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TAXAdviser

The changing tax environment

Jayne Harrold and *Colin Smith* consider the development of new environmental taxes and the drive for behavioural change, p6

PLUS Capital gains tax – Settlements and tax planning – Self Assessment tax returns – Mental health

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Happy New Year!

To our clients & candidates

Last year surprised us all, and proved to be a difficult time for so many. We feel incredibly fortunate that we were able to continue business through such an uncertain time and, although none of us can predict what the future holds, we feel quietly confident as we move forward.

The end of 2020 saw a huge surge in the Tax Recruitment market, and it looks set to continue this way as we step into 2021.

*The AVTR team is here, ready and waiting for your call. Let's take on this year with a burst of hope and positivity - **together**.*

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SCAN ME

President's page

president@ciot.org.uk
Peter Rayney

Love Is All Around

Welcome to my first Presidential Page of 2021. And may I start by wishing you and your families a successful and happy New Year. I am sure many of us are glad to see the back of 2020 and the prospect of some return to normality. As you read this, I am all too aware that a large number of you will be in the midst of tax return filing. This can be a stressful time and it is important that we manage to look after our mental health – even if this is a brief walk or meaningful break from our computer screens.

One of the positives that I take from the Covid-19 ridden 2020 is the emergence of the wonderful human spirit and courage we have seen working for the benefit of our wider society. The NHS and the other vital front line workers, Captain Sir Tom Moore, Marcus Rashford MBE, and all the other great shining examples of humanity and benevolence.

The work of our Low Incomes Tax Reform Group

Closer to home, I think we can justly be very proud of the great work of our Low Incomes Tax Reform Group (LITRG). LITRG has worked tirelessly this year to help the public – especially the vulnerable – to understand and navigate through the complex web of Covid-19 assistance measures. At the last count, LITRG had over 600,000 visitors to its Covid-19 website hub (which can be found at bit.ly/2WjG2DP). Furthermore, it has published over 80 dedicated articles to help everyone understand the impact of Covid-19 on tax and related benefits. The group has also been able to use the numerous web queries it has received to improve website guidance on areas that people have found particularly difficult and to alert HMRC to issues.

LITRG continues to work closely with HMRC on many highly topical areas, including the Covid-19 support schemes, tax credits and the loan charge. It is great to see that, as a result of LITRG's practical expertise in these areas, HMRC has listened to and taken on board some of its recommendations; for example, improvements to guidance allowing you to check if you can claim a grant through the Self Employment Income Support Scheme (see bit.ly/3gzNYdF). Moreover, LITRG has been instrumental in identifying issues and improving processes such as surrounding the disability element of tax credits (see bit.ly/3n4Y34L).

I could go on to list out more of LITRG's wonderful achievements but space does not permit. We were all very delighted to see LITRG win the award for **Best Specialist Team in a Public or Not for Profit Organisation** at the 2020 Tolley's Taxation Awards. Further awards were picked up by one of LITRG's Technical Officers, Meredith McCammond (**The Tax Rising Star Award**) and Robin Williamson (LITRG's former Technical Director and ongoing volunteer) (**The Lifetime Achievement award**). These awards are indeed testament to the widely acknowledged fantastic work of our indefatigable LITRG group, headed up by Victoria Todd.

A better deal for the low-income taxpayer

Looking further ahead, last month LITRG released a visionary paper, 'A better deal for the low-income taxpayer'. This paper sets out how the tax system can be made to work better for taxpayers on low incomes. The 47 recommendations in the paper are divided between seven key principles which LITRG believe should be firmly lodged in the minds of those designing and managing the tax system. I think many of you will be interested in reading this paper, which can be found at bit.ly/2W41nkw.

The CIOT is very proud to support and fund LITRG's valuable work providing free, relevant guidance on tax matters to those who need it, and trying to make the tax and related benefits systems work better for those on low incomes.

Supporting you

As we start the year afresh, we are looking forward to supporting our students in their studies, our members in their careers and volunteers in their much valued contribution to the CIOT.

I hope my page has shown that 'Love Is All Around' – being a child of the sixties, I much prefer The Troggs version!

Peter Rayney
President, CIOT
president@ciot.org.uk

"At the last count, LITRG had over 600,000 visitors to the Covid-19 website hub and has published over 80 dedicated articles on the impact of Covid-19.

It's time to complete your 2020 Annual Return.

Don't get caught out. Stay compliant.

All members* are required to complete an Annual Return confirming their contact, work details and compliance with membership obligations such as:

- continuing professional development
- anti-money laundering supervision
- professional indemnity insurance.

Please check that you have completed yours by logging on to the Members Portal (https://pilot-portal.tax.org.uk) then going to Secure area/Members Area/ Compliance/Annual Return where you will be able to complete any outstanding form.

*Excludes those who are fully retired and students.

STEP BY STEP GUIDE TO COMPLETING YOUR 2020 ANNUAL RETURN

1. Login

On the ATT website click login located in the top right.
On the CIOT home page please refer to the advert on the right hand side.

2. Portal

To access your account on the portal please use your:

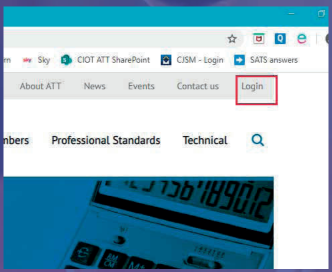
- **member number**
- **email address**

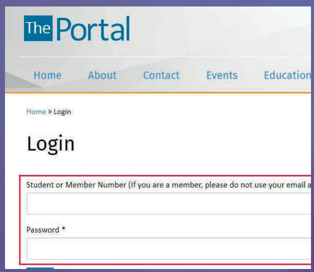
3. Account

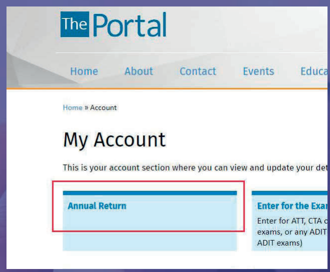
Select Annual Return option

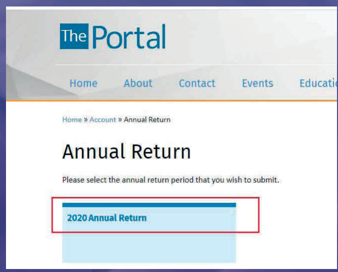
4. Period

Select 2020 Annual Return period









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

ATT welcome

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Richard Todd

‘Things can only get better…’

Things can only get better…’ was the tune played frequently at the time of the General Election in May 1997, when the population thought we had hit rock bottom and the only way was up (that was the title from another song from pre-1997). Dare we say that about the year 2021?

- **Covid-19:** With the development of the vaccine at the tail-end of last year, is it time to think about Sir Winston Churchill’s famous words? ‘This is not the end, this is not even the beginning of the end, this is just perhaps the end of the beginning.’ It is probably correct to say that we have now moved into the next stage of this battle. How are we going to pay back all the money we have borrowed?
- **A review of capital gains tax has been announced:** I am aware of some scaremongering already about the possibility of increasing rates above the current level, coupled with a possible reduction of the annual exemption from £12,300.
- **Brexit:** By the time you are reading this, the Transition Period will have ended (probably a fortnight ago, unless you are reading this after the end of this year’s personal tax return cycle, in which case four or five weeks ago). It is probably too early to see the full impact of Brexit. Remember, there will be changes whether it ends with Deal or No Deal. There are also further complications for Northern Ireland: although Northern Ireland businesses keep their VAT registration number, they replace the prefix GB with XI.
- **VAT domestic reverse charge:** This has already been delayed from 1 October 2019 until 1 October 2020, and then again until 1 March 2021. Are the businesses affected by the new rules ready to hit the ground running? Or are they hoping for a further delay? It would look very poor form if this were to be delayed yet again.
- **Off-payroll working:** This should have been introduced in April 2020 but was delayed until April 2021. Have all businesses potentially affected by this rule reviewed contracts with their suppliers and determined any changes required? Have they communicated those changes to the workers involved?

But it is not all bad news. Just sometimes, some snippets of information come along that make me smile.

- **Annual Investment Allowance (AIA):** In case you missed it last month, the AIA, which was due to return to the £200,000 limit with effect from 1 January 2021, will be retained at £1 million for another 12 months. That is not the end of the story though, because we now need to communicate this to our clients. And make a note for late Autumn to bring AIA back off the shelf and put it front and centre again.
- **Working From Home (WFH) expenses:** If you do not need to complete a Self Assessment tax return, have you got yours yet? I know I could easily spend £312 at 20% on a night out, if only there was somewhere open to take my money.
- **Tax compliance:** Late filing penalties, late payment interest charges and late payment penalties: at the time of writing, it was not confirmed whether any of these could be waived if the taxpayer has been affected by Covid-19. Watch this space. Wherever possible, I would not delay filing the tax return because at least the return will quantify the liability outstanding and make it easier to agree a payment plan with HMRC.
- **Pension Annual Allowance:** As the threshold has been increased from £110,000 to £200,000, there may be fewer instances of having to consider the tapering of the Pension Annual Allowance. But did you notice that the minimum Pension Annual Allowance was reduced from £10,000 to £4,000?

But we must also think about ourselves. How have you coped this year? How would you rate your health, especially as we find ourselves in January, the worst time of the year for those of us working in personal tax? Branch meetings were always useful opportunities to meet and talk with friends and colleagues, providing some social interaction but even they have moved online.

Continue to look after yourself and remember what Churchill said – maybe this is the end of the beginning, and maybe it isn’t going to get any worse than what it has been. Maybe the only way is up?

All the very best,

Richard Todd
ATT Deputy President
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“This is not the end, this is not even the beginning of the end, this is just perhaps the end of the beginning.

The changing tax environment

Jayne Harrold and *Colin Smith* consider the development and implementation of new environmental taxes

KEY POINTS

- **What is the issue?**
Tax has become an important policy lever in helping to drive behavioural change. The development and implementation of new environmental taxes means that more businesses will start to fall within their scope.
- **What does it mean for me?**
Management of environmental taxes by taxpayers frequently relies on detailed and granular operational data. The data often needs to be collated from multiple sources and can be difficult to obtain, manage and verify, with wide scope for misunderstanding or error.
- **What can I take away?**
The strong movement towards the development of new environmental taxes, such as plastic packaging tax, will bring more businesses within their scope, meaning that more tax teams may need to start managing them for the first time.

With the increased public profile of environmental issues, particularly plastic pollution and climate change, tax has become an important policy lever in helping to drive behavioural change. The development and implementation of new environmental taxes means that more businesses will start to fall within their scope.

The EU Green Deal published in December 2019 sets out a number of proposals including a new plastic packaging levy which will take effect from 1 January 2021 and consultation on a carbon border adjustment mechanism to apply carbon pricing in some form to imported goods.

The purpose of this article is to explore UK environmental taxes, including the new plastic packaging tax which takes effect from 1 April 2022, and carbon emissions tax which may replace the EU Emissions Trading Scheme from 1 January 2021.

We have set out the detail of the current UK environmental tax regime so that tax teams who may not be interacting and dealing with these taxes get a sense of some of the challenges that they could face if they deal with these or the new environmental taxes in the future.

What are the environmental taxes?

In 2012, HM Treasury defined environmental taxes as those meeting the following three principles:

- the tax is explicitly linked to the government's environmental objectives;

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PROFILE

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- the primary objective of the tax is to encourage environmentally positive behaviour change; and
- the tax is structured in relation to environmental objectives, e.g. the more polluting the behaviour, the greater the tax levied.

We focus in this article on the core indirect environmental taxes: landfill tax, aggregates levy, climate change levy, the proposed carbon emissions tax which may be implemented with effect from 1 January 2021 if a UK Emissions Trading Scheme cannot be implemented, and plastic packaging tax which will take effect from 1 April 2022.

Common features

As for many of the indirect taxes and excise duties, environmental taxes tend to be levied at a single point in the supply chain.

Although a relatively small number of taxpayers are required to levy such taxes and complete tax returns, a much larger number of businesses bear the economic burden of such taxes as part of the cost of waste disposal services, aggregate (rock, sand and gravel), gas and electricity, and in future on the cost of plastic packaging.

The new plastic packaging tax will impact a much greater number of taxpayers than the existing environmental taxes, meaning that tax teams may need to start managing environmental taxes for the first time. There are commonalities between the taxes that mean the lessons learned from management of the existing environmental taxes can be directly applied.

All of the environmental taxes are designed to introduce a price signal into the supply chain to promote alternative, less environmentally damaging, behaviour by making alternative options more economically viable. For example, increasing the cost of waste disposed to landfill not only changes the market price for disposal, making investment in recycling infrastructure more economically viable; it also improves the business case for investment in waste reduction measures at source.

Management of environmental taxes

Management of environmental taxes by taxpayers frequently relies on detailed and granular operational data. The data often needs to be collated from multiple sources and can be difficult to obtain, manage and verify. There can be wide scope for misunderstanding or error, which can lead to tax disputes.

The environmental taxes are designed to introduce a price signal into the supply chain to promote less environmentally damaging behaviour.

Operational teams more often than not have control of the creation and management of these data sources. Tax teams managing existing environmental taxes have learned to work closely with operational and legal teams to ensure that robust processes and controls are implemented and maintained to manage tax risks appropriately.

Plastic packaging tax

The new plastic packaging tax is due to take effect from 1 April 2022. The tax will be charged at £200 per tonne on plastic packaging which contains less than 30% recycled content.

In the latest publication of draft legislation (see bit.ly/2JqrS0U) and summary of response to consultation (see bit.ly/36sBMrK), the scope of the proposed tax has been extended. The number of taxpayers will be much greater than for any of the existing environmental taxes.

Plastic packaging tax will potentially affect any business which:

1. manufactures or imports plastic packaging components; or
2. imports packaged goods into the UK.

The term 'plastic packaging components' is important. Under the draft legislation, the meaning of the term is much broader than might first be thought. As well as the obvious natural meaning, it is also defined as products 'designed to be used solely or mainly by a user or consumer for the transportation, storage or preservation of goods'.

This means that many actual plastic products themselves will also fall within the scope of the tax. The potential scope is so wide that in the summary of response to consultation, the government notes that some products not intended to be captured could fall within the definition because they provide some kind of containment, giving an example as a plastic handbag. Secondary legislation and guidance are to be issued to help clarify the scope, but given the potentially very wide application it will be important for any business dealing in goods to follow developments and assess whether they fall within the scope of the tax.

Impact for tax teams

Collating the information to comply with the requirements for evidence of both quantities of plastic packaging material and levels of recycled content will be fairly onerous.

Tax teams will have to liaise with operational teams to identify the data sources that already exist and any systems changes required to collect data that does not currently exist. Importantly, this need for data and reporting will apply whether the tax is due or not. Even if all plastic packaging contains 30% or more recycled content, affected businesses will need to register and complete returns, and robust evidence of recycled content will be required on a component by component basis at production run level of detail.

Carbon emissions tax

From 1 January 2021, the UK will no longer be within the EU Emissions Trading Scheme (EU ETS). Energy intensive facilities which are currently within the EU ETS will need to comply with the new domestic regime which will take the form of either a UK Emissions Trading Scheme or a carbon emissions tax.

At the time of writing, the government has not confirmed which scheme is to take effect, but whichever applies it will relate to emissions during calendar year 2021 in any event, with compliance obligations in 2022.

The new plastic packaging tax will take effect from 1 April 2022, and will be charged at £200 per tonne on plastic packaging that contains less than 30% recycled content.

Impact for tax teams

Both proposed domestic schemes are intended to broadly mirror the EU ETS but there are some subtle differences that may impact affected facilities, including the need to reconsider transfer pricing arrangements.

Landfill tax

Landfill tax (LfT) is charged on waste disposed of at landfill sites in England and Northern Ireland. It is a devolved tax so there are separate regimes in Wales (landfill disposals tax) and Scotland (Scottish landfill tax). There are two rates of LfT, the standard rate which is currently £94.15 per tonne and the lower rate which is currently £3.00 per tonne.

The taxpayer for LfT is the landfill site operator and returns are required to be filed quarterly. Although this is a small number of businesses, the economic burden of LfT or the effect it has on disposal prices for alternative waste disposal routes is borne by waste producers. It can be difficult for waste producers to know what LfT amounts they bear within their costs because it tends not to be tracked and will be entered into ERP systems as part of the net figure.

For a waste producer the key issues to consider are:

1. appropriate management of waste streams to reduce the amounts being sent to landfill;
2. properly segregate and avoid contamination of materials that qualify for the lower rate of tax; and
3. identify any exemptions and reliefs that may apply.

Lower rate materials are those listed in the Landfill Tax (Qualifying Material) Order 2011 in England and Northern Ireland. (The equivalent legislation in Wales is Landfill Disposals Tax (Wales) Act 2017 Schedule 1; and in Scotland is The Scottish Landfill Tax (Qualifying Material) Order 2016.) They are generally inert materials with low pollution potential such as rock, soil, concrete, certain minerals, slags, ash and low activity inorganic compounds. There are prescriptive requirements with regard to what does and does not qualify for the lower rate and this is an unusual area of tax in being subject to legal directions from the tax authorities made within published guidance. It is an area that is subject to intense scrutiny from the tax authorities.

Exemptions from LfT are for very limited activities like dredging, mining and quarrying waste, pet cemeteries(!), and the filling of certain quarries.

Of much wider application, water discounts are available for a number of industrial activities involving the addition of water during the process or for transportation of waste.

Impact for tax teams

It is the waste producer who applies to HMRC for a water discount agreement, with the consent and agreement of their landfill site operator. The agreement acts to reduce the amount of LfT charged on every tonne of the specified waste disposed by the agreed percentage of added water contained within the waste. The agreement is issued subject to a number of conditions in order for it to continue to apply, and there is a requirement to let HMRC know if there is a change in the amount of water present in the specified material. HMRC has been applying increased focus on compliance with water discounts by waste producers recently.

For many years, LfT was only due when waste was disposed of at a landfill site. As a measure to increase the financial consequences of unauthorised waste disposal activity, LfT is now applied to unauthorised disposals in each of the LfT regimes. Examples of circumstances that might accidentally trigger a charge to tax include:

- temporary storage of material exceeding the required time limits due to operational or permitting issues (one year where material is destined for disposal or three years where material is destined for recovery or treatment);

- non-compliance with the terms of an exemption from a requirement to hold a waste permit (thus triggering an unfulfilled requirement to hold a permit);
- developments under the Definition of Waste: Development Industry Code of Practice in which unexpected material is found during the course of the development; and
- material deposited by someone else on your land.

Given that material movement and management is an operational issue, it can be difficult for tax teams to be aware of activities taking place within the business which might unintentionally trigger a liability.

It is important for tax teams to ensure that operational, commercial, legal and real estate teams which may undertake relevant activities are aware of the consequences and risks, and ensure that they are aware that they should consult with the tax team if in doubt.

Joint and several liability can extend liability up the supply chain to any party who knowingly caused or knowingly permitted the unauthorised disposal to take place. Of particular note, land owners are automatically considered to be jointly and severally liable unless they can show that they took all reasonable steps to ensure the disposal did not take place.

Aggregates levy

Aggregates levy (AGL) is charged at £2 per tonne on the commercial exploitation of aggregate which is broadly defined as rock, sand and gravel. Generally, it is a commercial quarry operator that is responsible for registering for and charging the tax, but others can be liable too.

There are a number of exemptions and reliefs from AGL available to end users. In essence, these exemptions and reliefs are aimed at circumstances where aggregate is not being used for construction purposes. Exempt processes include, for example, creating dimension stone, extracting industrial minerals, producing lime or cement from limestone and certain uses of shale.

The most common reliefs for end use are for use of material in industrial and agricultural processes prescribed by the Schedule to the Aggregates Levy (General) Regulations 2001.

Impact for tax teams

For tax teams, as well as ensuring that available exemptions and reliefs are claimed for use of material, it is important to be aware of activities within the business that might trigger an obligation to register and account for AGL. These ancillary activities have given rise to a number of tax disputes over the years with regard to whether AGL is due or not. Whilst these disputes have frequently been found in favour of the taxpayer, the time and cost associated with a tax dispute can be significant.

Construction of buildings or construction work on other large scale assets can be an activity that might trigger a need to assess whether tax is due. For the construction of buildings, there is an AGL exemption for aggregate removed from the site of the proposed building exclusively for the purpose of laying its foundations, pipes or cables.

Ostensibly, this is a fairly narrow exemption and work on building sites can involve more extensive works, including reprofiling activities which might trigger a liability. In *Customs and Excise Commissioners v East Midlands Aggregates Ltd* [2004] BTC 8107, the High Court rejected a narrow interpretation of the meaning of the site of the proposed building and allowed aggregate removed from the site of a lorry park serving the warehouse being built to benefit from the buildings exemption.

For large scale projects such as construction or repair of reservoirs, roads, pipelines and wind farms, there may be a requirement for locally sourced aggregate to be used to reduce the environmental impact of a project which can result in the need for tax teams to assess whether a liability to register is triggered or not. The issues can be complex and have been tested before the Tribunal in *Hochtief Ltd* [2009] TC 00264 and *Northumbrian Water Ltd* [2015] BTC 511.

AGL could become the subject of devolution in the way that LfT has. Devolution has not occurred to date due to a long running State Aid investigation and litigation which only recently ended. Reform of AGL is currently being considered.

