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Excellence in Taxation
August 2020
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TAXAdviser

Diversity in tax

Tax Adviser presents the views of Black, Asian and Minority Ethnic tax practitioners about their experiences in the profession, p6

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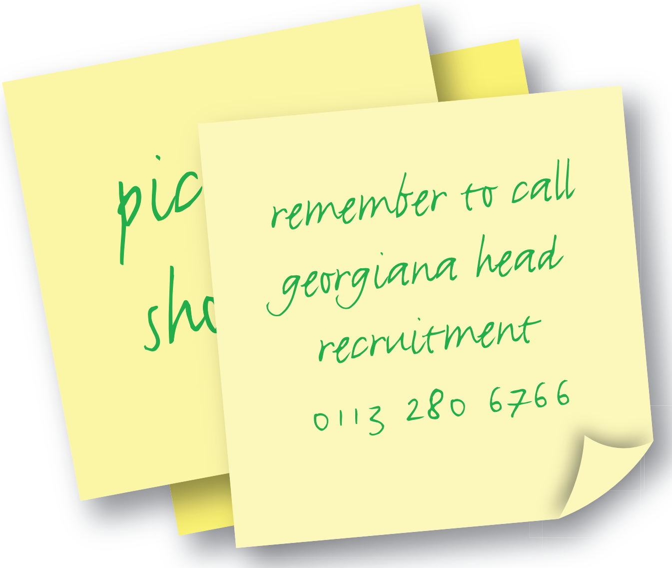

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Utterly invaluable, Andrew has successfully helped us find and hire high quality candidates. He listens, works tremendously hard, is committed, keeps you updated and delivers. Andrew is an extremely reliable and fruitful source. He is also very amiable, which makes the whole process a delight!

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I had a wonderful experience working with Andrew, all the way from the initial conversation, to the placement. Andrew could not have been more helpful and professional in his approach. Now, I've landed a job with one of the best firms in the industry and I am very happy in my new position. I am very grateful to Andrew for all the help and support, his excellent service and efficiency. I would highly recommend him to others.

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Candidate placed into EY at Senior Manager level

I would like to thank Andrew for a smooth process. He managed everything pe… interview to s… with EY. His p… attitude are se… highly recomm… tax profession…

Candidate … Qatar at Di…

Tenacious and persistent, Andrew has proved exceptional when it comes to recruiting various positions for my team. His patience, loyalty, tremendous knowledge and experience of the industry serve him well. Beyond this, he is an all-round approachable, affable, and … work with; a … always rely

…ding global …-commerce

Andrew was a pleasure to work with throughout the process. He was always responsive, reverting quickly on issues and questions and providing good practical advice. Andrew provides an excellent recruitment service in the specialised area of tax and I would strongly recommend him to anyone looking for that next career move in tax.

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Candidate placed into PwC at Senior Manager level

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… Tax, FTSE100 company

…bout working …at he is very easy to get on with. It's clear to me that his pleasant nature is part of what makes him such a successful recruiter. He is a people person, but beyond this he also has an incredible and extensive knowledge and awareness of his field, it is very evident that he's worked in the tax profession himself earlier in his career. The combination of his fantastic personality and terrific business acumen are evidently a winning combination.

Candidate placed into EY at Assistant Manager level

Working with Andrew is always a pleasure. He's very friendly and approachable, and takes the time to understand what kind of role the candidate is after.

Andrew has a great understanding of the practice environment and was able to place me in the right team in the right firm for me to further my career.

Candidate placed into PwC at Tax Manager level

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A joint welcome from

Glyn Fullelove: A state of collective blindness

In Matthew Syed's book 'Rebel Ideas', he discusses how organisations can exhibit a state of 'collective blindness' – sometimes with catastrophic consequences. He illustrates this with a discussion of how the CIA managed to miss obvious signs of an upcoming attack prior to 9/11. The signs were obvious – to those with a certain cultural background. However, the CIA had a highly homogeneous cultural character – white, male and elite.

While the politicians who oversaw the CIA were concerned about the lack of diversity in the agency, their concerns were generally trumped by the CIA leadership pointing to the recruitment criteria they had used for many years. These were a set of criteria based around excellence – recruiting the 'brightest and best', irrespective of background. In short, they believed that political correctness should not be put above protecting national security. However, when a set of criteria established by a white, male elite consistently recruited those from the same cultural background, a lack of diversity at the CIA was to prove disastrous for the national security of the USA.

The point is not that we should encourage diversity for diversity's sake – it is much more profound. Complex problems can rarely be solved from one perspective alone. Complex businesses can rarely be run successfully in the long term based on a single skill set. Perhaps we should consider why auditing firms seem to be unable to escape from a regular procession of audit failures – could it be because there is a form of 'collective blindness' present?

In the tax profession, we can risk 'collective blindness' by over-emphasising one skill set; for example, technical excellence. High technical standards are crucial and must be maintained. However, it is also highly probable that our firms, companies and even the Institute Council will benefit from looking to build leadership groups that achieve a mix of backgrounds, cultures and skills to tackle the wide-ranging issues the tax profession faces. It is against this background that we have established our new committee.

Glyn Fullelove
President, CIOT

Glyn Fullelove,
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Jeremy Coker
ATT President
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Jeremy Coker: Inclusion is being asked to dance

At the CIOT Cambridge conference last year, I was approached by a member who was pleasantly surprised that I was President. When pushed, it transpires it was more surprise than pleasantness. She lamented what she saw as the lack of representation.

After the conference, I reached out to her to ask if she would articulate her concerns so that I could take them forward. She did not. While I was glad that she had voiced her concerns, many people from diverse backgrounds will be aware of the risk of being 'labelled' just because one has an opinion that is 'different'. Also, she felt that no one would listen.

Recent events mean that some are listening. I have also been educating myself. Conversations are, by definition, uncomfortable. It seems most need to start by individuals being made aware of privileges they do not realise that they have. Despite the discomfort of such conversations, eminent writers on such matters say that a refusal to recognise the existence of said privilege(s) when they are pointed out to them will mean that such individuals continue to inadvertently cause discomfort for others.

I am eternally grateful to quite a few female Past Presidents for being where I am today. We however recognise that we can always do better. We can learn more by educating ourselves; and also by encouraging and engaging with people from across the whole spectrum. It is this engagement that will lead to the education. To borrow a phrase: 'Diversity is being invited to the party; Inclusion is being asked to dance.'

We are continually looking for volunteers from all backgrounds for our Steering Groups and frequently advertise in *Tax Adviser* and the weekly newsletters. We have sent out the invitations. I look forward to many newly involved members leading the dance.

Jeremy Coker,
President, ATT

the Presidents of ATT and CIOT

JANE ASHTON

Diversity is about including people from all different backgrounds and accepting people for who they are.

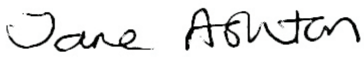
I count myself lucky because many of my friends from my childhood and throughout my working life are from diverse backgrounds. I have appreciated the different opinions and ideas they have which can improve decisions and enrich conversations.

I did not come into tax with a 'silver spoon' in my mouth – neither of my parents went to university and I went to a huge state comprehensive school. But through working hard, a mindset to grasp every opportunity that was offered and volunteering for various causes (not all to do with tax) I met amazing people who gave me the encouragement to progress throughout my career.

Here at ATT, we are committed to providing equal opportunities to job applicants, staff, students and volunteers regardless of sex, sexual orientation, marital status, age, race, ethnic origin, religion or belief or disability. Now, due to the Covid-19 pandemic, we are supporting all our staff to work from home.

We have volunteers from a range of diverse backgrounds which is incredibly important because they help to shape the organisation and what we do to meet our charitable objectives. We are constantly bringing new volunteers into the organisation to sit on our various steering groups and all that we ask is that you bring enthusiasm and a commitment to shape and improve the Association going forward.

If you are interested in being a volunteer, whatever background you come from just do it, or if you want any further information contact me or one of our many volunteers.



Jane Ashton
Chief Executive, ATT
jashton@att.org.uk

HELEN WHITEMAN

I arrived at the CIOT from a legal regulator CILEx Regulation. It is a professional body whose regulated community is 75% female. Furthermore, 13% are from a BAME background and 80% of that community do not have a parent who attended university. It is the only non-university route to a career as a lawyer.

I was very proud to be the Equality and Diversity Champion, developing and delivering a plan of action to further enhance and improve our approach to education, membership, governance and law reform. It was pleasing to see other professional bodies across many sectors respond to a report from Alan Milburn on Fair Access to the Professions, called 'Unleashing Aspiration'. What a motivating title!

The more you immerse yourself in learning about people, their background and experiences, the more you walk in the shoes of others, encourage discussion, help to promote change and embed good practice. Like ATT's chief executive Jane Ashton, I grew up with a broad mix of people around me who taught me from an early age to listen and respect the opinions and backgrounds of others.

Here at CIOT, my aspiration is to deliver on Council's ambition to ensure that our strategy, actions and behaviour are inclusive, transparent and open to all, regardless of background. I am pleased to be working with my ATT colleague Jane to review and produce revised terms of reference for the Equality and Diversity Working Group, which Glyn referred to in last month's Welcome article. These will go to both CIOT and ATT Councils in Autumn with a proposed joint action plan. Our key stakeholders are staff, members, volunteers, employers and those third parties who access our services, such as members of the public, other charitable/professional bodies and suppliers. On a practical level, while there is a lot of good practice in place, there is more we can do. We are listening and responding to feedback from staff, some of which is featured in this article. We are also looking to engage as broadly as possible with you. Please keep an eye out for future articles and communications to get involved.

Helen Whiteman
Chief Executive, CIOT
HWhiteman@CIOT.org.uk

Messages from our staff

Annette Hutchinson, Head of HR for the ATT and CIOT, shares the views of our employees on how important diversity is within our organisations

The ATT and CIOT actively support diversity and inclusion, both in the workplace and in recruitment. It is important because about 65% of our staff, who are largely jointly employed, are female. Slightly more than two thirds of CIOT staff are white UK nationals with the rest from diverse backgrounds.

We recognise that being able to draw on a rich and diverse range of experiences and perspectives benefits us. This includes valuing work-life balance and wellbeing. After all, nearly a third of CIOT staff work part time and 65% work remotely all or some of the time.

What I love about this organisation is the people who work here. Diversity, equality and inclusion means everyone is welcome and welcomed. We share our cuisines, viewpoints, interests, hobbies and differences with mutual respect. We work well together because we accept each other and listen. There's always more that we can do, but I'm confident we will be able to do it together.

Here are some further comments on diversity from other members of staff:

> When I joined the CIOT/ATT, I immediately noticed the richness of diversity and this showed that I was in a place that gives everyone a chance. Over the years, I have experienced a workplace that is safe and welcoming to all kinds of people. I have been given the opportunity to grow professionally.

> I think we are very good at having a diverse workforce and being inclusive. However, that is no reason to rest on our laurels as unconscious bias can easily creep into our working lives.

> Working at ATT and CIOT has been one of the only places where I have felt comfortable about referring to going to church and being a Christian. A factor in this is probably that workplaces based in London are generally more accepting of cultural and religious diversity than those where I have previously been based.

> My experiences with my daughter's disability connect me to staff and volunteers through shared understanding, experiences or helping each other with tips, links to resources or just being a sounding board because 'we get it'. The CIOT supported me by allowing a flexible start time and flexibility in how I worked.

> My impression is that the ATT and CIOT are committed to continuous improvement and that includes having a more diverse workforce. It will hold us in good stead if we remember continuously that diversity gives us access to a greater range of talent and can make us more effective and, hopefully, even more successful in our important work.

> We are growing a global tax community of members, students, volunteers, employees and others – and expanding an extraordinary group of charities and valuing employees opinions.

> The CIOT is the most diverse place I have ever worked – every culture is represented, and there is good BAME representation, which is unusual compared to most offices I have been in. I have only ever seen everyone get on as individuals, without any thought to what they look like. I hope that people treat everyone respectfully regardless of their background – that is what I do.

The truth behind the figures

Tax Adviser presents the views of Black, Asian and Minority Ethnic tax practitioners about their experiences in the profession

Tony Wilson, Institute Director at the Institute for Employment Studies, reports that racial inequality in the labour market has persisted for decades – and that we all have to play a part in addressing it

The protests around the world following the killing of George Floyd have thrown into sharp relief the structural racism that still pervades our society. Over decades, progress has been too slow in addressing racial inequalities, and we are seeing the impacts of this in the current crisis – with people from Black, Asian and Minority Ethnic (BAME) groups more likely to die from the virus, reflecting among other things existing health inequalities, where people live and the jobs that they do.

Racial inequalities have been particularly pronounced in our labour market, over decades. BAME people are more likely to be out of work than white people, to be in low paid work and to experience poverty. Overall, just over two thirds of BAME people are in work (68%) compared with nearly four fifths of white people (78%). White people are more likely to be in work than any other ethnic group, and this applies for both men and women (with one exception, where Indian men are more likely to be in work than white men). Underneath this, the employment rate gap has fallen significantly over the last two decades for men, to just 5 percentage points – but for Black men, the gap stands at 11 percentage points (with employment for Black men actually falling in recent years, while it has risen for others). For women the employment rate gap has narrowed more slowly, and now stands at 14 percentage points (but is more than double this for women of Pakistani or Bangladeshi descent).

Once in work, BAME people are also more likely to be low paid than white people. This in large part reflects longstanding occupational segregation, which our work on under-representation in apprenticeships shows starts before people enter the labour market and often intersects with other characteristics like gender and class. People from minority ethnic groups are over-represented in a range of lower paying jobs (care workers, security, hospitality, customer services and taxi drivers) even as they are more likely to work in a small number of higher paying jobs like as doctors and IT professionals.

Part of these pay differences are explained by demographics, but research by the Resolution Foundation in 2018 and by the ONS last year suggests that pay gaps are not fully explained by the jobs that people do, nor by working patterns, qualifications (where separate research suggests that BAME groups are more likely to be overqualified for their jobs), age or gender. Pay penalties persist, and appear to do so particularly for men and for those born overseas. And part of this ongoing inequality, undoubtedly, is a result of racial discrimination. This has been most clearly borne out in studies using fictitious CVs to apply for jobs – most recently by Nuffield College, Oxford, who in findings last year reported that people with ethnic minority backgrounds had to submit 60% more applications than the ‘majority group’ in order to get a callback. These ‘shocking levels of discrimination’, as the study put it, are unlikely to stop at recruitment, and of course are not limited to the labour market.

These issues have existed for decades, and progress in addressing them has been far too slow. So as we think about the recovery from this crisis, recent events have reiterated that it has never been more pressing that we work to address this. A great place to start is the ‘Colour of Money’ report by the Runnymede Trust last month, which has a range of specific proposals on how policy and practice needs to change in the recovery. Three points however stand out for me:

- We need better targeted interventions to address specific barriers or discrimination that BAME people face.
- We should be much more rigorous in ensuring that ‘universal’ policies that are meant to address disadvantage actually do so for BAME groups.
- There needs to be more representation of BAME voices and perspectives.

For us at IES, in our work on employment, HR and wider public policy like education and skills, we are acutely aware that we need to play our part in driving this change, and that we can do a lot more. So, on better targeted measures to address inequalities in pay and participation, we need to build on our work on ethnicity pay reporting, tackling pay gaps and inclusive recruitment to better support employers and employer bodies to take action. However, where we identify specific disadvantages for BAME groups – as we did in research on youth employment last year – we also need to challenge ourselves on whether targeted measures are needed, and what form those should take.

Tony Wilson
Institute Director, IES

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A lack of Black role models

Sofia Thomas
Director, Sofia Thomas

As with all individuals, my experiences in work reflect all parts my identity and not just my ethnicity. As I reflect on my challenges, it's hard to pinpoint which are most relevant for this piece. At the beginning of my career in tax, I struggled with the lack of Black partners to role model my career after. It reminds me of the now well-known belief that 'if you can't see it, you can't be it'. Unfortunately, this was being reinforced with a lack of Black speakers at tax events or in technical publishing. As a junior tax professional, I'd sometimes feel like an outsider at these events when I'd realise that I was only one of a handful of attendees from an ethnic minority background.

As an industry, I think we should be holding space for underrepresented affinities, not due to the affinity they represent but as they are subject matter experts. We know that diversity brings different perspectives and experiences and, as an industry, we need to hear from these thought leaders.

Part of hearing from new voices means that individuals who have previously held positions will need to make space for others. I saw a great example of this recently in Women in Tax, where a senior committee member announced that she would be stepping down to create space for a new member to step up.

Another great example includes the ATT delivering a talk on a career in tax at What Career Live. Initiatives like these can provide role models for young people considering a career in tax that I felt was missing at the start of my career.

Although I believe the tax industry can do more to engage diverse speakers and writers, my personal experience over the years has been that the tax community is incredibly kind and welcoming. I recall turning up to one meeting with former CIOT President Ray McCann with my son in tow, as childcare fell through at the last minute, and Ray didn't bat an eyelid! This kind of experience made me feel really accepted.

For younger professionals coming into the industry, I would urge you to find a sponsor and reach out to those in the profession who can offer guidance and support. (If you can't find one, email me!) One of things I wish I had known when I had started out is how kind and supportive much of the profession is. Just because you might not be able to see yourself in them doesn't mean they aren't waiting to welcome you in.

BAME representation in tax

Tasneem Kadiri
Tax Director UK & Ireland, L'Oréal

Statistics have shown that a white woman is twice as likely to reach the top three positions in a FTSE 100 company compared to an ethnic minority male and 20 times more likely than an ethnic minority female. As a Tax Director from an underrepresented group, I am often asked to speak on the topic of ethnicity. Ethnic minorities are still unrepresented in senior level roles and this is especially the case at Partner and Director level. While the tax profession is progressing in the diversity debate, there is still not enough being done to address the lack of representation of Black, Asian and ethnic minority individuals at senior levels. We have a long way to go to get to a truly diverse workforce in tax.

My advice to companies: Business in the Community (www.bitc.org.uk) recommends organisations to sign up the Race at Work Charter, which makes five calls for action:

1. Appoint an Executive Sponsor for race.
2. Capture ethnicity data and publicise progress.
3. Commit at board level to zero tolerance of harassment and bullying.
4. Make it clear that supporting equality in the workplace is the responsibility of all leaders and managers.
5. Take action that supports ethnic minority career progression.

The Charter also calls for employers to capture and publish ethnicity pay gap data. Whilst this is not currently obligatory, I believe it won't be long before this becomes mandatory just like gender pay gap. At the moment, just 15 organisations are voluntarily publishing this information. The Charter also calls for employers to take the race at work survey.

I also recommend looking at the 2020 Parker Review, which states that supporting equality in the workplace is the responsibility of all leaders and managers. See go.ey.com/39OOvkR.

My advice to BAME tax professionals: Building allies will help to create more BAME awareness. A great BAME ally is someone who is willing to take the time to educate themselves on BAME experiences. Allies need to be well informed on BAME issues to make better decisions for inclusivity. The Parker Review states that supporting equality in the workplace is the responsibility of all leaders and managers.

Challenge stereotypes in your own communities: There can be stereotypes within some BAME communities. For example, in the Asian community it is more typical and expected that men will be the main breadwinners. As a result, ethnic minority women who are working may face judgements from within their communities, especially if they are working mums. They may be more likely to suffer from 'mum guilt' which can in turn impact their confidence levels. Such obstacles make it even harder for ethnic minority women to succeed, as not only are they grappling with the obstacles in place due to the outside world but some may also be grappling with obstacles or lack of support from their own communities.

I encourage people to start challenging these stereotypes and to help break down such barriers. If you do face this, try to find support from positive role models, which will help you in times of challenge or self-doubt.

Mentors, role models and sponsorship: It is important that you have people that you aspire to, and to surround yourself with people who support you on your journey. Choose someone you look up to within the organisation to be your mentor. They will understand the culture and characteristics of the people you work with, helping you to see things in a different light and find solutions. Research shows that mentoring can particularly help people who are in the minority, or in more junior roles, to have greater influence and progress their careers.

Educate yourself on the different levels of difficulties faced within the BAME community: Within the FTSE 100 there are just 10 BAME leaders, of which two religions are most widely represented (Hindu and Sikh) and only 1.4% of these leaders are Black. This has to change. This is where the discussion of equality and equity comes in. Although both promote fairness, equality achieves this through treating everyone the same regardless of need, while equity achieves this through treating people differently depending on need.

Offering opportunities to disadvantaged communities

Ebrahim Sidat
CEO, Signature Tax

Ebrahim runs the AMS Academy, taking talented youngsters from disadvantaged communities with limited opportunity and mentoring them into successful careers in accounting and finance.

AMS Academy offers school leavers an opportunity and pathway into accountancy and finance. We set it up for two reasons. The first was to address some of the issues we were experiencing recruiting the right candidate. Typically, there is too much focus on recruiting candidates that are the very 'cream of the crop' in terms of academic grades. Each year, we see the largest organisations only taking candidates with the very top grades.

However, we see this as an outdated and flawed model, as these exams do not measure, recognise or value the softer skill set that we believe is crucial for all great accountants. We believe more impetus should be placed on these softer skills early on, as these skills are usually forgotten and not developed until later within a career in accountancy. At AMS, we place far more emphasis on the client experience, as our client bank demands these skills from us as much as our expertise.

