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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 set of FAQs for agent paying CGT on UK property

HMRC has published **FAQs** through the Association of Tax Technicians to assist agents who report and pay capital gains tax (**CGT**) on UK property disposals online. The FAQs are intended as a 'stop gap' until HMRC releases updated guidance.

The FAQ document lists common queries and issues, and also gives general information to assist agents in completing returns. It also covers common issues related to online CGT reporting such as repayments, online reporting for non-UK residents and CGT offsetting. The FAQs focus, in particular, on the issues faced by personal representatives who are required to pay CGT on the disposal of UK property during the administration of an estate.



HMRC consults on digital platform rules

HMRC has announced a **consultation** on the implementation of the new model tax rules for reporting by digital platforms.

While the new rules have already been agreed internationally, the government is interested in views on the optional elements to the agreed rules and how it should implement the new rules. The consultation will also consider comments on the impact that the implementation of the new rules might have on businesses. Certain aspects of the new rules are mandatory and require digital platforms to collect certain information about their sellers in order to identify where that seller is based. The platforms must also report the information acquired, including the income of the seller on the platform, to the relevant tax authority on an annual basis. Tax authorities are able to exchange information with another tax authority where the seller may be resident and therefore liable to pay tax.

The government intends to adopt the mandatory aspects of the OECD rules and a number of the discretionary elements, including the exclusion of certain platform operators from the rules and narrowing the scope of the rules so that only certain services provided by sellers are covered by them. HMRC will develop an online service where UK platform operators can register and supply the required information. This will operate in a similar way to the current service for reporting under Automatic Exchange of Information agreements.



HMRC's investigation of family investment companies concludes

Since 2019, a specialised unit within HMRC has been investigating the risk of tax avoidance by the use of family investment companies (**FICs**). The unit was created due to an increase in the popularity of FICs for succession planning.

This investigation has now finished. HMRC has concluded that the increased use of FICs does not mean that taxpayers using such structures are more likely to be non-compliant with the UK's tax laws. HMRC

commented that it now has a better understanding of the characteristics of FICs, and it does not consider them necessarily to be vehicles for the avoidance of tax.



HMRC responds to disguised remuneration loan repayment demands

HMRC has released new **guidance** relating to taxpayers who have received demands to repay loans that were made as part of disguised remuneration arrangements. It notes that in most cases, the demand has been issued because the original loan provider has sold the loan to a third party, or because it has been recalled.

The guidance notes that in some cases third parties have contacted taxpayers seeking repayment of their loans. This is despite the fact that the taxpayer has already paid the Loan Charge in respect of a loan(s) that was outstanding on 5 April 2019.

HMRC states that the Loan Charge liability still applies, even if the loan was repaid after the 5 April 2019. However Time To Pay arrangements can be made where taxpayers are struggling to meet their ongoing tax liabilities.

Many taxpayers who are facing the prospect of having to pay considerable amounts of income tax in respect of loans which may have to be repaid will find little comfort in HMRC's guidance.

Case reports



Wilkes – HMRC's discovery assessments were invalidly issued

In *HMRC v Jason Wilkes* [2021] UKUT 150 (TCC), the Upper Tribunal (UT) dismissed HMRC's appeal against a decision of the First-tier Tribunal (FTT) which held that discovery assessments issued by HMRC to assess the high income child benefit charge (HICBC) were invalid.

The UT acknowledged that although the amounts involved in this case were relatively small, the issues raised are of wider significance. The decision clarifies the position regarding the use of discovery assessments to assess taxpayers for the HICBC, particularly in light of the FTT's decision in *Wiseman v HMRC* [2020] UKFTT 383 (TC), in which the FTT declined to follow the approach taken by the FTT in *Wilkes*. More broadly, the decision is a useful example of the judiciary upholding the limits and conditions which delineate HMRC's legislative collection and enforcement powers, in particular, in relation to discovery assessments.

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



Kelly – rediscovery not permissible for the purposes of section 29 TMA

In *Sean Kelly v HMRC* [2021] UKFTT 162, the FTT confirmed that a discovery can only be made once and HMRC cannot raise a new discovery assessment under section 29, Taxes Management Act 1970, in respect of the same discovery.

Although the recent decision of the Supreme Court in *HMRC v Tooth* [2021] UKSC 17 (you can read our blog on that decision [here](#)) removed the possibility of a taxpayer arguing that a discovery assessment could become stale through the passage of time, in this case the FTT has confirmed that a discovery can only be made once and HMRC cannot raise a new discovery assessment in respect of a discovery previously made.

Together with the FTT's recent decision in *Ball Europe Ltd v HMRC* [2021] UKFTT 23 (TC), this decision is another reminder that taxpayers who receive a discovery assessment should pay close attention to the statutory protections provided in the relevant legislation and case law and where appropriate, the validity of such assessments should be challenged.

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



Walewski - Mixed partnership rules mean profit can be reallocated for whole period of account

In *Nicholas Walewski v HMRC* [2021] UKUT 0133 (TCC), the UT held, in dismissing the taxpayer's appeal, that the mixed partnership rules in section 850C, Income Tax (Trading and Other Income) Act 2005, can

operate to reallocate profits for any period during which an individual and a body corporate are partners in a partnership, regardless of whether they both remain partners for the whole period.

The UT applied a strict interpretation to the wording of section 850C and was firmly of the view that the alternative interpretation relied upon by the taxpayer was incorrect. Given that the mixed partnership rules are designed to counter tax planning, and that it is possible for a partner to receive a profit allocation even if he or it resigns from the partnership part-way through a year, the outcome of this appeal is not surprising. This decision will no doubt encourage HMRC to use the mixed partnership rules when challenging corporate member planning.

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



And finally...

Many commentators have questioned whether the law relating to corporate criminal liability is still fit for purpose or whether it is due an overhaul.

The Law Commission has been asked by the Ministry of Justice, Home Office, Department for Business, Energy and Industrial Strategy, HM Treasury and the Attorney General's Office to consult on how the law of corporate criminal liability functions and how, if appropriate, it should be changed.

*With the potential for significant change on the horizon, we are joined by David Allan in our latest **podcast**, a criminal law reform lawyer with the Law Commission and working on the corporate criminal liability project, to discuss how the law currently operates and some of the suggested changes to corporate criminal liability that have been put forward.*

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