Climate change levy

Climate change levy (CCL) is a tax on supplies of fuel to business customers. There are two rates:

1. the main rate which is charged on supplies of gas, electricity and some other commodities made to business customers; and
2. the carbon price support rate which is paid by electricity generators on supplies of gas, LPG or coal or other solid fossil fuels they use for electricity generation.

The main CCL taxpayers are licensed gas and electricity suppliers and electricity generators using fossil fuels for electricity generation. Other activities can trigger a liability, including operation of combined heat and power plants. As for the other environmental taxes, whilst there are a small number of taxpayers there are a large number of end consumers who bear the economic burden of CCL via their energy bills.

As an end consumer, there are a number of exemptions and reliefs from climate change levy which may be available. Businesses within certain energy intensive industries may enter into a climate change agreement in return for entering into the agreement, which includes energy efficiency targets, a discount of 92% on CCL charged on electricity and 81% on CCL charged on gas, rising to 82% from 1 April 2022 (see bit.ly/3ogeAmr for a list of sectors with climate change agreements).

Impact for tax teams

These exemptions and reliefs have to be claimed, generally through submission of two forms: a form PP10 which is sent to HMRC; and form PP11 which is sent to the energy supplier. The energy supplier then directly applies the exemption or relief to their charges.

Much like VAT and partial exemption calculations, any claim for exemption or relief to be applied is based on retrospective figures. It is not known at the time what the actual relief should be and there may be a need for adjustment later. For any business claiming exemption or relief through forms PP10 and PP11, there is an obligation to review actual entitlement to relief against relief received on an annual basis and to make an adjustment if there is a difference. If too much relief has been claimed, the business may need to register for CCL in order to account for it to HMRC.

Summary

Whilst the current UK environmental taxes have a narrow taxpayer base, there are a number of potential risks and opportunities for tax teams to be aware of. The strong movement towards the development of new environmental taxes, such as plastic packaging tax, will bring more businesses within their scope, meaning that more tax teams may need to start managing them for the first time.

It will be important for tax teams to monitor developments and stay connected with the wider business in order to assess the impact, manage risk, implement processes and controls to comply with new requirements and identify opportunities.

The costs of a wealth tax

Bill Dodwell asks whether the UK should have a wealth tax, and if so how it should go about it

Two academics and a barrister (Dr Arun Advani, Emma Chamberlain and Dr Andy Summers) – together called the Wealth Tax Commission – have published a report on a possible wealth tax for the UK (see www.wealthtaxcommission.uk). Their work has been supported by a wide range of other, mainly academic, contributors. Their website contains a wide range of background papers, which are well worth reading.

What is a wealth tax?

A wealth tax is a tax levied by reference to an individual's assets, net of any debt. Unlike a capital gains tax or a gift tax, it is not levied on an event (a disposal or a receipt) but is levied on a one-off or annual basis by reference to the value of an individual's net assets on a defined day.

What do we own?

The authors have used the ONS Wealth and Assets Survey Wave 5 (see bit.ly/3nq4YWk) to highlight what we own. (I would recommend visiting the site to see how our asset ownership is broken down (see bit.ly/3ab1x1Q)). There is some doubt over whether the ONS survey captures enough of the wealth of the wealthiest and so the report authors have used the Sunday Times Rich List for additional data.

Just over 8 million adult individuals have net assets of £500,000 or more with the top 1 million having average assets of £2.45 million. Assets are split into main residence; other property; financial assets; physical wealth and pensions. The highest ranked 11 million individuals have more in their pensions than in their main residence and it is only the top 1 million who have significant financial assets, as well as other property interests beyond the main home. Financial assets include owner-managed companies, as well as cash in banks or building societies, shares or unit trusts and open-ended investment companies (OEICs) and other more exotic arrangements. Physical wealth is of course our personal possessions, which most of us probably do not quite see as wealth. For some, physical wealth could include some investments, such as an art or classic car collection. (See **Table 1: Average wealth per adult by asset class**.)

Perhaps as a point of reference we should note that the average house price in the UK was £244,000 in September 2020 (see bit.ly/3nmOwGf); 3 million individuals have a main residence worth at least that (net of mortgage debt).

How does the UK currently tax wealth?

The UK, like most countries, has a wide range of asset-based taxes. Inheritance tax brings in over £5 billion annually, paid by about 25,000 estates. Capital gains tax brings in about £8 billion, paid by about 280,000 individuals and trusts. Property transactions taxes are expected to bring in about £9 billion this year but typically yield about £12.5 billion. Stamp duties bring in £3.5 billion. Finally, council tax brings in over £38 billion. Business rates typically yield about £32 billion, although the Covid-19 measures have dropped the current yield to £19 billion. The UK has a similar overall yield from asset taxes compared to other G7 members and has the highest level of property taxes, which bring in about 4% of GDP. (See **Table 2: Wealth taxes as a percentage of total wealth across the G7 (2018)**.)

What do other countries do?

There is a useful background paper from the OECD's Sarah Perret, which looks at examples of wealth taxes (see bit.ly/2WgAs5l). There are currently very few examples, although France and Germany (and others) used to have annual wealth taxes. Today, the only significant tax is in Switzerland, where the annual wealth tax raises 1.1% of GDP and 3.9% of total Swiss taxes. However, Switzerland does not levy capital gains tax and most cantons do not levy inheritance or gift tax. The other OECD countries with an annual wealth tax are Spain and Norway.

The most common exemptions from wealth taxes covered pensions and the main home but some countries introduced a much broader range of exemptions or reduced rates, before repealing them. Perret notes: 'The most commonly cited justifications for the repeal of wealth taxes were that they reduced savings and investment, they encouraged migration, they were not effectively borne by the wealthiest households who could engage in tax avoidance and evasion, and they generated substantial administrative and compliance costs, especially compared to the limited revenues they raised.'

How long could it take to introduce?

A background paper from Thomas Pope and Gemma Tetlow at the Institute for Government discusses the issues for a government in considering a wealth tax (see bit.ly/3mgPlPL). Whilst the UK has introduced a number of new taxes in recent years, they have typically applied to businesses and not to millions of individuals. Their paper concludes: 'It could take over

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four years to rigorously consider the options, build public support and effectively legislate for and implement a new net wealth tax. However, such a long timescale may not be consistent with the UK's five-year electoral cycles … Ministers could seek to expedite the process but there would be risks in doing so, particularly if the tax were to affect a relatively large proportion of the population and if the government had no existing mandate for this reform.'

Public opinion

Yet another background paper by Karen Rowlingson at the University of Birmingham, and Amrita Sood and Trinh Tu at Ipsos MORI looks at public attitudes through a representative sample survey, supported by four online focus groups (see bit.ly/37iHkp2). As with other recent public surveys, it found a high level of public support for a net wealth tax, although increases in council tax and capital gains tax were quite close behind. The interesting findings covered what the public thought should be subject to a wealth tax and its level. There was strong support for including financial investments and property wealth (after excluding the main home) as the base, but firm opposition to including pension wealth, the main home and cash savings. The majority of the public supported a threshold of £500,000 for the tax at a rate of at least 1%, followed by a £2 million threshold. The question made it clear that a £500,000 threshold would affect over 7 million people.

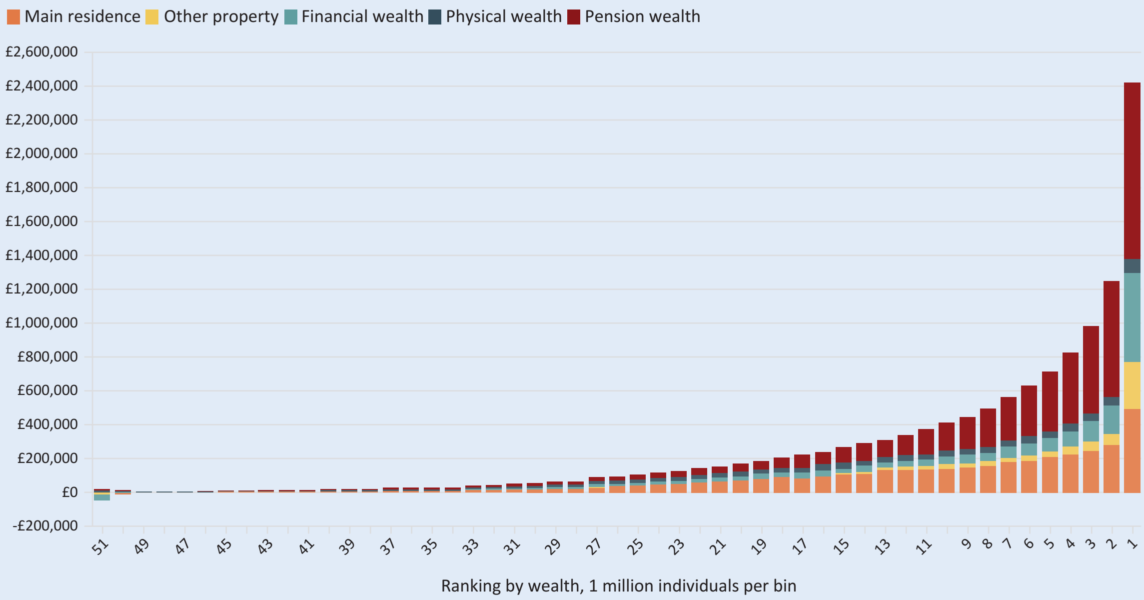
The recommendations

The final report, published on 9 December, recommends that the government should introduce a one-off wealth tax, potentially payable in instalments (see bit.ly/3oY86ct). It does not recommend an annual wealth tax, recommending instead that existing asset-based taxes are reformed to increase yield. The authors recommend that the taxable base should be all assets owned by an individual, net of debt. It thus includes the main residence, pension savings, personal property, cash savings, financial investments and other property.

The authors have modelled the yield, using individual thresholds of £500,000, £1 million and £2 million. At these levels, a wealth tax would respectively cover 17%, 6%, and 1% of the adult population.

The report authors calculate that a one-off tax at 5% on assets above £500,000, payable by over 8 million individuals, would

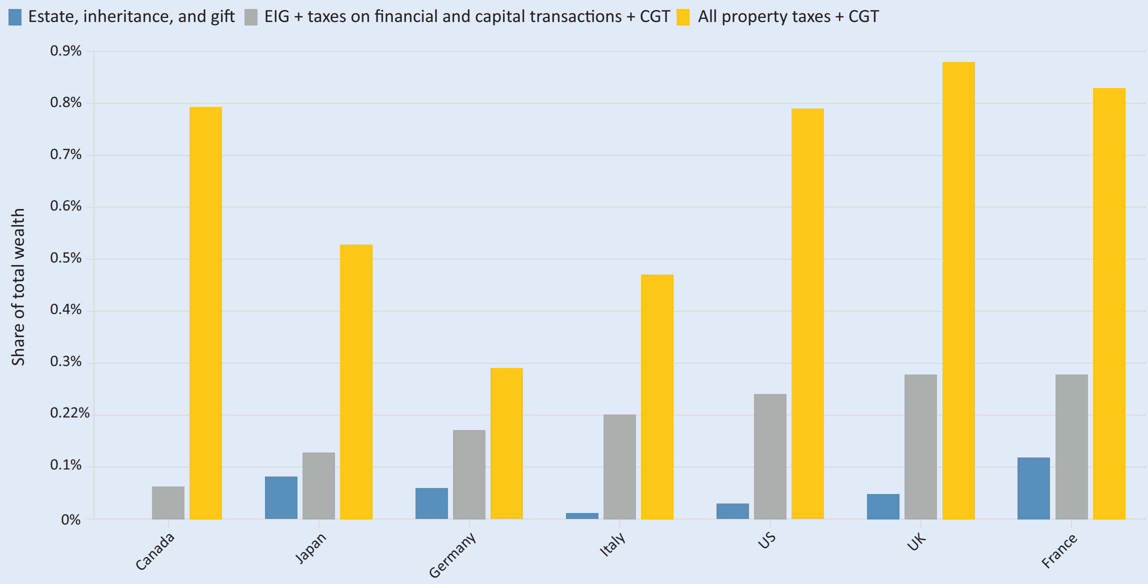
TABLE 1: AVERAGE WEALTH PER ADULT (18+) BY ASSET CLASS



Notes: Constructed using data on wealth owned by individuals in 2014-16. Individuals are ranked by total wealth and grouped into bins of 1,000,000. Bars show democratic mean wealth within each bin. and breakdown of this by asset type.
Source: Authors' calculations based on Wealth and Assets Survey, wave 5.

Source: www.ukwealthtax

TABLE 2: WEALTH TAXES AS A PERCENTAGE OF TOTAL WEALTH ACROSS THE G7 (2018)



Notes: Constructed using data on total tax revenues and total wealth in 2018. CGT is capital gains tax. All property taxes" includes estate, inheritance and gift taxes (EIG), taxes on financial and capital transactions, recurrent taxes on immovable property, recurrent taxes on net wealth, non-recurrent taxes on property, and other recurrent taxes on property. Control total is total wealth from the Credit Suisse Global Wealth Databook.
Source: Authors' calculations based on OECD Revenue Statistics and Credit Suisse Global Wealth Databook.

Source: www.ukwealthtax

bring in about £260 billion. The report recommends that it should be paid in five equal annual instalments. An individual with assets of, say, £1 million would pay a charge of £25,000 (amounting to £5,000 each year).

If instead the tax was levied only on assets above £2 million, it would bring in about £80 billion, payable by about 626,000 individuals.

Other permutations are naturally possible, including a system of graduated rates, which are illustrated in the report.

The authors' recommendation for a broad-based tax is based on the desire for horizontal equity: individuals of similar means should not be taxed differently because (for example) one owns a house while the other holds cash while they wait to buy a house, or one has their savings in a pension while the other has reinvested their savings in their business.

This economic view would immediately quite significantly reduce support from the public, which is opposed to taxing pensions and the main residence. However, the chart showing asset breakdown makes it clear that only the top 1 million individuals have significant assets other than pensions and their homes. There would be a stark political choice: should a wealth tax be charged only on those with very substantial assets, or would the need for revenue spread the tax to the 8 million with total assets of at least £500,000? (This is significantly more than the 4.7 million higher and additional rate income taxpayers.) The report rejects the idea of linking a wealth tax levy to levels of income, since its purpose is to be a tax on assets.

However, we must wonder whether basic rate taxpayers feel themselves truly wealthy.

Another question concerns the taxable unit. The authors plump for the individual rather than a married couple. This looks unreasonable to me, not least because assets are commonly not held by each spouse in the way in which they would be divided on a divorce. It would be fairer to allow married people to file together, thus helping to share whatever the exempt band happens to be.

One of the challenges with an asset-based tax concerns a potential lack of funds from which to pay the tax. This is acknowledged in the report, which defines an individual as 'liquidity constrained' where the wealth tax payable in a year exceeds 20% of their income net of other personal taxes and it exceeds the combined total of 10% of their net income plus liquid assets. Based on these criteria, it is estimated that at a threshold of £500,000, around 1 in 14 of the individuals liable to pay the tax would be liquidity constrained. The proportion of liquidity constrained individuals rises to 12% in the range of total wealth between £1-2 million, 26% between £2-5 million, and 40% above £5 million. Particularly at lower levels of wealth, a great part of the challenge comes from including pension assets. Accordingly, the authors propose that the charge attributable to the pension should be payable by the pension fund from the tax-free lump sum at the first opportunity to draw it.

The only recent one-off asset-based tax was in Ireland, where a temporary pensions levy was introduced from 2011 to 2015. It was 0.6% of pension fund assets, payable for each of the four years 2011 to 2014 and an additional levy of 0.15% for 2014 and 2015. Therefore, in 2014 the levy increased to 0.75% and in 2015, the levy was 0.15%. The levy was based on the market value of the pension fund on 30 June each year. There is thus a precedent for collecting tax from pension funds. In addition, a statutory instalment payment scheme is recommended for those who have insufficient liquid funds to pay the tax.

The final area covered is valuation, where the authors bravely assert that HMRC's valuation office would be able to value more than 8 million properties if the tax were to have a wide impact. They compare the valuation process for inheritance tax – although the issues with valuing about 25,000 estates are not really comparable to something of the scale of a broad-based wealth tax.

Will it happen?

The initial feedback rather suggests that a tax affecting over 8 million individuals is highly unlikely – mainly because at the broad level of £500,000 most people's wealth is tied up in their home and their pension. The challenge with introducing such a tax at a much higher level, excluding homes and pensions, is whether the yield is worth the complexity. This report from Dr Arun Advani, Dr Andy Summers and Emma Chamberlain is an excellent attempt to shine a light on all the issues of asset-based taxes.

comprehensive

/kɒmprɪˈhɛnsɪv/

adjective

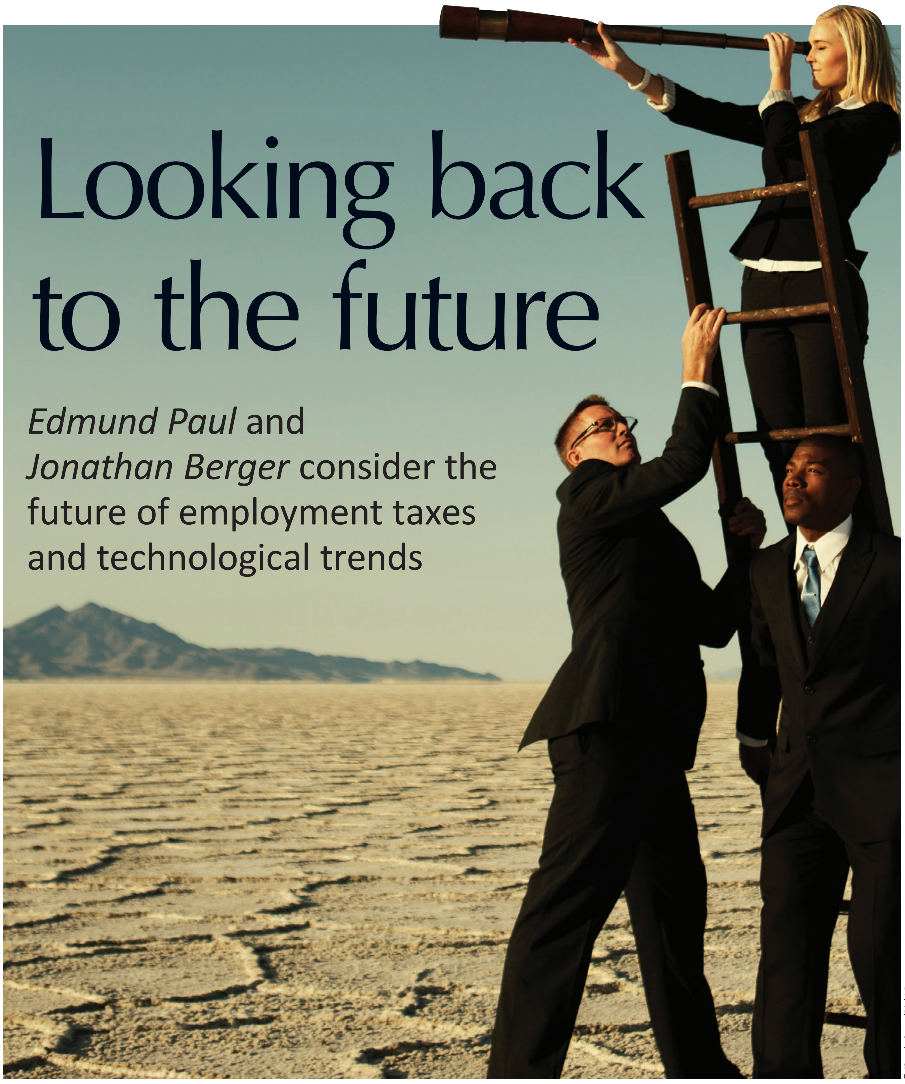
1. marked by abundant detail or thoroughness, including everything that is necessary.

IR35 SHIELD

THE IR35 COMPLIANCE STANDARD

Looking back to the future

Edmund Paul and *Jonathan Berger* consider the future of employment taxes and technological trends



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KEY POINTS

- **What is the issue?**
In recent years, HMRC has increased its reliance on employers to ensure compliance, keep abreast of the relevant changes in tax legislation and through their use of technology tools.
- **What does it mean for me?**
By actively considering employment tax trends, businesses can be more proactive and try to guard against potential surprises.
- **What can I take away?**
Upskilling, both in terms of employment tax developments and technological capabilities, will be key to keep up and even remain one step ahead.

Tax is a constantly evolving area. Many changes have followed trends, such as the increased use of technology, which have continued regardless of the political party that holds office. With the onset of Covid-19 and corresponding increases in public debt as a result of this unprecedented extraneous event, it seems likely that we might see yet further legislation introduced to try to make up gaps in revenue. The government has increasingly looked at employment taxes as an efficient method of raising revenue, unsurprising given that income tax and National Insurance Contributions (NICs) make up about 45% of the UK tax take.

In this article, we look at a number of key employment tax and technological trends observed during recent years. By actively considering such trends, businesses can undertake early risk management, be more proactive in their decision making, and try to guard against any potential surprises.

The evolution of self-compliance

Historically, HMRC had limited oversight of employment tax information, typically relying on the end of year employer submissions. There are several advantages for HMRC where submissions are made during (rather than at the end of) the tax year. These include reducing the time spent on one-to-one discussions with individual taxpayers, enabling better management of debts by checking payments near to the time of payment rather than at/after year end and freeing officer time for more proactive customer engagement and other matters.