The second reason for setting up AMS Academy was so that we can give back and support our communities and local schools. This is extremely important to us; it is engrained in our strategy and DNA. We look to give back, to develop and help people and causes wherever we can. We're a very diverse business and we try to support candidates with limited opportunities from disadvantaged backgrounds and mentoring them into successful careers in accounting and finance.

The Academy has been a pilot until this point, where opportunities have been offered to candidates from disadvantaged backgrounds or to those that may have been knocked back from other organisations. Nine years ago, we took on Yasin, who was paying for his accounting exams himself whilst in another job. Yasin passed his exams but he lacked experience and found it very difficult to find a company to give him an opportunity. We took him on and developed his softer skill sets, helping to shape him over time into an excellent accountant. Today, Yasin is an equity partner and lead partner of our Medical division here at AMS.

This is one of the earliest examples of how investment in a softer skill set has helped to shape and develop what we believe to be more well-rounded accountants. With what we've learnt to date, we're now in a position to build the AMS Academy, which is to be located next to our head office in Manchester. We're looking to create a facility that offers an in-house teaching programme combined with on the job training, so we can develop the right level of talent for the accountants of the future, to support our business and give our clients the support they deserve.

As of next year, we hope to have developed a regimented programme delivered by a qualified trainer, where our students will receive lectures and revision sessions alongside on the job experience. We're looking at partnering with local schools to offer candidates the opportunity for a first-class experience to get into accountancy and finance.

The challenges of relocating to the UK

Tafadzwa Kativu
Tax Assistant Manager, M+A Partners

Eight years working within the Zimbabwe Revenue Authority (ZIMRA) was the start of my journey within the tax profession. I qualified, worked as a tax auditor (inspector) and became a training officer in both direct and indirect taxes. I later found another relationship that would equally shape my long-term future when I fell in love with a girl who was based in the UK and relocated after our wedding in 2013.

Moving to the UK was extremely challenging. It meant leaving my family and friends and embarking on a search for employment within a professional environment that was very different from the one I had left behind in Zimbabwe. After unsuccessfully trying to find a suitable position for a few months, I enrolled for the Chartered Tax Adviser qualification. The CIOT was helpful in exempting me from ATT, on the condition that I passed the awareness paper first. I gained a pass despite the fact that I had to self-study as I could not afford to enrol on a taught course.

To my advantage, I had taught tax legislation for over three years and was pleasantly surprised that some of the case law (my favourite) was the same. Whilst the tax rules are broadly similar, there are some differences, including distinguishing between the UK and Zimbabwean tax treatment of concepts like rollover. I was employed in taxes in 2014 and continued to self-fund (hoping I would pass all three CTA exams in one sitting). I then realised that I would need to pay for some revision courses (which also meant paying for accommodation in London) and eventually I had to enrol on taught courses, allowing me to pass the exams.

As a tax professional, I have never felt disadvantaged based on the colour of my skin. I work with an amazing team at M+A Partners in Norwich and am barely conscious of differences in skin colour or race as I interact with colleagues and clients. Unfortunately, this is not always the same away from work. A complete stranger once shouted a racist remark as they drove past me as I was cycling, which was a truly unpleasant experience.

However, I am mindful of cultural differences, having spent most of my life in Zimbabwe. At times, I do wonder if I might convey more of a relaxed and open persona in professional settings. I often have to choose between adapting in respect of societal values or maintaining my cultural values and norms. In Zimbabwe, making direct eye contact with someone older or more senior is considered a sign of disrespect and confrontation; while in the UK, direct eye contact is a sign of confidence, respect and truthfulness. I find myself making a conscious effort to look directly in people's eyes, reminding myself that this is not a confrontation but a way of engaging in receptive and honest conversation.

As professionals, we all have a role to play in making this career accessible to the younger generations. For the profession to continue diversifying, it is so important to strengthen the relationship we have with those in education by targeting schools and colleges in predominantly minority ethnic communities, showing them how individuals from a wide range of backgrounds and nationalities can find success within the sector. I have recently signed up to volunteer as a member of the CIOT Corporate Taxes Subcommittee and whilst it is early days for me, I feel I have something to contribute to the development of tax law based on my experience of a different tax regime.

URGENT

CHECK YOU HAVE COMPLETED YOUR 2019 ANNUAL RETURN

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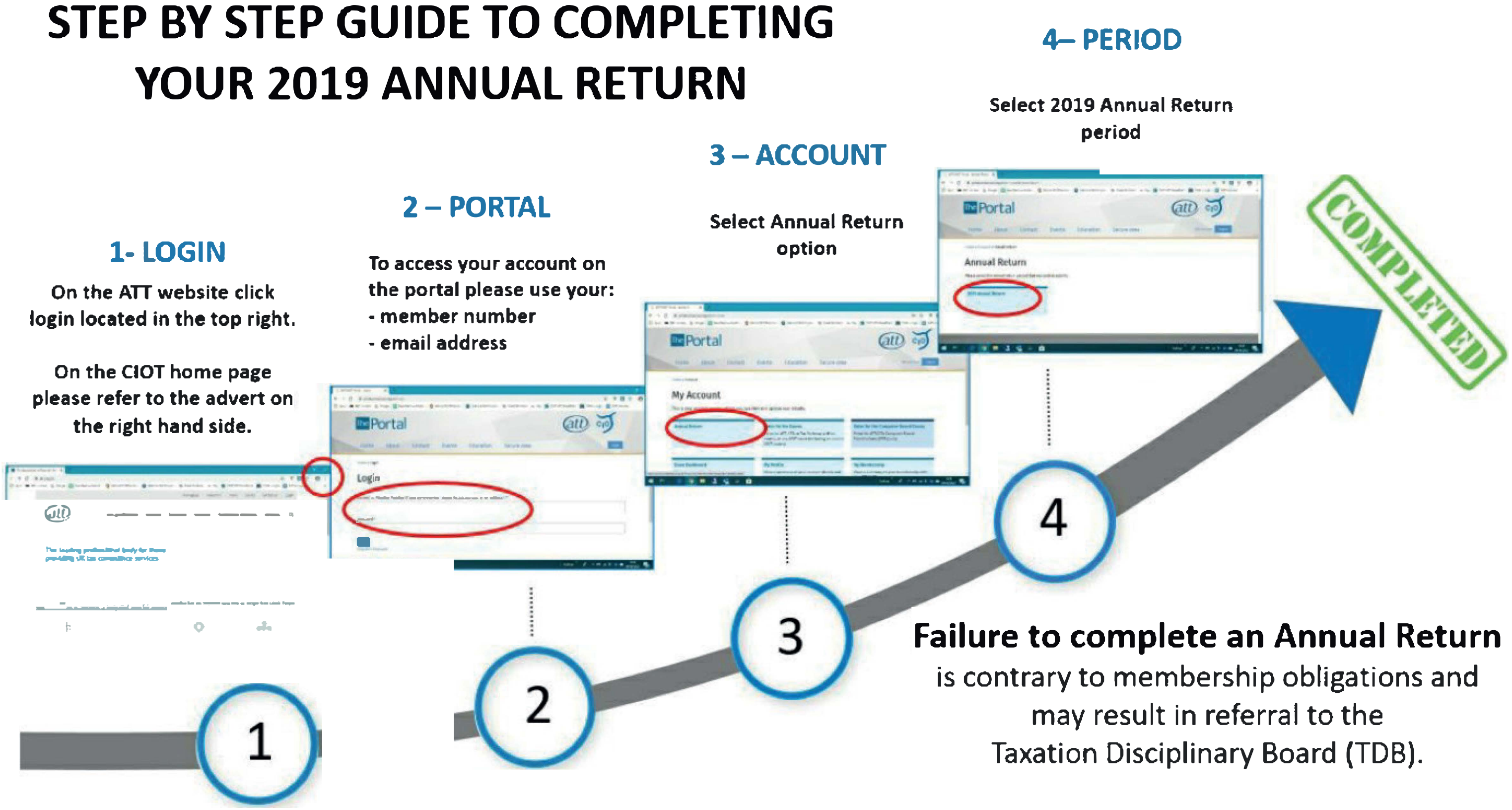

Failure to complete an Annual Return is contrary to membership obligations and may result in referral to the Taxation Disciplinary Board (TDB).

The complex web of support

KEY POINTS

- **What is the issue?**
What are the different forms of state aid and how are all the tax incentives and Covid-19 support packages categorised?
- **What does it mean for me?**
There are limits on the number of types of aid and the amounts a business can receive. It is important not to fall foul of these limits as a clawback of support at a later date can be very damaging to a business, especially if the support is tax related and a clawback involves not just the aid received but also interest, penalties and professional fees.
- **What can I take away?**
Armed with a basic understanding of the state aid rules, you can help your clients to ask the right questions when seeking support, and make sure they are keeping the records they need to show they have taken due care.

James Geary gives an overview of the different forms of state aid, including the recent Covid-19 support measures, and how these different forms of state aid interact

In these unprecedented times, we are seeing support mechanisms from the government which are very generous and wide ranging. These are going a long way towards helping businesses to keep going and weather the storm so that hopefully they can come back stronger in what is looking increasingly like a very different post-Covid-19 world.

The existence of these new schemes has raised a lot of questions around the implications of state aid. We are still bound by the European rules, at least for the time being – we are currently in a transition period which is due to end on 31 December 2020. After this date (which could change), the UK will be free of many of the European Union restraints on the provision of aid; however, as I understand it the European Commission will maintain some supervisory powers for up to four years following this date, which it will use to review approved measures.

What is state aid?

As defined by the EU treaties, 'state aid' is a term used to describe any assistance or subsidy given by a member state that confers an advantage on a selective basis to organisations that take part in economic activity, which distorts or threatens to distort competition. In essence, the state aid rules exist to prevent unfair advantages being given to selected businesses. State aid is permissible when it is by measures that can be demonstrated to have a wider economic benefit, despite their rewarding individual businesses.

There are financial limits as to how much state aid a business can receive, and therefore it is crucial to keep an eye on how the different forms of aid interact. Failure to do so could, in the most extreme cases, mean that a valuable relief or support mechanism is denied to a business because it has previously harnessed another (potentially far less valuable) relief.

Worse, if the aid was a tax incentive (such as research and development (R&D) tax relief or seed enterprise investment scheme (SEIS) income tax relief) and is later withdrawn, it is entirely possible that HMRC may be required to seek late payment interest and penalties in addition to the clawed back cash.

For example, R&D tax relief under the SME scheme is notified state aid. If other forms of aid have been received, there is a risk that CTA 2009 s 1138(1)(a) may deny the R&D relief, instead pushing that claim into the less beneficial R&D expenditure credit (RDEC) scheme. If HMRC discovers this in an enquiry, it is likely to seek penalties if it considers that the business owner has not taken reasonable care.

The different types of state aid

State aid can take a large number of forms, both national and local. It includes some seemingly innocuous support, such as short sessions with a business coach for free or at a reduced price, free or subsidised training courses, and continuing professional development (CPD). However, this article focuses primarily on financial measures which broadly fall into one of two types of state aid: notified state aid and de minimis state aid.

Notified state aid

Notified state aid is provided at a level that requires the provider (whether a government department, local authority or

EXAMPLE: APPLYING SEIS RULES

A new company has obtained grants and support of €100,000 at an early stage, under the de minimis rules, and now wishes to apply for SEIS status for a share issue. Because of the previous aid, only the sterling equivalent of €100,000 of investment can qualify for SEIS status, with any further investment having instead to make use of the less generous enterprise investment scheme.

However, if the company had first raised investment under SEIS for the sterling equivalent of, say, €150,000, it would only be counting €75,000 in its cumulative de minimis aid rolling three year total. If it then applied for the €100,000 in grants and support, it would be able to receive these in full.

otherwise) to make a specific notification to the European Commission. It is not permitted for a recipient to receive more than one form of notified state aid in respect of any 'defined project'. I have spoken to businesses which have fallen foul of this when they have received a small start-up grant for a product development project, but have then been denied R&D tax credits which, in hindsight, would have been worth far more.

Notified state aid includes the following:

- R&D tax relief under the SME scheme;
- grant funding: not all grants are so classified but a lot are, including most from Innovate UK – grant providers should always be able to advise whether they are notifiable or not; and
- support under the Coronavirus Business Interruption Loan Scheme (CBILS) and Bounce Back Loan Scheme (BBLS).

To avoid falling foul of the notified state aid rules, businesses should be clear exactly what the funds will be used for in their applications for grants and support. In the case of CBILS and BBLS, it is likely that the funds are for generally supporting the business rather than specifically for an R&D project, so eligibility for R&D tax relief under the SME scheme is unlikely to be affected. However, it is crucial to be clear about this in applications for CBILS and BBLS and also to keep records to evidence what the funds have been used for.

In particular, the BBLS application process is so straightforward that there is no facility in the process to specify what the loan is for. Internal records would therefore need to be kept to make it clear that the loan is, for example, to provide working capital for the business.

Grants which are notified state aid are often from Innovate UK and are often for 70% of defined project costs. While this means that R&D tax credits cannot be claimed for the same project, at a 70% funding rate this is more beneficial anyway (an R&D tax credit will be worth a maximum of around 33% of qualifying costs) so businesses do not lose out overall. However, where the rate of funding from a grant is lower than 70%, the business owner should always seek advice from their R&D tax adviser so that they can understand the potential impact on their ongoing R&D claims.

If the business cannot claim the R&D tax credits because of the existence of other notified state aid, it can still claim R&D support under the large company R&D expenditure credit (RDEC) scheme. Although this is not as beneficial, it is still worthwhile. Projects which have not been the subject of other forms of notified state aid can still be claimed under the SME scheme.

There are financial limits as to how much state aid a business can receive, and it is crucial to keep an eye on how the different forms of aid interact.

De minimis state aid

Some forms of aid, typically not quite so generous, are classed as 'de minimis' aid, which is subject to an overall financial limit of €200,000 over a rolling three year period. In a small number of business sectors, this figure is lower.

There is a lot of support which classifies as de minimis aid, including:

- seed enterprise investment scheme (SEIS);
- employment allowance; and
- Covid-19 support grants under the Small Business Grants Fund and the Retail, Hospitality and Leisure Grant Fund.

There is also a lot of other local and national state funded support, including discounted advertising or consultancy services, discounted or free training, and purchases of land or property at less than market value. But there are many more forms of support too.

De minimis aid should be tracked on a continuous basis by businesses as there are so many sources. Most small businesses are unlikely to fall foul of the rules for this. However, where a fledgling high growth business is obtaining equity finance, it will want to make use of SEIS to make it more attractive to angel investors.

A note about SEIS

SEIS status means that an investor can potentially claim a tax refund equal to 50% of the amount they invest for shares. However, this relief is classified as de minimis aid and counts against the company's rolling three year limit of €200,000.

The way this works is rather odd (see example above). When a company is seeking SEIS investment, the maximum it can obtain under the scheme is £150,000, and any de minimis aid obtained in the previous three years will be deducted from the amount it can raise under the scheme. However, if things happen the other way round, and SEIS shares have been issued for £150,000, then the amount the company has to track is the tax relief obtained by the investors; therefore, potentially only £75,000 (converted to euros at the time of the investment) has to be tracked for the following three years. This approach is confirmed by HMRC in its manuals at VCM2040.

General Block Exemption Regulations

Certain forms of aid fall under the EC's General Block Exemption Regulations framework. This framework covers a range of types of state aid that (subject to conditions) do not require notification to the EC.

In practice, where aid falls into the Block Exemption rules, a business can be confident that this will not affect its eligibility for other forms of state aid.

The forms of aid covered by the Block Exemption rules is wide ranging, but in terms of tax this includes risk finance investments, in particular the enterprise investment scheme (EIS).

When the conditions for a state aid to fall under Block Exemption are examined, many of these are identical to the rules of the EIS scheme, in particular the limit of €15 million of support and the requirement that the aid commences (broadly) within seven years of a first commercial sale.

Other support which is not state aid

Forms of support which are not classed as state aid include the following very current support mechanisms:

- The Coronavirus Job Retention Scheme: Although generous, this is not classed as a state aid because it is not a selective measure and therefore is not considered to distort competition.
- The Future Fund: The government has confirmed that this scheme is a convertible loan advanced on commercial terms, and is therefore not classified as state aid.

Innovate UK's current range of continuity grants and loans, although technically state aid, fall under a Temporary Framework for State Aid which applies until 31 December 2020, and has a limit of €800,000 per business. This framework was introduced by the EC in March in specific response to the Covid-19 pandemic and exists to provide EC member states with the ability to offer a wider range of support to minimise the economic impact of the crisis.

Companies in difficulty

Many forms of state aid have a requirement that the business must not be 'in difficulty' by virtue of the EC rules. The Covid-19 specific support mechanisms, while still bound by this rule, usually require a snapshot of the business at 31 December 2019 in determining this, so that the pandemic itself should not have impacted the business at that stage.

There are various ways a business can be classed as 'in difficulty', but for a continuing business the usual test is quite formulaic, and requires you to determine whether accumulated negative profit and loss reserves are more than 50% of the subscribed share capital. Where it appears that this may be an issue, particularly for an early stage company worth reviewing the company's capitalisation policies, particularly around R&D where a product is not yet commercialised. Many SME businesses will simply expense their qualifying R&D costs instead of capitalising these as intangible assets, and often it will be possible to capitalise these R&D costs with the result that the 'in difficulty' test will not be an issue.

The accountant and the client will have to critically review the capitalised R&D each year and write off any costs in full that relate to aborted projects, as well as amortising any commercialised project R&D at an appropriate rate at the appropriate time.

In conclusion

As there are now so many kinds of state aid available, it has become more important this, in particular where this is 'de minimis' aid. For example, if a business hits the €200,000 maximum, it would be very easy to do something which all small businesses may take for granted now and claim their employment allowance of £4,000 through the payroll to discount the employer's NIC – without realising they might not be allowed to do so due to the level of de minimis aid received elsewhere.

With the UK's impending exit from the EU, and the time approaching when we will no longer be bound by the EC regulations, it is a somewhat ironic turn of events that have led to such a large number of support mechanisms being launched in 2020, meaning that it has suddenly become so important to ensure a basic understanding of state aid interactions.

PROFILE

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Profile: James heads the Corporate Tax team at Randall & Payne LLP. He has worked in tax for 22 years and has over 17 years' experience in providing specialist Corporate Tax advice, in particular around R&D Tax Incentives. He is also Chair of the CIOT's Severn Valley Branch and sits on the CIOT's OMB committee.

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  Susan Ball, RSM UK Tax and Accounting Limited
- Principal private residence update and UK residential property capital gains tax compliance
  Meg Saksida, Meganomics
- Panel session: COVID-19 tax measures
  Chaired by Jeremy Coker, ATT President
  Heather Self, Blick Rothenberg
  Helen Thornley, Association of Taxation Technicians
  Sharron West, Low Incomes Tax Reform Group
  HMRC panellist TBC

Thursday

- Topical fiscal share valuation issues and negotiating with HMRC Shares and Assets Valuation
  David Bowes, Bruce Sutherland & Co
- Employee ownership trusts – an alternative exit route for OMB owners
  William Franklin, PettFranklin LLP
- Panel session: The future of UK tax in a post-COVID-19 world
  Chaired by Glyn Fullelove, CIOT President
  Julia Cockroft, Bristows
  Dr Stephen Daly, King's College London
  Pete Miller, The Miller Partnership
  Heather Self, Blick Rothenberg

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Wednesday 18.30 - 19.15
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Summer holiday boost

Neil Warren answers some practical questions about the reduced 5% VAT rate that will apply to many supplies made by the tourist and hospitality industry until 12 January next year

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KEY POINTS

- **What is the issue?**
The temporary 5% rate of VAT will apply to many supplies made in the tourist and hospitality industry but not all of them. The article explains how to ensure the correct rate is charged in each of the three different trading categories.
- **What does it mean for me?**
Care will be needed with some issues, such as how to deal with payments made when 20% VAT applied but where the actual supply takes place during the window of the temporary VAT reduction. If any mixed supplies are being made, it is also important to consider where output tax must be apportioned.
- **What can I take away?**
The flat rate scheme percentages have been reduced for three categories affected by the rate reduction. In some cases, it might be worth advising clients to leave the scheme. The article also considers why no anti-forestalling legislation was introduced, which means that the 5% rate could be extended to next year's holiday bookings in some cases.

When asking what supplies will be subject to 5% VAT between 15 July 2020 and 12 January 2021, it is logical to divide the changes into three different categories:

- **food and drink sales:** affecting pubs, cafes, restaurants, members clubs, fast food take-aways;
- **overnight accommodation:** hotels and similar establishments, caravan parks, camp sites, holiday cottages; and
- **admission fees to tourist attractions:** shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas, exhibitions, similar cultural events and facilities.

With regard to food and drink sales, the reduced rate will apply to all food and drink sold on the premises of a business, with the exception of alcohol which continues to be subject to 20% VAT. For take-away sales, the reduced rate will apply to hot food and hot drinks, again excluding hot alcoholic drinks such as mulled wine. All other take-away sales will be subject to the same VAT rate as now. See **Box 1**.

