



**Edition 8**  
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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, do please let us know, or get in touch with your usual RPC contact.

### News



#### **Government extends power to depart from retained EU case law to Court of Appeal and other appellate courts**

The government has laid the European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020 (the Regulations) before Parliament, together with a draft explanatory memorandum. The Regulations:

- Extend the power to depart from retained EU case law after the end of the transition period to specified appeal courts (relevant courts), including the Court of Appeal in England and Wales, the Inner House of the Court of Session in Scotland and the Court of Appeal in Northern Ireland. This power, which is engaged when the court is interpreting retained EU law, had been vested only in the Supreme Court and the High Court of Justiciary in Scotland, under section 6 of the European Union (Withdrawal) Act 2018.
- Establish that the relevant courts must, when deciding whether to depart from retained EU case law, apply the same test as the Supreme Court would apply in deciding whether to depart from its own case law, namely, where it considers it 'right to do so'.
- Affirm the existing rules of precedent between decisions of the domestic courts.

These provisions, and any relevant court's departure from retained EU case law after the end of the transition period, are subject to relevant separation agreement law (specifically, the terms of the withdrawal agreement, EEA EFTA separation agreement and the Swiss citizens' rights agreement).

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



#### **HMRC updates DAC 6 guidance**

HMRC has published updates to its International Exchange of Information Manual, in relation to the disclosure of cross-border tax planning arrangements under EU Directive 2018/822 (**DAC 6**), amending several pages in the International Exchange of Information Manual. DAC 6 was implemented in the UK by the International Tax Enforcement Regulations (Disclosable Arrangements) Regulations 2020 (SI 2020/25), which came into force on 1 July 2020 (although the first reporting deadlines were postponed as a result of COVID-19 to 30 January 2021).

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



#### **HMRC Charter consultation**

HMRC has published a summary of the responses it has received to its consultation on draft revisions to its Charter, which sets out the standard of behaviour and values that HMRC aspires to when interacting with taxpayers, what taxpayers can expect from HMRC and what it can expect

from taxpayers.

It notes, amongst other things, that there was a consistent view that the previous Charter was not adhered to well enough within HMRC.

The summary of responses can be viewed [here](#).



### The Disguised Remuneration Repayment Scheme 2020

HMRC has published an updated Disguised Remuneration Repayment Scheme 2020, as part of its collection related to implementation of changes to the loan charge.

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



### Raising standards in the tax advice market and next steps

HMRC has published a summary of responses to its consultation on ways to raise standards and increase transparency in the tax advice market.

Overall, respondents emphasised that interventions should be proportionate, risk-based, and only made when necessary. There was general agreement that the line between tax advice and tax services is not easily drawn and as such, respondents believed the scope of any proposed intervention in the tax advice and tax services market, or legislation in relation to tax advice, would have to be considered very carefully. After considering the responses received, the Government plans to take a number of steps to improve standards and trust in the tax advice market, including:

- raising awareness of the Standard and review HMRC's powers to enforce the Standard;
- consulting on requirement for professional indemnity insurance.

The summary of responses can be viewed [here](#).



### Coronavirus support payments - penalties for failure to notify

HMRC has published a factsheet containing information relating to the penalties which may be imposed where there has been a failure to notify an income tax charge relating to the overpayment of certain coronavirus support payments made under the Coronavirus Job Retention Scheme; Self-Employment Income Support Scheme, and Eat Out to Help Out Scheme.

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

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## Case reports



### Jurisdiction and the Rule of Law

In *R (oao Boulting & Anor) v HMRC* [2020] EWHC 2207 (Admin), the High Court refused permission to bring a judicial review claim against HMRC, on the basis that the taxpayer had an 'alternative remedy'.

In recent years, the First-tier Tribunal (FTT) has repeatedly confirmed that its powers are restricted to those conveyed on it by statute – these do not include the general supervisory jurisdiction of the High Court, and accordingly the FTT is unable to consider general matters of public law. In *Boulting*, the High Court concluded that as the taxpayer can be taxed in accordance with the clearance he had sought, if he succeeded in his FTT appeal, he had an alternative remedy and therefore permission to bring a judicial review claim would be refused.

If this reasoning is correct, taken to its logical conclusion, it would mean that a taxpayer who is also pursuing a statutory appeal would never be given permission to bring judicial review proceedings on the basis that the FTT can determine their tax position and give them what they seek. With respect to the learned judge in this case, that reasoning is flawed.

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

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### Cheshire Centre - HMRC ordered to pay taxpayer's costs due to its unreasonable behaviour

In *HMRC v Cheshire Centre for Independent Living* [2020] UKUT 275 (TCC), the Upper Tribunal ordered HMRC to pay the taxpayer's costs even though HMRC had been successful, as it had acted unreasonably in introducing a new ground of appeal.

This decision confirms that an unsuccessful appellant may obtain a costs order from the tax tribunals against a successful party if that party (or its representative) has acted unreasonably in 'bringing, defending or conducting the proceedings'. The decision suggests that the tax tribunals will look closely at the conduct of both parties when determining whether the conduct of one party is sufficiently unreasonable to warrant a costs order being made against that party and, if it is appropriate to do so, will reflect the conduct of the other party by discounting the costs awarded.

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



### Belloul - Ignorance of the law was a 'reasonable excuse'

In *Bachir Mohamed Belloul v HMRC* [2020] UKFTT 312, the FTT held that a taxpayer's ignorance of the law was a 'reasonable excuse' for failing to notify HMRC of his liability to pay High Income Child Benefit Charge.

Although it will be a matter of judgement for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question and for how long, it is clear that ignorance of the law can constitute a 'reasonable excuse' for failing to notify HMRC. Ignorance of the law was also accepted by the FTT as a reasonable excuse in the recent penalty appeal cases of *Leigh Jacques v HMRC* [2020] UKFTT 311 and *Vivian Hill v HMRC* [2020] UKFTT 316.

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



### And finally...

Why not listen to our observations on top COP 9 tips in the era of furlough fraud [here](#)...

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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](http://rpc.co.uk)

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