Successive governments have introduced legislation requiring businesses to provide greater transparency of their tax affairs to HMRC. Some of the key milestone legislation for this can be found below.

Disclosure of Tax Avoidance Schemes (DOTAS)
Introduced in 2004, where an arrangement meets certain conditions, the scheme promoter, often the adviser (or scheme user in prescribed circumstances) must disclose certain information about it to HMRC. HMRC hopes to obtain early information about certain tax saving arrangements and how widespread their usage might be. This provides HMRC with an early opportunity to counteract these arrangements.

Senior Accounting Officer (SAO)
This regime was introduced in 2009 and requires a designated responsible senior employee, the SAO, to certify that the business has appropriate financial accounting arrangements in place. Where the company considers that it did not have appropriate tax accounting arrangements in place, including in relation to employment taxes, the SAO may have to use this process to make HMRC aware.

Real Time Information (RTI)
Introduced from the 2012/13 tax year, this requires employers to provide details of salary and other payments made to their employees on or before the payment is made via electronic reporting, thereby providing HMRC with information promptly.

Intermediary reporting
Since the 2015/16 tax year, where an intermediary places a worker with an end client and that worker's income is not subject to PAYE, the intermediary is required to provide certain details on the worker, engagement and rationale as to why PAYE was not operated.

Voluntary payrolling of benefits
Formally introduced from the 2016/17 tax year, employers are able to opt to report certain taxable employer provided benefits through the payroll. Where all eligible benefits are payrolled (and no other benefits are provided), the requirement to submit a Form P11D to HMRC after the tax year is removed (although the employer P11D(b) reporting requirement remains).

Tax Strategy publication
Large businesses, namely those caught by the SAO regime and multinationals with a

turnover exceeding €750 million, are required to publish a tax strategy which includes their approach to tax planning, risk management and governance.

Self-compliance: looking ahead

Will this trend continue? If so, what steps should employers take to try to future proof their employment and remuneration arrangements?

This trend of more timely reporting shows no signs of abating. In fact, within HMRC's 2020 'Building a trusted, modern tax administration system' strategy, HMRC explores changes to the timing and frequency for the payment of different taxes and the technology infrastructure needed to support it. This will likely result in more information in relation to payments needing to be reported as near as possible in real time.

Building on this, the government is also consulting around requiring large businesses to disclose planning where there is an uncertain tax treatment and where individually or together there's more than £1 million at stake in the financial year. The onus of proof rests with the business; however, it remains to be seen how this might be implemented. Although postponed until 2022, this regime is expected to cover income tax but not NICs.

Businesses should review their existing employment tax processes to ensure that they support accurate reporting and payment of tax. Practically, this might involve mapping out the relevant existing end to end process, determining the purpose of each step and considering whether any alterations are needed to reduce the risk of tax reporting errors.

Given HMRC's increased ability to monitor submissions in real time and impose significant penalties automatically, quality data which is complete and auditable is key to enable accurate reporting. HMRC departments are also increasingly joined up, so a default in one tax can lead to further scrutiny in another.

Employers should also consider whether they can move towards an automated input and output process which, when coupled with appropriate controls, can also drive efficiency and demonstrate good governance. Employee training should also be supported and invested in so that businesses can ensure this can be carried out from a practical perspective.

The evolution of labour supply chains

HMRC perceives that significant tax losses can arise throughout supply chains. They are often complex with multiple different layers, making them time consuming for HMRC to scrutinise and police on an individual basis. It is logical then that

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HMRC has sought to shift greater responsibility of monitoring supply chains onto end clients (i.e. the highest entity in the contractual chain). Several pieces of legislation have been introduced which either impose a responsibility to deduct tax, transfer a tax liability or supply information downstream. The key legislation has been summarised below.

Construction Industry Scheme (CIS)
Contractors are required to validate whether the subcontractors they are paying have gross payment status. If not, contractors must withhold a fixed percentage of the invoice labour element and remit to HMRC.

Agency rules
The end clients are required to validate whether workers are under their 'supervision, direction or control', with the potential for greater reporting if so.

Managed Service Company (MSC) rules
Where an MSC is involved in the contractual chain, a transfer of debt can result in a liability for the end client.

Off payroll worker legislation (IR35)
Amending the current approach applicable to public bodies and introducing it to the private sector from April 2021, end clients (who are not small) will be responsible for assessing the employment status of contractors engaged via intermediaries, typically personal service companies (PSCs), and providing a status determination statement downstream. In addition, if the end client also pays the intermediary, they will be responsible for reporting and withholding.

Corporate Criminal Offence (CCO)
Whilst not solely related to employment tax, UK businesses have a responsibility to prevent the facilitation of tax evasion. This requires businesses to ensure that their customers and supply chains are tax compliant.

The evolution of labour supply chains: looking ahead

Will this trend continue? If so, what steps should employers take to try to future proof their employment and remuneration arrangements?

Whilst the legislation that underpins the above requirements might be complex when taken together, it removes some of the burden on HMRC by transferring the compliance responsibility. HMRC has introduced several further requirements that increases the responsibilities for end clients.

For instance, some of the suggestions made within HMRC's 2020 'Tackling abuse within the Construction Industry Scheme' consultation would require the main contractor to be responsible for the identification of potential fraud within the supply chain. HMRC would then encourage these businesses to identify the perpetrator and remove them from the chain or to ensure CIS deductions are applied retrospectively to payments those entities have received. Whilst these suggestions have not yet translated into the draft legislation, it supports the trajectory of travel HMRC is taking.

In addition, within the 2020 'Call For Evidence: tackling disguised remuneration tax avoidance', HMRC is looking at requiring engagers to assure themselves of the tax compliance of their flexible workforce. It is suggested that, as a matter of course, contracts with third parties are reviewed to ensure that they appropriately manage business risk and, to the extent they do not, amendments are made. This may include, as an example, including clauses that restrict the ability of suppliers to subcontract their work.

Whilst there is a requirement under the CCO to undertake due diligence of supply chains, this is best practice for all businesses. This would typically involve key considerations such as understanding whether any entities in the supply chains are based offshore, have a history of non-compliance and have withheld PAYE where they are obliged to do so.

Finally, with the development of the IR35 legislation, as well as the wider risks around off-payroll workers, businesses should ensure that their processes are suitably robust. This would include ensuring that data held by businesses on workers is accurate, there is strategic oversight over the numbers of contingent workers within the business, and there are appropriate on-boarding processes, as well as periodic review.

The robots taking over

Technology and automation potentially makes it easier to pay tax, as well as to enforce the payment of it. Whilst businesses are increasingly seeing how they can best utilise technology to do things like increase efficiency, automate tasks and obtain data driven insights, HMRC is also catching up with its adoption of technology.

The challenges of 'Big Data' are often the source of discussion, and HMRC is using tools to drive deeper analysis. Making Tax Digital has also been a longstanding project across a number of taxes. It is already being introduced for VAT and is currently being consulted upon for corporation tax. There are some notable examples of where HMRC has already enhanced its technological capabilities.

Enterprise Tax Management Platform (ETMP)

HMRC is moving towards a single domain where tax management and financial accounting processes are hosted. A byproduct of this will be that there is more information readily accessible to HMRC on particular taxpayers, including RTI submissions which are currently housed within it.

Specialist data analytics teams with bespoke tools

One of the main analytics tools used and developed by HMRC is known as 'Connect'. This houses a wide array of HMRC data (in 2017, this amounted to 22 billion lines of data and 500 million documents) and identifies and links data related to individuals and businesses.

Recently, HMRC has been using this data to create maps of underpayments which can identify businesses down to street and property level. As at 2019 (the most recently available reporting for the tool), HMRC states that the use of Connect has alerted it to more than 500,000 cases for enquiry per year.

Provision of automatic penalties

HMRC uses large-scale automated processes to carry out routine tasks such as issuing statutory penalties. This is because making individual decisions on individual cases would be impractical and resource intensive.

Whilst the use of automated penalties was previously challenged in the courts on the basis that it was not supported by legislation, Finance Bill 2020 expressly authorises HMRC to use computerised decision making for such tasks.

Use of robots and AI

In early 2018, HMRC passed the landmark of processing 10 million transactions by robots. In this context, robots are programmed pieces of software that transact work items in the same way as humans and are typically used for routine tasks. This has helped to increase the time officers spend proactively speaking to businesses directly.

Further expansion is expected with HMRC looking to enhance the use of artificial intelligence (AI) and machine learning for contact handling, casework and effective self-service, again with the view to decrease officer time spent on repetitive and administrative tasks.

Technology and automation: looking ahead

Will this trend continue? If so, what steps should employers take to try to future proof their employment and remuneration arrangements?

We are seeing and often benefiting from the development of technology in almost every sphere.

We take the use of email for granted and its use by HMRC is rising, as well as the use of AI chatbots and web interfaces for document upload. Most recently, we have seen this in the design and rollout of the Covid-19 Job Retention Scheme portal and calculator. In addition, those who have been preparing for the change in the rules around IR35 will have become more familiar with HMRC's Check Employment Status for Tax (CEST) tool and it seems likely that the development and utilisation of such online tools will continue.

Data quality is key. Historically, tax functions utilise a significant amount of their time in manually collecting, manipulating and validating their data. Ensuring that it is correct and auditable back to the primary source is also important. Going forwards, given HMRC's continual advancement in data gathering and analytics, businesses should ensure that they have appropriate data analytics processes in place. This may include creating their own internal data solutions or purchasing tools from third parties.

In addition, businesses should seek to upskill tax professionals in the use of technology. This would include ensuring that employees are comfortable utilising the tools made available to them, as well as understanding any functional limitations and inherent risks.

The use of technology that is either not understood or without the required checks and balances could mean that businesses lose oversight of their tax obligations; for instance, with tax being calculated automatically, validated and then paid over to HMRC. Risks could arise if taxpayer activity falls outside of an established technological process, while businesses may lose out if they do not fully understand their obligations or do not possess the knowledge to challenge any automated tax assessment made by HMRC. A growing number of businesses have sought to draw down on and utilise the Apprenticeship Levy funding for taxation related apprenticeships and qualifying specialised training programmes.

Appropriately taxing?

Whilst changes to the tax legislation often happen incrementally and in different spheres, taking a step back to consider the trends makes it clear that the tax system is being modernised or at least evolved with employers at its core and underpinned by technology.

Whether we will see a bold statement to take things significantly further in the future remains to be seen. In any case, the burden will likely continue to rest with employers to ensure compliance and keep abreast of the relevant changes in tax legislation and use of technology tools.

Whilst fears have been raised about the onset of robots, the responsible use of AI and other developments has its place in tax enforcement as well as collection. However, as tax professionals, our jobs should be safe – not just to translate the practical implications by keeping one step ahead, but also by providing leadership and vision. In doing so, we might help, at least in part, to bring about a tax system fit for the future and one that is 'appropriately taxing' rather than 'mind boggling' or simply 'exasperating'.

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A tale of two countries (or more)

KEY POINTS

- **What is the issue?**
The Covid-19 pandemic has hugely impacted the way people work, accelerating a shift to flexible ways of working across the global workforce.
- **What does it mean for me?**
There are a number of tax risks for employers, which need to be considered alongside how much flexibility employers wish to offer employees. Employers need to ensure they meet their global employment tax obligations.
- **What can I take away?**
Employers should take steps to understand which employees were working where and for how long, and consider what UK PAYE obligations may have arisen.

Steve Wade and *Sarah Hewson* examine the UK Pay As You Earn considerations for cross border remote workers

As one of 'the worst of times' in recent history, the Covid-19 pandemic has hugely impacted the way people work, accelerating a shift to flexible ways of working across the global workforce. Some UK employees are undertaking their duties remotely outside the UK and some employees usually based overseas are performing duties in the UK.

Whilst Covid-19 is far from 'the best of times', it presents an opportunity for businesses to consider the potential advantages of permitting more flexible cross border working and redesigning their policies and processes accordingly. This does mean that there are a number of tax risks for employers, which need to be considered alongside how much flexibility employers wish to offer employees. Whichever approach is taken, employers will need to ensure they meet their global employment tax obligations.

Pay As You Earn

This article focuses on UK employer PAYE obligations and is intended to give an overview of the key points to consider, although employers should consider the impact of the precise facts and circumstances of each case. Other issues such as National Insurance, employment law, immigration, wider tax considerations and overseas obligations, as well as any obligations arising for the individual, will also need to be considered but are outside the scope of this article.

Step 1: Identify the location of employees

The first step employers should take is to:

- identify and record which employees spent time working outside the UK, where they were working, for how long and whether they were working for any other group entities;
- ensure that they know which employees are still working outside the UK; and
- identify any employees of a connected overseas entity which may have undertaken duties for the benefit of the UK business.

Step 2: Consider whether a PAYE obligation arises

Broadly, for there to be a PAYE obligation there needs to be taxable employment income. If an employee is neither tax resident, nor performs any substantive duties, in the UK, there is no taxable employment income and therefore no PAYE obligation arises. On the other hand, where there is taxable employment income, the question becomes whether or not the employer has an obligation to operate PAYE.

Whilst not expressly addressed in the legislation, there is an implied territorial limitation on the operation of UK PAYE, such that only an employer with a sufficient tax presence in the UK is required to operate PAYE (see *Clark v Oceanic Contractors Inc* [1983] 2 AC 130). A tax presence includes a branch, permanent establishment or office where HMRC can contact the employer.

If there is no presence for the purposes of PAYE, the next question is whether the 'host employer rules' apply, as set out in the Income Tax (Earnings and Pensions) Act 2003 s 689. These rules apply when the employee 'works for' the benefit of another entity in the UK who is not the legal employer. 'Works for' is broadly interpreted but the UK entity has to have a degree of control over, and receive the benefit of, the employee's services. If these conditions are met then the UK entity, even if not physically paying the individual, will have a PAYE obligation unless the legal employer operates PAYE.

For employees ordinarily working in the UK who have undertaken duties overseas, employers will need to consider what information they have available to assess the likely tax residency of the individual. However, in the absence of any additional information, the prudent approach is to assume that the individual remains UK resident. If no changes were made (i.e. PAYE applied to all earnings), no adjustment should be made to the treatment via the UK payroll.

Step 3: Consider the availability of treaty relief

For overseas employees coming to the UK, where it is determined that there is a requirement to operate PAYE, the next question is whether relief is available under the Dependent Personal Services Article of a double taxation treaty.

Employees not resident in the UK may be eligible to claim relief under a tax treaty. To avoid PAYE being paid and then subsequently refunded when it is clear the income is exempt from UK tax under the terms of the relevant treaty, an employer can apply to HMRC for a Short Term Business Visitor agreement (Appendix 4). In the absence of such an agreement, unless another arrangement is in place (see below), PAYE will need to be operated on all remuneration paid to the individual. Any employers without an Appendix 4 agreement who have employees in this situation should apply for one as soon as possible.

Where an Appendix 4 agreement is in place, an employer can replace a PAYE withholding obligation with an annual reporting obligation for employees who are likely to be able to make a claim for relief under a tax treaty. Such relief will generally be available where:

1. the employee is resident in the other country;
2. the employee is present in the UK for fewer than 183 days in any period of 12 months starting or ending in the UK tax year;
3. the employee has a non UK resident employer; and
4. the cost of remuneration is not borne by a permanent establishment or a fixed base the employer has in the UK.

Some treaties have the extra condition that the remuneration must be taxable in the other country.

For the purposes of conditions 3 and 4, HMRC interprets the 'employer' to mean the economic employer (i.e. the entity bearing the risks and rewards of the employee's services) and not just the legal employer. Where an employee is economically employed by the UK entity, the employee cannot be exempted from UK PAYE under an Appendix 4 agreement. Commonly, this is met where costs are recharged to the UK entity or the employee works for an overseas branch of the UK entity. In such a case, the UK entity should consider the availability of the '60 day rule' for employees who spent fewer than 60 days in the UK (and such days do not form part of a longer period – see Tax Bulletin 68 at bit.ly/2HUhCgG), under which HMRC will accept that the UK entity is not the economic employer, such that no UK tax reporting is required.

Where treaty relief is not available, consideration should be given to using/agreeing a PAYE special arrangement with HMRC (Appendix 8) and accounting for PAYE annually for employees who had no more than 60 UK workdays in the tax year by 31 May following the end of the tax year.

Step 4: Where a PAYE obligation arises, consider the availability of PAYE reliefs

The precise obligations and available reliefs will depend upon whether the employee remains tax resident in the tax year. UK resident individuals are taxable on worldwide income, whilst non-resident individuals are only taxable on earnings related to substantive duties performed in the UK. However, where a PAYE obligation arises, UK tax must be accounted for on the entirety of an employee's earnings via the UK payroll unless a relaxation is agreed with HMRC before payment to the employee. Examples of such agreements include:

- **Appendix 5:** If a UK resident employee is due credit for the foreign taxes then, to prevent any cash flow disadvantages, agreement can be sought from HMRC (an Appendix 5 net of foreign tax credit relief agreement) that, where there is a foreign tax withholding obligation in addition to a tax withholding obligation via the UK payroll, relief can be taken via the UK payroll for any foreign taxes withheld. Employers will need to put a process in place to ensure the necessary steps are taken at the end of the UK tax year (see PAYE82001). Not all payroll software can process an Appendix 5 agreement, in which case relief can be given in a PAYE code.
- **Section 690 Determination:** Agreement can be sought from HMRC for either non-resident employees or resident employees entitled to overseas workday relief that only the percentage of the employee's earnings that relate to UK workdays relative to their total workdays should be subject to UK PAYE.
- **PAYE Code:** HMRC may agree to: (i) change the employee's PAYE code to reflect any foreign tax credit; or (ii) issue tax code NT (No Tax) where employers are confident no UK tax is ultimately payable, such that no PAYE is withheld via the UK payroll on payments made to the individual.

Whichever of the above approaches is taken, the position will ultimately need to be reconciled via the individual's UK tax return.

Whilst these UK payroll relaxations cannot always be applied retrospectively, where employers seek to retrospectively comply with any overseas withholding obligations, they should consider both how any overseas liabilities can be recovered from the employees (to prevent any additional UK and/or overseas liabilities arising) and whether any of these relaxations can or should be applied for, to limit any cash flow impact for employees.

Remote assignments

Where an employee has not been able to travel to the new location, a number of businesses have permitted the employee to start the assignment remotely. The key PAYE considerations remain those as outlined above.

Complications can arise where the employee received certain allowances and/or payments that relate to the assignment and specifically the move to or from the UK. A detailed analysis of the payment and the residence status of the employee will be required, given that:

- for non-UK assignments, not all payments will be taxable if the employee does effectively relocate and break UK residence; and
- for UK assignments undertaken remotely, such payments may still be taxable in the UK (albeit PAYE may not be due).

Statutory residence test and Covid-19 specific HMRC guidance

Establishing residence can often be complex and cannot always be determined until nearly a year after the tax year. However, under the UK's statutory residence test (SRT), a UK employee is likely to remain UK tax resident unless they intend to spend the entirety of the 2020/21 tax year working full time outside the UK.

The SRT has existing provisions under 'exceptional circumstances' where a maximum of 60 days spent in the UK in a tax year, which are beyond the employee's control, may be disregarded for some of the tests under the SRT. HMRC has recently issued updated guidance regarding 'exceptional circumstances' in light of Covid-19 (RDRM11005). Whilst this disregard may be helpful to prevent individuals who have spent a relatively short time in the UK from becoming tax resident under the SRT, it is worth noting this disregard does not:

- apply to all tests under the SRT (the 30 workday limit, significant break test when looking at the working time abroad, the home in the UK test or family, accommodation or work ties);
- affect the position under the terms of a tax treaty; or
- affect days of work in the UK.

Whilst the current year position may affect the residency position in the previous (and future) tax year, it remains to be seen whether HMRC will expect employers to review or amend the treatment in 2019/20.

Next steps

To avoid a 'winter of despair', employers should take steps to understand which employees were working where and for how long, and consider what UK PAYE obligations may have arisen. Employers should also consider the UK NICs position and whether any overseas tax and/or social security obligations have arisen. However, there is a 'spring of hope' in the opportunities for employers over and above understanding their compliance position. Employers may wish to review their approach to cross border working to benefit from the advantages arising from a more flexible approach, recognising the need to put appropriate processes in place to factor in any additional costs and manage any associated risks.