Should a business reduce its prices to pass on the VAT savings or keep prices the same and increase its profits?
It is up to business owners to make a commercial decision. Many businesses price their goods on a VAT inclusive basis and account for output tax of 1/6 on their gross sales. The reduction to 5% VAT means that the relevant fraction will be 1/21. There is no problem if a business keeps its prices the same and increases its profits. For example, it would probably involve a lot of work for a business having to reduce the price of a cup of coffee from £3.60 to £3.15 to pass on the VAT saving to customers.

How will a business deal with sales that are subject to different rates of VAT, say a 'pie and pint' offer in a pub?
The first challenge is to consider whether there is one main supply, with the other supplies being incidental. If this is the case, then the VAT charge wholly depends on the liability of the main supply. So, for example, a vodka drink with a splash of coke added is a single supply of an alcoholic drink – the coke is ignored.

The second challenge is to consider the perception of customers: what do they expect to receive when they part with their cash? In the case of a 'pie and pint' offer, they clearly expect both food and drink. This is a mixed supply and output tax must be apportioned on any fair and reasonable basis, so that 5% VAT is paid on the pie and 20% on the beer.

A problem with holiday bookings is where advance payments were made when the 20% VAT rate applied but the actual stay takes place in the period when the 5% rate is relevant. What is the situation here?
If a sales invoice is raised or payment received in advance of a booking, this

creates an 'actual tax point' and the VAT payable depends on the rate in force when the payment was made or invoice issued to the customer; i.e. 20% VAT up to 14 July. However, there is a concession in the legislation that the whole of the charge for a supply can be based on the 'basic tax point'; i.e. when the goods or services are supplied to a customer. This concession is at the discretion of the supplier – it cannot be demanded by the customer. See **Box 2**, which shows two different situations.

The difference is important. If a business has issued an invoice and added VAT, then any VAT reduction must be passed back to the customer by issuing a credit note. The supplier cannot pocket the VAT saving.

Many advisers were surprised that there was no anti-forestalling legislation to prevent the 5% rate being applied to sales invoices raised or payments received for next year's bookings. Why did this happen?

The changes were legislated on 14 July by the VAT (Reduced Rate) (Hospitality and Tourism) (Coronavirus) Order SI 2020/728. This legislation introduced new groups 14 to 16 to VATA 1994 Sch 7A; i.e. the reduced rate schedule. And you are right: there was no anti-forestalling legislation, which was a surprise to many advisers. Anti-forestalling legislation would prevent advance payments and invoicing on or before 12 January 2021 benefiting from the 5% rate if the actual supply took place after this date.

I asked HMRC the reason and a spokesperson said: 'The new temporary reduced rate of VAT for tourism and hospitality was introduced to help businesses in these sectors that have been severely impacted by Covid-19 and social distancing measures. As no anti-forestalling legislation was introduced to accompany this relief, normal tax point rules will apply. This will result in all supplies of affected services which are paid for, or take place, in the six months in which the relief is in operation being covered by it. Allowing businesses to obtain the relief on bookings which are pre-paid during the six months but take place in the future will aid in the recovery of these sectors, which should also support employment as lock down restrictions are lifted.'

What are the practical challenges with admission fees to tourist attractions?

The good news is that the legislation is very specific about which venues will qualify for the 5% rate on admission fees, as listed at the beginning of this article. However, the extension of the reduced rate to 'similar cultural events and facilities' creates a grey area, which is open to interpretation. HMRC guidance includes the example of a botanical garden qualifying for the reduced rate within this definition. I visited a seaside a few weeks ago and paid an admission fee to go on the pier. I feel very confident that this fee qualifies for the reduced rate as a tourist attraction.

There is an important sentence in the HMRC guidance: 'It is the responsibility of each taxpayer to demonstrate that its supplies are eligible for the temporary reduced rate.' In cases of doubt, however, HMRC has confirmed that customers 'should contact the VAT enquiries helpline on 0300 200 3700 who will be able to provide further support'.

Finally, one omission from the 5% list and confirmed as an exclusion in the guidance is admission to sporting events.

Where can I find more information about the rate reduction?

HMRC issued Revenue and Customs Brief 10/2020 on 9 July 2020, which includes links to specific guidance under the 'more information' section. Three public notices have been updated and are a particularly useful source of information.

Finally, what is the situation with the flat rate scheme?

HMRC has amended the flat rate percentages for three categories affected by the rate reduction. The revised rates are as follows:

- catering services, including restaurants and takeaways: 12.5% to 4.5%;
- hotel or accommodation: 10.5% to 0%; and
- pubs: 6.5% to 1%.

In some cases, it might be financially worthwhile for a business to leave the scheme, particularly if it has a lot of sales that are subject to 5% VAT. However, once a business leaves it cannot rejoin for 12 months. So, the VAT saving made by leaving now might be lost when we are back to 20% in January and it cannot rejoin until July 2021 (see VAT Notice 733 s 12).

BOX 1: VAT ON FOOD AND DRINK

John goes into his local pub and buys a cheese roll, a packet of crisps, a pint of beer, a cup of coffee and a hot pizza. All sales will qualify for 5% VAT apart from the beer, which is excluded as an alcohol drink.

He orders the same food and drink the following day but from his local take-away café. The coffee and pizza will qualify for the 5% rate of VAT as hot take-away food and drink but the beer will be subject to 20% VAT. The VAT liability of the crisps (20%) and cheese roll (zero-rated) remain unchanged because they are not hot food.

BOX 2: ADVANCE PAYMENTS FOR TWO HOTELS

Marie paid an advance deposit of £500 plus £100 VAT to Posh Hotel in January 2020 for her hotel stay in August. She will pay the balance of £1,000 plus VAT when she arrives. Posh Hotel can just charge 5% VAT on the £1,000 balance and not adjust the 20% VAT charge on the deposit. However, it could issue a credit note to Marie for £75 so that she benefits from the 5% VAT rate on all of her booking fee. All credit notes must be issued to customers within 45 days of the VAT rate change (see VAT Notice 700 paras 30.7.4 to 30.9.2 and specifically para 30.7.5).

Bob is sole trader of a seaside guest house and never issues invoices to his customers. He prices his services on a VAT inclusive basis and takes a non-refundable deposit of £50 per customer when the booking is made. Let us assume a guest paid a deposit in January and the balance of £400 when they arrive in August for their stay. Bob's output tax liability is:

£450 x 1/21 = £21.43

with the basic tax point option of accounting for VAT. He has already paid output tax of £8.33 on the deposit back in January (20% VAT), so will include the balance of £13.10 on the return that includes August.

PROFILE

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Profile Neil Warren is an independent VAT author and consultant, and is a past winner of the Taxation Awards Tax Writer of the Year. Neil worked at HMRC for 13 years until 1997.

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Finding a simpler way

Bill Dodwell asks whether we can create a simpler system of tax to benefit the smallest companies

PROFILE

Name **Bill Dodwell**
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Profile Bill is Tax Director of the Office of Tax Simplification and Editor in Chief of *Tax Adviser* magazine. He is a past president of the Chartered Institute of Taxation and was formerly head of tax policy at Deloitte. He is a member of the GAAR Advisory Panel. Bill writes in a personal capacity.

On 20 July, the Office of Tax Simplification (OTS) published an evaluation update on its Corporation tax review and its Accounting depreciation or capital allowances review, combined with a stock take of its work on personal service companies and self-employed people's taxation (see bit.ly/3jvgZIz). This is the second recent evaluation of previous reports published by the OTS; the first, published in October 2019, looked at the November 2017 VAT report.

The OTS hopes that the update will be a useful contribution to current thinking, noting the chancellor's statement in conjunction with the 26 March 2020 announcement of the Covid-19 support package for self-employed people: 'It is now much harder to justify the inconsistent contributions between people of different employment statuses…'

Helping small companies

A key ambition of OTS work has always been to find a simpler way for very small companies to file corporation tax returns. Arguably, there is now a simpler system for many self-employed individuals, in that the cash basis has fewer adjustments than for accruals-based accounting and reporting. About 1 million individuals now file using the cash basis. It's best suited to labour only businesses and is not right for everyone. However, the cash basis doesn't apply to companies, primarily no doubt because company law and accounting standards require that companies prepare accounts on the accruals basis.

The evaluation note explores whether it might be possible for very small companies to adopt a simpler system, with a short list of tax adjustments, instead of being required to consider (if only to dismiss) the much longer list in current legislation. The short list would inevitably include disallowing personal expenses and other items prescribed by law, such as entertaining and penalties. There's a debate about how best to give tax relief for the cost of plant and machinery. One route might be to keep capital allowances and disallow depreciation – which would mean immediate deductions for all costs aside from on cars, thanks to the annual investment allowance. An alternative might be to give tax relief for accounting depreciation, perhaps with an optional top-up to mimic the annual investment allowance.

The note also highlights the following:

Personal service companies

The OTS suggests renewed consideration of enabling a small personal service style business to operate through a UK limited company whilst being treated as transparent for tax. This would remove the business from corporation tax (salaries, dividends and loans to participators being ignored for tax purposes) and permit the relative ease of a self-employment style tax calculation.

Tax administration

The OTS reiterates comments in its Tax reporting and payments review about the merit in HMRC doing more to enhance the personal tax account and to integrate it with the business tax account, to provide an end-to-end tax reporting and payment service and facilitate the simplification of tax administration for self-employed people. It is thus pleasing to find the Tax Administration Strategy from the financial secretary, the Treasury and HMRC, released on 21 July, specifically refers to a single digital account for individuals, combining and enhancing the personal tax and business tax accounts (see bit.ly/2CWV6kv).

Employment and self-employment

The OTS is interested in the possibility of a statutory definition of employment for tax purposes being developed. This need not be an attempt simply to codify the current case law principles but could have different features. A better definition would not be the answer to the current disparity of tax/NIC treatment of employed and self-employed people, but it should be easier to know which regime should apply.

Review of capital gains tax

On 13 July, chancellor Rishi Sunak wrote to the OTS to commission a review of capital gains tax in relation to individuals and smaller businesses. He said:

'I would like this review to identify and offer advice about opportunities to simplify the taxation of chargeable gains, to ensure the system is fit for purpose and makes the experience of those who interact with it as smooth as possible... This review should identify opportunities relating to administrative and technical issues, as well as areas where the present rules can distort behaviour or do not meet their policy intent. In particular, I would be interested in any proposals from the OTS on the regime of allowances, exemptions, reliefs and the treatment of losses within CGT, and the interactions of how gains are taxed compared to other types of income.'

On the following day, the OTS published its call for evidence. Please do reply to our survey or send us an email with your thoughts. The call for evidence is lengthy, as it attempts to cover everything, but answers on one or more aspects are very welcome. There is an initial call for comments on how CGT fits into the wider panoply of UK taxation, with a longer deadline for comments on the detail of the tax, its reliefs, exemptions and administration. See bit.ly/3hF8Gbx.

Tax debt collection

Chris Holmes and *Jennifer Jones* set out HMRC's powers to collect unpaid taxes from individuals and businesses

KEY POINTS

- **What is the issue?**
HMRC's systems automatically recognise when tax payments have not been made on time, flagging the debt to the Debt Management and Banking Unit. The rate at which a tax debt progresses through the collection process depends on the nature of the tax and the amount owed.
- **What does it mean for me?**
If the debt remains unpaid, HMRC may issue a Notice of Enforcement, announcing its intention to enforce recovery of the tax debt. If the notice does not result in full payment within 14 days, HMRC may commence enforcement action.
- **What can I take away?**
Effective tax debt collection will likely be a priority for HMRC following the current crisis. Taxpayers and their advisers should be aware of HMRC's debt collection powers and be proactive in order to manage risks and minimise unnecessary costs and disruption, seeking specialist advice as necessary.

In the June edition, we looked at the principles when dealing with HMRC's Debt Management and Banking (DMB) Unit and some practical tips for agreeing a Time to Pay Arrangement (TTPA) with HMRC. Whilst the quantum and nature of the tax debt is significant in determining the likelihood of agreeing such an arrangement, understanding where the debt is in the collection process is also key to anticipating how much time a taxpayer may have under any agreement and what HMRC's attitude may be. This article looks at the tax debt collection process and some of the powers available to HMRC to recover tax debts.

Overview of the collection process

HMRC's systems automatically recognise when tax payments have not been made on time, flagging the debt to DMB. The rate at which a tax debt progresses through the collection process depends on the nature of the tax and the amount owed.

Where the debtor's contact details are unknown, HMRC can issue a notice to a third party under Finance Act 2009 Schedule 49 to obtain the debtor's contact information. Where debtors cannot be traced, in some circumstances responsibility for PAYE and NIC debts may be transferred to other parties; e.g. a deliberate failure to pay in cases involving a managed service company, an employment intermediary or even an employee. Specialist advice should be sought if HMRC is seeking to transfer debt.

Once the debtor's identification is confirmed, HMRC's collection policy is generally as follows.

Statements of Account

After the payment due date elapses, HMRC will simply issue Statements of Account as a reminder of the amount due.

A request to call

After a period of time, HMRC will write to the taxpayer making specific reference to the debt and request a call to discuss it. Occasionally, for larger debts, HMRC may call the taxpayer directly and ask them if there is a reason for non-payment. It is not uncommon for TTPA discussions to take place at this stage.

Taking control of goods

If the debt still remains unpaid, HMRC may issue a Notice of Enforcement. These notices announce HMRC's intention to enforce recovery of the tax debt. If the notice does not result in full payment of the tax debt within 14 days, HMRC may commence enforcement action under the Tribunals, Courts and Enforcement Act (TCEA) 2007 and send its 'field force' officers (the bailiffs) to visit a business's premises or a taxpayer's home to identify, seize and eventually sell assets to settle the tax debt.

At the initial visit, the taxpayer is usually given a period of time to settle the debt or to agree a payment plan. The field force officer may walk around the premises making a note of the assets that could be sold to cover the tax debt and any associated costs of selling them, such as auctioneer fees. Those items will be written onto a 'Controlled Goods Agreement' (a 'Walking Possession Agreement' in Northern Ireland), following which the taxpayer is unable to sell or otherwise dispose of the listed assets. If the

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taxpayer fails to agree payment, HMRC will return and remove the listed goods.

If more funds are raised, net of fees such as auctioneers and advertising costs, upon sale of the seized assets, then the excess balance is returned to the taxpayer. However, if the funds (net of costs) are less than the debt due to HMRC, then it will pursue collection of the remaining debt. It should be noted that additional fees will be added to the outstanding debt for enforcement action by way of taking control of goods, potentially making a visit from field force costly for the taxpayer.

HMRC increasingly uses third party bailiffs and enforcement agencies to facilitate the collection of the tax debt. The collection agencies are used simply because when a taxpayer is contacted by someone outside HMRC, it often prompts payment or agreement of a payment plan. (In Scotland, such recovery action can only be carried out under court direction by Sherriff Court officers.) If the total debt is not settled through taking control of goods, HMRC will escalate the matter and attempt to collect the debt through DMB or HMRC Late Stage Resolution Department. At this stage, communications with the taxpayer will include the threat of legal action in respect of the debt.

Bankruptcy/insolvency

This is ultimately the final sanction for HMRC. Petitioning to bankrupt individuals and to wind up companies is carried out by the DMB's Enforcement and Insolvency Office (EIO).

It is important to understand that the EIO does not act like most commercial creditors. It will seek to make a taxpayer bankrupt even where it is clear that it will receive nothing. Such action is permitted even where an assessment is under appeal and awaiting a tax tribunal hearing, where collection of tax is not postponed.

Action	Flat fee	Plus
Issuing a notice of enforcement	£75	
Take control of goods	£235	7.5% of the proportion of the main debt over £1,500
Goods taken and sold at auction	£110	7.5% of the proportion of the main debt over £1,500

Note: The fees above are for England and Wales. Fees levied in Northern Ireland differ.

For individuals, the EIO will first serve a Statutory Demand (requesting payment within 21 days) before petitioning the court. The court will then issue a hearing date for the judge to consider making a bankruptcy order. For companies, HMRC will use the compulsory liquidation procedure, by issuing a winding up petition to the court.

Once a petition has been issued, the timetable is very much governed by the court. In the case of a company, the winding up petition will be advertised, bringing it to the attention of creditors and others (including bankers, who are likely to freeze bank accounts) unless the company obtains a court order preventing the advertisement. Even if the company can settle the debt before the date of the hearing, the reputational damage associated with such proceedings can be detrimental to the business.

It should be noted that the taxpayer can seek a TTPA with HMRC at any stage in the collection process. However, the further a tax debt is along the collection process, the less favourable any agreeable TTPA terms will be. For example, HMRC may agree a TTPA covering 12 months for a tax debt at the initial stages of the collection process but only agree to a couple of months if that same tax debt were in the latter stages of the collection process.

HMRC powers in relation to tax debts

Further to progressing the tax debt through the general collection process, HMRC has a range of powers at its disposal to recover tax debts.

Tax collection via coding notices

HMRC can alter individuals' coding notices to collect self-assessment tax, Class 2 National Insurance debts, contract settlement debts and tax credit overpayments by deduction at source from their salary or pension.

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The amount that can be collected this way varies depending on the taxpayers earnings. If a person earns less than £30,000 per annum, then HMRC can collect up to £3,000 via their tax code. If a person earns more than this, HMRC can collect more – up to £17,000 if the person earns £90,000 or more. However, the limit for collecting self-assessment balancing payments and PAYE debts remains £3,000. If the amount owed exceeds these limits, HMRC will not collect the debt via the individual's coding notice but will use other methods instead.

Direct recovery of tax debts

Finance (No 2) Act 2015 s 51 and Schedule 8 enables HMRC to collect tax and duties due to it directly from taxpayers' bank and building society accounts. This is known as the 'direct recovery of debts' (DRD) and targets those taxpayers who have the means to pay but choose not to do so.

Whilst the use of these provisions has been limited to date, a review of the DRD intervention published by HMRC in April 2019 concluded that the provisions have a significant deterrent effect. Of the 22,667 cases subjected to the DRD provisions between March 2016 and December 2018, payment was recovered early in the DRD process with only 19 cases requiring actual deduction from the taxpayers' bank accounts.

Direct recovery can only be considered for debts of £1,000 or more and a number of safeguards are in place under these provisions, including the following:

a) Every debtor must receive a face to face visit from HMRC agents before their debts are considered for recovery under the DRD.
b) When determining the amount of funds available to settle the taxpayer's debt, an amount of at least £5,000 must be left in the debtors account(s) with the bank/building society in most cases.
c) Debtors affected by DRD will have 30 days to object before any money is transferred to HMRC.
d) HMRC will not use its DRD powers to recover amounts owed by vulnerable taxpayers. Further guidance on how HMRC identifies 'vulnerable taxpayers' can be found at bit.ly/37aGzNa.

After the face to face visit, taxpayers who are not vulnerable and have sufficient money in the bank but still refuse to settle their debts can be considered for debt recovery. They have up to 30 days to object, although their bank accounts will be frozen during that period which may cause significant issues, particularly for businesses.

If the DRD provisions are applied by HMRC, it is important to check that any notices issued are correctly issued and valid. Objections can be made to HMRC, although the grounds of appeal are limited. If HMRC rejects an account holder's objections, then the account holder may appeal to the County Court.

Notice of requirement to give security for tax debts

With the aim of limiting its exposure to potential future bad tax debts, HMRC may issue a notice of requirement to give security to companies and their directors, or to LLPs and their partners, if:

a) they failed to comply with their tax obligations in their previous or current business; or
b) HMRC has spotted that the directors were connected or associated with multiple business failures.

Security can be demanded for debts of PAYE, NIC, Construction Industry Scheme, corporation tax, VAT, insurance premium tax, aggregates levy, climate change levy and landfill tax. The notice requires the company and its directors, or the LLP and its partners, to give security in respect of tax within 30 days (or a longer period if HMRC permits). The company and its directors are therefore jointly and severally liable to give the full amount of security.

HMRC will not accept assets as security. The security can only be provided by cheque or bank transfer, opening a joint bank account with HMRC or providing a guarantee in the form of a performance bond from an approved financial institution.

If the taxpayer disagrees with anything in the notice, then they must appeal to HMRC within 30 days of the date of the notice. If no agreement is reached, the matter may be referred for internal review or a hearing before the First-tier Tribunal. Furthermore, if the company knows that it needs a TTPA for any tax debts or the security amount, then they must contact HMRC to request one before the date that the security becomes due. The security is normally held for 24 months but if the company or LLP meets its normal tax obligations (including payments), the holding period may be reduced. When it is no longer required, the security is either repaid or set against outstanding tax debts.

It must be noted that failure to give security is a criminal offence and HMRC may prosecute the company and directors, or the LLP and partners, and convicted parties will be fined up to £5,000. In addition, the taxpayer may be entered into the Managing Serious Defaulters regime as a result of being asked to provide security.

Further information about the requirement to give security can be found in HMRC's Security Guidance Manual and in its series of factsheets (SS/FS1, SS/FS2a, SS/FS2b and SS/FS3–SS/FS6), and at bit.ly/2CdeSbf and bit.ly/3ixEQqB.

Accelerated payment notices for scheme users

Where the 'debt' arises from tax in dispute because of a tax avoidance scheme, HMRC may issue an accelerated payment notice (APN) to the taxpayer under FA 2014 ss 219-229.

