



**Edition 14**  
01 July 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



#### New principles for interpreting the MLI

The conference of the parties to the multinational instrument (**MLI**) on base erosion and profit sharing (**BEPS**) approved an **opinion** which sets out the guiding principles, drawn from public international law, for how they might address questions on the interpretation and implementation of the MLI. The opinion places the interpretation of the MLI in the context of its purpose of implementing the tax-treaty-related BEPS measures and the policy objectives of those measures. The principles were approved on 20 May 2021, following approval of the opinion on 3 May 2021.

A key principle for interpretation is that where the MLI conflicts with a treaty provision that it modifies, the MLI provision will prevail. This is in accordance with the later-in-time principle. The opinion sets out the types of compatibility clauses that address conflicts between a substantive provision of the MLI and an existing provision on the same subject matter.

The opinion does not deal with issues related to the interpretation of a double tax treaty which the MLI modifies, instead it looks exclusively at how the MLI should be interpreted and implemented. The opinion notes that any questions on the interpretation of the double tax treaty should be settled according to that treaty's provision for a mutual agreement procedure.



#### Off-payroll income guidance updated

HMRC has released new **guidance** on how intermediaries can calculate statutory payment entitlements. This applies to situations where a worker's intermediary has received amounts under the off-payroll working rules net of income tax and NICs.

Provided the worker has the requisite average weekly earnings over a given time period, payroll software will calculate the level of statutory payment. The software uses the worker's gross earnings subject to NICs. However, if off-payroll income is paid to an intermediary, the software will not automatically include that payment as earnings for statutory payment purposes. This may be problematic, as the worker's entitlement should include all gross earnings, subject to Class 1 NICs.

The guidance sets out how to ensure that consideration is given to all gross amounts, even where payroll software only processes net amounts of off-payroll working income.



#### G7 agree global digital tax regime

Following a meeting in London on 5 June 2021, the Finance Ministers of the G7 have **agreed** to a proposed two pillar solution to address tax challenges posed by the increasing digitisation of the world economy. This agreement follows many years of discussions between the G7 nations and the OECD.

Under 'Pillar One', market countries will have the right to tax multinational

companies on at least 20% of their profit exceeding a 10% margin. Companies with a profit margin of under 10% will not be caught. Under 'Pillar Two', the Finance Ministers agreed to adopt a global minimum 15% corporation tax rate for multinational groups on a country by country basis. They also agreed to remove all digital services taxes.

These measures are aimed at capturing tax revenue from large companies with customers in a country, but which do not have sufficient physical presence in that country to incur a local tax liability under current rules.

The G7 Ministers hope to get further support for the international agreement at the G20 meeting in July 2021.



#### Update to wage calculation guidance

HMRC has updated its **guidance** on how employers can calculate wages, pension contributions and NICs for employees under the Coronavirus Job Retention Scheme (the furlough scheme), which has been extended until 30 September 2021. The guidance provides a helpful revised example of how to calculate wages, pension contributions and NICs for an employee who has been furloughed.

---

### Case reports



#### Hargreaves - Burden of proof on HMRC in taxpayer information notice appeals

In *Hargreaves and others v HMRC* [2021] UKFTT 80 (TC), the First-tier Tribunal (FTT) confirmed that the burden of proof in an appeal against an information notice issued by HMRC under paragraph 1, Schedule 36, Finance Act 2008 (a **taxpayer notice**), is on HMRC.

The FTT was of the view that the burden of proving that information requested in a taxpayer notice was reasonably required was on HMRC. Once that burden has been discharged, it is then for the taxpayer to establish that the information was not reasonably required. The position is, however, different for third party notices issued under paragraph 2, Schedule 36, Finance Act 2008, where the sole burden of proof lies on the taxpayer. The FTT noted in its decision that the issue of where the burden of proof lies in relation to Schedule 36 notices has received inconsistent treatment in the past. This decision is helpful in confirming that HMRC bears the burden of establishing that information requested in a taxpayer notice is reasonably required.

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



#### Tooth – Supreme Court rejects the concept of 'staleness'

In *HMRC v Tooth* [2021] UKSC 17, the Supreme Court, in dismissing HMRC's appeal, confirmed that a discovery assessment issued under section 29, Taxes Management Act 1970 (**TMA**) will not be invalid because a lengthy period of time has elapsed between the discovery being made and the assessment being issued by HMRC, and that for a taxpayer to bring about a loss of tax as a result of a 'deliberate' inaccuracy in a document there must be an intention to mislead.

The Court's rejection of the concept of 'staleness' will come as a disappointment to many taxpayers. What this means in practice is that so long as an HMRC officer has made a 'discovery', the fact that HMRC then sit on the discovery will not prevent it from issuing a valid assessment at a later point in time provided the assessment is issued within the relevant statutory time limits and the statutory safeguards in section 29, TMA, are satisfied.

The Court did acknowledge that a taxpayer may seek relief by way of judicial review proceedings if HMRC fail to act in accordance with ordinary principles of public law in deciding when to issue an assessment under section 29. The Court also confirmed that an HMRC officer may make a discovery even if a different HMRC officer made the same discovery earlier, and there are no new facts.

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

---



### Daarasp – Loss claims denied as closure notices were valid

In *Daarasp LLP & Betex LLP v HMRC* [2021] UKUT 0087, the Upper Tribunal (UT) dismissed the taxpayers' appeals and their claims for losses as the conclusions in HMRC's closure notices were not inconsistent with the losses being reduced to zero in the taxpayers' returns.

Although the UT has confirmed that closure notices should be construed as a whole, it considered it wrong, as a general proposition, that amendments to tax returns should be used to construe conclusions contained in closure notices more widely than their ordinary meaning would permit. Amendments to a tax return can only widen or narrow conclusions contained in a closure notice if considered as part of the whole factual matrix, and not if the meaning of the conclusions is otherwise clear.

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



### And finally...

*In a special cross-over episode, our Taxing Matters podcast looks at the growth in popularity of tax liability insurance.*

*Giles Hambly, a Tax Specialist in the Major Risks Practice at global insurance broker Gallagher, joins us to explain what tax liability insurance covers, how it works in practice and why many businesses are now choosing such insurance. You can listen to our podcast [here](#)!*

**If this email has been forwarded to you,  
you can sign up to RPC Tax Bites here:**

[Subscribe](#)

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)

RPC is the trading name of Reynolds Porter Chamberlain LLP, a limited liability partnership,  
registered number OC317402.  
We are authorised and regulated by the Solicitors Regulation Authority.  
A list of members' names is open to inspection at the office.

London Bristol Hong Kong Singapore