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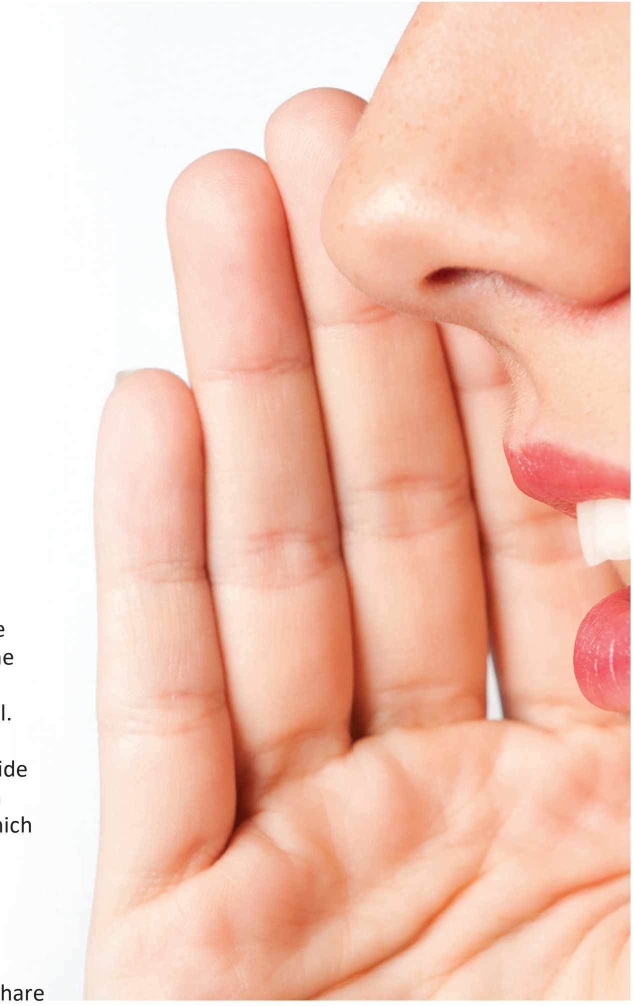
A 'secret' appeal



Mark McLaughlin looks at a 'hidden' appeal route for taxpayers, which is not commonly known

KEY POINTS

- **What is the issue?**
HMRC's approach to company reconstructions seems to have changed significantly in recent times, as has its response to some applications for statutory clearance on the tax effect of transactions such as share-for-share exchanges.
- **What does it mean for me?**
The applicant can require HMRC to refer to the tax tribunal its refusal to give clearance under TCGA 1992 s 138 on a share-for-share exchange or a company reconstruction involving the issue of shares.
- **What can I take away?**
A referral of HMRC's clearance refusal should be considered as soon as it seems probable that HMRC will not be persuaded to give clearance. You may need to ask HMRC to formally refuse clearance, so that you can start the ball rolling.

The tax landscape is constantly changing, whether due to legislative changes, new case law or HMRC practice. One aspect of HMRC's approach that has seemingly changed significantly in recent times is in connection with company reconstructions, and its response to some applications for statutory clearance on the tax effect of transactions such as share-for-share exchanges.

Capital gains tax clearances

For example, on a share-for-share exchange, the vendor shareholders will generally wish to avail themselves of the capital gains treatment in the Taxation of Chargeable Gains Act (TCGA) 1992 s 135 to prevent a 'dry' tax charge (i.e. a tax liability resulting from a sale of shares that generates no cash proceeds).

The effect of the share exchange provisions in TCGA 1992 s 135 for the vendor shareholders is broadly that the 'Newco' shares stand in the shoes of the 'Oldco' shares, so that no immediate capital gain arises on the share disposal. However, this tax treatment does not apply unless the exchange is for bona fide commercial reasons and does not form part of a scheme or arrangement of which the main purpose, or one of the main purposes, is the avoidance of a capital gains tax or corporation tax liability (TCGA 1992 s 137).

A statutory clearance procedure is available to taxpayers in advance of a share exchange (or reconstruction) to confirm whether HMRC is satisfied that the exchange will be carried out for bona fide commercial reasons, and will not form part of a scheme or arrangement as mentioned above (TCGA 1992 s 138(1)).

A further advance clearance application is often submitted to HMRC (under the Income Tax Act (ITA) 2007 s 701) for confirmation that:

- the 'transactions in securities' anti-avoidance provisions are not considered to apply; and
- no notice ought to be given by HMRC to counteract an income tax advantage arising.

This article concerns the capital gains clearance application mentioned above. However, it should be noted that whilst HMRC might give clearance in respect of the transactions in securities provisions (for income tax purposes), this does not necessarily help for the purposes of a clearance application on a share-for-share exchange, which relates to capital gains tax or corporation tax on chargeable gains.

What's the problem?

There is anecdotal evidence that in mid-2019 some tax practitioners began noticing HMRC was no longer granting clearance under TCGA 1992 s 138 for transactions where it would previously have normally given clearance based on similar transactions.

It is understood that HMRC resisted clearance applications where the transactions were being undertaken in a particular manner (e.g. involving the insertion of a holding company) for reasons that included personal benefit to individual shareholders, with HMRC questioning whether there was any connection with commercial reasons relating to the business carried on by the company.

This approach by HMRC was pursued despite established case law in *Clark v Commissioners of Inland Revenue* (1976-1980) 52 TC 482. In *Clark* (a case on the transactions in securities anti-avoidance provisions), the taxpayer was a farmer who held shares in a family investment company (E Ltd), and in a second company (H Ltd), whose only significant asset was a 20% holding in a public company (C Ltd) of which his father was managing director and in which E Ltd held shares. The taxpayer wanted to raise cash to purchase an adjoining farm.

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His father wished to keep ownership of C Ltd within the family. The taxpayer sold his shares in H Ltd to E Ltd.

The Revenue (as it then was) issued notices under what is now ITA 2007 s 695. The taxpayer appealed, contending that the shares had been fairly valued and the transactions had been carried out for commercial reasons. The High Court allowed his appeal.

Furthermore, in *Commissioners of Inland Revenue v Brebner* [1976] UKHL 43 TC 705, the House of Lords held (once again in the context of the transactions in securities legislation) that obtaining a tax advantage is not a 'main purpose' if it is incidental to a larger commercial purpose. The decision in *Brebner* recognises the taxpayer's right to undertake commercially driven restructuring in a tax efficient manner without any question of unmeritorious tax avoidance thereby arising. In that case, Lord Upjohn said:

'…when the question of carrying out a genuine commercial transaction, as this was, is considered, the fact that there are two ways of carrying it out – one by paying the maximum amount of tax, the other by paying no, or much less, tax – it would be quite wrong as a necessary consequence to draw the inference that in adopting the latter course one of the main objects is, for the purposes of the section, avoidance of tax. No commercial man in his senses is going to carry out commercial transactions except upon the footing of paying the smallest amount of tax involved.'

However, it appears that even where HMRC accepts there is a commercial element to a transaction, it does not necessarily follow that (notwithstanding *Brebner*) HMRC will accept the transaction is being effected for bona fide commercial reasons and so may not give clearance under TCGA 1992 s 138 (see 'Too late!' below). This is despite HMRC sometimes giving clearance for the same transaction under the transactions in securities provisions, which are concerned with whether transactions are undertaken with a main purpose of obtaining an income tax advantage, as opposed to whether there is a commercial purpose.

What can be done?

All is not necessarily lost if HMRC refuses to give capital gains clearance under TCGA 1992 s 138. The applicant can require HMRC to refer to the tax tribunal its refusal to give clearance under s 138 on a share-for-share exchange or reconstruction involving the issue of shares (or can refer a clearance application to the tribunal if HMRC fails to give its decision within 30 days of the application or the supply of further particulars).

The referral procedure to the tribunal is as follows (TCGA 1992 s 138(4)):

'If the Board notify the applicant that they are not satisfied as mentioned in subsection (1) above or do not notify their decision to the applicant within the time required by subsection (3) above, the applicant may within 30 days of the notification or of that time require the Board to transmit the application, together with any notice given and further particulars furnished under subsection (2) above, to the tribunal; and in that event any notification by the tribunal shall have effect for the purposes of subsection (1) above as if it were a notification by the Board.'

It should be noted that the tribunal considers referrals 'on paper', as opposed to the 'face to face' hearings that are a common feature of appeal hearings before the tax tribunal. A referral can therefore be relatively inexpensive. The applicant can ask HMRC to forward the correspondence to the tribunal, and the turnaround is relatively quick in general.

The tribunal referral procedure also applies to refusals by HMRC to give clearance on the transfer of a business (under TCGA 1992 s 139), as it does to refusals to give clearance under s 138 (see s 139(5)).

A referral of HMRC's clearance refusal should be considered as soon as it seems probable that HMRC will not be persuaded to give clearance. You may need to ask HMRC to formally refuse clearance, so that you can start the ball rolling.

Too late!

I have successfully used the referral procedure on behalf of a client in a company reconstruction involving the insertion of a holding company prior to a capital reduction, in circumstances where the purchaser wished to acquire only one of a company's trades and assets in a 'clean' new company.

Unfortunately, in the time taken to (unsuccessfully) argue with HMRC that clearance should be given, and ultimately for the referral to be made and the decision given, the client's proposed sale of the existing company's main trade fell through, as the prospective purchaser lost interest in acquiring it.

End of the line?

Of course, HMRC's refusal to give clearance in the first instance does not necessarily mean the matter should be referred to the tribunal, or that the proposed transaction cannot take place.

If the statutory requirements for capital gains tax relief are met, consideration could be given to carrying out and reporting the transaction and providing additional supporting information in case HMRC chooses to make any enquiries.

The cost of reform

KEY POINTS

- **What is the issue?**
HM Treasury have been consulting on an Economic Crime Levy to fund new government action to tackle money laundering and help deliver Economic Crime plan reforms. The CIOT and ATT responded in detail to the consultation.
- **What does it mean for me?**
Members who are subject to AML Supervision by the CIOT and ATT should be aware of the potential levy and the case put forward by the CIOT and ATT in their consultation response.
- **What can I take away?**
The fight against money laundering and financial crime continues to be a focus for the government and the potential for the introduction of a levy brings another change on the horizon.

Even before the revelations of the recent Financial Crimes Enforcement Network (FinCEN) leaks, the UK government had plans in place to press ahead with additional reforms to tackle the threat from economic crime. Economic crime includes money laundering, fraud, bribery and corruption, and terrorist financing. It is impossible to say accurately the scale of all these crimes, although the National Crime Agency estimates that the scale of money laundering alone impacting the UK annually is in the hundreds of billions of pounds.

The 2019 Economic Crime plan (see bit.ly/361o9Q3) sets out the UK response to economic crime and builds on the commitments of earlier plans. Important elements include the reform of the suspicious activity reporting system, improving the response to fraud, information sharing and enforcement.

Reform has to be funded and at Budget 2020 the government announced its intention to introduce an economic crime levy. In July 2020, a consultation was launched (see bit.ly/3q1UG0c) inviting views on a variety of areas in relation to the levy, including design principles, how it could operate, what it would fund and how it should be collected.

The CIOT and ATT both responded to the consultation in some detail, including coverage of the nature of the tax advice market and the disproportionate burden that anti-money laundering compliance already places on smaller tax practitioner firms. We also ensured that member representatives with an understanding of operating in small firm environments took part in associated roundtable discussions.

The principles applying to the levy

The levy principles set out in the consultation document are as follows:

- proportionality and affordability;
- solidarity;
- simplicity and transparency;
- predictability;
- cost effectiveness of levy collection; and
- avoiding unintended consequences.

The CIOT and ATT response agreed these principles and pointed out that they should be applied to the costs and burdens of anti-money laundering compliance overall, and that the levy should be considered as part of the overall picture. In relation to the principle of solidarity, all parts of the anti-money laundering regulated sector are required to meet the same legislative requirements, irrespective of size. For example, all firms, even sole practitioners with no employees, have to have written policies and procedures and a written practice risk assessment in the same way as the largest firms.

What should the levy fund?

Areas requiring levy funds as set out in the Economic Crime plan include:

- suspicious activity reporting reform programme;
- increased resources and staffing for law enforcement agencies involved in the response to economic crime;
- awareness raising campaigns; and
- Companies House reform.

The CIOT and ATT responses agreed that the levy should pay for the priorities under the Economic Crime plan and the money should be ringfenced.

We noted in the response document that the government should raise money in as few ways as possible and with as few additional collection costs. Medium to longer term planning should aim to look at overall needs over that period in order to minimise repeated requests for additional funding via different levies and fees.

The levy calculation

The consultation document set out a number of potential ways of calculating the levy, including:

- a fixed percentage of current anti-money laundering supervision fees;
- a fixed charge per business;
- a levy proportionate to the number of suspicious activity reports submitted; or
- the number of employees or business owners, officers and managers.

However, the consultation indicated that 'the government currently assesses revenue as the most desirable levy base' and considered issues such as a single fixed percentage, fixed amounts based on revenue bands, the exemption of small

Jane Mellor sets out the CIOT and ATT's responses to Treasury plans for an Economic Crime levy

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businesses and how to take into account money laundering risk.

The CIOT and ATT responded to indicate that the only fair basis of allocating costs of regulation was by reference to fees, being a fair indicator of the scale of operation and level of risk. We strongly supported the proposal that businesses with fees below £10.2 million (the small company threshold in the Companies Act 2006) should be exempted from paying the levy.

The CIOT and ATT submitted background information on the way in which the tax market operates and evidence of the size of firms supervised by the CIOT and ATT. We referenced the considerable increase in costs already borne by our supervised firms over recent years as a result of required increased supervisory activity and the Office for Professional Body AML Supervision (OPBAS) levy passed on as part of anti-money laundering renewal fees.

The CIOT and ATT recognise the loyalty of our membership and the high standards of conduct which they embrace. However, we took the opportunity to make the point that escalating costs could push advisers out of the market or out of the scope of professional body membership. This could only have a detrimental impact on those with lower incomes who use smaller firms with a lower cost base (and lower fees). Firms serving this market can find it hard to pass on any cost increases and may simply choose to exit the market, thus reducing the choice of advisers for those on lower incomes. It could also increase the number of firms acting outside the requirements of professional body standards which is not in line with public policy objectives to improve the standards applying to tax agents.

Collection of the levy

The consultation document considered the best method of collecting the levy and asked for responses on whether there should be collection by the current anti-money laundering supervisory bodies or a single agency.

From a practical perspective, there are a number of hurdles to the CIOT and ATT acting as a collection agency. The collection of a government debt such as the levy would require changes to the CIOT Royal Charter and the ATT Articles of Association, together with potential updates to agreements with members. It would create significant additional administrative costs for CIOT and ATT, which would have a knock-on effect on supervisory costs to pass on to firms and would divert resources from other CIOT and ATT charitable objectives.

In our view, HMRC is uniquely placed as it has the power to collect and enforce the payment of government debt. It would make sense to use this existing model, especially since they would have to have systems in place to collect the levy from their supervised firms.

Where do we go from here?

The response to the consultation document is expected in Spring 2021 and is likely to be followed by further consultations and draft legislation. The CIOT and ATT will update members on possible changes as soon as further details become available and will continue to voice concerns about additional costs in this area and increased administrative burdens on our supervised populations.

EXTRACT FROM 'ECONOMIC CRIME LEVY: FUNDING NEW GOVERNMENT ACTION TO TACKLE MONEY LAUNDERING'

'The Economic Crime Plan acknowledges the need for a long-term and sustainable resourcing model to transform the UK's response to economic crime. As outlined in the Plan, the government believes that this resourcing model should comprise contributions from both the public and private sectors that participate in, and benefit from, the agenda to reduce economic crime. The government also believes it is right that those who contribute towards the risks within the UK economy should pay towards the costs of addressing those risks.

'Money laundering is one of the key economic crime risks the Plan seeks to address. Money laundering is at the heart of all economic crime with ultimately the proceeds of all such crimes needing to be laundered for their benefits to be realised. Businesses, such as banks, law firms and casinos, are already required to take steps to address the risk that they are used by criminals to launder money. They work alongside the public sector to tackle money laundering. But, through the actions in the Plan, both public and private sectors have committed to go further. To help sustainably fund those actions, and wider new government action to tackle money laundering, the government will introduce a levy upon the AML-regulated sector. The government is of the view that a levy would provide the fairest and most simple method for the AML-regulated sector to contribute further. This levy will form one part of the sustainable resourcing model to tackle economic crime. Other components of the model will include additional public sector funding (to be finalised at the upcoming Spending Review), updating the Asset Recovery Incentivisation Scheme, and exploring whether suspended funds can be unlocked to pay for economic crime reform.

'This consultation invites your views on the design principles of the levy, and how this levy could operate in practice, to ensure that it is proportionate and effective.'

Keeping your confidences

Helen McGhee considers the legal rights which allow individuals and companies to resist the disclosure of confidential evidence, and the limitations surrounding legal privilege

KEY POINTS

- **What is the issue?**
Legal professional privilege (in the form of either legal advice privilege or litigation privilege) allows a party to withhold evidence from a third party or the court.
- **What does it mean for me?**
Both legal advice privilege and litigation privilege carry a dominant purpose test. If documents are produced for a mixed purpose, this could undermine the privilege position. The burden of proof is on the person claiming privilege.
- **What can I take away?**
For a document to have been created for the dominant purpose of litigation, the litigation must be existing, pending or reasonably contemplated. Great care must be taken when materials are circulated to a broader audience who may subsequently add a subsidiary purpose and thus compromise legal advice privilege.

In the context of tax disputes, privilege is commonly understood as referring to the fundamental legal right which allows individuals and companies to resist disclosure of confidential evidence. Under English law, there are strict rules on when privilege may apply and this article explores two distinct categories of legal professional privilege: legal advice privilege and litigation privilege.

Another form of commonly encountered privilege is 'without prejudice' privilege, which operates to prevent statements made in a genuine attempt to settle an existing dispute from being put before the court as evidence of an admission against the interest of the party making them.

Legal advice privilege

Legal advice privilege only applies to communications between a lawyer and client which have come into existence for the dominant purpose of giving or receiving legal advice. Legal advice privilege is narrower in ambit than litigation privilege but is claimed more commonly. The communications remain privileged at all times unless privilege is waived by the client or inadvertently lost; for example, when confidential information is unintentionally disclosed.

The underlying purpose of legal advice privilege is to ensure that the lawyer's professional skill and judgment is given freely and is not subject to any constraints. The risk areas in the context of legal advice privilege lie in:

- addressing sensitive material to a wide group of advisers who subsequently comment on the advice; and
- advice given which has a mixed purpose.

Litigation privilege

Litigation privilege applies to confidential communications between a lawyer and the client or a third party created for the dominant purpose of litigation, which is existing, pending or reasonably contemplated.

The burden of proof in establishing privilege is on the party claiming it. Litigation privilege exists in order that a potential litigant is free to seek evidence without being obliged to disclose their research results.

Recent case law

Two recent pertinent cases address how privilege can be maintained and also so easily lost. These are both worth examining.

***Frasers Group*: protection by litigation privilege?**

The first case is *FRC v Frasers Group Plc (formerly Sports Direct International Plc)* [2020] EWHC 2607 (Ch). The background to this case was the investigation by the Financial Reporting Council (FRC) into Grant Thornton's 2015/16 audit of the financial statements of Sports Direct International Plc (SDI), controlled by UK billionaire Mike Ashley.

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In 2014, Sportsdirect.com Retail Ltd (SDR), SDI's subsidiary, received an email from the French tax authorities asking SDR, amongst other things, whether it had paid English or French VAT. The email was interpreted as being in contemplation of a potential enquiry and possible ensuing litigation, and SDR instructed SDI's solicitors and accountants.

As instructed, SDR's professional advisers prepared a series of reports on:

1. the lodging of protective claims with HMRC for repayment of overpaid VAT, in the event that SDR should have been paying VAT in a member state other than the UK;
2. how best to defend SDR's proposed tax structure; and
3. how to improve the arrangements so as to make them more robust.

The issue for the judge to consider was whether these reports in the hands of SDI were protected by litigation privilege and therefore not required to be disclosed to the FRC. The High Court held that the advice was not protected by privilege as it was ostensibly not prepared for the sole or dominant purpose of litigation.

In his judgment, Lord Justice Nugee made it clear that the 'sole or dominant purpose test' for litigation privilege was an extremely high hurdle which could not be overcome in this context simply because, at the time the reports were produced, SDR expected there to be litigation with respect to its VAT arrangements. He said:

> 'A taxpayer who takes advice as to how to structure his affairs does not do so for litigation purposes. He does so because he wants to achieve a particular result for tax purposes… Even if it is contemplated that the particular structure will be likely to be attacked by the relevant tax authorities and that there will be litigation, the advice as to how to implement the new structure … is not primarily advice as to the conduct of the future possible litigation. It is primarily advice as to how to pay less tax.'

Advice about a potential course of action may not be covered by litigation privilege, even if that course of action is expected to lead to litigation. However, where the document or advice in question is legal advice given by lawyers, legal advice privilege (rather than litigation privilege) is likely to apply.

Advice about a potential course of action may not be covered by litigation privilege, even if it is expected to lead to litigation.

The Supreme Court in *R (Prudential plc) v Special Commissioner of Income Tax* [2013] UKSC 1 confirmed that legal advice privilege does not apply to advice from other professionals. Until Parliament decides otherwise, it continues to be the case that legal advice privilege can only protect legal advice given by members of the legal profession to their clients. The same advice emanating from accountants or other non-lawyers is still vulnerable to disclosure.

Civil Aviation Authority: protection by legal advice privilege?

The judgment in the case of *Civil Aviation Authority v R (on the application of Jet2.com Ltd)* [2020] EWCA Civ 35 is essential reading for companies relying on the advice of in-house legal teams.

In this case, Jet2 brought judicial review proceedings against the Civil Aviation Authority (CAA) in relation to the CAA's publication of material critical of Jet2's lack of participation in a consumer complaint scheme. Jet2 argued that the CAA made the materials public for an improper purpose and applied for disclosure of all relevant drafts and discussions relating to the disclosure. The CAA asserted that such were protected by legal advice privilege.