An APN effectively prevents postponement of tax while an enquiry or appeal is ongoing. The payment must be made within 90 days of the APN or 30 days after HMRC issues a determination in response to any representations made following the notice's issue. However, a TTPA can be agreed with HMRC in respect of the amount due.

If the taxpayer instead decides to withdraw from participating in the scheme and settle the outstanding tax, then it may be possible to do this by way of a contract settlement following discussions with the HMRC officer. HMRC is often prepared to include in the contract settlement instalment payments which may be over a period in excess of 12 months. A better result may be achieved in terms of time to pay upon settlement than via a TTPA negotiated with DMB in respect of the APN. However, having settled their tax position with HMRC in relation to the scheme, the taxpayer will not benefit if the scheme is ultimately found to achieve its original aims.

Court action

For tax debts of less than £2,000, HMRC may seek 'summary proceedings' from the Magistrates' Court (TMA 1970 s 65 and DMBM660040). For larger tax debts, HMRC may refer the case for recovery to other courts such as the County Courts or High Court (TMA 1970 ss 66 and 68). In practice, a County Court judgment (CCJ) does not give HMRC any powers of collection that it does not already have.

Therefore, a CCJ is generally only sought where its threat is believed likely to elicit settlement of the debt by the taxpayer – on the basis that the CCJ would seriously impact a person's access to credit, and could adversely impact their professional status.

Effective tax debt collection will likely be a priority for HMRC following the current crisis. HMRC's powers will be expanded following Royal Assent of the current Finance Bill as that prioritises certain tax debts on insolvency, as well as making directors and LLP members jointly and severally liable for tax debts in situations involving tax avoidance, evasion or phoenixism. Taxpayers and their advisers should be aware of HMRC debt collection powers and be proactive in order to manage risks and minimise unnecessary costs and disruption, seeking specialist advice as necessary.

Will you be caught by IR35?

Edmund Paul considers the steps which businesses should take to prepare for the deferred IR35 legislation to be introduced on 6 April 2021

KEY POINTS

- **What is the issue?**
The IR35 legislation is coming into effect from 6 April 2021. Businesses should once again consider the steps they should take to prepare for the changes.
- **What does it mean for me?**
Based on our experience of the April 2020 implementation, businesses that failed to prepare for the changes experienced higher costs and disruption. Businesses should take steps now to prepare for the changes, including review records, correspond with contractors and update engagement contracts.
- **What can I take away?**
The preparations made for the April 2020 implementation should be revisited to understand whether the contractor population has changed, assessments made remain valid and if processes can be enhanced.

Due to the ongoing coronavirus pandemic, it was decided that the implementation date for the IR35 legislation would be postponed until 6 April 2021. Many businesses had already undertaken significant preparation for the arrival of this legislation, which was often fraught with difficulty.

Businesses are now once again considering the steps they should take to prepare for April 2021. This article looks at some of the practical implementation challenges that we have seen and the ways in which businesses have sought solutions.

This article focuses on personal service companies (PSC), as it is the most common intermediary through which businesses engage with contractors.

Contractors caught by IR35

In order for a worker to be caught by the IR35 legislation, the worker would need to own a material interest in the PSC through which they provide their services.

The draft legislation defines a 'material interest' as having:

- beneficial ownership of, or the ability to control, more than 5% of the ordinary share capital of the company;
- an entitlement to receive more than 5% of any distributions that may be made by the company; or
- an entitlement to receive more than 5% of the assets on winding up.

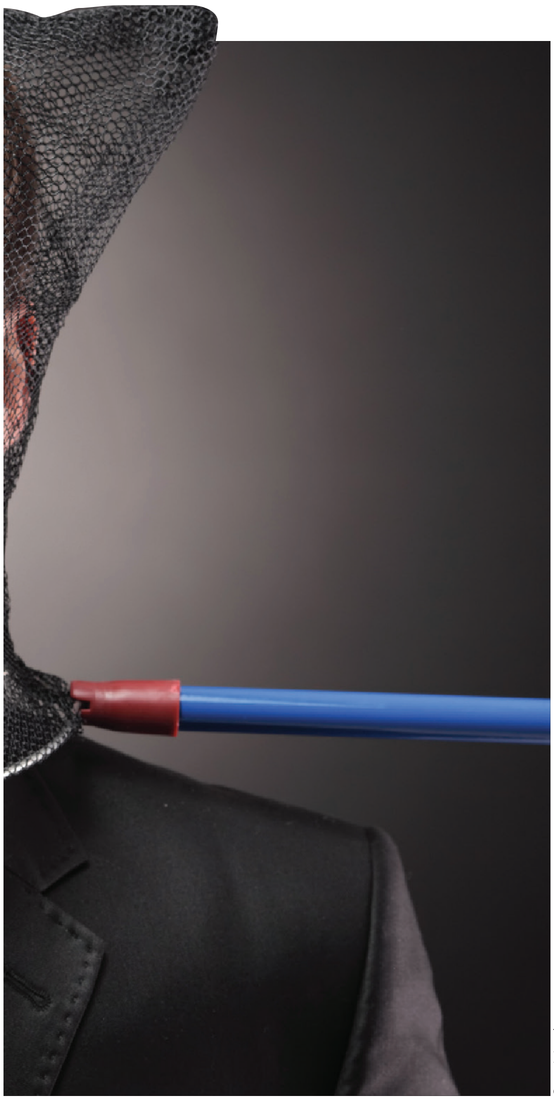
However, there can be difficulties in identifying whether a worker has a 'material interest' in an intermediary.

Practical complexities in identifying ownership structures

Publicly available information on corporate ownership structures is scarce. The most accessible data can be found within Companies' House.

Companies' House can confirm whether an individual owns over 50% in the corporate entity. However, it will not identify scenarios where an individual owns between 5% and 50% of the intermediary, nor if the contractor is entitled to distributions or assets on winding up. Therefore, its use in determining which contractors fall within the scope of the IR35 legislation is limited.

Given this, many engagers chose to reach out to contractors when trying to identify their impacted populations. Approaches varied, with some businesses requesting detailed information on ownership structures, whereas others relied on representations from contractors as to whether the legislation applied. This was often coupled with contractual indemnities to ensure accurate information was supplied.



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PROFILE

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When solely relying on information provided by contractors, some clients found contractors were not forthcoming in providing data. Alternatively, possibly because there was a desire to continue arrangements as is, only favourable datasets were provided.

The requirement to determine whether the IR35 legislation applies falls on end clients. As such, HMRC would seek any underpaid income tax and NIC in the first instance from the engaging entity. To recover this by using a contractual indemnity could be complex, especially as contractors may simply not have the money available to settle any claim. There may also be a delay between any assessment being raised by HMRC and the business reclaiming the amounts under the indemnity.

Next steps

Businesses should ensure that there is sufficient time to review records, correspond with contractors and update engagement contracts (where required). Experience from last year shows us that businesses which took action well in advance were best prepared for implementation and expecting less disruption.

There is no one size fits all approach; each business should consider the most efficient and effective method to review its contractor population. The most appropriate approach will depend on the quality of the internal data held on contractors, the resources available to undertake such an exercise, and the relationship between the business and contractor.

Where a business is relying on representations made by contractors, ensure that there are sufficiently robust processes to validate the information provided. This can range from a sense check of the data against Companies' House to requesting detailed backup documentation from the contractor.

Identifying the 'end client'

Entities which benefit from the personal service of a contractor (i.e. end clients) will be responsible for determining the contractor's employment status and preparing the status determination statement (SDS). Where an entity does not comply with its obligations under the IR35 legislation, the liability to any underpaid income tax and NIC (as well as interest and penalties) would rest with the non-compliant end client.

Whilst in most cases it will be clear who the end client will be, for outsourced services the reporting obligations may not be clear. Additional complexities can arise where there is a long chain of intermediaries, such as multiple agencies.

Typically, an outsourced service envisages a product being received. Where a service is received and that service primarily relates to the provision of specific individuals, potentially also naming them, then there is a risk that it would not be an 'outsourced service'. Arrangements where there is a mixed service contract in place, or the agency has a bespoke payment arrangement (e.g. commission based), should be carefully considered.

Methods of identifying the end client where an outsourced service is provided

As a starting point, the contract should be considered to understand the services being provided. A true outsourced service generally specifies a fixed scope of services with a fixed fee on completion of that deliverable. On the flip side, a personal service contract would provide an individual for an agreed daily rate.

Businesses should consider whether the contractor's services are similar to those provided by its employees. Where this is the case, there is heightened risk that the service is not an outsourced service.

HMRC suggests that where the service provided by the worker aligns closely with the nature of a business, this indicates that an outsourced service is not being provided.

Next steps

Businesses should reach out to suppliers to agree who will be undertaking employment status assessments, as this will help to avoid disputes on how different parties interpret their obligations.

Consideration should be given to engagements with small companies (as defined by Companies Act 2006), as they fall outside the scope of the changes. The rationale for the decisions taken should be documented and retained in the event of a HMRC enquiry.

Processes should also be in place to monitor the evolvement of engagements. Whilst an engagement may initially be outsourced, with the passage of time they can evolve and become one of personal service. Periodic reviews are recommended to ensure that the correct entity undertakes the employment status assessment.

Many clients have found that current contractual wording does not reflect the true nature of engagements. As part of the preparation for the upcoming changes, businesses should consider refreshing engagement terms to ensure they match the engagement realities.

Minimising business disruption following the assessment process

Many contractors consider themselves to be self-employed and prefer to receive their remuneration without income tax or NIC deductions.

However, there will be instances where the engager disagrees and considers the relationship to be one of employment under the IR35 legislation. Our experience is that this will not be welcomed by most contractors, given the perceived risk of a retrospective HMRC challenge into historic self-assessment submissions, as well as a reduction in 'take home' pay.

For the April 2020 implementations, a significant number of challenges were made against employment status determinations. Often, this was done by contractors obtaining independent reviews into their employment status or emphasising aspects of the engagement that indicated they were working on a self-employed basis. Contractors also completed HMRC's Check of Employment Status Tool (CEST) and, to the extent that these produced a different result, suggested that employers did not take reasonable care when making assessments.

Dispute resolutions were found to be time consuming. The draft legislation states that end clients are only required to consider submissions within 45 days of receipt and provide a statement either confirming the original decision (with supporting reasons) or amend the original determination. However, the reality was that there were protracted rounds of correspondence with workers before the matter was resolved. Where the individuals worked for clients of the end user, these complaints could also be escalated to client contacts causing relationship disruption.

In some cases, contractors who were deemed employees under IR35 chose to depart engagements where there was no corresponding day rate increase. This created a struggle to backfill niche roles.

Methods of reducing the business disruption arising from the changes

From our experience, clear communications significantly reduce the risk of contractor challenge. The most successful businesses made contractors aware of the upcoming changes; the process through which the business would identify and assess its contractor population; and the timescales in which key decisions would need to be made. In the main, these would be centrally managed with key individuals briefed on how to handle contractor conversations and escalate concerns.

Businesses also considered which workers were business critical and, for these workers, undertook bespoke conversations. Many engagers identified replacement candidates where engagements relied on niche skillsets well in advance of the statutory deadlines. This meant that the business was in position to onboard a replacement immediately.

There was also a perception of bias, given that the dispute resolution process is 'client led'. To avoid this perception, many engagers had different teams who dealt with disputes or, where an external tool was utilised, generated a new employment status determination statement based on the additional information provided.

As part of the wider IR35 project, businesses considered different engagement terms for contractors, including whether it was more appropriate to engage as employees considering the pros and cons.

Next steps

Given the recent Covid-19 pandemic and the limited Government support for PSCs, contractors may be more open to different engagement terms. Where this is not the case, businesses should consider whether any assessments made prior to April 2020 remain accurate, and if not, undertake new assessments.

A communication plan should be established for when assessment results are disseminated and deadlines for accepting new engagement terms.

If the business is considering using a different method of assessing the employment status of its contractor populations, then a comparison of the new assessment method versus the old method should be undertaken. Where this results in significantly different assessments, these should be communicated to contractors at the earliest opportunity to manage their expectations.

Given the cash flow constraints arising from Covid-19, businesses should be considering the commercial impact in even more detail, including whether any increases in engagement costs can be passed onto third parties.

Other points for consideration

Length of supply chains

The IR35 legislation requires businesses to review their supply chains to understand whether contractors have been utilised by suppliers. If so, there may then be a requirement to assess these workers' employment status.

Businesses need to undertake a due diligence of their supply chains. Agencies are generally aware of their requirements and proactively provide the required data, though a small minority of suppliers may be reluctant to divulge information on their downstream supply chains. This can cause delays in identifying the population requiring assessment.

There are transfer of liability provisions within the new legislation. This means that any underpaid income tax or NIC can transfer to the first agency in the contractual chain and, if not collected from this entity, then to the end client itself. This has meant that there is greater need to fully understand the supply chain and ensure that sufficient protections are contained within contracts. In addition, many clients have sought to understand the potential exposures for non-compliance downstream, with a view to ensuring suitably robust contractual terms.

The use of umbrella companies

To reduce the administrative burden of undertaking employment status assessments, some businesses sought to remove PSCs from contractual chains and engage workers via umbrella companies. Whilst this approach means that employment status assessments are not required, operating through an umbrella company may not be acceptable to the contractor and costs could increase.

Caution should be taken when engaging workers through umbrella companies that are not registered in the UK or without having undertaken appropriate due diligence. HMRC is increasingly aware of non-compliant umbrella companies (see Spotlight 55) and there is a risk that the income tax and NIC liability is passed up the contractual chain.

Interaction with VAT

Where a contractor raises an invoice, this would contain the agreed fee and VAT (to the extent the supply is subject to VAT). Whilst the amount paid in respect of the workers' services would need to be subject to PAYE (alongside the PAYE reporting obligations), the VAT element of the invoice would still be payable in full.

Processes should be in place to ensure that invoices are appropriately flagged and that the correct amounts (i.e. post income tax and NIC) are paid to the worker, the VAT element is paid in full and is also captured in relevant VAT returns.

Entitlement to employment rights

The government has specifically stated that changes to the IR35 legislation do not automatically entitle workers to employment rights. However, given that contractors will be suffering PAYE deductions and are considered to be employees for tax purposes, there is a risk that they will ask for corresponding employment rights (e.g. holiday pay, sick pay etc.).

Time to reboot

Jeremy Mindell asks if we should change the mandate of the Office of Tax Simplification for the next ten years

The OTS celebrates its 10th birthday on 20 July. It was set up by the Coalition government with the express purpose of trying to simplify the UK tax system. Watching 'Fantasia, The Sorcerer's Apprentice' in lockdown with my children reminded me of the efforts of the OTS. As Mickey Mouse draws out one barrel of water, 100 brooms chuck in a barrel of water each, overwhelming Mickey. The comparison to the OTS is apposite.

The OTS tries to simplify parts of the tax system but it appears to be overwhelmed by a deluge of legislation and complexity with every Finance Act. The weight of legislation has grown during the past decade with relatively few successes for real simplification. Few, if any, commentators would assert that the tax system in 2020 is simpler than that in 2010.

Increasing length and complexity

This is not to criticise either of the first two leaders of the OTS or their staff, who have undertaken this difficult task with both enthusiasm and perception. The problem appears to me as being the basis on which the OTS was formed; its terms of reference and its power. It concentrates on specific aspects of the tax system, whilst ignoring the welter of new legislation. The remorseless addition to the weight of the UK tax code shows no sign of diminishing and it really is time for this to be tackled.

I would go further and suggest that a rethink of tax simplification, its goals and objectives need to be undertaken. Simply totalling up of the size of the UK tax code in some form of league table would not be the ultimate goal, but you cannot avoid the fact that the very size of the legislation creates commercial issues which reflect on the UK's tax competitive position.

Not simplification but certainty

Fundamentally, it is not simplification that one should look for but certainty. In essence, the more uncertain the tax system is in its treatment of relatively similar transactions, the more unsatisfactory it is. Moreover, uncertainty correlates with newness of the legislation.

Take, for example, the treatment of employee benefits and expenses. These have remained very similar for the past two decades and therefore practitioners and taxpayers have confidence in dealing with the end of year procedures.

Whilst doing an overdue clear out as a result of lockdown, I came across an old course on the completion of P11Ds that was two decades old. The rules were relatively similar to the ones today. This area is complex but, because it has not been subject to substantial changes in the past 20 years, the complexity is less of a problem.

I would always argue that certainty is crucial. Where the principles of tax have changed very little, practitioners can live with the complexity because most of the difficult questions have been asked and answered over the years. Additionally, there are not a myriad of updates and changes that practitioners must remember and relearn over the years. Constant changes may be good news for lecturers but not for anyone else!

Another example would be share schemes, where the share incentive plan SAYE (Sharesave) CSOP and EMI schemes have changed very little for the last two decades. This is a source of encouragement to people embarking on these types of long-term remuneration plans.

The source of greatest complexity now is the introduction of large amounts of legislation. This legislation has three undesirable features:

1. It is often rushed in its introduction, requiring amendments where it has either been badly drafted or its consequences have not been properly thought through.
2. The legislation often replicates provisions which are already in the tax code. A good example of this is the new profit fragmentation rules, whereby the 'avoidance' which is being countered appears to be counteracted by a number of pieces of legislation, including the transfer of assets abroad, transfer pricing, diverted profits tax, controlled foreign company and indeed the normal principles for obtaining a corporate tax deduction.
3. The degree of complexity introduced with some of these provisions is disproportionate to the issue at stake or could be dealt with in a different way. For example, to deal with the alleged abuses regarding employee benefit trust and loans that were not repaid did not require the full panoply of the

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disguised remuneration legislation. Likewise, the corporate interest relief provisions, with its numerous elections and different methods of calculation, is over-engineered. The draftsman has taken what was a relatively simple principle from the OECD BEPS process and turned it into something of unbelievable complexity.

Resetting the objectives and powers

In the first ten years, the OTS did some valuable work but I am not sure that a ‘duck shoot’ on existing tax allowances and reliefs should have been a priority. I would suggest that for the next ten years the OTS should turn its attention from the measures and practices which are on the statute book to the proposals that the government makes. The OTS should be empowered to audit new measures for six elements:

1. What is the amount of tax at stake?
2. How complex are the new measures, and how long would it take an average professional to understand them?
3. Are these measures duplicating previous legislation which is underutilised by HMRC?
4. What is a realistic assessment of the compliance time for these measures? The corporate interest relief group ratio calculations are an extreme example, requiring earnings before interest, tax, depreciation and amortisation (EBITDA) on a global basis to provide an alternative calculation on an interest restriction.
5. Does the new legislation overturn an area where the law and settled practice was clear?
6. Will the proposed law create uncertainty which had not been present before?

A new example of complexity is the Structures and Buildings Allowance (SBA). It still takes 33 years to fully use the allowance, and does lead you to ask whether it really makes a difference to decision making in this area.

Redundant or duplicated legislation

Finally, if the OTS wishes to look at existing legislation, I believe it should focus on those areas which continuously cause significant difficulties to taxpayers.

First, this calls for a review of issues that regularly come before the courts so as to identify complexities which could be reduced by unambiguous legislation.

Secondly, there is plenty of redundant legislation which probably brings in miniscule amounts of revenue to the Treasury. For example, in the light of the case of *FRC 2012 Plc* [2017] UKSC 45 (the *Rangers* case), you might ask whether the disguised remuneration legislation is actually required in its current format.

Finally, there is a problem with HMRC being slow to use the legislation it already has in an effective manner. For example, from 9 December 2010 the anti-forestalling legislation became effective in respect to loans; however, it took the passage of the loan charge legislation, seven years later, to bring this issue to the fore.

Process, procedure and the law

The OTS has done some sterling work in trying to simplify tax procedures and, in the words of a former head of the OTS, ‘to make the user experience better and simpler for the majority of taxpayers – the greatest good for the greatest number’. This, however, leaves the issues of the more complex areas unresolved, making it difficult for those who advise larger businesses. This surely has an effect on the UK’s competitiveness.

Conclusion

The last chancellor genuinely interested in tax reform was Nigel Lawson, who left office three decades ago. His combination of reducing allowances but also reducing tax rates worked successfully. Most of his successors have, however, proceeded in the opposite direction. If the OTS is to have a more successful second decade, then it needs to be given powers to review and challenge the legislation at an early stage. This will need both political will and perhaps, as in the conclusion to the Sorcerer’s Apprentice, a bit of wizardry.

Coming Back Stronger – ATT Foundation Qualification supports Catax Specialist Tax Team

Catax, providers of specialist support across four government tax reliefs services, have recently enrolled their entire Specialist Tax Team onto the ATT Foundation Business Tax Programme.

Their team starts the programme this summer with the aim of gaining a deeper understanding of wider business tax issues. The Business tax module covers aspects such as capital allowances, corporation tax and partnerships.

Foundation qualifications are studied online, at the candidate's own pace. Foundation qualifications are also available in Personal Taxation, VAT Compliance and Transfer pricing.

ATT are delighted to be supporting the training needs of the Catax Specialist Tax Team. Nigel Holmes, Head of Research & Development Technical Operations, tells us that their Specialist Tax Consultants are raring to go and are already challenging each other on the new information and resources available to them.

"Our team of Specialist Tax Consultants are highly skilled at carrying out client consultations and writing R&D tax relief reports to a high standard, for onward submission to HMRC. Their strong analytical and questioning skills are supported by a vast array of experience such as IT, science and law.

