HM Treasury has provided the Public Bill Committee with a draft copy of *The Insolvency Act 1986 (HMRC Debts: Priority on Insolvency) Regulations 2020*, to be made pursuant to the current clause 96 of the Finance Bill 2020. The draft regulations have not yet been formally laid before Parliament but are drafted to come into force on 1 December 2020.

The draft regulations detail the debts owed to HMRC that will have secondary preferential status in insolvency procedures once the regulations are in force. These are in addition to VAT, whose secondary preferential status is bestowed directly by the current clause 95(2) of the Finance Bill 2020. The new preferential status for these debts will not apply to insolvencies that commence before 1 December 2020.

The following HMRC-related debts are intended to have secondary preferential status:

- VAT
- PAYE income tax
- Construction Industry Scheme deductions
- Employee National Insurance contributions
- Student loan repayments

The insolvency industry and others, including the Chartered Institute of Taxation, continue to lobby against the reintroduction of Crown preference, but it is would appear that the government intends to proceed with these reforms. Our [article](#) from last September discussed the government's motivation and whether the proposed changes are necessary or proportionate.

The draft regulations can be viewed [here](#).



COVID-19: First-tier Tribunal (Tax Chamber) guidance on conducting tax litigation during pandemic

The First-tier Tribunal (Tax Chamber) (FTT) has published a document answering some frequently asked questions about the conduct of tax litigation in the FTT during the COVID-19 outbreak.

All in-person hearings scheduled for before the end of August 2020, have been cancelled, although some have been decided on the papers and some have been heard remotely by telephone or video. The document provides practical advice on corresponding with the FTT and the procedures and time limits for appeals during the current lockdown. The FTT has now also released guidance on preparing electronic bundles (which it suggests will become the default position) and a video presentation on remote hearings.

The document addresses questions relating to the effectiveness of remote hearings, noting that, in the FTT's experience, all hearings, including complex multi-participant hearings, can be held successfully using remote technology. The document indicates remote hearings are likely to be continued for shorter hearings even once the FTT is able to conduct in-person hearings (which, in London, is expected to be at the start of September, although the document notes the possibility of an earlier start of in-person hearings). Parties will be able to state a preference before an appeal is heard and the document states there will always be a place for in-person hearings, which suggests there is no intention to dispense with them entirely.

The FAQ document can be viewed [here](#).

Case reports



Partners and closure notices: making amends

In *R (on the application of Amrolia) v HMRC and R (on the application of Ranjit-Singh) v HMRC* [2020] EWCA Civ 488, the Court of Appeal held that notices amending individual partners' tax returns under section 28B(4), Taxes Management Act 1970 (**TMA**), were not closure notices and therefore did not need to specify the final amounts of tax due.

The issue of whether HMRC has opened or closed an enquiry using the correct statutory provision and procedure has been much litigated in recent years. The argument in this case arose from the additional layer of procedure that applies in the case of partnerships, namely, the requirement for a separate notice to be issued to each partner under section 28(4) TMA. The Court of Appeal's judgment provides some much needed clarification as to what HMRC is (or is not) required to do in order to issue valid notices under that provision.

Given the increasing number of amendments being made to the TMA in an attempt to paper-over the cracks that have been revealed by recent case

law, it is perhaps only a matter of time before a new administrative Act is enacted which caters for a more complex and diverse tax system.

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



Court of Appeal confirms partnership contributions not deductible

In *Investec Asset Finance Plc and Another v HMRC* [2020] EWCA Civ 579, the Court of Appeal has held that partnership contributions were non-deductible, but has upheld the 'no double taxation' principle and prevented HMRC from introducing arguments not previously relied upon.

This decision illustrates the complexity of certain aspects of the taxation of corporates with partnership interests, a fact highlighted by the Court's comment that it was not persuaded by the Upper Tribunal's purported distinction between repayment of capital contribution and trading profits. Although the provisions relating to corporate partners have been in operation for many years, the Court described HMRC's approach to the law in this area as "to put it kindly, work in progress".

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



Game Match Officials - the final whistle for HMRC?

In *Professional Game Match Officials Ltd v HMRC* [2020] UKUT 147 (TCC), the UT confirmed that certain football referees and other match day officials were not employees of Professional Game Match Officials Ltd and accordingly it did not have tax and NICs liabilities in respect of the officials in question.

This decision helpfully summarises the case law on mutuality of obligation although whether an individual is, or is not, an employee for tax purposes remains a highly fact-dependant question. The case law derived principles discussed by the UT are central to the extension of the new IR35 rules to the private sector from April 2021.

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



And finally...

A recent report written by Arun Advani, Assistant Professor, University of Warwick Economics, CAGE, IFS and Andy Summers, Assistant Professor, LSE Law, International Inequalities Institute entitled: "How much tax do the rich really pay? New evidence from tax microdata in the UK" examines the effective rates of tax paid by the UK's wealthiest taxpayers. The report floats the idea of introducing a 'minimum tax' to narrow lower effective rates of tax for the wealthiest people in the UK.

Whilst the report overlooks certain aspects, such as the role of Corporation Tax/NICs, and why there is a distinction between taxes on capital gains and income, given where the country is headed economically, alternative proposals, such as a minimum tax, may prove attractive for policy makers. The alternative minimum tax proposed by Warwick and LSE it is said would raise around £11bn annually. This could rise to £20bn annually, depending on which reliefs and adjustments are taken into account.

The report can be viewed [here](#).

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