The Court of Appeal concluded that drafts of the materials should be disclosed unless specifically drafted by lawyers for the 'dominant purpose' of obtaining legal advice. Documents circulated to or by in-house lawyers, or the mere presence of a lawyer at a meeting, did not automatically satisfy this dominant purpose test.

Where the dominant purpose is to obtain or give advice, even if in a commercial context, then this should satisfy the dominant purpose test. Communications addressed to lots of different recipients need to be considered very carefully so as not to dilute the legal advice and render it merely a subsidiary purpose. Where external lawyers are appointed, legal advice privilege will clearly apply.

Points to take away

In order for litigation privilege to apply, the relevant document must have been created for the dominant purpose of obtaining advice in relation to litigation that is reasonably in contemplation. This does not include litigation that may possibly arise in future as a result of a particular course of action.

It is always difficult where a communication has a mixed commercial and litigation purpose. A safe way to protect such communication is to ensure that it is also covered by legal advice privilege.

Legal advice privilege is also subject to the dominant purpose test. Where not inextricably intermingled, it may be possible to separate out the component parts of some advice but if there are commercial as well as legal issues being discussed great care is recommended.

It isn’t child’s play…

Chris Williams considers the complexities of settlements and tax planning to fund a child’s education

KEY POINTS

- **What is the issue?**
A study of the wide ranging anti-avoidance legislation applicable demonstrates why tax-efficient planning for a child’s education and support is difficult, especially for a parent.
- **What does it mean for me?**
A parent who wants to create an arrangement that will be effective in providing for their own child’s education will find their options severely restricted, at least while the child concerned is a minor. However, there are ways in which a parent can make provision for their child’s future needs as an adult.
- **What can I take away?**
Any trust for the education of a minor relative will be a chargeable lifetime transfer for inheritance tax purposes. The proportion of the settlement that falls outside the settlor’s available nil-rate band and is not covered by a relief or exemption will be immediately charged to inheritance tax at the lifetime 20% rate.

There are no special rules that apply to arrangements to fund education costs for family members – which is just as well really, when the general settlements legislation applies anyway. A study of the raft of anti-avoidance legislation applicable demonstrates why tax-efficient planning for a child’s education and support is difficult, especially for a parent. This is why the first part of this article is given over to considering what is not possible; once the impossibilities have been eliminated, we are left – to paraphrase a certain fictitious detective – with what is possible.

The options available will be affected by different tax treatments according to the ages and relationships of donors and beneficiaries. Donors may be parents, grandparents, other relations or friends. The recipients of their generosity may be pre-school, in school or in further education, though the main watershed is between minority and majority, i.e. their 18th birthday.

Settlements: the legislative background

A trust is a settlement but there does not need to be a trust for there to be a settlement. The Income Tax (Trading and Other Income) Act (ITTOIA) 2005 Part 5 Chapter 5 can be regarded as setting out the ‘Settlements Code’ and all statutory references in this article refer to ITTOIA 2005 unless otherwise stated. Section 619 is the charging section and the sections that follow describe more fully the scope of the charge and include restrictions of its scope which one needs to be aware of.

In s 620(1), the expression ‘settlement’ is primarily defined as any disposition, trust, covenant, agreement, arrangement or transfer of assets.

Settlor retains an interest

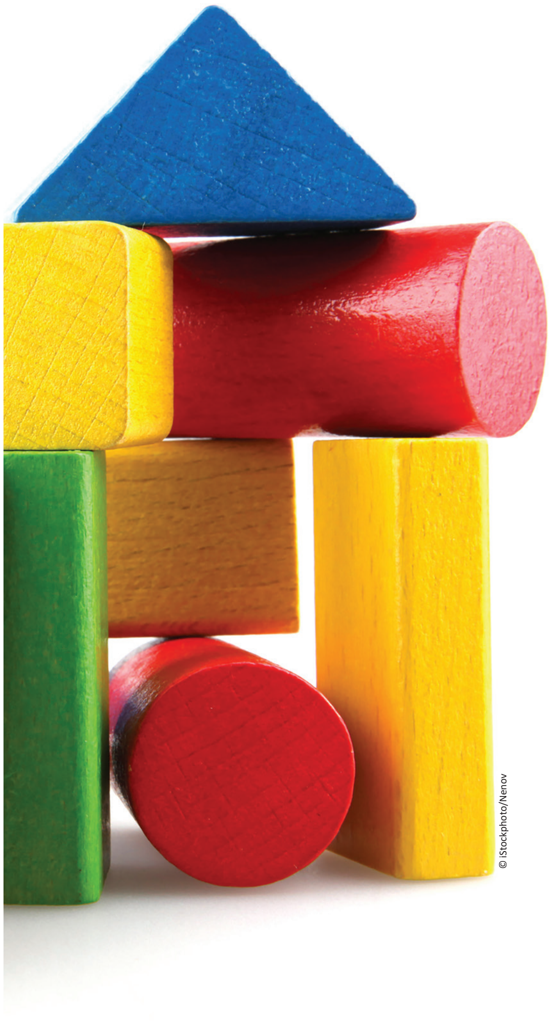
The first obstacle is where the settlor retains an interest in the settled property. A settlor is treated as having a reversionary interest in any settled property which is – or may in any circumstances, including the death of a beneficiary – become payable to or applicable for the benefit of the settlor or their spouse or civil partner (s 625(1)). This extends to circumstances in which the settled property may revert to the settlor by operation of law, including for example where a trust comes to an end because there are no remaining actual or potential beneficiaries.

Properly drafted trusts nowadays usually include longstop beneficiary provisions, whereby if there are no surviving beneficiaries the trust’s property is required to pass to a named charity or the trustees must appoint a charity or other new beneficiary who is not the settlor or their spouse or civil partner. (For convenience, all references to marriage and spouses apply equally to civil partnerships and civil partners.)

Exceptions to the settlor interest rule

The settlor retained interest rule is strict but there are limited exceptions which are worth noting. The exceptions apply if, and only if, the settlor may become beneficially entitled to some or all of the settled property in any of the following circumstances:

- a person who is or may become beneficially entitled to the property or any related property is made bankrupt (s 625(2)(a));
- a person who is or may become beneficially entitled to the property or any related property assigns such property to the settlor (s 625(2)(b));
- settled property to which a person who is or may become beneficially entitled becomes subject to a charge; or, in Scotland, a right in security is granted over such property (s 625(2)(c));
- if the settlement is a marriage settlement, the deaths of both parties to the marriage and all or any children of the family (s 625(2)d));
- the death of a child of the settlor who had become beneficially entitled to the property on their 25th birthday or earlier; and
- it is not possible for settlement property or related property to become payable or applicable to or for the benefit of the settlor or their spouse during the life of another person, without activating the settlor interested charge, unless that person is made bankrupt or assigns or charges their interest in the property; and that person is under 25 years of age.



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Trusts for the settlor's minor children, including bare trusts

Nowhere in the above is there any reference to benefits received by a minor child of the settlor. This does not really get the would-be settlor very far because the trust will be liable at the trust income tax rate of 45%. That tax is available as a credit to the person who is taxable on receipt of income from the trust. However, when a minor child receives or becomes entitled to the income of a settlement made by their parent, it is not the child or their bare trustee who is liable for income tax; it is the parent, by virtue of s 629.

Note the reference to entitlement. In the case of a bare trust, the child is absolutely entitled to the income as it arises, regardless of whether the trustee pays or applies it to or for the benefit of the child (see HMRC Trusts and Estates Manual TSEM4300). Therefore, any income of the child in excess of £100 is taxable on the parent. The only crumb of comfort for a parent in this situation is that tax paid by the trustees is credited against the parent's liability.

The same treatment applies if the child is given an interest in possession in trust property.

If the trust does not create an interest in possession, it is the trustees who are liable for income tax on income as it arises to them.

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Possibilities for parents

A parent who wants to create an arrangement that will be effective in providing for their own child's education will find their options severely restricted, at least while the child concerned is a minor. However, there are ways in which a parent can make provision for their child's future needs.

Accumulation and capital growth

A parent looking ahead to future needs may create a trust without a current interest in possession which holds assets that will produce capital growth, rather than income (which would be taxed at 45%). This can enable money to be accumulated for release when needed, including after the child has reached majority. Settling a trust can also reap benefits in inheritance tax planning (see below).

Non-parents and planning for minors

The most restrictive provisions in Part 5 Chapter 5 apply only to the parents of minors. This leaves open a much wider range of options for grandparents, in particular, but also for other relations and friends of the family. I take grandparents as the examples here but other relations, including older siblings, can set up trusts for the benefit, including education, of their younger brothers and sisters.

The non-parental settlor must still be mindful of s 624 and the potential charge on a settlor who retains an interest. However, they should ensure that their trust deed allows for the exceptions in s 625 (set out above) to disapply the charge on the settlor.

Non-parents are also free to put assets into bare trusts for minors. In this case, the disposition is treated as an absolute gift to the minor, which is a potentially exempt transfer and so should fall completely out of account for inheritance tax purposes after seven years.

Lifetime settlements and inheritance tax

Any trust for the education or other benefit of a minor relative will be a chargeable lifetime transfer for inheritance tax purposes. This means that unless the settlement falls within the settlor's available nil-rate band or is covered by a relief or exemption, such as agricultural property relief or business property relief, the transfer will be immediately charged to inheritance tax at the lifetime 20% rate. It is also potentially re-assessable should the settlor die within seven years.

Grandparents considering an educational settlement should be mindful of the effect on their overall opportunities for inheritance tax planning. This is especially the case with settlements into trust, which should never be made before any outright gifts because of the interaction with other dispositions.

When a potentially exempt transfer becomes absolute, it has no further effect on subsequent chargeable transfers.

But if a chargeable lifetime transfer is followed by another settlement within the following seven years, the second settlement becomes chargeable: so the 'tail' on the first chargeable lifetime transfer in this instance can be up to 14 years.

Bare trust

The charge in s 629 is only a risk for the parent of the child for whom the bare trust is created. Therefore, any gift on bare trust for a person who is not a child of the donor will be effective.

Generation skipping

Another great advantage of a settlement by a grandparent is generation-skipping. Once property is in a well-constructed settlement, it will not benefit only the children whose education provided the original motivation. The trust property does not become the child's parent's property and so does not create for the parent the additional inheritance tax planning problem of increasing their estate. Property may remain in a trust, outside any individual's estate, for up to 125 years.

When the parent of a child 'inherits' a trust created by their parent, any disposition of income in favour of their child will not be taxed on them because they are not the settlor.

Six to eight weeks

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Keith Gordon looks at a case which concerns the application of the main residence exemption after only a few weeks of occupation

KEY POINTS

- **What is the issue?**
The usual absence of a capital gains tax charge on a taxpayer's only or main residence can mean that the possibility of tax being payable upon the disposal of one's home escapes most people's consciousness.
- **What does it mean for me?**
The individual's occupation of the property must be of sufficient quality to represent a place of residence rather than a mere temporary presence.
- **What can I take away?**
I would strongly advise that the taxpayer registers the new address with the local GP, the local authority, the bank, HMRC, etc. promptly on moving in – this being good evidence that the move is meant to be long term.

The exemption from capital gains tax in respect of a taxpayer's only or main residence is perhaps the widest known tax rule in the UK. The alternative view is that the usual absence of any tax charge on the disposal of one's home means that the possibility of tax being payable escapes most people's consciousness.

Either way, tax advisers will know that the true position is considerably more nuanced than most people realise. This article discusses the recent case of *Core v HMRC* [2020] UKFTT 440 (TC) which focuses on the meaning of 'residence'. At the heart of that statutory word is the requirement that the individual's occupation of the property must be of sufficient quality to represent a place of residence rather than a mere temporary presence.

The facts of the case

Mr and Mrs Core are married, with school age children. Mr Core is a builder by trade, and he operates his business through a limited company. Their family home was rented but, in March 2013, they purchased a property in 'Green Lane'. Before moving into the property, Mr Core carried out some refurbishment and extension work to the property. Initially, during these works, the family continued to live in the rented accommodation and in fact extended the lease by six months on two occasions (in December 2013 until June 2014, and in June 2014 until December).

Whilst working on the property in about February 2014, Mr Core was approached by an individual who asked if the property was for sale. Although told that it was not for sale, the individual returned about a month later and, a further time, a month after that. On those latter two occasions, actual offers to purchase were made, with a higher offer on that last occasion (May 2014) if exchange could take place immediately. Mr and Mrs Core accepted that last offer.

In the meantime, the Cores had moved into Green Lane (around March or April 2014). They therefore considered that Green Lane had represented their home which they would have stayed in for a longer period but for the unsolicited offer made six to eight weeks later.

HMRC considered that Green Lane did not amount to the couple's residence and that capital gains tax was due on the gain arising. They enquired into Mr Core's 2014/15 tax return and issued a closure notice charging the additional tax. In respect of Mrs Core, HMRC made a discovery assessment. Mr and Mrs Core appealed against both decisions and subsequently notified their appeals to the First-tier Tribunal.

The Tribunal's decision

The Tribunal (Judge Zachary Citron) dealt with the case on the papers, with the consent of both parties. He first set out the facts as he found them and as summarised above. In particular, he concluded that the agreement to sell

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Green Lane was reached in or after May 2014 and not, as contended for by HMRC, in or before December 2013.

The judge then addressed the law. He acknowledged the leading case on temporary occupation, being the Court of Appeal's decision in *Goodwin v Curtis* [1998] STC 475. However, he recognised that there is no minimum period of occupation that is required before the property can amount to a residence. Each case turns on its own facts. As the judge continued: 'to succeed, [taxpayers] must provide some evidence that their residence in the property showed some degree of permanence, some degree of continuity or some expectation of continuity'.

The judge considered that the fact that the whole family moved into Green Lane was 'strongly indicative that they expected to live at Green Lane indefinitely' and that it was only the unsolicited offer that caused that position to change. Accordingly, he allowed the taxpayers' appeals.

Commentary

This case strikes me as a classic illustration of a number of faults within the world of tax dispute resolution. HMRC's case theory appears to have been based on the undisputed fact that the Cores extended their rental agreement after accepting the offer on Green Lane. For some reason, HMRC interpreted this as an indication that the offer must have been made in or before the first extension in December 2013 (so that the Cores had moved into Green Lane when they already knew it was to be sold). However, the judge recognised that this made little sense and the relevant extension was that effected in June 2014.

In ideal world, this is the kind of factual misunderstanding that ought to have been capable of resolution at a face-to-face meeting. However, most advisers recognise that HMRC's approach to such meetings is typically too confrontational and, in any event, meeting notes subsequently prepared by HMRC are so skewed that it is standard advice not to allow such meetings between HMRC and the client. Indeed, this case highlights the risk of HMRC picking up on one statement and then later basing its whole case on one interpretation of that statement, without recognising that that statement was capable of being interpreted (and was meant to be interpreted) in a different way.

It is for this reason I consider the Alternative Dispute Resolution (ADR) facility a helpful way forward, as information can often be clarified in a less confrontational forum. However, ADR works only when both sides are prepared to listen as well as to talk.

What also hindered HMRC's appreciation of the Cores' case was its insistence that there be contemporaneous documentary evidence that corroborated the Cores' account of what happened. It is not clear, however, how HMRC could realistically expect such documentation to have existed in a case such as this. But if it was the absence of such documentation that prevented HMRC from agreeing to drop the case, then it seems that a case proceeded to the tribunal wholly unnecessarily. The approach adopted by HMRC seems to fly in the face of the HMRC Charter promise to 'assume you're telling the truth, unless we've good reason to think you're not'.

Another of the aspects of the case that concerned me was the fact that the appeal did not relate solely to the question as to whether a capital gains tax liability existed but also to penalty assessments made against Mr and Mrs Cole for 'carelessly' omitting to declare the capital gain on their tax returns. In the light of the judge's decision on the main issue, he did not proceed to address this issue. However, I shall.

The mere fact that penalties were issued in a case such as this is a cause for concern. There is a worrying tendency within HMRC to proceed from the assumption that 'error on tax return' implies either careless or deliberate conduct by the taxpayer (so as to justify the imposition of penalties). However, there is a safe zone, often (but not universally) referred to as 'innocent error'; for example, a mistake caused because of a genuine difference in opinion. This was such a case: was the quality of occupation sufficiently high so as to make the property the Cores' residence?

I would be interested to know whether the officer had a good reason to consider a penalty due, beyond the fact that the officer considered that capital gains tax due had not been accounted for. In many cases I am professionally involved with, I see similar threats of penalties in equally inappropriate cases. However, it is rare for penalties to follow and I assume that HMRC rows back because it knows that the taxpayer is professionally represented and that any penalty assessment would be vigorously challenged.

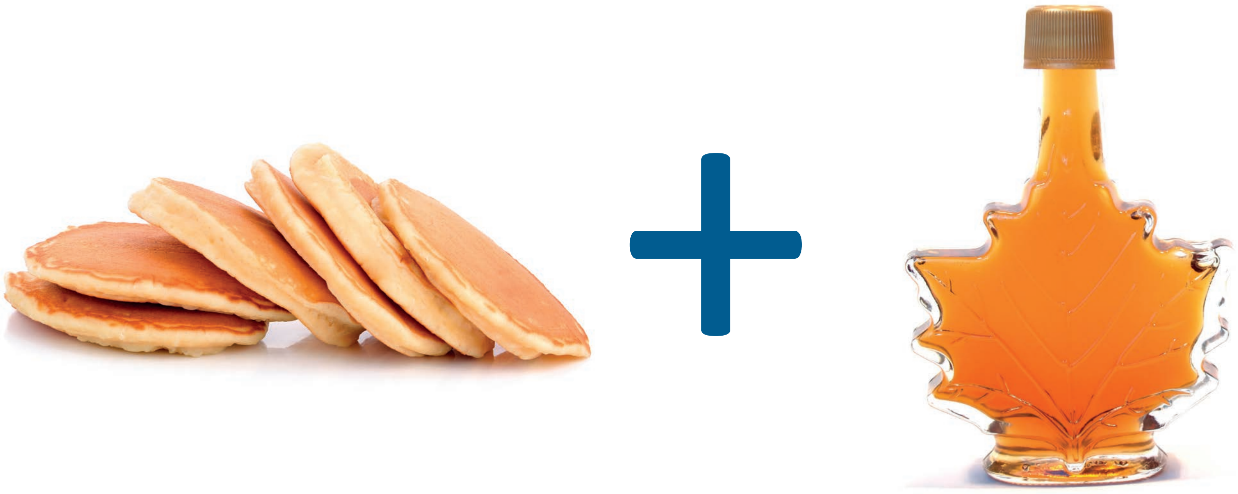
On this point, I note that the duty to treat all taxpayers equally has been dropped from the HMRC Charter.

What to do next

What can taxpayers do to help themselves if they find themselves in similar cases? The clincher in this case was the fact that the whole family moved to Green Lane; had there not been the intention for Green Lane to become their home, the likelihood is that the family would have continued to remain in their rented accommodation. However, how can a single taxpayer (or a couple without children) make it equally clear to HMRC (or the tribunal) that the move is not merely an exercise of window-dressing? In such situations, I would strongly advise that the taxpayer registers the new address with the local GP, the local authority, the bank, HMRC, etc. promptly on moving in – this being good evidence that the move is meant to be long term. Of course, there will be situations (the Cores' case perhaps being an example) where there is no immediate urgency to effect this paperwork (because the rented accommodation was being retained for Mr Core's work purposes, as he was working next door). However, failure to take such a precaution could cause difficulties with HMRC at a later stage.

As for HMRC, what can it do next? Perhaps read correspondence without the presumption that taxpayers have underpaid their tax. Similarly, HMRC should be more willing to believe the accuracy of what taxpayers tell it, even in the absence of corroborative documentation. It should be only when there is contradictory documentation or an intrinsically incredible account from a taxpayer that this should lead to HMRC disbelieving taxpayers.

BETTER TOGETHER



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Self Assessment tax returns: your FAQs

Karl Khan, HMRC's Director General for Customer Services, answers the questions HMRC is often asked about Self Assessment

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2020 has been a difficult year for many of us and with so much to think about it's easier than ever to forget about the routine things. But forgetting about your tax return could cause you unneeded stress and worry at a time when we could all do without any more of it.

Particularly given the unusual situation we've all found ourselves in, you may find that there are new challenges to overcome as you gather everything you need to complete your Self Assessment. You may have been working from different locations; for example, to adhere to social distancing guidelines. Give yourself all the time you need to collect together and check your documents. Remember, this isn't just about telling HMRC your income and what you owe in tax; it's also your opportunity to take stock of your business-related expenses and document any tax exemptions.

The following guide will help you decide if you need to complete a Self Assessment tax return for 2019/20; what you need to tell HMRC about and what you can include for exemption; and how you can manage your payments if you're concerned about your tax bill this year.

PROFILE

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Employer: HMRC
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I'm not sure if I need to complete a tax return. How will I know if I do?

This depends on your circumstances. You must complete Self Assessment if you fit into any of the following categories:

- You've earned more than £2,500 from renting out property.
- You've received, or your partner has received, child benefit and either of you had an annual income of more than £50,000.
- You've received more than £2,500 in other untaxed income; for example, from tips or commission.
- You are a self-employed sole trader with an annual turnover of over £1,000.
- You are an employee claiming expenses in excess of £2,500.
- You have an annual income of over £100,000.
- You have income from abroad that you need to pay tax on.