By entering into the ATT Foundation Business Tax programme all of the team will now be able to gain a better understanding of wider tax issues and how R&D tax relief tax relief impacts a client's tax position, providing an even greater service to our clients and stronger support to our in-house tax experts who submit the claims. This is further evidence of the great ways that Catax supports its staff."

Nigel Holmes – Head of Research & Development Technical Operations

Interested in rolling out a similar programme to your team?

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The return of the inspector

Keith Gordon looks at the Court of Appeal's judgment on the legality of an informal HMRC investigation

KEY POINTS

- **What is the issue?**
In most cases, it will be sufficient for taxpayers to consider informal HMRC information requests as if they were made under Schedule 36 and to consider whether or not to comply with them in that light.
- **What does it mean to me?**
At any stage where a taxpayer considers that an information request from HMRC goes too far, the taxpayer should simply decline to provide the information. At that stage, HMRC has a choice: either drop the request or issue a formal Schedule 36 notice.
- **What can I take away?**
It will not be possible to challenge a request taken by HMRC simply because it is based on a flawed understanding of the facts. It will be necessary to go a step further and show that HMRC could not reasonably have thought what it thought.

In the November 2019 issue of *Tax Adviser,* 'An inspector calls', I discussed the High Court's dismissal of a judicial review claim where the claimant taxpayers sought the Court's supervision over an ongoing (albeit informal) investigation by HMRC into their tax affairs. The taxpayers have since appealed against the decision to the Court of Appeal, which has issued its decision (see [2020] EWCA Civ 784).

The facts of the case

The facts can be simply stated. Since about 2016, HMRC has been investigating the tax affairs of a Mr Bryn Robertson and various corporate entities with which he is associated. Those investigations have included making requests to the tax authorities in Spain and Portugal where much of Mr Robertson's business activities take place. Mr Robertson, however, is UK resident and domiciled.

There are no statutory enquiries into any of the tax returns filed by the UK entities subject to HMRC's investigation (i.e. under the Taxes Management Act 1970 s 9A in Mr Robertson's case or the equivalent provisions for applicable to LLPs and companies). Accordingly, HMRC's information requests have been largely carried out without direct reference to the information powers found in Finance Act 2008 Schedule 36. As a result, they may therefore be termed as 'informal investigations'.

The High Court rejected Mr Robertson's challenge to HMRC's approach to the investigation. Mr Robertson and a number of these entities appealed against that rejection on three grounds:

- HMRC is not empowered to conduct informal investigations.
- Even if informal investigations are lawful, that power is to be used only in wholly exceptional circumstances.
- On the assumption that the court may intervene only in exceptional cases, this was a case where the court should have intervened to curtail the investigation.

The court's decision

The case came before Lady Justice Simler and Lord Justice Popplewell. They dismissed the appeal.

Power to conduct informal investigations

A number of reasons were given to support the view that HMRC is entitled to conduct informal investigations. Leaving aside the practical advantages (both to HMRC and to taxpayers) of being able to correspond outside the framework of a strict statutory regime, the court noted that the information powers in Schedule 36 were not drafted so as to *confer* power on HMRC to carry out any form of investigation. Instead, that Schedule is predicated on the basis that such a power exists elsewhere and merely confers on HMRC the right to demand information and documents, etc. (i.e. in the course of such an investigation).

The statutory enquiry provisions (such as TMA 1970 s 9A) contain a prescribed regime for investigations into specific tax returns, with the broad power of investigation being balanced by the strict timetable for commencing such an enquiry and the statutory right of taxpayers to seek a closure notice. However, that is not the only type of investigation that may be carried out by HMRC. (Indeed, Schedule 36 itself makes it clear that information may be sought outside the framework of a statutory enquiry into a tax return.)

As to the statutory source of HMRC's power to conduct informal investigations, the Court of Appeal agreed with the High Court in that this derives from the residual power in the Commissioners for Revenue and Customs Act 2005 s 9, which allows HMRC to do 'anything which they think necessary or expedient in connection with the exercise of their functions, or incidental or conducive to the exercise of their functions'.

Furthermore, as the court added, the question is not what 'is' objectively necessary or expedient or conducive, but what HMRC subjectively thinks is so. In other words, it will not even be possible to challenge an action taken by HMRC simply because it is based on a flawed understanding of the facts. It will be necessary to go a step further and show that HMRC could not reasonably have thought what it thought. Of course, once an error in HMRC's understanding of the facts has been identified, it might be possible to challenge subsequent actions that are taken based on HMRC's earlier (now known to be flawed) views.

Threshold to carry out informal investigations

Although there is established authority to the effect that a wide discretion is given to statutory investigators where criminal or disciplinary proceedings are envisaged, the appellants sought to argue that different considerations apply in the case of purely civil investigations, such as those being carried out by HMRC into the appellants' tax affairs.

However, the court concluded that the same principles that govern the position for criminal and disciplinary investigations should apply to civil investigations carried out by HMRC. In particular, the court accepted HMRC's arguments that statute has determined that HMRC should be the one to decide which investigations are to be carried out (and therefore the courts should be slow to trespass on the process).

This does not mean that the courts should never become engaged. As the court made clear, it is perfectly appropriate to resort to the courts if HMRC is acting unlawfully, is not exercising its powers in good faith or is not acting on a rational basis.

The court should intervene in this case

In a similar vein, the court felt that HMRC was not acting inappropriately in this case. The general gist of HMRC's concerns was known and not obviously flawed.

Commentary

As I noted last year, I was not persuaded that the appellants' case was well-founded (at least based on how the facts were summarised in the respective judgments). Indeed, I would tentatively suggest that there is nothing wrong with informal investigations and taxpayers 'voluntarily' providing information to HMRC, which HMRC could legitimately compel under Schedule 36. At any stage where a taxpayer considers that an information request from HMRC goes too far, the taxpayer should simply decline to provide the information. At that stage, HMRC has a choice: either drop the request or issue a formal Schedule 36 notice, the reasonableness of which can be determined by the First-tier Tribunal.

Nevertheless, to have authoritative statements as to the basis of HMRC's informal investigations is to be welcomed, even more so now that we have the Court of Appeal's views.

I noted above one of the HMRC arguments that the court accepted in relation to the second ground of appeal. However, there were others, which I am slightly less persuaded by or at least in respect of which I would recommend an element of caution. In particular, the court accepted that it was 'desirable' that judicial intervention should take place at the conclusion of the investigation (i.e. in the course of subsequent appeal proceedings) and not any earlier (i.e. at the investigation stage).

Although I accept this as a general proposition, I think one should be careful not to treat it as an immutable rule. In particular, the validity of an information request might itself require the tribunal's adjudication. Indeed, earlier this year, the First-tier Tribunal recognised that it had the power to reach a decision about the appellant's domicile status both in an appeal against a Schedule 36 notice and also when a taxpayer is seeking a closure notice (even though such a question is more usually the subject of a substantive appeal following a closure notice or discovery assessment) (*Henkes v HMRC* [2020] UKFTT 159 (TC)).

It should be noted that HMRC is probably not happy with the tribunal's decision in that case. However, as the domicile decision went against the taxpayer, it is unlikely to appeal against it.

What to do next

In most cases, it will be sufficient for taxpayers to consider informal HMRC information requests as if they were made under Schedule 36 and to consider whether or not to comply with them in that light. If a dispute arises in relation to any particular request, the request can be formalised and the matter can then be adjudicated by the tribunal.

However, there will be exceptional cases when HMRC does not issue a formal notice but simply gives the impression of 'sitting it out' – neither advancing the investigation nor telling the taxpayer that the case has been formally discontinued. In such cases, it would probably be appropriate to ask HMRC for a clear statement as to the status of its ongoing investigations and, if that answer is unsatisfactory or not forthcoming, to consider judicially reviewing that answer (or lack of it). Nevertheless, I emphasise that this is likely to be a response of last resort for the exceptional case.

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A revised approach to regulation

In his Chartered Tax Advisers' Address, Stephen Mayson examined the future regulation of legal services and its possible application to tax advice

Professor Stephen Mayson is a barrister and legal commentator who recently concluded a two-year assessment of the regulation of legal services in England and Wales. This article is abridged from his CTA Address speech.

My subject is the future regulation of legal services and its possible application to tax advice and advisers. I have recently submitted a report to the Lord Chancellor following a two-year independent review of legal services regulation. The recommendations cover both long-term and short-term reform.

When I began the review in 2018, I knew that reform for the longer term was not likely in the near future. However, the Covid-19 pandemic has further highlighted the present difficulties. I hope that short-term reform might soon be considered.

The problems

The principal flaws and shortcomings in the current regulatory framework derive from the structure of the Legal Services Act 2007. These include the inflexibility arising from statutory prescription, as well as competing and inappropriate regulatory objectives. A pivotal set of reserved legal activities are anachronistic, distorting the approach to activities that ought to be regulated. Title-based authorisation for reserved activities leads to additional burdens and cost because they are more heavily regulated than they need to be.

The nature of the separation of regulation and representation is unsatisfactory, and unregulated providers cannot be brought within the current regulatory framework. Some activities are not regulated when they ought to be, also putting legally qualified practitioners at a competitive disadvantage.

The increasing costs of legal advice and representation further reduce access to legal services, resulting in more litigants in person, and an increased use of unregulated providers. The rapid development of lawtech, offering legal advice and services at scale and independently of any human or legally qualified input, is also beyond the reach of the current framework.

Consumer confusion results from the existence of both regulated and unregulated providers, and from a profusion of differently regulated professional titles. Additionally, variability in the competence and quality of legal services, as well as inadequate or incomplete consumer protection, result in falling public confidence in legal services and their regulation.

The proposals

Might there be a better way to tackle these issues? In formulating a new approach to regulation, I offer the following seven proposals.

1. The overriding objective of regulation should be the public interest, whether relating to the public good or the protection of consumers.
2. The scope of regulation should be extended to include all 'providers' of 'legal services', including those who are currently unregulatable and providers of lawtech. There should be limited exemptions for most self-representation, advice from family and friends, and information-only services.
3. A single independent, sector-wide regulator of legal services – the Legal Services Regulation Authority (LSRA) – should replace the current Legal Services Board, approved regulators and regulatory bodies. It should have the power to delegate defined and limited regulatory powers to other designated bodies.
4. The LSRA would maintain a public register of providers. It would apply regulatory conditions for before, during, and after-the-event regulation, as appropriate to the importance and risk of particular legal services or the relative vulnerability of the clients concerned. These conditions would be monitored and enforced on a sector-wide basis, irrespective of provider.
5. Minimum conditions of registration would require common standards and disclosures, access to complaints investigation and redress, and protection through indemnity insurance. A revised and more extensive ombudsman scheme would provide a single point of entry for individual consumers or micro-organisations.

6. The current reserved activities should be replaced with a requirement for prior authorisation in order to secure the public interest. Where this is required for advocacy and litigation, there would be a dedicated advocacy and litigation regulator as part of the LSRA.
7. Professional titles should not be the only route for entry by individuals into legal services regulation. The LSRA would establish the conditions for personal authorisation or accreditation (with or without a professional title). It would also approve the arrangements for the award and removal of legal professional titles, but the professional bodies would actually confer or remove them.

A key part of the proposed scheme is the assessment of risk by reference to protecting the public interest; the complexity of the underlying law; the complexity of the transaction or dispute; the vulnerability of the client; and the nature and extent of any consequences. I expect that tax advice will score significantly on all of these.

For the highest risk services, prior authorisation by the regulator would be required before any practitioners could offer their services to the public. This would apply, in my view, to most advocacy and litigation.

For low risk services, only registration and compliance with minimum conditions would be required. I do not envisage that this would generally involve tax advice.

For intermediate risk services, other regulatory conditions would be imposed by the LSRA, which could include accreditation under an approved scheme for specialist activities, a specific code of conduct, and additional indemnity insurance. Unlike the current position, these intermediate conditions would apply to practitioners only if they undertake the relevant activities.

Practitioners would not need prior approval to undertake intermediate risk services. However, if regulatory conditions apply, their registration entry would have to demonstrate compliance. This would need to declare, for example, the form of approved accreditation they hold, or which method of holding money on behalf of clients was being used.

The LSRA would decide which authorisations or accreditations could be conferred on individuals by virtue of their professional title (qualification). Professional bodies would play a role in education and training, and in forms of specialist accreditation. They could also promote and enforce professional standards above those required by regulation.

Application to tax practitioners

How might such an approach affect tax practitioners? What follows are personal views, and I cannot guarantee that any new regulator would agree with me in every respect! However, I would first like to make two caveats.

The first is that the report envisages an exemption for any services, including tax advice, that are 'subsidiary but necessary' to the provider's main business. However, there would be no exemption for any legal service for which prior authorisation or personal accreditation is required.

The second caveat is that the *principal* purpose of registration is for the information and protection of individual consumers and small organisations. Many law firms and accountancy practices provide highly specialist tax advice to extremely wealthy individuals and large businesses. I do not expect them to be subject to mandatory accreditation requirements.

Personal regulation of tax advisers

Qualified lawyers who are tax advisers would need to be registered and authorised personally if they conduct tax advocacy or litigation. They would also need to be registered and accredited to the extent required by the LSRA for all or some aspects of tax advice. That accreditation could potentially come from bodies such as the CIOT, the Law Society, the Chartered Institute of Legal Executives, and the Society of Trust and Estate Practitioners. These accreditations should, in my view, be available more widely than their own membership, but that is obviously a matter for them.

Similarly, accountants who are tax advisers would need to be registered and authorised by the LSRA if they conduct tax advocacy or litigation. Accreditation requirements would also apply to them, and accountancy professional bodies would also be sources of approved accreditation.

Accountants providing non-contentious tax advice could benefit from the LSRA's power to recognise alternative regulatory arrangements. It could, for instance, approve the ICAEW as a designated body to carry out the regulation of legal services provided by chartered accountants.

Chartered tax advisers, tax technicians or similar that are not qualified as either a lawyer or accountant would occupy a new position in the proposed framework.
In offering advice or representation on tax matters, they would be a provider of legal services. As such, they would have to be registered, and meet any regulatory conditions for authorisation (for contentious) and accreditation (for non-contentious) work.

REGULATING THE TAX PROFESSION

Sir Edward Troup considers the need for tax advisers to work towards better regulation, in response to Stephen Mayson's CTA Address.

Is tax different enough for tax advisers to deserve a special treatment from other professions? Or for tax practitioners to require regulation at all? These were some of the questions prompted by Stephen Mayson's address. Stephen set out a challenging programme for the reform of legal regulation. How far should it apply to the tax profession – and how much can the tax profession learn from it?

Like any other professional, bad tax advisors can cause harm to their clients. But unlike most other professions, bad tax advice can also harm the public interest and the public purse. In extreme cases, an unwary taxpayer may even regard 'bad' advice as rather good if it results in paying less tax than the law requires or intends.

Tax advice which purports to cut a tax bill dramatically is usually too good to be true, with the consequences of the advice only becoming fully apparent after some time – often years of expensive litigation. Many film tax schemes failed on challenge, leaving clients – but not advisors – to pick up the bill. And even in 2020, unscrupulous advisors continue to claim (entirely wrongly) that they have schemes to frustrate the intention of the IR35 legislation.

For professionals who belong to one of the existing bodies, the Professional Code in Relation to Taxation marked a huge step forward, but advisers outside those bodies (and the rare bad apple within them) continue to sell schemes which are doomed to fail. If there is to be reform – legislative or regulatory – to address the quality of tax advice and tax advisors, I would argue that reform should focus first on ensuring that the public are not led into those schemes which are indeed too good to be true. Also, there must be adequate redress – both for the clients and for HMRC – against those who continue to promote such schemes or are reckless in allowing their clients to use one.

Stephen's proposals, with their proportionate approach to risk, set out a sensible set of reforms for the legal profession. For those lawyers specialising in tax, they would deliver an improved regulatory framework. All tax advisers should work towards better regulation (whether voluntary or compulsory), but any improvements must be supported by some hard action to protect the unwary and to crack down on the unscrupulous.

Sir Edward Troup was a permanent secretary at HMRC from 2012 to 2017.

TAX IS DIFFERENT FROM MANY OTHER PROFESSIONS

Professor Jane Frecknall-Hughes considers the problems of regulating a profession which does not meet the 'traditional' definition in many ways.

Professor Mayson's report is substantial: with 46 detailed recommendations, there is much to consider. It makes us reflect on who exactly provides tax services. As a work domain, tax is different from many others, and does not meet the 'traditional' definition of a profession on many levels. This may be reflected in the numerous terms used to describe practitioners – tax advisers, tax accountants, tax agents, tax intermediaries, tax preparers, tax professionals, tax practitioners, tax lawyers and more recently, tax 'structurers'. Perhaps we should also think of the body of academic work on 'tax exceptionalism', which has held that the administrative law of tax has evolved into different forms from those found in general administrative law.

Are tax practitioners likewise 'exceptional' in a different sense? They are certainly spread across different subject domains (tax is an interdisciplinary or multidisciplinary subject). They may be members of one or more professional bodies (which regulate their members), and work in a variety of different firms or settings, including charities. Perhaps unusually, there is a public (HMRC) as well as non-public dimension to the profession, which will offer a different perspective.

Unregulated practitioners have long been a concern: only HMRC will know the potential effect of poor or unscrupulous advice. However, in terms of public perception, it is not necessarily 'unregulated' practitioners who have been the focus of attention (and much misunderstanding). The fact of tax practitioners being unregulated does not automatically mean that they will provide poor quality advice.

The subject of regulating the tax profession in the UK has been mooted before in a 1995 report (Regulation of Tax Advisers in the UK), written for TaxAid, although this did not gain traction. Other countries have, however, taken steps down the regulation road. Australia's tax practitioners have been highly regulated since 1943, as are those in certain US states (Oregon since 1973, California since 1997 and Maryland since 2008), though things change constantly. Regulation has also been under discussion in South Africa and some African countries – but there does not appear to be any over-arching study to determine what is happening worldwide.

In terms of Professor Mayson's specific proposals, clarity will be needed about how regulation/oversight would apply: the devil is always in the detail. The overall aim to separate representation from regulation/discipline in practice might see the latter referred back to the professional bodies if their processes are robust. This could potentially create confusion, but having one regulatory body might be easier overall where practitioners are members of more than one professional body.

Jane Frecknall-Hughes is Professor of Accounting and Taxation at the Business School, University of Nottingham.

I imagine that the CIOT and ATT would wish to provide the appropriate routes to authorisation or accreditation for their members. In my view, the rules for the award and retention of their respective titles could be approved by the LSRA. Given the highly specialist nature of the work, designated body status with delegated regulatory powers could be achieved.

That brings me to the potential treatment of recognised tax agents who are not affiliated to any professional body. I believe that a tax agent should be treated as a provider of legal services – unless they are simply sources of information or the conduit for information or documents, without any advice being offered. As providers, registration and regulation should offer certainty and consistency to consumers.

Though not a member of a professional body, a tax agent would therefore need to be registered and, for instance, carry a defined minimum level of indemnity insurance. If the agent is providing services that the LSRA has identified as carrying higher risk, then additional regulatory conditions would apply, such as specialist accreditation or compliance with a specialist code of conduct.

The CIOT or the ATT might wish to provide appropriate programmes for accreditation for tax agents. In fact, tax agents may wish to become a member of either or both of those bodies.

Regulation of tax technology

The new approach is designed to apply to legal services provided through technology where no other regulated person is involved in provision or referral. It is not, however, intended to apply to technology that is simply a source of information.

The dividing line between information and advice can be blurred. However, a platform that simply sets out tax law and practice, or allows the completion and submission of tax returns and forms, should not fall within the scope of this proposed regulation. Like other aspects of lawtech, tax technology will no doubt extend its reach, and the regulatory framework should be capable of bringing tech within its remit.

Regulation of entities

In addition to personal registration in respect of higher risk legal services, the registration of a firm or other entity providing tax advice is also necessary under these proposals.

A law firm providing advice will naturally be registered as a provider of legal services. Dedicated tax advisory businesses that are not law or accounting firms would need to be registered as entities, ensuring that their staff are appropriately qualified and registered if personal authorisation or accreditation is required.

Registration would be required for the provision of legal services by multidisciplinary businesses, though it need not apply to the *whole* business. For an accounting or business advisory firm for which law-based tax advice is a key component of their offering, this could have been an unwelcome imposition.

The solution offered in the report is for the business to register a discrete 'business unit', which becomes the registered provider of legal services for the purposes of registration and regulation. Like all other registrants that are not individuals, there would need to be a 'registered manager', responsible to the regulator for compliance.

Unlike the current structure, which often requires the regulation of an 'alternative business structure' *as* a separate legal entity, the report proposes the identification and registration of a business unit *as if* it were a separate legal entity. There would be no requirement for complex legal or structural arrangements with duplicated overheads and compliance functions. Full separation would remain an option for those businesses that preferred it.

Conclusion

The common system of registration would allow *any* client of *any* regulated provider of tax advice, whether legally qualified or otherwise, to be assured that the same minimum regulatory requirements are met and that some form of redress will be available if something goes wrong.

Obligations on tax practitioners would be proportionate to the risk and range of the services they were offering, and would build on existing qualifications and accreditations. For those who were not lawyers, although registration at an expected minimal cost would be required, their existing qualifications and regulatory oversight could remain intact.

