



Edition 11
01 April 2021

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 updates its guidance on compliance checks

HMRC has updated its **guidance** with more information on how agents and taxpayers can assist it with compliance checks.

The new section, entitled "Helping us with checks", explains what taxpayers will be asked to do as part of an enquiry. This includes providing documents to HMRC and meeting with HMRC to discuss matters.

The guidance also provides advice to taxpayers who have been impacted by the pandemic, what to do if they need help and whom to ask, including links to independent organisations.



HMRC issues briefing paper on how it will support organisations to comply with changes to the off-payroll working rules (IR35)

The IR35 rule changes, which come into effect on 6 April 2021, mean that it will be the responsibility of the engaging organisation to determine whether a contractor should be treated as an employee of the organisation for tax purposes, rather than the responsibility of the contractor's personal service company. The organisation must account for employment taxes and NICs if the rules apply.

HMRC has issued a new **briefing paper** setting out details of its planned compliance activity in relation to IR35. HMRC says it will offer support to taxpayers adjusting to the new rules, but will challenge intentional non-compliance or avoidance. As reported in our last update, HMRC does not intend to impose penalties for any careless inaccuracies within the first 12 months of the roll-out.



Spotlight 57 issued on a tax avoidance arrangement used to avoid tax and National Insurance contributions by selling future business revenues to a trust

HMRC has issued **Spotlight 57**, in which it confirms that it is aware of an arrangement where a business may enter into an agreement with a trust and claim to have sold the rights to its future revenue to the trust. The revenue is not included in the business's accounts (so no tax is paid on it) and the transfer of funds to the trust is not disclosed to HMRC. In the view of HMRC, this arrangement is a contrived form of tax avoidance arrangement and it will challenge anyone promoting such arrangements and investigate the tax affairs of all users.



Regulations published amending capital gains treatment of UK property-rich collective investment vehicles

Regulations have been made amending the taxation of non-UK investors in UK property-rich collective investment vehicles (**CIVs**)

The provisions on overseas life insurance companies (effective for

disposals after 5 April 2019) now disapply substantial indirect interest treatment if the company disposing of an asset deriving at least 75% of its value from UK land (UK property-related asset) is an overseas life insurance company or would be if carrying on business through a UK permanent establishment, no more than 40% of the market value of its assets immediately before the disposal derives from investments in UK land or UK property-rich companies, the UK property-related asset is an interest in a CIV that is a UK property-rich company and, immediately before disposal, the disposing company did not have a 10% interest in that CIV.

Additionally, the provisions on offshore CIVs (effective for disposals after 5 April 2019) now disapply substantial indirect interest treatment if the CIV disposing of a UK property-related asset meets the non-UK real estate and genuine diversity of ownership conditions, it is not a UK feeder vehicle immediately before the disposal, the UK property-related asset is an interest in a CIV that is a UK property-rich company and, immediately before disposal, the disposing CIV did not have a 10% interest in that other CIV.

From 24 March 2021, the new provisions will apply indirect interest treatment to entities disposing of UK property-related assets due to 50% investment only if the connected CIV and other relevant CIVs are all UK property rich.

If a disposal occurred after 5 April 2019, the regulations specify that the deemed market value of disposals and corresponding deemed receipts, attract "just and reasonable" reductions if part of the relevant UK property-derived amount attracts income or corporation tax.



Government publishes its response to the House of Lords Economic Affairs Finance Bill Sub-Committee report on whether new powers for HMRC are fair and proportionate

The UK government has published its **response** to a report produced by the House of Lords Economic Affairs Finance Bill Sub-Committee on whether new powers for HMRC are fair and proportionate. The government accepted a number of recommendations, including the following:

- HMRC should re-examine triggers for promoters of tax avoidance schemes (**POTAS**) rules to reduce the impact on genuine professional advisers;
- current legislation targeting POTAS is adequate, but this area should be monitored for areas of potential improvement;
- taxpayers should be better informed to help them to identify tax avoidance schemes;
- any suggestions for extensions to HMRC powers should set out why its current powers are insufficient to achieve the desired policy objectives.

Case reports



SSE Generation – Taxpayer's capital allowances victory marred by procedural issue

In *HMRC v SSE Generation Ltd* [2021] EWCA Civ 105, the Court of Appeal (**CA**) has dismissed HMRC's appeal and agreed with the Upper Tribunal's (**UT**) decision that expenditure on parts of a hydroelectric power scheme was eligible for capital allowances.

However, in an interesting twist, one item that had been overturned by the UT in favour of the taxpayer and considered as plant was disallowed by the CA. This was not because the CA deemed it not to qualify (it agreed it should have been allowed in full) but because of a procedural error. The taxpayer had not sought permission to appeal the decision reached by the First-tier Tribunal (**FTT**) when it concluded it was not plant. As a consequence, the taxpayer was denied the opportunity to claim on this one item.

The CA's decision on this procedural issue does mean that taxpayers whose appeals to the FTT have been largely successful and who are faced with an appeal by HMRC from the FTT, will need to give careful consideration as to whether they should seek permission to appeal in relation to any issue in respect of which they were unsuccessful.

You can read our commentary on this decision [here](#).



Ditton – HMRC cannot issue daily late filing penalties retrospectively

In *D & G Ditton Ltd v HMRC* [2021] UKFTT 489 (TC), the FTT has held that daily late filing penalties, where notice was given by HMRC to the taxpayer after the period in respect of which the penalties were issued, were void.

This decision confirms that late filing penalties cannot be issued to taxpayers retrospectively and will no doubt be welcomed by those taxpayers who find themselves in a similar position to that of the taxpayer in this case. This issue was also addressed in the recent case of *Heacham Holidays Ltd v HMRC* [2020] UKFTT 406 (TC), in which the FTT discharged the daily penalties imposed on the taxpayer as they were also issued retrospectively by HMRC without notice.

You can read our commentary on this decision [here](#).



Atholl House Productions - BBC presenter wins IR35 case

In *HMRC v Atholl House Productions Ltd* [2021] UKUT 0037 (TCC), the UT has held that IR35 did not apply to a presenter who provided services to the BBC through a personal service company.

Employment status disputes will of course turn on their own particular facts, but the UT's detailed analysis of the relationship between the actual contract between Atholl House Productions Ltd and the BBC and the hypothetical contract between the BBC and the presenter is worthy of careful consideration by anyone dealing with employment status disputes. Such disputes are likely to take on a greater significance given the extension of the public sector off-payroll rules to the private sector from 6 April 2021.

You can read our commentary on this decision [here](#).



And finally...

It was International Women's Day on 8 March 2021, and to mark the occasion we commissioned a special episode of our Taxing Matters podcast, which featured five successful women who have encouraged diversity and inclusion in the workplace.

Our guest speakers all come from very different backgrounds and include a global tax correspondent at the FT, a former Tax VP at Sony and the owner of a successful consulting group. They each share the challenges they have faced at work and address a range of topics including juggling family life, being overlooked and suffering imposter syndrome.

You can listen to our podcast [here](#).

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