If you're still not sure whether you should complete Self Assessment, you can check by running through our handy tool online at www.gov.uk/check-if-you-need-tax-return.

I need to complete a return. What do I do now?

If this is your first tax return, you will need to register at GOV.UK. It's a straightforward process, but if it is your first time, it's very important to register sooner rather than later, as it can take up to 10 working days (21 if abroad) for the registration to arrive in the post.

Visit the website: www.gov.uk/log-in-file-self-assessment-tax-return. Have some identification and key information to hand, such as your passport, National Insurance number and bank details.

Once you are registered, you will be given your Unique Taxpayer Reference (UTR) which will make any future tax returns far easier. Anyone who registered before already has their UTR and they use this for all their subsequent declarations.

When do I need to submit my tax return?

The final deadline for 2019/20 tax returns is 31 January 2021 for returns submitted online but we urge people not to put it off and to submit it as soon as possible. You can complete Self Assessment as soon as you have all the information you need.

What does HMRC need to know?

We need to know what your total income was and about any employment benefits you received in the relevant tax year. If you receive an income as an employee in addition to being self-employed, we need to know about this, as well as any foreign income or pension income you might receive.

Employment benefits may be from your employer or your own business and could be a company car, interest-free loans (such as those given to employees to pay for train season tickets) and/or health insurance, to give just a few examples. These will be declared in form P11D.

You need to declare any earnings from property if you are a buy-to-let investor, but don't forget that certain expenses and allowances can be applied to that income to reduce your tax bill; for example, buildings and contents insurance. Any significant gains from the sale of stocks, shares, property or any part of your business need to be declared on your Self Assessment Return.

It's important to be aware that the process for capital gains tax on UK residential property sold since 6 April 2020 has changed. It must now be declared and paid within 30 days of completion. This only applies where the property in question is not exempt from tax, typically as the seller's main home. For more information on how to declare this you can visit the website at www.gov.uk/capital-gains-tax/report-and-pay-capital-gains-tax.

What about allowances and expenses for tax relief?

Taking the time to prepare properly for your tax return also allows you to check that you are claiming all your correct entitlements for tax relief.

HMRC needs to know about your work expenses. These are defined as either 'travelling to your job' or 'other expenses you had to pay in doing your job – and only whilst doing your job'. Examples may include car mileage and the cost of hotel rooms for business trips. You can also count business expenses, such as the cost of printer ink and business stationery. The recent addition to this list is working from home expenses, unless paid by your employer.

If you are self-employed and have bought work equipment such as a computer, printer or phone, you can't necessarily claim these as expenses. But you can claim tax relief on them through the annual investment allowance (AIA) as part of your tax return. The AIA amount has temporarily increased to £1 million between 1 January 2019 and 31 December 2020. For the most part, AIA covers the cost of purchases you need to carry out your business.

Charitable donations are taken into account and deducted from your tax liability. It's possible to make a donation now and carry it back into the previous year , provided you make the donation before filing your return. Gift aid donations give you as much as 60% tax relief (20% of which goes directly to the charity).

You must give details of your student loan repayments in the relevant section of your tax return. You must declare it, but there's no tax relief on loan payments.

I'm worried about my tax bill. Is there anything I can do?

This has been a very hard year for a lot of people, so sadly you won't be alone. HMRC is aware of this. Some people who find themselves in the position of worrying about paying their tax bill may, unfortunately, be reluctant to call HMRC to deal with this. This is why we've made it easier for customers to make their own arrangements for managing how they pay their tax.

Self-serve Time to Pay is our online payment plan service. Self Assessment customers can apply online for additional support, allowing them to spread the cost of their tax bill into monthly payments without the need to call us.

Self-serve Time to Pay could always be used for tax liabilities up to £10,000, but as of the beginning of October 2020 the maximum amount has been increased to £30,000. The aim is to support Self Assessment customers who may be experiencing financial issues due to the coronavirus pandemic.

When you complete your tax return for the 2019/20 tax year, you may have the option of using the online Self-serve Time to Pay facility through GOV.UK to set up a direct debit and pay any tax that is owed in monthly instalments. If you wish to set up your own monthly payment plan, you must meet the following requirements:

- no outstanding tax returns;
- no other tax debts; and
- no other HMRC payment plans set up.

The debt needs to be between £32 minimum and £30,000 maximum and the payment plan must be set up no later than 60 days after the due date of a debt. Customers using Self-serve Time to Pay will be required to pay any interest on the tax owed. Interest will be applied to any outstanding balance from 1 February 2021.

Any other advice?

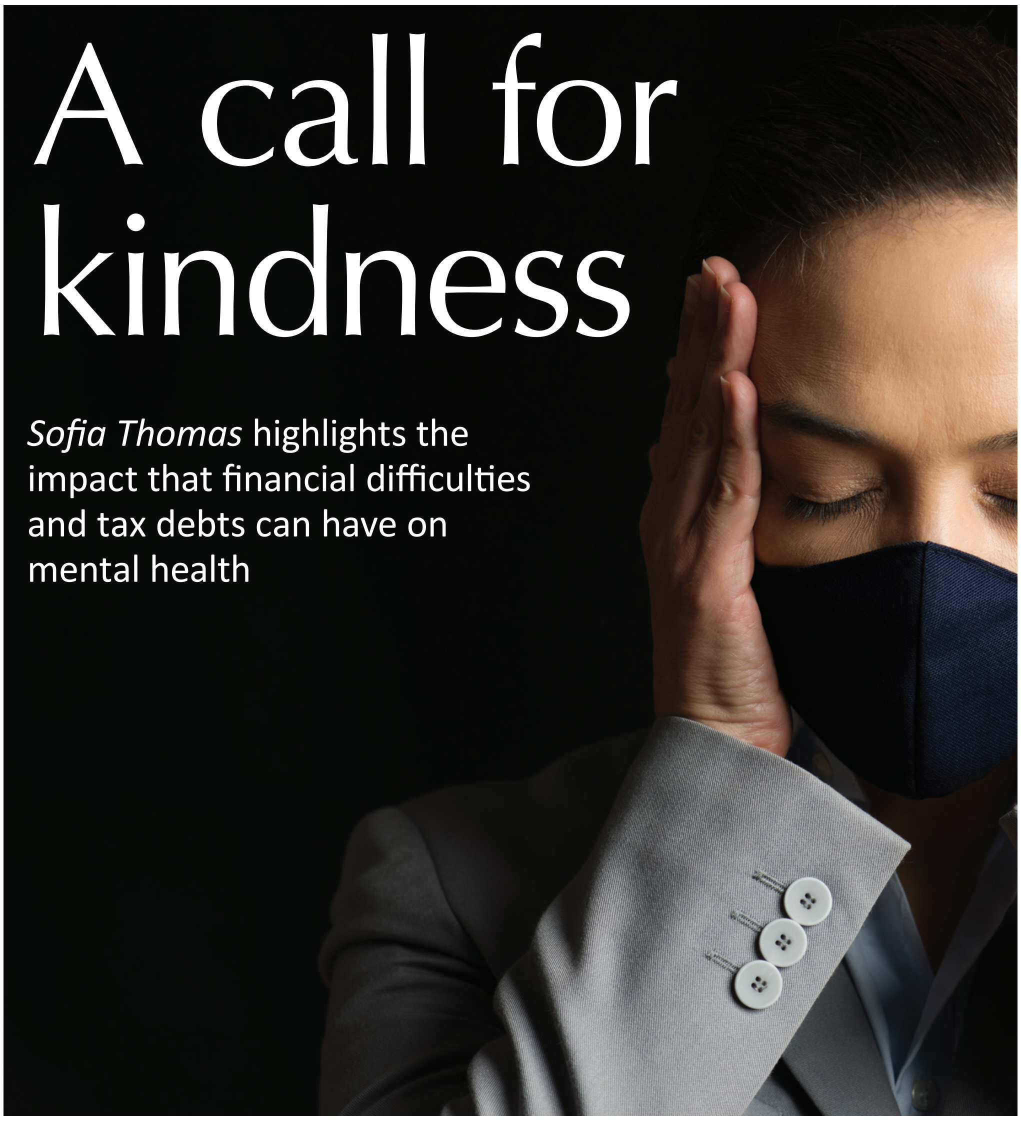
Give yourself plenty of time. It's not fun or exciting, but don't put it off to the last minute. Rushing to get your information to us as the clock is ticking makes it more likely that you will make a mistake or forget to include some of your allowances.

Plan when you'll complete your return well in advance. Get all your documents together, check them first for accuracy or missing information and set aside a quiet time to enter the details online. The system will calculate your tax automatically as you fill in the sections, but don't worry if you have a lot of information to work through – you can save your progress in stages and come back to it later. You don't need to complete everything in one sitting.

If you are worried about any aspect of your Self Assessment tax return and would like to get more help and advice, you can find plenty of useful support at www.gov.uk/self-assessment-tax-returns/get-help.

A call for kindness

Sofia Thomas highlights the impact that financial difficulties and tax debts can have on mental health



There is a huge amount of stigma around both mental health issues and debt, so when the two collide it can create an almost unbearable situation for individuals. Such anxieties can cause clients to avoid their tax issues until they become almost impossible to deal with.

Acknowledging the importance and intersection of financial difficulty and mental health is the first step for tax advisers and HMRC to best support clients in crisis. The reduced economic activity due to Covid-19 has made this issue even more topical, highlighting the need for a clear policy and plan on how to help and support customers with mental health issues. Advisers need to be of the real and tangible impact of tax debts, as mental health problems are being exacerbated by the current economic climate.

A growing problem

Problems can be caused both by long term financial difficulties, and by a sudden trigger such as income shocks or an unexpected tax bill. These issues are compounded by the fact that tax debt has no statute (it never expires) and interest accrues daily. Failure to pay can ultimately lead to legal action, bankruptcy and business closure.

According to a study by the Money and Mental Health Policy Institute, a charity set up by financial adviser Martin Lewis (see www.moneyandmentalhealth.org), people who are in problem debt are three times as likely to have thought about suicide in the past 12 months, while nearly a quarter of people who attempted suicide during that period were in problem debt. The report explicitly states that many of those in problem debt have not told family or friends about their financial difficulties. The social stigma around debt can stop people from seeking help.

Debt management

HMRC's debt management team can offer payment plans to individuals, providing a welcome breathing space for taxpayers. Those in self employment who did not make a self assessment payment on account in July 2020 will have had their payment automatically deferred until 31 January 2021.

HMRC encourages taxpayers to set up a payment plan online to spread the cost of a self assessment bill. The amount has been increased to make it easier to use the online tool and the conditions are:

- they owe £30,000 or less;
- do not have any other payment plans or debts with HMRC;
- their tax returns are up to date; and
- it is less than 60 days after the payment deadline.

Those who cannot pay any other bills should call the coronavirus helpline on 0800 024 1222, although HMRC acknowledges that due to Covid-19 restrictions it has fewer advisers available to answer calls.

These solutions – welcome as they are – can create issues of their own. The Money and Mental Health report advises that payment plans can help taxpayers but that falling behind on payments can be seen as a personal failure and add to a sense of hopelessness.

The HMRC Debt Management and Banking Manual, citing the Equality Act 2010, states that 'it requires creditor organisations to make reasonable adjustments to any of its provisions if a customer is known to be suffering from a disability'. Customers with mental health issues can be considered to have a disability if their impairment has a substantial and long-term adverse effect on their ability to carry out normal day to day activities. Long term is defined as a period of time which has lasted for 12 months or is likely to last for 12 months. HMRC may ask for written information about the nature of the mental health issue, which can be provided by a GP or social worker.

The manual suggests that HMRC staff should ask the customer to explain how their condition affects their ability to manage their financial affairs and how it affects their ability to deal with HMRC. This exchange of information can be a traumatic process for a person suffering from mental health problems.

A reasonable excuse

In two judgments from 2017, appeals have been allowed on the grounds that mental health issues are a reasonable excuse.

In *PH v HMRC* [2017] UKFTT 373, the taxpayer, who had concealed his financial affairs from his family for many years, appealed late filing and late payment

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penalties on the grounds that he had been suffering from anxiety and depression since 2009. The tribunal accepted that the taxpayer had a reasonable excuse for the late payment and filing and the appeal was allowed. During the appeal, HMRC stated that for an illness to be considered a ‘reasonable excuse’, the illness must be so serious that it affected the taxpayer ‘immediately before the deadline’ and that ‘where an illness is an ongoing condition the appellant would be expected to make arrangements’ to settle their tax affairs. This may be considered to contradict HMRC’s manual, which states that mental issues can only be considered to have a disability if they are long term.

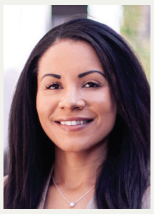
In *Appellant v HMR* [2017] UKFTT 839, the First-tier Tribunal allowed an appeal against late payment penalties and surcharges due to the taxpayer’s mental health problems. The taxpayer had been issued with determinations and late payment notices for several years, and had a diagnosis of schizophrenia which was supported through evidence. The judge found that a person’s mental health condition does not affect a person’s liability to pay tax. However, the taxpayer’s mental health problem had prevented her from appropriately dealing with her affairs and this was an exceptional reason for extending the time limit for payment and a reasonable excuse for failing to comply with her tax obligations.

Looking forwards

HMRC’s new Charter, published on 5 November 2020, includes a promise by HMRC to be aware of a taxpayer’s personal situation and to provide extra support if taxpayers need it. This includes support for those who are experiencing financial hardship; for example, those who cannot afford essentials like food, bills or rent. It also states that in certain circumstance HMRC can give an extension to a deadline; for example, those who have been laid off because of coronavirus.

Tax advisers who wish to discuss a client’s debt management problems should call HMRC’s dedicated debt management line on 0300 200 3887.

PROFILE



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Profile: Sofia founded Sofia Thomas Ltd to offer accessible, expert tax services to assist family law firms in providing their clients with tax advice and support. She works closely with a number of tax charities and is a committee member of the Tax Technical Steering Group, which advises on public tax policy, and Women in Tax.

FURTHER ASSISTANCE

Low Incomes Tax Reform Group
LITRG has a range of resources including advice for those with mental health conditions. See its feature on ‘Dealing with HMRC if you have mental health conditions’ (bit.ly/3o27JwK).
Website: www.litrg.org.uk

Tax Help for Older People
Tax Help for Older People is a service operated by registered charity Tax Volunteers (TV). It has established a nationwide network of volunteer tax professionals who provide free telephone and face-to-face tax advice to older people on low incomes who would not otherwise be able to afford to pay for such advice. In addition, TV provides education, training and technical support to other voluntary sector agencies and offers constructive consultation with HMRC.
Tel: 0845 601 3321
Website: www.taxvol.org.uk

TaxAid UK
TaxAid provides a professional, free ‘crisis advice service’ to low-income taxpayers across the range of employment and self-employment tax problems that cannot be resolved by HMRC. Help with resolving tax and tax debt problems is available on the phone and via email, with face-to-face advice services in major cities provided pro bono by tax professionals. In addition, TaxAid trains front-line money and debt advisers in the voluntary sector and supports them via a dedicated helpline and meets with HMRC at consultations about tax issues which affect low income earners.
Public Helpline: 0345 120 3779
Website: www.taxaid.org.uk

Bridge the Gap
Tax Volunteers and TaxAid have launched a campaign to raise £250,000 each year for the next five years with the objective of helping thousands of people who can’t afford to pay for tax advice to:

- have their tax affairs brought up to date;
- pay only the right amount of tax; and
- learn how to manage their tax affairs in the future.

Details about supporting this joint initiative can be found at: www.bridge-the-gap.co.uk.

Technical Team

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Welcome to the January Technical Newsdesk

Like most authors writing articles around this time of year, I'm sure I am writing familiar things such as looking forward to 2021 with a sense of optimism, and being pleased to see the back of 2020. But looking back on 2020, I think our technical teams can do so with a real sense of achievement.

COVID-19 has of course been the biggest factor which has impacted our work. But we acted swiftly. We quickly developed website pages to provide signposting and guidance to members and the wider population. We also liaised with HMRC regarding practical easements in order to ensure that tax administration could continue to function effectively in the new virtual climate, in particular with regard to stamp taxes. Our engagement with HMRC and HMT on the key support schemes (which continues in earnest, particularly on SEISS) has resulted in improvements both in terms of their scope and operation, but also around communications and guidance. And we have presented webinars to help improve understanding.

Like most organisations, we have had to quickly adopt practices that might have been unfamiliar to some of us previously. Our various committee meetings with volunteers have all been virtual, as have our meetings with revenue authorities. We have all missed the personal touch, but we have found new and improved ways of working, many of which we will continue to adopt for the future.

The increased use of virtual meetings has led to even greater engagement with revenue authorities and policymakers. I estimate that we will have had about a third more meetings in 2020 than we did in 2019 – and quite possibly the most meetings since we started keeping count! This has really strengthened our relationships, and demonstrated the value we can bring, enabling us to have trusted discussions on key issues.

We have also had a number of 'successes' in relation to particular tax matters, such as the welcome deferral of the requirement to notify uncertain tax treatments, the saving under 5MLD implementation that non-UK trusts will not have to register on the Trustee Registration Service when entering into a UK business relationship unless the trust has at least one UK resident trustee, and working with HMRC to prepare guidance for our members on matters such as the profit diversion compliance facility.

Indeed, there have been many successes, so when we publish our annual report for 2020 do take a look. Remember, though, that much of what we do necessarily happens 'behind the scenes', in order to preserve our trusted relationship with policymakers, and for those we will just have to be satisfied with the warm feeling it gives us.

COVID-19: an update on recent developments

GENERAL FEATURE PERSONAL TAX INDIRECT TAX

In this article, we summarise the most recent announcements and further guidance published by the government in relation to the Self-Employed Income Support Scheme and the permitted deferral of VAT payments.

Self-Employed Income Support Scheme (SEISS)

Claims for the third round of the SEISS opened on 30 November, and will close later this month on 29 January. The grant is worth up to 80% of average monthly trading profits, for a period of three months, capped at an overall maximum of £7,500.

The Treasury Direction dated 24 November (see tinyurl.com/y2s2j68n) sets out that, in order to be eligible for the third grant, all of the same conditions have to be met as for the first and second grants. However, two extra conditions must also be met in order to be eligible for the third grant:

- The trade must have suffered from reduced activity, capacity or demand in the period from 1 November 2020 to 29 January 2021 as a result of COVID-19.
- The claimant must reasonably believe that they will suffer a significant reduction in trading profits for the basis period including those months as a result.

A claim cannot be made for the third grant if the reduced activity, capacity or demand is caused solely because a person is required to self-isolate, or care for someone required to self-isolate, as a result of travelling to the UK.

The ATT and CIOT held a webinar on 27 November 2020 looking at the third grant in more detail. A recording can be watched for free on the CIOT (www.tax.org.uk/SEISSwebinarNov) and ATT (www.att.org.uk/SEISSwebinarNov) websites.

At the time of writing, the details regarding the level of the fourth grant (intended to cover the period from February to April) and who is eligible are yet to be confirmed. Please keep an eye on the CIOT (www.tax.org.uk/COVID19SEISS) and ATT (www.att.org.uk/COVID19SEISS) websites for the latest updates.

VAT deferral: updated guidance and the position for deregistered businesses

VAT registered taxpayers were able to defer payments of VAT due to HMRC arising from VAT returns submitted between 20 March and 30 June 2020, until 31 March 2021. On 24 September 2020, the Chancellor announced a new measure allowing taxpayers that need more time to opt into a repayment plan of smaller amounts over an 11 month period interest free, subject to meeting the qualifying criteria. HMRC have now updated their guidance (see tinyurl.com/yx247sum) with information on how taxpayers can opt into the scheme, which will be open for registration in early 2021. If a taxpayer does not opt in, the full balance of the deferred VAT is still due on 31 March 2021.

Deregistered businesses

The CIOT approached HMRC to query whether deregistered businesses with an outstanding deferred VAT balance could still use this scheme. The response stated: 'HMRC will support business that need help, including those that deferred VAT and have since deregistered. These businesses will either be able to use the VAT deferral new payment scheme through the online journey or, if we are unable to provide that, we will offer these businesses the same terms as the new payment scheme through HMRC's well-established Time to Pay service. We will share full details of who can and can't use the new service on GOV.UK, including advice on where to go for extra help.'

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Making Tax Digital for corporation tax

LARGE CORPORATE | OMB | MANAGEMENT OF TAXES

A consultation has been launched seeking views on how Making Tax Digital could be extended to corporation tax.

On 12 November, HMRC published their long awaited consultation (see tinyurl.com/yywfwacz) on Making Tax Digital (MTD) for corporation tax. This confirms the intention to extend MTD to corporation tax, but not before April 2026 at the earliest.

The consultation includes details on the proposed scope and operation of MTD. In summary, it is proposed that companies will need to:

- maintain digital records of their income and expenditure;
- provide quarterly updates of income and expenditure to HMRC using MTD compatible software; and
- prepare and file their annual corporation tax return using MTD compatible software.

It is likely that these requirements will lead to most companies having to make at least some changes to their current software, processes and/or record keeping, even if they already use software to keep their records and prepare their returns.

It is proposed that MTD will apply to all entities within the charge to corporation tax, with only a few minor exceptions. Importantly, unlike MTD for income tax (and MTD for VAT to date) there is no exemption for smaller businesses.