I have not sought the perfect future system of legal services regulation. No regulatory approach can ever be perfect. Nor can it eradicate all risks to the public interest or to consumers. But I am sure that we could do better, and I hope that my report is a step on that journey.


You can't check every transaction

Technical Team

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Welcome to the August Technical Newsdesk

Those who know me will also know that I have (at least) a couple of weaknesses: a proper cappuccino and motorbikes. In 'normal' times (that is, pre-COVID), if I was working at home for a few days in a row, I would get up early and ride to my local Costa to be there when it opened, so that I could have a change of working environment for a couple of hours, whilst getting a buzz both from the bike and the caffeine in my frothy coffee. Having worked from home for over four and a half months straight, now that my local Costa has re-opened for dining in, I will be on the bike and back there for my cappuccinos and a change of scenery.

Whilst I am acutely aware of the importance of staying alert and respecting social distancing, for many of us there is a strong desire to do some of the things we took for granted pre-COVID. So I was surprised to find out that under the Chancellor's 'Eat Out to Help Out' scheme, if I do my ride to Costa between Mondays and Wednesdays this month, and have a working breakfast there, I will get 50% off my bill. Of course, the hospitality sector (along with many others) has taken a massive hit over the past few months, but without straying too much into politics, you do wonder how well targeted the scheme is. I know I would be getting on my bike to Costa anyway, irrespective of the discount scheme (and this from a Yorkshireman). Also, how much spare capacity will eateries have if they are required to reduce the number of customers they can serve?

It would seem that Jim Harra, HMRC's Chief Executive and First Permanent Secretary, also has doubts over whether the scheme represents value for money, having written to the Chancellor asking for written instructions to proceed with the scheme. The exchange of correspondence is interesting and can be found at https://tinyurl.com/ybbnsxta. A similar exchange of correspondence has also taken place in relation to the Job Retention Bonus and the correspondence can be found at https://tinyurl.com/y9wby6lw. Whilst I do not have the best memory in the world, I do not recall seeing an exchange like this before.

It is also noteworthy that these are two further schemes that HMRC has been tasked with delivering. The Job Retention Bonus will not be payable until early 2021, and will hopefully just be an extension of the systems used for the Job Retention Scheme. However, the Eat Out to Help Out scheme is brand new and goes live on 3 August, and the registration process launched on 13 July. HMRC are also part way through delivering the flagship Self-Employment Income Support Scheme and Job Retention Scheme, whilst themselves having to adapt to the challenges faced by all organisations such as homeworking, social distancing, staff absences, etc. How will HMRC cope?

Part of the answer to this question can be found by looking at HMRC's performance measures, which we track on the CIOT website (see bit.ly/30cukfS). Unsurprisingly, some aspects of HMRC's performance are falling short of target.

This leads me onto my final point – what is the consequence of HMRC failing to meet the standards set for them? If a taxpayer fails to meet their obligations, there can be serious consequences. But what if HMRC fail to meet their obligations? At least outwardly, the consequences seem to be negligible. This will form an important part of our response to the consultation on HMRC's charter, which we will report on in more detail next month.

COVID-19: easements and issues to consider for indirect tax

INDIRECT TAX

Although the VAT return payment deferral period ended on 30 June 2020, there are still COVID-19 easements and issues to consider for indirect taxes.

Extension to the temporary zero-rating on personal protective equipment

On 3 July, HMRC updated its Revenue and Customs Brief 4 (2020): *Temporary VAT zero rating of personal protective equipment (PPE)* (https://tinyurl.com/y7gxhlmd) to extend the period that the temporary zero-rate is in place. The revised period now ends on 31 October 2020, formerly being 31 July. There is no use test for the zero-rating to apply; the PPE is zero-rated whether or not it is put to a COVID-19 based use.

Change of use of a certified building due to COVID-19 resulting in a self-supply VAT charge

Certain constructions or purchases of buildings certified as being used solely for a 'relevant residential purpose' or a 'relevant charitable purpose' need to be used for such qualifying purposes for at least 10 years.

If the use of a certificated building changes or the building is disposed of as a direct result of COVID-19, a self-supply charge may be due; for example, if a vacated student accommodation block was used to house NHS workers on a short term basis during the pandemic.

Affected taxpayers can contact HMRC via their customer compliance manager if they have one, or if not they can contact the charities compliance team: wmbchfesector@hmrc.gov.uk. Paragraphs 15.6 and section 19 of VAT Notice 708 have more information about change of use (https://tinyurl.com/y44ejc22).

International VAT refund claims

Due to the impact of COVID-19 measures on HMRC's resourcing, Revenue and Customs Brief 9 (2020): *Delayed VAT repayments to overseas businesses* (https://tinyurl.com/ycucgsm8) was published to address an issue arising for some international VAT claims. HMRC are unable to meet the repayment deadline for the Overseas Refund Scheme for some non-EU business claims (also known as 13th Directive claims). For valid claims covering the period from 1 July 2018 to 30 June 2019 (submitted by 31 December 2019), some claims will only be paid by 30 September 2020, rather than 30 June. The brief also sets out what international non-EU businesses need to do if, due to the impact of COVID-19, they are unable to obtain a certificate of status to accompany the VAT claim for the period 1 July 2019 to 30 June 2020. These claims must be submitted by 31 December 2020.

Excise: publicans now included in spoilt beer supervisory easement

HMRC has added publicans to the list of businesses that can use the temporary easement that does not require a specific responsible person to supervise the destruction of spoilt beer, cider, wine or made wine (https://tinyurl.com/yc2etsjo) due to social distancing difficulties.

Please also see our articles in *Tax Adviser* for May, June and July 2020, and the CIOT's and ATT's COVID-19 indirect tax webpages for further information.

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COVID-19: Self-Employment Income Support Scheme

OMB MANAGEMENT OF TAXES

Claims for the second round of the Self-Employment Income Support Scheme can be made from 17 August to 19 October 2020, and we now have more information on the extension of the scheme for parents and reservists, as well as HMRC compliance and recovery powers.

The Self-Employment Income Support Scheme (SEISS) provides support to self-employed workers affected by the COVID-19 outbreak in the form of a cash grant.

Second payment

On 28 May 2020, the government announced that the scheme would be extended, with those eligible being able to claim a second and final payment from August 2020. A second Treasury Direction published on 1 July 2020 (https://tinyurl.com/ya8ovzx5) confirms that the claim period for this second payment will run from 17 August 2020 to 19 October 2020.

The second payment will be worth:

- 70% (previously 80%) of average monthly trading profits;
- covering three months' worth of profits; and
- capped at a maximum of £6,570 (previously £7,500).

Eligibility and the definition of 'trading profits', 'average trading profits', 'non-trading income', etc. will remain the same as for the first payment under the scheme. However, in order to qualify for the second grant, the business has to be adversely affected by COVID-19 on or after 14 July 2020. This means that if a business was adversely affected on or before 13 July 2020, but is not affected on or after 14 July 2020, it will only have been eligible to claim under the first round of the scheme (which closed on 13 July 2020).

There is no requirement to have made a claim for a first payment in order to receive the second payment. This means that, for example, a business which has only been adversely affected by COVID-19 for the first time on or after 14 July can make a claim for the second payment.

HMRC's guidance gives some examples of how a person's business might be 'adversely affected by coronavirus' for both the first and second grants (see https://tinyurl.com/ycs46nwn), and the CIOT and ATT's webinar on 7 July 2020 also covered this in some detail (see below for the link and more information).

Extension for parents and reservists

The second Treasury Direction also sets out an extension of the scheme for those individuals who would otherwise not be eligible due to the effect on their trading profits and other income in the 2018/19 tax year of military reservist activities or having parental responsibilities. This extension only applies if the individual did not already qualify for the SEISS rules under the normal tests. It does not affect the amount of the grant available to those who already qualify for the scheme.

A separate claims process will be introduced for those who qualify for this extension, with both the first and second payments able to be claimed by 19 October 2020. At the time of writing, no further details on this claims process were available.

More information on the extension can be found on GOV.UK (https://tinyurl.com/y7g3f4c7).

Compliance and recovery powers

Legislation introduced by FA 2020 Sch 16 confirms how SEISS payments are to be taxed, as well as outlining HMRC's powers to recover amounts claimants are not entitled to and charge penalties. In outline, this legislation establishes the following:

- SEISS grants have to be reported in full on the 2020/21 self-assessment tax return, regardless of date of receipt, basis period or method of accounting.
- If an individual claims an amount they are not entitled to, they need to notify HMRC by the later of 90 days after Royal Assent or 90 days after the day the grant was received, and pay it back.
- Failure to do so could result in the amount being recovered through a 100% income tax charge, and interest and penalties applying.
- If an individual knew they were not entitled to the grant when they received it and failed to notify HMRC of that fact, they could face a deliberate and concealed penalty of up to 100% of the amount of the grant.

At the time of writing, no further detail was available as to the practical mechanism of repaying or notifying HMRC. HMRC were expected to publish guidance around the time that the Finance Act received Royal Assent. Please keep an eye on the ATT and CIOT websites for more details.

The CIOT commented on the draft Finance Bill legislation that was published on 29 May 2020 and provided a briefing on the legislation that was introduced at Report Stage and is now in FA 2020 Sch 16 (both sets of comments can be found at www.tax.org.uk/ref683). The ATT also commented on the draft legislation (see www.att.org.uk/ref360).

Ongoing work

Since the SEISS was first announced on 26 March 2020, the ATT and CIOT have worked with both members and HMRC to address queries on the scheme and provide support.

All the latest information can be found on the ATT and CIOT websites. The CIOT page covering the scheme (www.tax.org.uk/COVID19SEISS) is frequently updated as we receive more information, as are the ATT detailed guidance note (www.att.org.uk/COVID19SEISS) and accompanying FAQs (www.att.org.uk/COVID19SEISSFAQ).

The ATT and CIOT also held a very popular second webinar on the SEISS on 7 July. A recording of this webinar and the slides used can be found on the ATT website (www.att.org.uk/COVID19SEISSJUL) and CIOT website (www.tax.org.uk/COVID19SEISSJUL).

If you have any queries or feedback on the scheme, please send these to technical@ciot.org.uk or atttechncial@att.org.uk, and do keep an eye on our websites for all the latest information.

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Management of tax reliefs: Parliamentary Committee Inquiry

GENERAL FEATURE

The CIOT submitted comments in relation to the Public Accounts Committee's inquiry into the management of tax reliefs.

On 27 May 2020, the Public Accounts Committee (PAC) opened an inquiry into the UK's management of 'tax expenditures': tax reliefs which are granted on certain activities or goods.

There are two broad categories of tax reliefs:

- structural tax reliefs that are integral parts of the tax system (like the basic rate of income tax relief); and
- non-structural tax reliefs or 'tax expenditures', where the government opts not to collect a portion of tax for social or economic objectives (such as tax credits for companies' research and development costs, or income tax relief on pension contributions).

The UK tax system has over 300 of this kind of tax relief, which cost the government an estimated £155 billion of foregone tax revenues in 2018/19. Our largest tax expenditures are the reliefs on pension contributions, not charging VAT on food and new dwellings, and not charging capital gains tax on people's main home.

However, National Audit Office (NAO) evaluations have shown that the impact of applying different tax reliefs is not guaranteed, and many require careful monitoring to ensure the tax expenditure – that is, the tax revenue given up – is 'money well spent'. In a report published in February this year, the NAO repeated previous concerns about the effectiveness of HMT's and HMRC's management of tax expenditures (see https://tinyurl.com/qspxerm).

It found that there is no formal framework governing the administration or oversight of tax expenditures, and that while HMT and HMRC have begun welcome steps to increase their oversight of tax expenditures and more actively consider their value for money, these will not be sufficient on their own to address value-for-money concerns. As noted in the report, the CIOT held a day-long informational workshop with the NAO, in which we discussed issues related to each of their case study tax expenditures.

Our comments

The CIOT was one of only six respondents that provided written evidence, and our evidence was relatively brief.

In our submission, we endorsed the NAO's conclusion that more needs to be done to monitor the use and impact of tax reliefs. There is no formal framework governing the administration or oversight of tax expenditures. The closest framework which requires such monitoring is the Tax Consultation Framework, to which the government has re-committed. However, the final stage of the framework, reviewing and evaluating the change, seems to be rarely undertaken.

We agreed that whilst HMT and HMRC have begun steps to increase their oversight of tax expenditures and more actively consider their value for money, these will not be sufficient on their own to address value for money concerns.

Governance of tax reliefs in the UK is not systematic or proportionate to their value or the risks they carry. There is a mismatch between the significant effort in government (and to an extent Parliament) that rightly goes into new tax measures – albeit that the first three stages of the tax consultation framework (which relate to that stage of the process) are themselves rarely fully and satisfactorily respected – and the almost total lack of attention, at least so far as is visible to the outside world, as to how effective those measures prove over time. This is particularly pertinent to tax expenditures. More systematic post-implementation reviews should be undertaken, either by HMRC or independently of government, and then form the basis of scrutiny in Parliament.

Where a detailed review is likely to be hindered by a lack of availability of accurate data, consideration should be given (either in relation to existing reliefs, or in the development of new reliefs) as to how reliable data can be captured in the most effective manner.

Other activity
On 10 June, the PAC held an oral evidence session with representatives from HMRC and HMT.

During debate of the Finance Bill, Financial Secretary to the Treasury Jesse Norman MP stated: 'HMRC will continue to monitor and evaluate reliefs and will bring forward a pipeline of further evaluations in due course. It will also consider a proposal … [for] a more systematic evaluation programme for reliefs.'

The PAC is now in the process of drafting the report for the inquiry.

The CIOT's submission can be found at www.tax.org.uk/ref684 and details of the PAC inquiry at https://tinyurl.com/ybcld3lf.

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Future relationship with the EU: Parliamentary Committee Inquiry

GENERAL FEATURE

The CIOT submitted evidence to the House of Commons Committee on the Future Relationship with the European Union's inquiry into progress of the negotiations on the UK's future relationship with the EU. We set out our thoughts on how the level playing field provisions which are being discussed by the UK with the EU might apply, or be relevant, to taxation.

In May 2020, the House of Commons Committee on the Future Relationship with the European Union requested input from the CIOT into their inquiry and its current focus on the 'level playing field provisions' and how these might apply, or be relevant, to taxation in the future relationship between the UK and the EU. The level playing field provisions are those set out in the Political Declaration agreed between the UK and the EU (at para 77). These provisions include state aid, competition, social and employment standards, environment, climate change and relevant tax matters. Our comments were limited to tax matters.

The Withdrawal Agreement does not contain level playing field provisions in relation to tax. As mentioned above, the Political Declaration refers to 'relevant tax matters', but these are not defined. There is a statement in the Political Declaration that the parties should 'commit to principles of good governance in the area of taxation and to curbing of harmful tax practices'.

Looking to the future agreement, the UK and EU draft texts of an agreement for the future relationship, in relation to tax, contain common ground in relation to adopting best practice in relation to harmful tax practices, to promoting good governance and to improving international cooperation in areas such as exchange of information. However, the EU's draft refers to 'rules against tax avoidance practices' and to common high standards at the end of the transition period, stating that the joint UK-EU 'Partnership Council' might include additional areas or lay down higher standards in the future.

Some EU parliamentarians and other commentators have cited concerns about the UK pursuing a policy of aggressive tax competition. In our comments, we noted that all governments pursue tax competition to a degree and membership of the EU has not particularly constrained this, for the UK or any other member state. Indeed, because EU member states that seek to retaliate against another member state's tax competition initiatives can be impeded in some respects from doing so by rules protecting the EU's 'fundamental freedoms', it might be more difficult to pursue an aggressive tax competition policy outside, rather than inside, the EU.

Our comments to the Committee concluded that there seems to be a possible route to an agreement between the UK and the EU in relation to the tax aspects of the level playing field provisions, given that:

- the EU mandate does not identify particular tax measures that should be prohibited or implemented, beyond those relating to harmful tax practices and rules against tax avoidance practices; and
- the UK position accepts that an agreement could include commitments to principles of tax good governance as reflected in international standards (including on tax transparency, exchange of information, fair taxation) without it constraining UK tax sovereignty.

We envisaged that under such an agreement the parties would not be prevented from taking such legislative measures as each sees fit in the future, subject to general international tax law constraints and practices.

We also said that clarity around the application of existing cross border anti-avoidance and administrative Directives after the end of the transition period would be welcome as soon as possible.

Our full comments can be read at: www.tax.org.uk/ref676.

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Agent authorisation: how will it work in future?

MANAGEMENT OF TAXES

The Agents Digital Design Advisory Group is continuing to look at the issue of agent authorisation and how it will work in future.

In *Tax Adviser* in April, we reported HMRC's progress in developing a new form of agent authorisation – the *digital handshake*. With the ultimate goal of replacing paper authorities like the form 64-8, a digital handshake allows a client to authorise their agent to act online, via their Government Gateway account. A process of this kind (although the design does vary from service to service) is already in use in systems such as the UK Property Reporting Service, Trust Registration Service and Annual Tax on Enveloped Dwellings reporting.

The process of agent authorisation and the digital handshake is a key concern of the Agents Digital Design Advisory Group (ADDAG). The issue was discussed in June and, with further meetings planned for July and August, feedback from members on this important issue – and volunteers for testing – would be very welcome.

Properties of Agent Authorisation Process
Following the latest ADDAG meeting, CIOT's Digitalisation and Agent Services Committee and ATT's Technical Steering Group have discussed what sort of properties any new authorisation process would need to have.

Firstly, any process needs to be consistent across all heads of tax. The existing handshakes for appointing an agent under the UK Property Reporting Service and the Trust Registration Service have been developed separately and the result is that clients have to follow two subtly different routes to appoint their agent.

It is also helpful if a client can appoint more than one agent for any given service, and at the same time a balance needs to be struck between the desire for a granular, service by service level desired by HMRC and specialist agents, and the more overarching authority demanded by general practitioners.

If you have comments on what agents require from the authorisation process, please send them either direct to us or to atttechnical@att.org.uk or technical@ciot.org.uk.

Digital exclusion

A common concern expressed by many agents is how their *digitally excluded* clients who cannot operate a Government Gateway account will manage to complete a digital handshake.

HMRC have reassured us that there will be a route for the digitally excluded, which is welcome. More work is needed on the definition of digital excluded; specifically, whether the current definition of digitally excluded as applied to Making Tax Digital (MTD) for VAT can fairly be applied to a much wider population.

Again, thoughts are welcome on how the current digitally excluded definition has worked for clients subject to MTD for VAT and whether the same definition should be used for the wider population. The recent experience of clients making Self-employment Income Support Scheme claims, which required self-employed individuals to set up a Government Gateway account (if they had not already) and negotiate GOV.UK to make their claim, may also be relevant here in considering how well clients will cope with digital handshakes in the future.

Channel gaps

Returning to the current agent authorisation landscape, ADDAG has also been looking at existing processes and has identified two kinds of gap. The first is where the agent simply does not have access to the same information that a client can access; the ATT and CIOT regularly ask HMRC for agents to be able to see and do what their clients can.

The second issue, on which the ATT has recently prepared a paper to present to HMRC, relates to so-called *channel gaps*. This is where the agent has authority, but that authority does not give them equal access to speak to HMRC over all the communication channels (online/paper/telephone). A classic example of this is the online MTD for VAT authorisation, which allows agents to submit MTD for VAT returns online but is often not accepted as sufficient authority by HMRC phone lines. HMRC are looking at this, although it may be limited in what is possible here because of the range of different systems involved.

Any other examples of similar channel gaps would be welcome.

Volunteers wanted

Finally, HMRC are looking for volunteers to test a bulk sign-up facility to submit returns for MTD for Income Tax. Under MTD for VAT, it was necessary to sign up each client individually even if the agent was already authorised to act under a form 64-8. Given the larger population potentially within scope for MTD for Income Tax, a bulk sign-up approach for existing clients would presumably be welcome.

If any agents are interested in testing this out, please let us know. We are assured that this will not involve moving clients to this service before MTD for Income Tax is mandated!

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HMRC Employment Tax Fora meetings

EMPLOYMENT TAXES

This is a round-up of six recent HMRC employment tax related consultative forum meetings: the Employment and Payroll Group, the Expat Tax Forum, the IR35 Forum, the Pensions Industry Stakeholder Forum, the Student Loans Consultation Group and the Statutory Payments Consultation Group.

In this article, we summarise virtual meetings of six of HMRC's employment taxes related forums, which are attended by CIOT volunteers, from the quarter to June 2020. HMRC publishes the minutes of the meetings on GOV.UK in due course.

Employment and Payroll Group (EPG)

The group is the main HMRC forum for employment tax related matters and met on 3 June. There was a discussion of the second phase of the Coronavirus Job Retention Scheme (CJRS), where it was clarified that if grant claims had been made for 20, 30 and 40 employees the maximum claim for any period under phase 2 would be 40 employees, not 90. HMRC were encouraged to publish clarification on this and a number of other points.

The withdrawal of the residential occupiers' job-related living accommodation benefit-in-kind exemption was discussed and HMRC said that so far as they were aware the exemption was little used. We reminded HMRC that we had referred to the residential occupiers' exemption in its response to the call for evidence on living accommodation (December 2015) and that we had flagged potential issues; for example, regarding landed estates, boarding schools, etc. We also raised a related concern with retired employees continuing to live in residential occupiers' exempted accommodation. We are continuing our discussions with HMRC on the withdrawal of this exemption.

