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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 publishes note on internal procedures on civil tax dispute resolution

HMRC has published a **note** on its internal governance arrangements for decision-making on the resolution of disputes with taxpayers. The note outlines that HMRC's aim is to manage such cases in a 'fair and even-handed manner'.

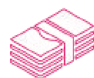
The note contains a summary of HMRC's approach to these disputes, the Tax Assurance Commissioner, governance boards, and any needs for additional support. There are details on the standards that individuals should expect when engaging with HMRC. There is also an overview of ADR, reviews, and appeals.

The note is a succinct and useful tool for anyone engaged in a potential tax dispute with HMRC.

HMRC updates guidance on uncertain tax treatment

HMRC's **guidance on uncertain tax treatment notifications** has been updated. The guidance is targeted at organisations with an uncertain tax treatment which has benefitted from a tax advantage in excess of £5 million, whose annual turnover is over £200 million or whose balance sheet is above £2 billion. The tax advantage is calculated by comparing the uncertain tax treatment with the standard approach adopted by HMRC.

There are a number of organisations that are exempt from the need to notify. The update means that the guidance now outlines that subsidiaries of a public authority are not exempt from the need to notify unless a public authority (or authorities) owns 100% of the subsidiary.



HMRC publishes guidance report on PAYE settlement agreement calculations

In early October, HMRC published a **new guidance report** entitled 'How Guidelines for Compliance (**GfC**) help you with tax and GFC1 (2022): Guidelines for Compliance: help with PAYE Settlement Agreement calculations'.

The report underlines the fact that such guidelines are meant to be used as a tool by taxpayers in circumstances where the risks are particularly high. The report also contains advice on minimising errors and how taxpayers should submit their calculations to HMRC.

HMRC's express aim is to help employers avoid the more common pitfalls and errors when calculating settlement agreements with their employees.

OECD submits report on crypto-asset tax reporting to G20

The OECD has published a **report** entitled 'Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard'. The report was reviewed and considered at the G20 meeting in October 2022.

It followed the OECD's approval of the Crypto-Asset Reporting Framework (**CARF**) in August 2022. CARF gives details of a standardised approach to reporting on taxation of crypto transactions.

The amendments to Common Reporting Standard (**CRS**) make clear that derivatives and other investment vehicles that do not involve a direct crypto-asset holding are covered by the framework. They also state that central bank digital currencies are covered by the CRS but are excluded by CARF.

Case reports

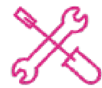
Tribunal considers salaried member rules and allows taxpayer's appeal in part

In *Bluecrest Capital Management (UK) LLP v HMRC* [2022] UKFTT 204, the First-tier Tribunal (**FTT**) considered, for the first time, the salaried member rules in section 863A-G, Income Tax (Trading and Other Income) Act 2005 and in allowing the taxpayer's appeal in part, concluded that Condition A (disguised salary) was met in relation to all members, but that Condition B (significant influence) was only met for certain categories of members.

Under the standard member rules, members of an LLP are treated as employees for the purposes of income tax and NICs, where three tests are passed. Bluecrest's appeal was allowed in part as the discretionary allocations (**DAs**) satisfied Condition A, but as certain portfolio manager members, including desk heads, had significant influence over the appellant's affairs, Condition B was not satisfied. It was agreed between the parties that Condition C applied to all members.

This is the first case to consider the salaried members rules and is an important decision on the taxation of LLPs. Taxpayers and their advisers will be interested in the FTT's careful analysis of the salaried members rules and in particular Conditions A and B.

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



HMRC's Ramsay argument fails

In *Altrad Services Ltd and Robert Wiseman and Sons Ltd v HMRC* [2022] UKUT 185 (TCC), the Upper Tribunal (**UT**) held that an artificial series of transactions designed to create additional capital allowances was not defeated by a *Ramsay*-based argument relied upon by HMRC.

The UT placed particular emphasis on the way that HMRC had run its case. It stressed that HMRC's *Ramsay* argument had been made in a limited and specific way, and was based on the proposition that the sale of the assets in question did not lead to either appellant ceasing to own those assets.

It is refreshing to see the judiciary carefully scrutinising a *Ramsay* argument and, on this occasion, rejecting it. All too often HMRC play the *Ramsay* card when it is out of options and not confident of defeating the taxpayer with a specific technical argument.

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

Lack of documentary evidence no bar to proving capital loss claim

In *Altan Goksu v HMRC* [2022] UKFTT 00213 (TC), the FTT found that the appellant was entitled to claim a capital loss from the sale of a commercial property and that inaccuracies in the appellant's return had not been brought about deliberately.

This appeal concerned a closure notice issued by HMRC amending the appellant's 2014/15 tax return, to increase the capital gains tax due on a gain realised by the appellant on the sale of a commercial property (**Broadway**) in 2015. The appellant had reduced the gain for tax purposes by the amount of a loss incurred on the sale of another property (**The Grove**) in 1998.

In the view of the FTT, in order to be entitled to deduct the capital loss incurred in respect of The Grove when computing the gain on Broadway, the appellant had to notify the loss to HMRC before 31 January 2005 and, in accordance with section 16(2A), Taxation of Chargeable Gains Act 1992, the loss had to be quantified in any such notification. The FTT accepted it was sufficient for the appellant to prove the loss was quantified in the notification rather than to prove the precise amount stated in that notification.

This decision will provide some comfort to taxpayers who have to prove their claims many years after they were made and where the available documentary evidence is extremely limited as a result. In such circumstances, the FTT will have regard to all of the available evidence, including evidence provided by taxpayers and third parties (such as their professional advisers), as to their usual practices, when considering what, on the balance of probabilities, was likely to have occurred at the relevant time.

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

And finally...

*HMRC's information gathering powers are extensive and have been enhanced in recent Finance Acts. In a recent **Webinar** hosted with Akash Nawbatt KC of Devereux Chambers, we discussed the panoply of powers available to HMRC and how best to manage requests for information.*

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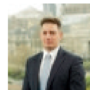

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