Instead, the only true exemptions proposed are for the digitally excluded and insolvent companies that would be exempt from online filing.

However, it is proposed that the requirements could be relaxed or flexed for companies in certain circumstances. In particular, those companies that fall into the quarterly instalment payments regime for very large companies (those with profits in excess of £20 million) may not be required to submit quarterly reports, though they will still be required to keep digital records in the required format and submit their annual corporation tax return using MTD compatible software.

The consultation closes on 5 March 2021, and HMRC have indicated they will also publish a simplified version of the consultation, aimed at small companies, in the coming months.

If you have any comments you would like to feed in to the ATT or CIOT response to this consultation, please send these to technical@ciot.org.uk or atttechncial@att.org.uk as appropriate.

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VAT: migration of taxpayers data to the system used for Making Tax Digital

INDIRECT TAX

HMRC are migrating the VAT data for taxpayers not yet registered for Making Tax Digital to the same IT platform used for taxpayers registered for Making Tax Digital. VAT agents should take action in respect of these clients.

The VAT records of all VAT registered taxpayers registered for Making Tax Digital (MTD) are stored on HMRC's IT platform known as the Enterprise Tax Management Platform (EMTP). The VAT records for taxpayers who are registered for VAT but not yet for MTD are on separate, older storage platforms. As part of HMRC's digital strategy to streamline their systems, they will migrate those VAT registered taxpayers stored on their older IT platforms to ETMP, commencing in March 2021 and continuing in a phased programme until complete.

What will change?

There will be no changes for VAT registered taxpayers who are already registered for MTD and no changes for their agents.

For VAT registered taxpayers not registered for MTD, following the migration of their data to ETMP, their VAT agents will be unable to use the online service account for filing VAT returns. Instead, these VAT returns must be filed through the Agent Service Account (ASA).

Next steps for VAT agents
Prior to the migration exercise taking place, agents that do not already have an ASA should create an account and copy across authorities for each client for whom they file non-MTD VAT returns from the existing agent portal. Note that this process does not sign up these clients for MTD. It should be noted that if the client data is already migrated to ETMP prior to the agent setting up the ASA, it will be a much more time consuming exercise to set up these clients in the ASA post-migration.

We will provide further details around the above changes, and action to take, when they become available.

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Raising standards in the tax advice market: government response

GENERAL FEATURE

HMRC have published a summary of responses received to their comprehensive call for evidence on raising standards in the tax advice market and also the government's proposed next steps. While the proposed next steps do not go as far as some might have expected, or wished, the proposals do include some welcome measures.

In October's edition of Technical Newsdesk, we reported on CIOT, ATT and LITRG's responses to HMRC's call for evidence on raising standards in the tax advice market. It is encouraging to see that the government's recently published Summary of responses and next steps (which can be found at tinyurl.com/y3s62dt7) makes the point that 'the majority of tax advisers are technically competent and adhere to high professional standards'. However, it goes on to say 'the market for tax advice does not always work as well as it should. Some tax advisers are incompetent, and others do not work to the high standards expected of them, either by their professional bodies, or if they are not a member of a professional body, by HMRC's standard for agents.'

The Summary of responses identifies four areas where the government plans to take action to 'improve standards and trust in the tax advice market'.

1. Raise awareness of the Standard and review HMRC powers to enforce the Standard
The 'Standard' referred to is HMRC's Standard for tax agents, sometimes referred to as 'Professional Conduct in relation to Taxation (PCRT) lite' as it is not as comprehensive as PCRT (the set of rules which sets out the principles and standards of behaviour that all members and students of the CIOT and ATT must follow in their tax work: www.tax.org.uk/PCRT). In particular, the Standard does not include any reference to the fundamental principles of confidentiality or professional behaviour. Respondents to the call for evidence gave a clear message that awareness of the Standard was low and more needed to be done to promote it. How HMRC can or should be able to enforce compliance with the Standard remains unclear and we understand that this is an area HMRC are exploring further.

2. Consult on requirement for professional indemnity insurance (PII)
A key focus of the call for evidence was consumer protection. While most, if not all, professional bodies require members to hold PII, some unaffiliated tax advisers are uninsured, leaving their clients unprotected when things go wrong. The proposal that all tax advisers should have PII cover is a welcome development. There will be a consultation in due course which will explore the viability of such an initiative. The insurance market is already quite challenging for members, with fewer insurers offering cover, premiums rising and more restrictions being put in place. It will be interesting to see how the market responds to the idea.

3. Work collaboratively with professional bodies
The CIOT and ATT do, and will continue to, work collaboratively with HMRC on raising standards. We are keen to see HMRC make more use of their power to refer our members who are not complying with PCRT (including the standards for tax planning) to the Taxation Disciplinary Board (the independent body that is responsible for running the complaints and disciplinary scheme for the CIOT and the ATT). In doing so, this helps to maintain high professional standards and protects the reputation of the profession.

4. Tackle high costs to consumers of claiming tax refunds
We support HMRC's plan to review options to tackle this. It is an important consumer protection issue. It is essential that the client can and does understand the terms of engagement with the adviser making the claim on their behalf. For example, how much will the adviser be paid? What happens if the claim is faulty and part or all of the refund has to be repaid – will any element of the fee be repaid?

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Office of Tax Simplification Capital Gains Tax Review: CIOT, ATT and LITRG responses to stage two

OWNER MANAGED BUSINESS PERSONAL TAX

The CIOT, ATT and LITRG have responded to the second stage of the Office of Tax Simplification's call for evidence into its Capital Gains Tax Review. This second stage of the review covered the technical details and practical aspects of capital gains tax.

CIOT
CIOT technical committee members met the Office of Tax Simplification (OTS) on 26 October 2020 to discuss the second tranche of its review of capital gains tax (CGT). Following this meeting, we provided a detailed follow-up note on specific areas identified in those discussions. Below is a summary of some of the key points discussed with the OTS. These are reflected in more detail, and additional points are made, in the CIOT's note which can be found at www.tax.org.uk/ref693.

Private Residence Relief (PRR): Essentially what should be a simple relief has become overcomplicated, with scope for taxpayers to go wrong, so that they need professional help to establish their liability, exacerbated by the different rates and the difficulty of calculating CGT liability mid-tax year for the 30 day return. The number of cases taken to the First-tier Tribunal is a good indication of an area that needs attention. In our note, we consider in detail a number of fairly commonplace situations where the availability of PRR and/or the application of lettings relief is not straightforward. The periods of absence rules in TCGA 1992 s 223(3) are difficult to follow and over-restrictive. Nominations are a further area in need of simplification; our strong preference is to exclude the need to consider interests that have no capital value (and therefore potential for a gain) when deciding which of two properties is a main residence for PRR. Consideration could be given to abolishing the two-year time limit for a PRR nomination more widely, and simply enabling PRR nominations to be made following a disposal.

Divorce: It is often challenging to effect transfers of chargeable assets within the year of separation to ensure the transfers take place on a no gain/no loss basis. Further complexities arise in the interaction with PRR, holdover of business assets, 'clogged' losses and inconsistency across the tax code. Providing for any transfers made in connection with divorce to be on a no gain/ no loss basis could offer a solution.

The operation of the rule in *Marren v Ingles:* Under *Marren v Ingles*, a right to deferred consideration is treated for tax purposes as an asset (a chose in action) itself. When the right is satisfied, there is a disposal for CGT purposes. We suggested that a key simplification to mitigate the current complexity would be a simple rule whereby unascertainable consideration is taxed on receipt as deferred consideration referable to the disposal of the original asset (not as a chose in action).

Distortions in Business Asset Disposals Relief (formerly Entrepreneur's Relief): We consider some of the distorting elements of the 5% test in the 'personal company' definition and some of the difficulties around the two-year holding period (views on this latter point were mixed).

Land assembly for housing developments: We noted that the CGT code (and the wider tax system) militates against using a land pooling mechanism (to promote more sustainable developments and patient investment over short term return) as opposed to the 'traditional' route where a landowner pursues an option and sale arrangement with a developer or a promotion agreement and sells the land upfront. Possible solutions could lie in adopting principles-based legislative drafting or a 'land-pooling' vehicle specifically designed to provide a neutral tax treatment without affecting the wider tax code, or a series of dedicated reliefs for CGT, inheritance tax and possibly other taxes or amendment to existing reliefs or provisions. Our note considers the pros and cons in each case.

The *Crowe v Appleby* trap: The *Crowe v Appleby* case is problematic in two ways: firstly, the trap caused by its application; and secondly, the scope for errors that occur across potentially many years of returns if the rule is not recognised and therefore not applied correctly. The trap applies if the settled property is an undivided share in land in England or Wales; for example, a joint interest in a field. The note includes case studies and the suggestion of a statutory override.

Lease extensions and tenant-owned flat management companies: We noted the lack of awareness of the CGT and wider tax issues arising where the freehold is an asset of the freehold company (other than as bare trustee) and a lack of HMRC guidance on the specific issues which needs to be addressed.

Estates in administration/position on death: Our note considers extending the Statement of Practice (02/04) allowance for the costs of establishing title to legatees. We point out the widely misunderstood position around asset values on death where estimates or incorrect low values have been entered onto the inheritance tax forms that produce an unanticipated chargeable gain. The CIOT's previous response in relation to stage one of the OTS's review (reported in October's Technical Newsdesk) considered more generally CGT uplift on death and the interaction with a general gifts holdover.

30-day reporting and payment: The design of the new system as an 'add-on' micro system meant there were a number of teething problems when it first went live, and problems remain with functionality and guidance that incur extensive professional time. These issues are discussed further below in the article on *Capital gains tax: 30-day reporting and payment*. In our response to the OTS, we questioned the benefit of developing standalone systems that operate independently of mainstream systems, such as the personal tax account and the agent services account, especially where they require their own separate agent authorisation process. In addition, there remains the fundamental issue of a general lack of awareness by the public of the obligation to report and pay within 30 days.

Record keeping: A common problem for property disposals is lack of information about holdover claims, details of enhancement expenditure and deferred EIS and SEIS gains. The facility for individuals and their agents to record these details when made or incurred in the personal tax account would have clear direct benefits.

ATT

The ATT's comments to the OTS focused on UK residential property reporting rules, PRR, divorce, Scottish partnerships and potential uses of the personal tax account.

We also discussed at length members' concerns about the new 30-day reporting requirements which have been universally unpopular. We provided the OTS with screen shots of the process and highlighted our key concerns including:

- the lack of communications and guidance from HMRC;
- practical issues with the process, particularly agent authorisation; and
- the wider lack of awareness of the requirements by the general public.

In respect of CGT on divorce, we highlighted a number of areas which could usefully be addressed, including the short window in which couples can make no gain/ no loss transfers and recent, and unexpected changes to HMRC's position on the availability of hold-over when couples are transferring business assets on divorce.

The ATT also highlighted that Scottish partnerships are currently unable to access the ability to partition land between joint holders on the same basis as partnerships in England and Wales. This is a distortion which needs to be addressed.

Finally, the ATT suggested a return to a 12-month final exemption period and an update to Statement of Practice 14/80 (which allows those who let to a single lodger to continue to claim PRR rather than rely on letting relief) so that it better reflects the modern lodgings market.

LITRG

LITRG's response highlights the fact that the majority of CGT taxpayers pay either no income tax or only pay it at the basic rate. For this population, the main reason for interaction with the CGT system is the disposal of real property. Properties which have been the taxpayer's only or main residence at some point throughout the period of ownership – but not the entire period – present a particular challenge in calculating and reporting the CGT payable.

Drawing upon queries received through the LITRG website, the submission explores how this is an issue which brings complexity and challenge in terms across almost all of the main stages of compliance, including: awareness that a chargeable disposal has been made; calculating the gain; calculating the tax; reporting the disposal; and making the payment. LITRG suggests a number of easements to make it less likely for unrepresented taxpayers to fall into non-compliance unwittingly. These include:

- consideration of how to make taxpayers more aware of their potential CGT obligations on the sale of property;
- a possible additional CGT allowance which applies to the disposal of a main residence where full PRR is not available;

- relaxations for separating couples to allow them more time to make no gain/no loss transfers, and extended private residence relief for former spouses and civil partners who leave the family home;
- clarifications and improvements to the process of nominating a property as a main residence;
- various possible exclusions from the obligation to make a 30-day report on the disposal of UK residential property, as well as an extension of the period allowed to 90 days; and
- improved guidance on GOV.UK on various CGT issues.

The LITRG response can be found here: www.litrg.org.uk/ref2353.

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Capital gains tax: 30-day reporting and payment

PERSONAL TAX

In response to feedback from members, the CIOT has raised a number of issues recently relating to the functionality of the capital gains tax reporting service and the related guidance on GOV.UK with the Office of Tax Simplification, as part of their CGT review, and directly with HMRC.

Payment reference
Members have reported some confusion over the instructions for which payment reference to use when making payment. HMRC have provided the CIOT with clarification which can be viewed at: www.tax.org.uk/CGT30days. The important thing to note is that if the user quotes the capital gains tax (CGT) account reference number **or** the payment reference number, the payment will be allocated to their account. The user should be able to view their payment on the dashboard in three to five working days once the payment has cleared.

No UTR/National Insurance number
The way in which non-UK residents without a national insurance number or a UTR, who cannot therefore set up a Government Gateway account, need to register to report and pay is not very obvious or accessible. The CIOT website highlighted the relevant steps and screens (see www.tax.org.uk/report_pay_CGT). However, we think this pathway needs to be signalled more clearly in the GOV.UK guidance.

Government Gateway account: unable to complete verification
To register with the 30-day reporting service, a user has first to set up a Government Gateway account (unless they do not have a National Insurance number or a UTR, in which case they can use the alternative route mentioned above). However, a taxpayer who does not have a UK passport or credit history may encounter difficulties completing the verification process and therefore the only route left to register for the CGT reporting service is to request a paper form.

Enquiry period
Where an individual is not in self-assessment, the window for HMRC to enquire into a 30-day return is based on treating the return as having been filed on 31 January following the year of assessment in which the disposal takes place (unless the CGT return was submitted after that date). For example, an individual sells a property on 6 April 2021 reporting the disposal before 5 May 2021. The individual does not need to file a self-assessment tax return. The enquiry window is open until 31 January 2024, two years and nine months after the CGT initial filing. This is in contrast for someone in self-assessment for whom the enquiry window ends 12 months after the submission of the self-assessment tax return. We have suggested reference is made in the GOV.UK guidance to the enquiry period and the need to retain records for the extended period.

Indirect disposals
We have pointed out that the guidance for indirect disposals (see tinyurl.com/y4w3pqhd) provides very little to help the non-UK resident investor in a property rich fund who may have little other contact with the UK tax system. In fact, the reference to the 25% de minimis for indirect holdings, without qualification, might mislead them into thinking there is no need to report. We suggested that at least a link should be included in the GOV.UK guidance to more detailed guidance for non-residents disposing of interests in property rich funds to increase awareness.

Guidance
The guidance on GOV.UK has been helpfully expanded recently. For example, guidance on submitting an estimated return if you are waiting on a CG34 valuation to meet the 30 day filing requirement (see tinyurl.com/y5uzyfg3) has been included. However gaps remain; for example, we think it would be helpful to make clear the 30-day reporting obligations on the disposal of mixed property (a disposal of one asset consisting of residential and non-residential elements) differs for UK residents and non-UK residents. Currently, the guidance refers only to non-residents and mixed property.

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Tackling disguised remuneration tax avoidance: CIOT response

EMPLOYMENT TAXES

The CIOT has suggested that more could be done to make it clear that disguised remuneration schemes do not work, that these schemes often involve sham arrangements, evasion and fraud, that HMRC should use its existing powers to pursue promoters and enablers, and that HMRC should be more helpful to taxpayers caught unawares by these schemes and who want to get out of them.

The CIOT has responded to the call for evidence on Tackling disguised remuneration tax avoidance. In November's Technical Newsdesk, we summarised LITRG's response to the call for evidence (see tinyurl.com/y3u44pwm) and in this article we summarise the CIOT's response.

We support the government's commitment to discouraging the continued use of abusive arrangements involving disguised remuneration schemes that distort labour market engagements. We hope that any legislative proposals by the government arising from responses to this call for evidence will be subject to full consultation. It will be important to ensure that such proposals meet their policy objective without impeding the legitimate use of differing modes of engaging labour.

Generally, we think that, taking on board the FA 2011 legislation on disguised remuneration (as amended), the general anti-abuse rule and the attitude of the courts to tax avoidance, it is difficult to see how disguised remuneration schemes of the sort described in the call for evidence can legitimately succeed. In fact, the arrangements, if as described, seem to be little more than shams.

HMRC need to clamp down on what appears to be knowing misrepresentation and concealment on the part of promoters and their associates and make examples of those who have crossed the line into tax evasion. We also believe that the legislation should permit genuine economic transactions that genuinely incentivise and reward employees and allow flexibility in labour engagements.

In our response, we noted that the market for promoters of 'mass-market' disguised remuneration schemes has significantly shrunk – the call for evidence identifies around 20 boutique firms leaving the market since 2014 and only a small number of promoters continuing to operate. We suggest that HMRC concentrate on tackling these boutiques, utilising the significant financial penalties and sanctions available to HMRC to apply to promoters and enablers. HMRC should also consider whether extending these sanctions to all associated parties knowingly involved in promoting and enabling schemes that rely on misleading HMRC and taxpayers would be an appropriate response.

In our view, tax avoidance is not a widespread motivating factor in the structure of employment supply chains where the work is done in the UK by those engaged under employment contracts. In fact, we think that the vast majority of businesses are intent on ensuring that the right amount of tax is accounted for to HMRC and have no interest in reducing tax liabilities by the use of contrived and abusive arrangements, such as disguised remuneration schemes, that will inevitably be challenged by HMRC and likely not succeed.

There are, however, other reasons for a rise in the use of umbrella companies recently, in particular as a result of the changes to IR35 and the new off-payroll working rules. Generally, we think the use of umbrella companies is not about tax avoidance, but due to a natural change in working practices to address concerns by end clients about their administrative responsibilities and potential exposure as regards PAYE and NIC where labour would otherwise continue to be engaged via personal service companies. Hence, any further anti-avoidance legislation needs to be appropriately targeted at abusive disguised remuneration arrangements rather than the legitimate use of, for example, umbrella companies.

In our response, we also suggest that HMRC should do more to help vulnerable taxpayers, by educating them and helping them to identify whether they are paying the right amount of tax and whether an offer is too good to be true. In addition, HMRC should help taxpayers to get out of disguised remuneration schemes they have entered into. In this regard, while ultimately the taxpayer is responsible for their own tax affairs, we think that HMRC's help should range from penalty free escapes from schemes where the taxpayer voluntarily comes forward unprompted, to PAYE/NIC credits where the taxpayer has been misled. In our opinion, taxpayers should not face additional taxes (over and above those which would have been due had they not entered into the disguised remuneration scheme) in the process of unwinding. We think that too many taxpayers have felt that they are damned if they do something to extract themselves from the schemes and damned if they don't. We suggest, therefore, that there needs to be flexibility and a level of discretion given to HMRC to allow unwinding in a way which does not incur further adverse tax consequences.

In summary, the CIOT has suggested that HMRC should be targeting the promoters of disguised remuneration schemes by:

a) making it clear that disguised remuneration schemes do not work;
b) making it clear that these schemes often involve sham arrangements, evasion and fraud;
c) using existing powers to pursue sanctions and penalties, and, in appropriate cases, criminal prosecutions against promoters and enablers and associated parties;
d) requiring onshore engagers to do more due diligence on the party with whom they are contracting;
e) introducing more rigorous compliance activity as regards umbrella companies;
f) introducing financial incentives for taxpayers to contact HMRC with information about disguised remuneration schemes;
g) discussing with the Bar Council the circumstances in which disguised remuneration schemes are promoted by reference to 'Counsels' Opinion' (and how DOTAS is being addressed); and
h) considering directing workers to appropriate HMRC guidance through messages on umbrella company payslips or other communications from engagers and agencies.

The full CIOT response can be read at: www.tax.org.uk/ref700.

After our response was submitted, HMRC launched their 'Tax avoidance: don't get caught out' campaign, seeking to help people make informed choices about their tax affairs, so they aren't tempted by avoidance schemes that promise higher take-home pay, only to be left with unexpected tax bills. The 'Tax avoidance: don't get caught out' (see tinyurl.com/y5jewk2s) page contains guidance and personal stories about the signs and dangers of tax avoidance schemes. HMRC have also published the 'Use of Marketed Tax Avoidance Schemes in the UK' report (see tinyurl.com/yymve3xh), which we are pleased to note says: 'These days, promoters are almost never members of the professional accountancy bodies (such as the Chartered Institute of Taxation…).' HMRC have also announced a joint piece of work (see tinyurl.com/y4kptx9y) with the Advertising Standards Authority that will enable them to more quickly remove misleading online advertisements offering avoidance schemes. You may wish to consider sharing these resources with your clients and professional contacts.

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DAC6: Guidance for CIOT and ATT members and students on the regulations

MANAGEMENT OF TAXES

At the time of writing (early December), it is our intention to publish guidance on our websites by the beginning of January 2021 to help CIOT and ATT members and students understand when they might themselves be classified as an 'intermediary' within the meaning of the regulations implementing DAC6, by virtue of being 'registered with a professional association related to legal, taxation or consultancy services in a Member State' and when, as a possible consequence of that, they might be required to make a disclosure to HMRC.