HMRC also explained that they were embarking on a sizeable project to ascertain what was not working as effectively as it should for PAYE/RTI purposes; for example, their 'trace and match' for payments, adjustment of tax codes, effective data cleansing, etc. HMRC said that the expectation is that key issues would be prioritised for resolution. HMRC's Liabilities & Payments viewer is being upgraded to show a seven year rather than only three year view for PAYE payments, which should help in resolving any disputed PAYE charges. We commented that more work still needed to be done on agent access.

Expatriate Tax Forum (ETF)

The forum met on 11 June and agreed to appoint a non-HMRC co-chair for the forum – congratulations to Steve Wade of Ernst & Young. There was discussion of outstanding queries on NICs and the two main issues HMRC are looking to get an insight into are:

- examples of how ITEPA 2003 s 62 payments for internationally mobile employees are handled in practice; for example, apportionment or an all or nothing approach; and
- the overarching practical operation of NICs on s 62 payments and employment-related securities chargeable events, with regards to double charges and the interaction with overseas jurisdictions.

The statutory resident test was also discussed in the context of COVID-19 related issues. It was felt that many employees may have difficulties with the tests because of travel restrictions or self-isolating requirements, etc. and this is being raised further.

IR35 Forum
The forum met on 22 May and there was an update from HMRC on the off-payroll working rules following the deferral of the start date for medium/large businesses from April 2020 to April 2021. HMRC will be ramping up communications on off-payroll working later on in the year and the CIOT will be engaging with HMRC in this respect.

Pensions Industry Stakeholder Forum (PISF)
This forum usually meets twice a year and the last meeting was on 22 April. There was a discussion of the temporary changes to pension processes as a result of COVID-19 (these changes can be found in HMRC's monthly Pension Schemes Newsletters). The changes to the tapered annual allowance and increase in the lifetime allowance, as announced in the Budget, were also discussed.

There will also be a call for evidence on how to address the different outcomes for lower earners, depending on whether their employer's pension scheme uses the net pay or relief at source method of tax relief on their pension contributions.

Collection of Student Loans Consultation Group (CSL)
The group met on 2 June. There was discussion on the collection of postgraduate loans where HMRC advised that some employers were making deductions when HMRC's records indicate that the employee does not have a postgraduate loan. HMRC will be contacting those employers. HMRC also noted that some borrowers (employees) are selecting 'no' to having a student loan when completing the New Starter Checklist when they do have a student loan, apparently because their earnings will be under the repayment threshold. HMRC will improve guidance in this respect!

The Student Loan Company is reminding borrowers that have direct payment arrangements in place that if their income has reduced, for example as a result of COVID-19, they should contact them to agree a new schedule of payments.

Statutory Payments Consultation Group (SPCG)
The group met on 25 June and there was discussion on the new statutory sick pay reclaim scheme for those employers with fewer than 250 employees. Due to the need to bring this scheme in quickly, it was built as a standalone system rather than linking in with the existing RTI system. Feedback was that the system was working well, albeit that some employers were not appreciating that it is a reclaim of amounts which should already have been paid to employees and not an advance funding of amounts due to be paid.

The new statutory parental bereavement leave and pay scheme was introduced on 6 April and initial views were that the scheme was operating as intended.

HMRC also confirmed that off-payroll workers are entitled to statutory payments if their own company is making salary payments to the worker out of deemed earnings, assuming the relevant conditions are met. There is, however, no entitlement to statutory payments arising directly from the deemed employer deducting NICs from deemed employment payments. Guidance on grossing up net payments from deemed employment payments received by the worker's company and calculating entitlements will be published by HMRC. Where, for example, there is entitlement to statutory maternity pay, this means that the worker's own company can usually reclaim 92% or 103% from HMRC.

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Revenue and Customs Brief 8 (2020): Change to partial exemption VAT treatment

INDIRECT TAX

HMRC have published the long-awaited Revenue and Customs Brief 8 (2020): *Change to partial exemption VAT* (https://tinyurl.com/ya2clbw8), which sets out its policy changes for businesses that supply goods by way of hire purchase agreements, and have a suggested apportionment method for input VAT incurred on overheads. This RCB follows the CJEU judgment in *Volkswagen Financial Services (UK) Ltd* (Case C-153/17) (https://tinyurl.com/ycf3jp3j).

Background: The *Volkswagen Financial Services (UK) Ltd* case
When a consumer wanted to purchase a VW vehicle from a Volkswagen dealer on finance arrangements, the dealer would supply the vehicle to Volkswagen Financial Services (UK) Ltd (VWFS) plus VAT; and in turn, VWFS supplied both the vehicle and financial credit services to the consumer. VWFS's view was that its partial exemption special method should be based on the transaction count; as individual supplies of a standard rated vehicle and VAT exempt credit were made to each consumer, the VAT recovery rate on overheads would work out at 50%.

After ongoing litigation in the UK, the Supreme Court referred questions to the CJEU in 2018. The Advocate General (AG) opined that the VAT liability of supplies of hire purchase agreements in the UK was not correct and should be treated as a single taxable supply of a vehicle, the value of which also should include the value of the credit supplied. Although the VAT incurred on overheads would become recoverable, this would be exceeded by the increased output VAT due on the supply of the vehicle.

HMRC's position was that as VWFS sold the vehicles at cost as part of the sales agreement, this taxable supply should not affect the apportionment calculation for the input VAT recovery on overhead costs, which they deemed to relate wholly to the VAT exempt supply of credit and arrangement services and hence all irrecoverable.

The CJEU did not follow the AG's opinion and instead held that VWFS's overhead costs were a component of the overall supply of goods under a hire purchase agreement and that there is a right to recover input VAT on overheads even where they had been set against the exempt element for costing purposes. Further, one cannot exclude the value of the goods in a values-based partial exemption apportionment method.

What changes?
The RCB proposes a method which, inter alia, takes the credit amount of the asset value as the numerator. The credit amount of the asset value, plus the credit amount, plus the finance charges, plus any arrangement fees are the denominator. This will result in a recovery percentage below 50% (the result originally sought by VWFS) but still significant – the example in the RCB produces a recovery rate of 46.69%.

The suggested partial exemption method that is in the brief is not compulsory, so businesses with existing partial exemption special methods can continue to use them if desired. Otherwise, businesses can contact HMRC if they would prefer their existing method.

As this case has been ongoing for several years, many businesses will have already lodged protective claims with HMRC and they should now be progressing with the publication of this brief. HMRC are also inviting businesses to contact them at wmbcassetfinanceteam@hmrc.gov.uk in the following circumstances where the taxpayer has:

- recovered no overhead VAT on hire purchase supplies;
- submitted error correction claims for overhead VAT on hire purchase supplies;
- requested revisions to their partial exemption methods; and
- submitted proposals for a new partial exemption method.

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Can family members claim state pension 'babysitting' credits?

GENERAL FEATURES PERSONAL TAX

COVID-19 has caused significant disruption to how children have been and are being cared for due to the closure of schools, out of school clubs and other childcare facilities.

During full lockdown, family members might have had limited ability to support parents with childcare. However, as restrictions are relaxed and more parents start to go back out to work, grandparents or other relatives might assume some childcare duties to help ease the burden. Note that we use the term 'parent' in this article, but the rules also apply to others with responsibility for a child.

Where families make such arrangements, advisers should note that those looking after a relative's children may be able to increase their future state pension by claiming Specified Adult Childcare credit. This will be useful to family members who are not themselves paying NICs or are otherwise entitled to national insurance credits.

Potential issues resulting from COVID-19

In more 'normal' times, grandparents are probably the biggest group of such 'family carers', but due to COVID-19, they might no longer be providing childcare – particularly if they are older or otherwise vulnerable. This means that they might no longer be eligible to claim national insurance credits while they are not (or have not been during lockdown) providing childcare.

The law says that the credits can be transferred for 'relevant weeks' in which care was provided for a child under 12. It could be that, say, a grandparent provided care for relevant weeks in the 2019/20 tax year up to mid-March 2020, but due to the introduction of social distancing measures and then full lockdown, they stopped providing that care. Based on the strict wording of the law, it would seem they could not claim Specified Adult Childcare credits for weeks that they do not actually provide the care. It is not yet clear whether the government would consider relaxing this requirement for those who would have been providing care if it were not for the virus outbreak.

Importantly, other adult relatives such as an aunt or uncle can also make claims for these credits, so if they start providing childcare due to the COVID-19 situation, they might become eligible for credits for the weeks in which they provide such care.

A list of who is considered a 'family member' for the purposes of these credits is found on GOV.UK's Specified Adult Childcare credits factsheet (see https://tinyurl.com/yczfkd5d).

Transferring credits

While the parent is working, they are probably paying NICs (or being credited with them if earning over the lower earnings limit). However, they will also be receiving NIC credits towards their state pension by reason of a child benefit claim. Even if the parent has chosen not to receive child benefit because of the High Income Child Benefit Charge, they will still receive these NIC credits as long as they have claimed child benefit. It is therefore possible for the 'spare' credits (Specified Adult Childcare credits) to be transferred to a relative who looks after the child.

The following conditions have to be satisfied for the year for which it is intended to transfer the NIC credits:

The relative:

- has not already reached state retirement age;
- looks after a child or children under the age of 12 – although this is perhaps likely to be while the child or children's parent or main carer is working, the law does not specifically state that the care provided has to directly relate to working;
- does not already have a qualifying year in their own right, through their own contributions or NIC credits; and
- is ordinarily resident in the UK.

The parent:

- does not need the NIC credits from their child benefit claim for their own NIC record. Their record can be checked after the end of the tax year in question, though it is unlikely to be fully up to date until October after the tax year end.

Both the family member and the parent:

- make a joint claim at the relevant time.

Both the person giving up the credits and the person claiming them need to complete and sign the claim form CA9176. Claims can be processed for as far back as 2011/12, so it is worth checking past years.

If childcare arrangements have switched from one family member to another, more than one application might be needed for a tax year. As credits are transferable based on weeks rather than the year as a whole, one family member might be able to claim the credits for some weeks, and another could claim them for other weeks.

It is the person who has claimed the child benefit who may be able to give up the NIC credits. This is often the mother, but may not be. Other people who might claim the credits include the partner of the child benefit claimant. They would claim on form CF411A.

Kelly Sizer
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Marriage and other relationship breakdown: issues for the lower paid

GENERAL FEATURE PERSONAL TAX

LITRG provides a brief overview of some of the things to consider when advising people on a low income whose relationships have broken down. We expect most advisers will be comfortable with the usual advice in relation to income tax, capital gains tax, inheritance tax and issues to do with the family home, but low-income people can have a host of other issues too. Below we examine some of the more common issues that affect this group particularly, but this is by no means a comprehensive list.

One of the sad things about the COVID-19 pandemic is that we cannot see many of our usual social circle. But, equally, we are having to spend much more time with our close family or partner. Naturally this can lead to discord and it seems to be anticipated that some relationships will simply not survive lockdown.

Remember that the parties may need to take legal and financial advice, in addition to your tax advice. Refer to the Professional Rules and Practice Guidelines (www.tax.org.uk/PRPG) for dealing with clients in these circumstances so you can avoid conflicts of interest and any other relevant issues.

Different taxes and benefits treat couples differently

LITRG's 2015 couples report (www.litrg.org.uk/couples-tax-and-related-welfare-systems-call-for-clarity) highlighted the different tests used to determine if two people were a couple. These differing rules can cause a great deal of confusion. It is best to be clear from the outset that different tests can apply for the various taxes and benefits – meaning that, oddly, the state might view people as a couple for one purpose but not another.

Generally speaking, taxes tend to follow a legal relationship such as marriage or a civil partnership, whereas the benefits system tends to be much more interested in living arrangements and households.

Sometimes, it can also be difficult to determine when a relationship has ended. For example, financial constraints might mean that the individuals still need to live in the same property. In addition, one party may believe the relationship to be over, while the other does not. Again, we would urge you to refer to the Institute's ethical guidelines to ensure your actions are professional at all times.

Tax issues

Claims to marriage allowance and married couples allowance

The marriage allowance can continue to be available even while a couple is separated but ceases upon divorce or dissolution, or earlier if the election is withdrawn.

By contrast, entitlement to the married couple's allowance (now only relevant where at least one party was born before 6 April 1935) requires the couple to be living together. This is deemed to be so unless they are separated under a court order or by deed of separation, or they are separated in such circumstances that the separation is likely to be permanent. If the couple separates, the married couple's allowance is given in full in the year of separation but not for any subsequent tax year.

National Insurance contributions and credits

For couples who split up before reaching state pension age, it is advisable to look at their national insurance record and make sure they consider future entitlement to the state pension. It should be noted that claims to certain state benefits might mean the individual is automatically credited with NICs, but some credits (such as carer's credit) have to be claimed.

Claims for state benefits

Child benefit

Only one person can receive child benefit for a child and the separating parties will need to consider whether or not they need to change the person who claims it, depending on the arrangements they make.

The position as regards the High Income Child Benefit Charge also needs to be considered, if relevant, because of the level of the parties' adjusted net income. For this charge, separation occurs (for married couples, civil partners and those who were living together as if they were married or civil partners) either on legal separation or in such circumstances as the separation is likely to be permanent.

Tax credits and universal credit

Existing claims will have been for a couple and any children as a family unit but on a relationship breakdown, the couple's joint claim will stop. Ceasing to be part of a couple is a change that must be reported to HMRC within one month, otherwise a penalty may be charged. It is also in the claimants' interest to report the change as soon as possible to minimise any overpayment.

The parties will have to consider whether they can make new claims for support as single people. In most cases, those new claims will have to be for universal credit as brand new claims to tax credits are only possible in very limited circumstances (as explained on the LITRG website at www.litrg.org.uk/who-can-claim-tax-credits.

Universal credit, whilst similar, is not a like for like replacement for tax credits. This could impact on people who have savings and were previously claiming tax credits; for example, because tax credits do not take into account capital, whereas capital does affect the level of a universal credit award. Indeed, there is no entitlement to universal credit where someone has capital over £16,000 (subject to various 'disregards' – for example, assets used wholly or mainly in the claimant's trade).

Maintenance for children or ex-partner

Normally maintenance payments are not taxable in the hands of the recipient, nor are they tax-deductible for the payer. However, very limited relief may be available for those where at least one spouse or civil partner was born before 6 April 1935.

Beware, though, of any interaction with means-tested benefits, especially as the rules can vary across different benefits. For example, as explained on LITRG's Revenue Benefits website aimed at advisers (see https://tinyurl.com/ya2uryvr), spousal maintenance is taken into account as unearned income for universal credit claimants.

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CIOT	Date sent
Draft legislation: Taxation of coronavirus (COVID-19) www.tax.org.uk/ref683	12/06/2020
Management of tax reliefs www.tax.org.uk/ref684	18/06/2020
COVID-19 and stamp taxes: temporary processes due www.tax.org.uk/ref686	18/06/2020
Future relationship with the EU www.tax.org.uk/ref676	18/06/2020
ATT	
Draft legislation: Taxation of coronavirus (COVID-19) support payments www.att.org.uk/ref360	16/06/2020

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CIOT & ATT

East Midlands Branch honours Andrew Hubbard

HONORARY BRANCH PRESIDENT

The East Midlands Branch are very proud to announce the award of 'Honorary Branch President' to Andrew Hubbard for his outstanding contribution and service to the tax profession not only throughout the East Midlands region, but also nationally and internationally.

A former East Midlands Branch Chair between 1999 and 2002, Andrew also served as ATT President during 2003/04 and then CIOT President during 2009/10. He stepped down from the CIOT Council last year after 15 years' service. Andrew is currently Editor in Chief of *Taxation* magazine and a consultant at RSM.

The title and position of Honorary East Midlands Branch President has never been awarded throughout the Branch's 37 year history, and Andrew is therefore the very first recipient of this special honour.

Commenting on Andrew Hubbard's award, East Midlands Branch Chair Stephen Foulkes, said:

'In view of Andrew's incredible contribution to the tax profession, we felt that the Branch should acknowledge and give thanks in some special and meaningful way to Andrew for his many years of unquestionable dedicated service.

'For many years, Andrew has been – and still is no less – a prominent and well-respected figure and tax commentator within the tax community. His service to the tax profession over many years throughout his career is both truly unquestionable and awe-inspiring. He has even risen through the ranks to become national President of both the ATT and the CIOT; this alone has always given me hope and inspiration that East Midlands Branch Chairs can indeed achieve truly remarkable things!

'I was also delighted to receive the endorsement from both the CIOT and ATT Presidents, Glyn and Jeremy, for us to offer the honorary presidency to Andrew. Glyn and Jeremy both told me that is a very fitting tribute to Andrew, especially considering that it is given from his home Branch.

'All our East Midlands members and students, past, present and future, owe Andrew an enormous debt of gratitude for everything he has done for us and for the tax profession at large, and it is therefore with immense pleasure, honour and the deepest of appreciation that we award Andrew the title of East Midlands Branch Honorary President.'

Responding to Stephen's comments, Andrew Hubbard said: 'I was deeply touched when I received Stephen's email inviting me to become the Branch's Honorary President. In such difficult times, receiving this recognition from colleagues really gave me a boost. The CIOT has been central to my tax career and everything stems from my first involvement with the East Midlands Branch more than 30 years ago. I was honoured to be asked to join the Branch committee in the late 1980s, though I suspect that it was really more of a case of a desperate need to make the numbers up.

'I learned a huge amount during my years as Secretary and then Branch Chair, not only about the best people to ask to lecture to us (and occasionally who not to invite!), but also about the skills of organising events and persuading busy people to give up their time to support the Institute. The Branch also gave me some of my first opportunities to lecture on tax matters. One of the very first talks I gave was on the new (1989) capital gains tax value shifting rules. Talk about a "baptism of fire", particularly as my fellow lecturer that afternoon was none other than Peter Rayney, our new President!

'That's one of the great things about our Institute; it has allowed me to meet with, and get to know, so many of the leading players in our profession. I certainly never imagined all those years ago that I would one day become President of both the ATT and then the CIOT. Nothing would have happened without our Branch structure and it is immensely gratifying to see that the Branch Network continues to support the activities of members and students in these unprecedently difficult times.

'I am very sorry not to have been able to accept this honour in person. One day things will get back to normal – in the meantime, I would like to thank Stephen and the Branch Committee for making me the Honorary Branch President, but also all my friends and colleagues, past and present, within the CIOT and ATT for enabling that very shy young committee member to achieve something which he could never have dreamed of the first time he gingerly stepped into a committee meeting!'

CIOT

CIOT Scotland virtual conference

CONFERENCE

The CIOT Scotland conference will take place as an online event this year, part of the CIOT and ATT's efforts to continue delivering CPD opportunities to members while face-to-face events remain on hold.

The conference will take place on Friday 6 November 2020. At the time of going to press, confirmed speakers included **Robert Jamieson, Kate Upcraft, Heather Self, Peter Rayney** and **Charlotte Barbour**.

In an email to members, Sean Cockburn, chair of the Scotland committee, said the event allowed the committee to continue offering to members CPD opportunities with the assistance of a range of high quality speakers and technical content.

It is hoped that the regular two-day members conference will be able to resume in 2021 as COVID-19 restrictions are relaxed.

Registrations for the conference will open towards the end of the summer, while any questions about the conference can be emailed to events@tax.org.uk.

CIOT

Build your own personal brand plan in six easy steps

TRAINING

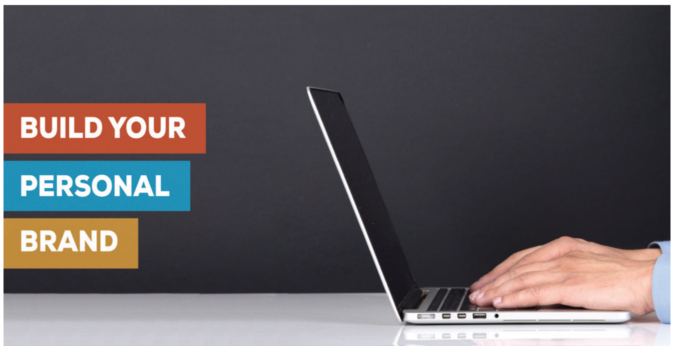
Joanne Herman's blog series continues

Welcome back! This instalment of my blog series will be focusing on how you can start to build your own personal brand plan. I will outline what steps you need to consider and finally what would happen if you didn't have a brand plan in place. You will also be able to download your very own one-page personal brand plan template, which is available at: **www.tax.org.uk/build-your-own-personal-brand-plan-6-easy-steps**

Planning your success

How many plans have you created over the years and what have they all been for? We may create a business plan, a sales and marketing plan or an event plan. We may also make dinner or birthday plans, but what about a personal branding plan? How about investing in ourselves?

It's not egotistical, far from it, in fact. Just as we may follow a diet, medical or exercise plan to maintain a healthy lifestyle, a personal brand plan will put us on track to career success. Over the years, I've worked for many organisations, big and small, and have noticed that CEOs or individuals working for the smaller businesses tend to invest in their personal brand



more than those in larger organisations. Why?

It boils down to the fact that when someone is building a business, the concept of building a personal brand probably comes naturally to them – as my boss Errol Damelin, founder of Wonga, did in 2000 with his dotcom company called CableNet. He was the face of the business, so building his personal brand made perfect sense.

Smaller businesses are high risk and have the drive and appetite to succeed. Like Errol Damelin, usually the CEOs or founders of a company will be at the coal face selling, marketing and building those important relationships.

Heard of H2H selling?

Regardless of B2B and B2C industries, they are connecting with people, and people are connecting with them. I like to call this H2H selling. Human to human. I came across this term around seven years ago and it's stuck.

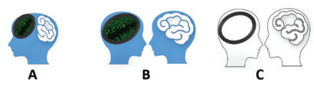
The CEO isn't only representing the company brand; he or she *is* the company brand. With this in mind, having a personal brand plan is not only important for the CEOs and entrepreneurs of this world, but for all of us. And what's more, you don't have to choose between building a personal brand and a company brand. You can build both at the same time.

Delivering the 'unique experience of YOU'

Personal branding may not come naturally to everybody. Freely talking, writing or showing what you do well at to others can be difficult. Yet, with a brand plan we can begin to clearly articulate what we do, how we are doing it and why.

A brand plan will help you consistently deliver the 'unique experience of you'. It will amplify your skills, talent, passion and experience to anyone you come into contact with.

What type are you?



Most people fall into one of three types. For more information, please see your BONUS infographic which can be located on the CIOT website.

Type A: You're at one with both your physical brand and virtual brand. You're comfortable with your on and offline reputation. Your SSI score, which is how LinkedIn measures your influence may be 70 or over. (I'll be explaining what an SSI score is in more detail in another instalment.)

Type B: Your virtual brand and physical brand are separate entities. You're not 100% comfortable with your personal brand. You are keen to take action to make improvements and become more visible. Your SSI score is below 70.

Type C: You're invisible. You're not comfortable with the concept of personal branding. You may not know how to or even want to improve your brand. Your SSI score may not even be applicable. If you are reading and think you're type C, then I hope you are beginning to see the value in personal branding. It's not too late!

In a future blog article, I will be exploring the ways in which you can raise your personal brand based around deciding what type of thought leader

you want to be and what type of visibility you may want to achieve. For now, let's crack on with your plan.

You can build your personal brand plan in six easy steps

1. Mission
2. Target audience
3. Your brand attributes
4. Your story
5. Key measurables
6. Ideas to share

What would happen if you didn't have a personal brand plan?
If you don't have a personal brand plan in place, then it's time to think about doing something about it. Remember, without a brand plan, you could be leaving yourself open to:

- **Not knowing who is saying/reading what and where:** One of the easiest ways to lose control over what others may say and read about you or your brand online is to not track online mentions, or fail to respond to comments or feedback left on your profiles.
- **Competitors ranking for your name or other relevant terms:** Although the average person won't be directly competing for your name as they do for brand names in the business world, it is worth Googling to see what comes up and how you rank. SEO (search engine optimisation) is one of the most important elements of your online reputation management to protect and improve your personal brand.
- **Attracting the wrong type of people:** If you want to be a thought leader in your specialist area, a TikTok internet sensation with your nifty dance moves, or an Instagram influencer, without a brand plan you could be potentially opening yourself up to negative comments or false reviews.

A plan will empower you to build a personal brand with meaning and significance in your specialist space. It will also help you to attract and retain a loyal following. There are helpful tools out there, and later on in this blog series I will be sharing my top five best brand management tools, as well as a checklist of things to get started. However, we need to ask ourselves how much investment we want to make to improve our personal profiles?

The key takeaway here is that what people find when they are searching for information online greatly influences three things: their buying decisions; their first impressions of someone; and how they quickly build an assumption of a brand or individual.

Before I leave you, I have one final question: What would you do if everything you've done in the past was recorded or documented on the internet for everyone to see?

KEY TAKEAWAY

- Think about where you are right now in terms of delivering your brand experience. What type are you?
- How much investment do you want to make to improve your personal brand?
- Download your one-page personal brand plan template.

Download your personal brand plan template from the CIOT website: www.tax.org.uk/sites/default/files/One_Page_Personal_Branding_Plan.pdf

If you enjoyed reading this article then please follow me: linkedin/com/in/joanneherman

ADIT

ADIT courses moving online

TRAINING

As tax professionals around the world adapt to new ways of working, learning programmes that support professional development are increasingly moving online. For ADIT students, who come from a diverse range of backgrounds in more than 120 countries around the world, this trend towards online learning has notable benefits.

ADIT course providers have been working hard in recent weeks to make their tuition programmes available via online and distance learning formats to support students who may be unable to attend physical classes ahead of the December exams. As we adjust to a new normal, this accelerated development of online courses creates a key opportunity for tax practitioners from all corners of the world to access ADIT tuition.

The CIOT will continue to support and promote online learning options, and digital developments, which offer value, support and accessibility to all ADIT students, no matter where they live.

To find out more about the growing number of online ADIT courses that are available, visit www.adit.org/onlinecourses.

ADIT

Home delivery for ADIT exams!

TRAINING

Just as ADIT students are able to benefit from a growing range of online tuition options to help them prepare for their exams, the exams themselves will be available for students to sit remotely this December, typing answers on a home computer.

The ADIT community spans the globe, and the forthcoming December 2020 exam session is expected to be our largest ever with students sitting exams in more than 60 countries. The various restrictions on travel and public gatherings likely to be in place in different parts of the world mean that a socially distanced, accessible method for sitting exams is crucial in ensuring that students are able to sit their exams safely and confidently, and continue their progress towards achieving ADIT certification.

The CIOT is committed to ensuring that exams remain accessible for all participating students regardless of background. The network of overseas ADIT exam centres will therefore remain in place, with social distancing and other precautionary measures in force, giving students who are unable to sit their exams online at home the option of handwriting their exams.

For more information about the introduction of online, home exams for ADIT students, visit www.adit.org/onlineexams.

Practical details for students, including software information and pre- and post-exam procedures, will be communicated in due course.

Disciplinary reports

Findings and orders of the Disciplinary Tribunal

TAXATION DISCIPLINARY BOARD

Mr David Hannah, Cornerstone Tax Advisors

At hearings which took place on 5 and 6 February 2020, and meetings on 17 February and 17 March 2020, the Disciplinary Tribunal of the Taxation Disciplinary Board considered complaints brought against Mr David Hannah (Cornerstone Tax Advisors) of Market Harborough, a member of The Chartered Institute of Taxation.

Mr Hannah (Cornerstone Tax Advisors) faced the following charges:

Charge 1
In contravention of rules 5.6.1 to 5.6.3 of the Professional Rules and Practice Guidelines 2006, Cornerstone Tax Advisors failed to adequately set out and describe in sufficient detail the potential routes and means challenge to a tax avoidance scheme by HMRC, including the proper interpretation of s 45 and the use of s 75A of the Finance Act 2003.

Charge 2
In contravention of rules 5.6.1 to 5.6.3 of the Professional Rules and Practice Guidelines 2006, Cornerstone Tax Advisors failed to highlight the fact that the said scheme had been expressly targeted by HMRC with the introduction of s 75A as was apparent from both the Pre-Budget Report (PBRN 17) and HMRC's Technical Note (both being released on 6 December 2006).

Charge 3
In contravention of rules 5.6.1 to 5.6.3 of the Professional Rules and Practice Guidelines 2006, Cornerstone Tax Advisors failed to properly assess and communicate the risk of a successful challenge by HMRC. In particular, to describe such a risk as a 'low probability' was not an assessment that any reasonable tax advisor could have reached in the circumstances.

The tribunal found all three charges proved, and determined that Mr Hannah be censured, pay compensation of £5,000 to the complainant, pay a fine of £5,000, and pay costs in the sum of £49,013.12. An application to appeal was rejected. The full decision of the tribunal can be found on the TDB's website at www.tax-board.org.uk

WCOTA

The History of Tax

REPORT

Alison Lovejoy on 'The merger between HM Customs and Excise and the Inland Revenue'.

On 24 June, Professor Penelope Tuck, Dr Dominic de Cogan and Dr John Snape gave the first virtual History of Tax session, considering the background to the merger between HM Customs and Excise and HM Commissioners of Inland Revenue to form HM Revenue and Customs. To some, this is very recent history, even though the merger took place 15 years ago.

The talk was part of a wider research project on the oral history of tax policy making, funded by the CIOT, which is designed to capture the voices of those involved in key tax developments to supplement documentary evidence. This strand of the project involved interviews with a number of those involved in, or impacted by, the merger, which added a fascinating dimension.

Penelope, Dominic and John considered the period up to the merger, and explained that it was not unique, although it could be described as 'characteristic'. Putting the merger into the wider historical context, it was one event on a historical continuum that started with the merger of the Boards of Stamps and Taxes in 1834, and continued to the merger between the Inland Revenue and the Contributions Agency in 1999, so mergers of this sort were not new. The merger, which was a recommendation of the 2004 review by Lord O'Donnell 'Financing Britain's Future', was one element of the Blair government's work to put fairness and efficiency at the heart of policy making and recognised that tax is more than just raising revenue.

They considered, using quotations by those who lived through the merger, what it achieved and the differences between the two original departments.

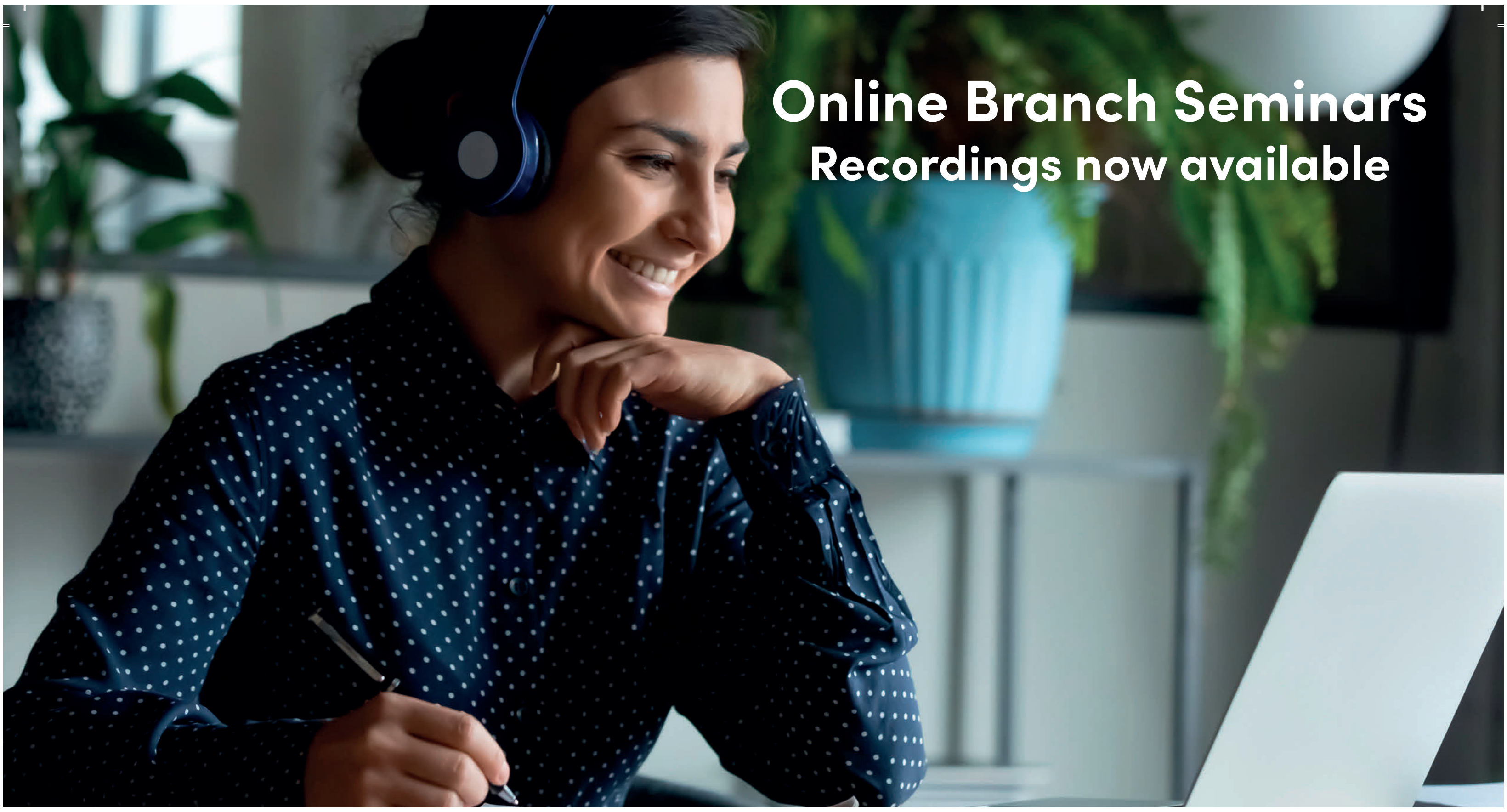
To an outside observer, the perception was always that HM Customs and Excise was a more aggressive department, partly due to the enforcement powers that were vested in its staff, and this perception was confirmed, at least in part, by the presenters. The reality was, as also emerged, rather more complex.

Following the presentation, we were fortunate to have Victor Baker (Senior Technical Policy and Technical Advisor at HMRC) give his personal reflections on the merger. Paul Morton, Master of the Worshipful Company of Tax Advisers, who started his career in the Inland Revenue, was also able to add his own memories.

We hope that Penelope, Dominic and John will come back and present further strands of this particular tax research project, hopefully in person rather than by videoconference.

by Caroline Turnball-Hall

The History of Tax lectures are open to non-members. Please contact: adminwcta@ciot.org.uk



There is a huge amount of online content available for members and students until 1 September 2020

www.tax.org.uk/branch-recordings
www.att.org.uk/branch-recordings

Barriers to Capital Extraction/Transactions in Securities
Presented by Pete Miller | £30

Capital Gains Update
Presented by Robert Maas | Free

Construction Industry Taxes Update and Their Reporting Obligations
Presented by Cathya Djangoly | £50

Coming to Work in the UK - Early Years
Presented by Megan Saksida | £30

COVID-19 Support for Businesses
Presented by Rebecca Benneyworth | £30

Dealing with SDLT in Common Transactions
Presented by Peter Rayney | £25

Demystifying Digital Assets
Presented by Kate Baucherel & Lorraine Ellison | £27.50

Domicile and Remittances: A Crash Course
Presented by James Heathcote | Free

Employment Status and Off-Payroll Working
Presented by Emma Rawson | Free

Engagement Letters and Liability Caps
Presented by Karen Eckstein | Free

Family Investment Companies and their use in Estate, Succession and Tax Planning
Presented by Ronnie Brown & Claire Macpherson | Free

Finance Act 2020
Presented by Robert Jamieson | £60

How Developments in Anti-Money Laundering Affect Your Work as a Tax Professional
Heather Brehcist & Jane Mellor | Free

IHT and Trusts Update
Presented by Helen Thornley | £25

Inheritance Tax and Trusts
Presented by Robert Jamieson | £55

IR35 and HMRC's CEST Tool - A Cornucopia of False Positives
Presented by Derek Francis | Free

Keep Calm and Carry On!
Presented by Alex Docherty | Free

Property Taxes
Presented by Caroline Fleet | £35

Property Taxes Round-up
Presented by Carl Bayley | Free

R&D
Presented by Mark Smith, Ben Craig & Joana Palha | £35

Stamp Duty Planning Opportunities
Presented by Georgina West | £30

Tax Planning Ideas for Owner-Managed Businesses
Presented by Robert Jamieson | £75

Tax Strategies for COVID-19 Distressed OMBs
Presented by Peter Rayney | £25

Transfer of Assets Abroad: Key Considerations for Asset Structuring
Presented by James Heathcote | Free

Update on Scottish Taxes
Presented by Charlotte Barbour & Joanne Walker | Free

VAT Update
Presented by Neil Owen | £65

What to Think About When Winding Up
Presented by Emma Rawson | £27.50

Online Branch Seminars

Keeping you up to date with your CPD

COVID-19 has changed the way the Branch Network are delivering CPD. The programme of events between September and December will take place online.

Our focus has been on delivering good topic coverage, affordability, accessibility and truly excellent CPD.

In the meantime, CPD on demand is available until 1 September, where you can access our catalogue of recorded branch seminars to date.

Members, students and non-members alike are welcome to access the recorded seminars:

www.tax.org.uk/branch-recordings
www.att.org.uk/branch-recordings

Until then...

Stay in the loop

Look out for our weekly emails about upcoming online seminars

Add us to your Safe Senders list – we'll email you from branches@tax.org.uk.

Check online

Our new online programme will begin from Tuesday 1 September. Check our websites and be the first to book when we launch:

www.tax.org.uk/online-branch-seminars
www.att.org.uk/online-branch-seminars

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Look out for details on the launch of our new programme

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Senior Finance Officer (Taxation)

Lewes

£28,802 - £31,112

You will form part of a newly integrated service delivering a comprehensive Tax Advisory and Compliance service across the three Orbis partners.

You will assist the Tax Manager in all aspects of tax compliance, including liaison with HMRC, for all three authorities and a number of external VAT registered organisations. You will be responsible for the completion and timely submission of monthly and quarterly VAT returns across the partnership; giving tax advice on both general and complex queries in accordance with approved policies and HMRC regulations.

If you have excellent attention to detail, the technical knowledge to advise on VAT, SDLT and CIS issues, experience in the completion of VAT returns, the ability to work accurately and methodically in a sometimes fast paced environment, pro-active and a solution focused team player, keen on providing an excellent and efficient service to all our partners, it would be great to hear from you!

For an informal discussion, please contact Karen Regan, Tax Manager on 07701 394900.

To apply, please visit **www.eastsussex.gov.uk/jobs**

Closing date: 23 August 2020.

Interview date: 1-3 September 2020. It is likely that interviews will be undertaken virtually via MS Teams or Skype video conferencing software.

East Sussex County Council is an equal opportunities employer. We welcome applications from all suitable candidates, regardless of race, gender, sexual orientation, disability or age. All applications are treated on merit.

East Sussex County Council

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Georgiana Head Recruitment

MEET YOUR ADVISERS

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Director

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ALISON TAIT

Director

Tel: 0113 426 6671
Mob: 07971627 304

alison@ghrtax.com

In-house Tax Manager
Leeds – £excellent

This in-house role is to assist in the management of our client's tax charge, the minimisation of tax liabilities across the group and the management and reporting of tax risks. To ensure compliance with all legislative requirements relating to corporation tax, in particular in the UK the group's transfer pricing policy and documentation. The tax team is based in the head office in Leeds. Initially, you will work remotely, but with planned reintegration into the office in future. Would consider an established manager or a good asistant manager looking for a step up. **Call Georgiana Ref: 2961**

Tax Manager or Senior Manager
Huddersfield – £excellent

Our client, a large independent firm with a great client base, seeks an experienced personal tax specialist to deal with a mix of compliance and advisory work for HNW individuals – many of whom are non doms. You will also be involved in some trust work. This practice is happy for someone to be predominantly home based with some travel to see clients or to help build the team in the office. The office is close to motorway links and easily accessible. There is scope for future promotion for someone looking for partnership prospects. **Call Georgiana Ref: 2958**

R&D Tax Manager – Manchester
£38,000 – £45,000 + bens + bonus

A great opportunity to join one of the fastest growing accountancy firms in the UK. Our client is a large independent firm, headquartered in Manchester. It has a strong and growing R&D tax practice which works on both a UK and international level, dealing with a range of technical tax reliefs. This business seeks a tax professional or former engineer with experience of R&D tax work. It may be that you currently work in a larger accountancy firm and are looking for scope for progression. Flexible working, a mix of home and office working available. **Call Georgiana Ref: 2954**

Tax Advisory Senior Manager
Manchester – £excellent + benefits

This is a newly created role that comes with clear progression to partnership. In addition to man management and business development responsibilities, you will work on technical assignments including restructuring, shareholder tax planning, employee share schemes, dividend planning, tax efficient share structures, tax due diligence, management buy outs and estate planning. You must have a broad knowledge of corporate, personal, business and capital taxes, and be experienced in delivering tax planning projects. **Call Alison Ref: 2906**

Mixed Tax Manager
Manchester – to £45,000

You will manage a portfolio of corporate and personal tax compliance clients, and will also assist the directors with a variety of project work. Your responsibilities will have a personal tax bias, but you will be an all round business tax adviser managing work including succession planning, IHT advice., R&D and capital allowances. You will also assist in mentoring junior team members. You should be CTA/ACA qualified. This role is based in Manchester city centre and offers the opportunity for progression to the senior management team. **Call Alison Ref: 2876**

Private Client Senior Manager/Director
Leeds – £excellent

This role has an emphasis in trust and IHT work, so the ideal candidate will be CTA and STEP qualified. You will provide tax advice covering IHT planning, non-domicile and residence issues, the use of UK and offshore trusts and income tax planning. You will also be involved in business development, man management and working closely with the Wealth Management team to ensure a joined up approach to tax and financial planning. This role has fantastic career progression opportunities. **Call Alison Ref: 2919**

www.georgianaheadrecruitment.com