The International Tax Enforcement (Disclosable Arrangements) Regulations 2020 (see tinyurl.com/y5eam23w) bring into UK law the provisions of EU Directive 2018/822 amending Directive 2011/16/EU (otherwise known as DAC 6 (see see tinyurl.com/y8b6scce)). DAC6 provides for the mandatory disclosure of 'reportable cross-border arrangements' by intermediaries to national tax authorities and the mandatory automatic exchange of this information amongst EU member states. At the time of writing, it is our understanding that the regulations will remain in force after the end of the UK's transitional period in the Brexit process on 31 December 2020. The first disclosures under the regulations fall to be made within 30 days of 1 January 2021.

The guidance will explain that the CIOT and ATT are 'professional associations related to legal, taxation or consultancy services in a Member State' and focuses on areas where a member or student may be an intermediary under the regulations and have an obligation themselves to make a report to HMRC. It should be noted that CIOT members and students include International Tax Affiliates of the CIOT holding the Advanced Diploma in International Tax (ADIT) qualification, and ADIT students.

As soon as it is available, we will be highlighting links to the guidance in other member communications, so please do look out for these. If you have any questions about the guidance, please contact either technical@ciot.org.uk or atttechnical@att.org.uk.

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VAT and the public sector: reform to the VAT refund rules: a call for evidence

INDIRECT TAX

The CIOT has responded to HM Treasury's call for evidence: 'VAT and the public sector: reform to VAT refund rules' (see tinyurl.com/y3mvposj) to look at ways in which the input VAT recovery and VAT accounting could be simplified for public sector organisations such as government departments, devolved administrations, the NHS and Highways England.

The call for evidence arose as a result of recommendation 16 in the Office of Tax Simplification's 2017 report Value Added Tax: Routes to Simplification (see tinyurl.com/y5wqj77o), which stated that HMRC should look at ways of enhancing its support to other parts of government on VAT issues affecting their operations.

Current VAT recovery position

The organisations listed in Value Added Tax Act (VATA) 1994 s 41 have a limited input VAT recovery position restricted to the VAT incurred on the purchase of outsourced services to deliver the organisations' statutory non-business activities; these outsourced services are known as 'contracted out services' (see tinyurl.com/y6amv2b7). Section 41 was introduced so that the cost of VAT could be ignored as a factor when making outsourcing decisions.

Full Refund Model

HMT's preferred proposal in the call for evidence is to extend the scope of s 41, which was also the preferred option of s 41 organisations based on initial consultations. The proposed extension of s 41, referred to as the 'Full Refund Model', would allow input VAT to be recovered on goods as well as services in relation to the costs of delivering non-business activities. The alternative simplification options were to scrap the s 41 refund scheme entirely (and have all costs including VAT funded centrally by government), or for outsourced suppliers to zero-rate their supplies to s 41 organisations. However, neither of these alternatives were considered by HMT to fulfil the balance of simplification compared to encouraging outsourcing. The Full Refund Model would grant the same input VAT recovery position as local government and other organisations listed in VATA 1994 s 33 on the purchase of goods and services used for non-business activities, and this would also bring simplification to the VAT recovery position when s 41 and s 33 organisations worked on joint projects.

The CIOT's views

The CIOT supports HMT's proposal to extend the VAT recovery position for s 41 organisations to HMT's preferred Full Refund Model, subject to any further views presented by the affected organisations in the call for evidence. The contracted out service rules are complex, lengthy and can cause a considerable administrative and financial burden for both the s 41 organisations, and the suppliers submitting tenders for contracts, which disproportionately impacts smaller suppliers when bearing the costs of resource and professional VAT advice on what may well be a one-off contract.

The CIOT would also like to see the position on partial exemption for s 41 organisations to be clarified. Will it change to a similar position to local governments and organisations listed in s 33, or will there be no extension to the current position?

The call for evidence also asked for feedback on the timeline of the implementation of any simplification changes. The CIOT would like to see any changes carried out at an early stage, subject to feedback from s 41 organisations.

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VAT: domestic reverse charge

INDIRECT TAX

The VAT domestic reverse charge for the construction and building services is an anti-fraud measure that seeks to tackle the estimated annual revenue loss in the sector of £120 million due to missing trader VAT and construction industry scheme fraud. HMRC have recently published guidance and updated legislation.

Background

Originally due to be implemented from 1 October 2019, the launch date of the domestic reverse charge for the construction and building services has subsequently been deferred twice: the first time for a year so that the scheme could be more widely publicised; and the second time to 1 March 2021 due to the impact of the COVID-19 pandemic.

Updated legislation

The VAT (Section 55A) (Specified Services and Excepted Supplies) (Change of Commencement Day and Amendment) (Coronavirus) Order 2020 legislates for the second deferral of the date of commencement. It also sets out a new Article 8(1A), detailing the conditions when a supply of eligible construction or building services is not to be subject to the domestic reverse charge rules and hence VAT would apply at the applicable rate when supplied to an 'end user' or 'intermediary supplier', though only where this status has been **notified to the supplier in writing**.

When does the domestic reverse charge apply to my supply?

The conditions when the domestic reverse charge applies are as follows:

- Both the UK supplier and the UK customer are registered for UK VAT.
- Payment for the supply is reported within the Construction Industry Scheme (CIS).
- The supply is listed in the in-scope CIS services (see tinyurl.com/yymezxmb).
- The supply is subject to the standard or reduced rate of VAT.
- The supplier is not an employment business.
- The customer is not an 'end user' or an 'intermediary supplier' and has informed the supplier of this status in writing.

End users and intermediary suppliers

An 'end user' is a taxable person who is a recipient of domestic reverse charge services and uses those services for any purpose other than making onward supplies of domestic reverse charge services. An 'intermediary supplier' has a specific meaning when used in the domestic reverse charge rules; it is a person who is a recipient of domestic reverse charge services who:

- makes an onward supply of those services (or part) to another person without material alteration or further processing; and
- is connected to the end user by either the usual connected parties rules or by having an interest in the same land or property as the end user (for example, landlord and tenant).

Where the intermediary supplier meets the definition criteria, they are treated as if they are an end user, and therefore the domestic reverse charge does not apply provided they have notified the supplier in writing.

The written notification of the end user or intermediary supplier status can be in the following formats:

- in hard copy;
- electronically; and
- in the contract (it can be in the terms and conditions).

The written notification wording is not prescribed in legislation and HMRC provide example wording in their technical manual (see below). Note that if no written confirmation of the status is provided to the supplier, the normal domestic reverse charge rules apply to the supply.

HMRC Guidance

For more detailed guidance on the domestic reverse charge, HMRC have published their technical manual (see tinyurl.com/y22dxz7u), a landing page for suppliers of domestic reverse charge services (see tinyurl.com/y5g74lob) and a landing page for purchasers of domestic reverse charge services (see tinyurl.com/yykcxngg).

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Simpler pension statements

GENERAL FEATURE PERSONAL TAX

An outline of the Department for Work and Pensions' plans to simplify annual pension statements for auto-enrolled employees.

Late in 2019, the Department for Work and Pensions (DWP) consulted on how annual pensions statements might be simplified and standardised.

In responding to the consultation (see tinyurl.com/qrcfw7v), the DWP broadly concluded:

- Pension providers should be mandated to follow a standardised simpler pension statement format (as voluntary adoption of a proposed standard has not been widely taken up). This will only be for schemes used for auto-enrolment at first.
- Rather than people getting annual statements at various times throughout the year, the government is seeking to impose a 'statement season', supported by awareness-raising campaigns encouraging people to engage with savings and pensions.
- They will not, for the time being, mandate pension statements to be sent in a particular coloured envelope, though the government remains interested in the Swedish 'orange envelope' model as a means of getting people to recognise and engage with their pension statements.

Further consultation is expected as this work develops, and LITRG hopes that the development of simplified statements will help people to better understand the multiple pension pots that they are likely to accrue under auto-enrolment. It is important for a person to see their pension provision in the round, not only to understand the likely level of pension provision in retirement, but also to understand their tax position – both at accumulation and decumulation.

While LITRG also supports the development of pension dashboards, it is pleasing to note that the government's response to this consultation recognises the importance of maintaining paper statements for those who want them; for example, due to digital exclusion.

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Universal credit: capital limits

GENERAL FEATURE PERSONAL TAX

LITRG gives a brief overview of capital rules for universal credit claimants.

There have been many new claimants of universal credit since the COVID-19 pandemic began to affect people's livelihoods.

If you encounter clients who might need to claim welfare benefits, it is important to be aware that – unlike tax credits – the universal credit means test takes into account a claimant's capital. If the would-be claimant has:

- over £16,000 in capital: there is no entitlement to universal credit;
- between £6,000 and £16,000 in capital: universal credit 'tariff income' rules apply, treating the claimant as having income of £4.35 a month for each £250 (or part thereof) over £6,000; and
- below £6,000: capital is disregarded, so there is no restriction on universal credit.

In valuing capital, generally debts secured on assets are deducted from the value of the asset against which they are secured, whereas unsecured debts are not deductible.

As a means-tested benefit, universal credit requires people to make a joint claim if they are part of a couple (with a few limited exceptions). The capital rules apply to both claimants in a joint claim in the same way as the income rules do and the capital limit of £16,000 is the same whether it is a single or joint claim.

Disregards

Some capital is 'disregarded' in the universal credit assessment. For example, business assets for self-employed claimants are disregarded. DWP have confirmed that this can include money set aside to pay a tax bill relating to business profits if it is in a business bank account or if the claimant can evidence the amount set aside. More information on disregarded amounts can be found in DWP's advice for decision making staff (see tinyurl.com/mon9rbg, chapter H2).

Deprivation

One point we have been asked about recently via enquiries to LITRG's website is whether capital can be 'used up' so that a potential universal credit claimant becomes entitled to the benefit. Two example situations which have arisen are:

- capital received on a divorce settlement, which the divorcee wished to spend on home furnishings and a car; and
- an inheritance received and whether this could be used for items such as house repairs or given away to family.

Not being benefits experts, we cannot comment specifically on these situations. However, what the would-be universal credit claimant needs to consider in these scenarios is the capital 'deprivation' rules (Universal Credit Regs, SI 2013/376 reg 50).

These rules mean that a person can be treated as having 'notional capital', that is capital they do not actually have, if they have deprived themselves of it to get universal credit or increase their universal credit award. Note in particular the last part of this sentence – that there has to have been an intention to get or increase universal credit.

A person is not considered as depriving themselves of capital if they have used it to pay off a debt, or they purchase goods and services which was a reasonable use of the funds in their case.

Tax advisers well acquainted with the many cases disputing terms such as 'reasonable excuse' and 'reasonable care' in the context of tax penalties will have already spotted the potential problem with the second part of this definition! What is reasonable is, of course, a matter of judgement.

DWP's advice to its decision makers (see tinyurl.com/mon9rbg, chapter H1) lists many factors to be taken into account when judging whether a claimant has deprived themselves of capital, including:

- when the alleged deprivation took place;
- mental capacity at the time of deprivation;
- whether the person had a choice in their actions; and
- whether the person knew that capital affected a potential universal credit award.

Getting help

Limited information on universal credit (focusing largely on tax interactions and the move to universal credit from tax credits) can be found on LITRG's Revenue Benefits website for advisers (see https://revenuebenefits.org.uk/universal-credit).

You might need to direct clients to a specialist welfare rights adviser if they are considering claiming universal credit. The LITRG website gives some information about organisations and you can signpost people to 'How can I get help with benefits?' (see tinyurl.com/yyg42tqa).

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CIOT	Date sent
OTS Capital Gains Tax review call for evidence and survey www.tax.org.uk/ref693	09/11/2020
VAT and the Public Sector: Reform to VAT refund rules www.tax.org.uk/ref724	25/11/2020

CIOT & ATT

Personal branding

TRAINING

Joanne Herman explains why personal branding should make it onto your 2021 new year's resolution list.

Happy new year and welcome back to my new blog! In this series, I will be continuing with the theme of personal branding, but this time from a different angle.

Last year, we explored the theory of what personal branding is about, why it's important, and how others have benefited.

Over the next few months, we will be focusing on the practical side of personal branding, thanks to the help of two profile-building campaigns, courtesy of ATT and CIOT. I will also be sharing more hacks, stats and facts to help you stay motivated and on track.

So, let's get started with a quick question. How many of you have taken part in one of the LinkedIn polls about working from home?

Do you prefer working from home, in the office or a mix of the two? All the poll results I've seen show a clear indication that a hybrid style of working is preferable. However, have you thought about what your working life may look like when you're back in the office?

How can you prepare yourself for this new way of working?

Every one of us has lived through lockdowns and made the overnight shift from working in the office to working from home. Sadly, millions have also lost jobs and the future looks uncertain because we don't know when things will return to normal, or to what extent: however, two things are certain.

Firstly, Covid-19 has reshaped our working world and normalised remote working. Slack co-founder and CEO Stewart Butterfield states: 'We all know that work will never be the same, even if we don't yet know all the ways in which it will be different.' (It's no coincidence that Slack has just been bought by Salesforce.)

Secondly, we should realise that every single one of us has the opportunity to prepare ourselves for what may lay ahead, regardless of how uncertain this may be. One aspect of our working life we can control and invest in is personal branding.

2020 has seen a complete merger of our professional and personal worlds and I think Glenn Llopis at Forbes sums it up nicely. 'Personal branding is no longer an option; it's a powerful leadership enabler. When you start to see yourself living through the "lens of a brand", your perspective will change and you will become more mindful about how you approach the personal brand you are trying to define and aiming to live.'

Why you should make personal branding your new year's resolution in 2021

The labour market is expanding globally and with this comes increasing competition. No longer are you competing with local candidates because if you can work from home, so can the guy in Australia.

Picture this... You're applying for a job at a company in Middlesbrough. You have the same qualifications and

Forget B2B or B2C, today it's all about H2H – human to human. Remember that people would prefer to do business with a person rather than a logo.
As you take a closer look at your personal brand this January, there are a few critical facts you should know to make sure you're prepared to STAND OUT, ATTRACT, and ACHIEVE the recognition and success you deserve. So don't miss out on my next blog instalment in February. See you then!

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experience as someone in Malaysia. With fast, reliable broadband, both of you can be available for Zoom meetings and neither of you are required to come into the office. Why would they employ you, when they could employ the other candidate for a fraction of the cost?

Because you have a stronger personal brand. It's that simple.

You need to make personal branding your New Year's Resolution and here's how. Begin by:

- incrementally building your brand – step by step;
- thinking of yourself as a selling point;
- blowing your own trumpet and encouraging others to advocate for you;
- regarding it as a way to improve your mental wellbeing; and
- considering it as a win-win strategy, both for you and your employer.

What's next?

Remember, embarking upon your personal brand experience is rewarding and exciting. It's your opportunity to learn more about yourself and make decisions and plans that can actively support your career development and support stability at your organisation. It also gives you an excuse to spring clean and refresh your online profiles that you've been putting off doing for the past year.

When was the last time you updated your LinkedIn profile or Twitter account details? Over the next few months, we will be focusing on the practical side of personal branding, with the help of two profile-building campaigns, courtesy of ATT and CIOT. I will also be sharing more hacks, stats and facts to help you stay motivated and on track.

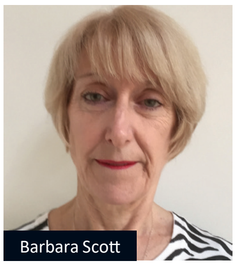
So, whether you are a member, student or employer, we can help you to propel your profile and career.

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

CIOT

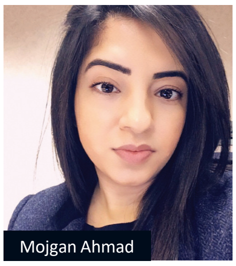
CIOT Brexit Debate

DEBATE


Barbara Scott


Chris Giles


Daniel Lyons


Mojgan Ahmad

The UK has a once-in-a-lifetime chance to craft and simplify VAT and customs duties after Brexit, agreed tax experts at a CIOT/IFS 'virtual' debate on 'VAT and Customs Duties after Brexit'.

The 8 December 2020 debate was chaired by new CIOT President Peter Rayney.

There are three main taxes levied on goods currently imported from non-EU countries and EU special territories: import VAT if the goods are subject to the standard or reduced rate of VAT; customs duty on imports above a certain value; and if the goods are alcohol or tobacco from outside the UK, excise duty is applicable. Customs duty is enforced to protect a country's economy and to control cargo entering and exiting a country. When the transition period ends and Great Britain (not Northern Ireland) leaves the Customs Union and the Single Market, EU member states will become subject to the import rules.

VAT expert Daniel Lyons, a CIOT Council member, took us on a trip down memory lane with the EU, touching on matters such as the 6th Directive, then brought us up to date by touching on the current tribunal process. Lyons considered the potential positive impacts of Brexit to include the move to postponed accounting to apply to all imports post-transition, and the end of both the Retail Export Scheme – because it will save the Exchequer money and simplify VAT – and the Tour Operator Margin Scheme for overseas supplies. But he also spoke of Brexit drawbacks, such as loss of the digitised 8th Directive refund system (move to a paper based refund system) and the end of access to the VAT Mini One Stop Shop (VAT MOSS). He worries about the scope for 'legal chaos' because of the risk of competing legal interpretations of the tax rules between the EU and UK.

Lyons, until November head of tax policy at Deloitte, said that most of the problems with VAT are down to UK lawmakers and much of the VAT Tax Gap is down to errors, some of which he says is the result of the complexity of VAT. Post 1 January 2021, he wants an axe taken to VAT reliefs and the slashing of the VAT registration threshold, saying the latter provides a 'bizarre incentive' for business people to avoid growing their business.

Mojgan Ahmad, VAT and Indirect Taxes, HMRC, spoke about the Northern Ireland (NI) Protocol. Ahmad explained that, under the Protocol, VAT will be collected through the periodic VAT return for goods sold and moved between GB and NI using the same boxes on the return. VAT will continue to be accounted for as it currently is on goods traded between GB and NI, even though technically it is import VAT in NI. Postponed accounting will be available for rest of the world (non-EU) imports into NI.

Ahmad said that HMRC will create a new NI landing page on GOV.UK, along with other fresh Brexit guidance material soon. She accepts that businesses are nervous about Brexit. HMRC will be sympathetic and flexible when it comes to Brexit related genuine errors before penalties are charged, she promised.

Barbara Scott, Chair, Customs Practitioners Group, reminded the audience that the UK has set most favoured nation rates with WTO. On UK global tariffs, she said we could see simplified tariffs and liberalised tariffs – but there are still many unknowns at the time of this debate. Even if the UK clinches a Free Trade Agreement with the EU, it does not mean that all trade with the EU will be tariff free because of origin rules. Beyond 2021, there should be a discussion of the purpose of tariffs. Tariffs should protect industry and encourage production, she said, and called for greater trade liberalisation.

Chris Giles is the Economics Editor at the Financial Times. In a short contribution, Giles said that we must watch for businesses going under because of the way the new regime is administered and that postponed accounting may lead to more opportunities for fraud. He warned that although OBR statistics show that the loss of the Retail Export Scheme is not a big deal in the big picture, the problem is that its effects are concentrated in some areas and shops – and the media has got its teeth into the story. It is also unclear to him whether Border Force will adopt a light touch or strict approach to managing checks on tourists.

During questions, Scott said she was working in customs before the single market was introduced and the UK was always a leader in trade facilitation. 'We can be again,' she said. The UK has hidden behind an EU 'facade' she said, adding that hopefully we will be more lenient on businesses that make errors in future.

Lyons said the UK could produce a road map towards a simpler VAT system with a broader base and lower rates. Ahmad emphasised the importance of acting now, urging traders to find a good customs intermediary as soon as possible. There will be changes no matter whether there is a deal or not, she warned.

The debate can be viewed at: www.presenta.co.uk/CIOT/IFS/081220.

CIOT

Peter Rayney's Presidential Inaugural Speech

SPEECH

Tuesday 16 November 2020

Thanks and 2020 – life under lockdown

Thank you Glyn, and thank you for your indefatigable efforts over the past 18 months. When it comes to your presidential year, you have truly delivered 150%.

You, Helen Whiteman, and the rest of the Institute's management team, have steered us through a potentially perilous year, with a steady hand and a sure grip... working closely, as always, with our ATT friends. Jeremy, Richard – I look forward to working with you over the coming months.

And thank you too to our professional staff...

- The HR, office support and IT teams who managed the transition to home working – smoothly and without drama.
- The education team who have taken our exams online, far faster than we had ever envisaged.
- The technical team, who worked tirelessly to provide input into the government's financial support packages and launch a 'Covid' website hub for members.
- The Low Incomes Tax Reform Group, who moved at speed to translate these measures into language the public can understand.
- The external relations team who publicised this help through the press and social media.
- The membership and branches team, who seamlessly moved our programme of branch events online, ensuring members have been able to keep up their CPD, even during lockdown, as well as other member support services.
- Our events team who have organised online conferences, webinars and debates.
- Our professional standards team who provided prompt guidance for members and adapted quickly to conducting AML visits virtually.
- Our marketing and comms team who supported our social media efforts and maintained contact with firms and those needing career support.
- Our finance team, whose work adjusting the Institute's cost base has ensured our continuing financial security.

Peter Rayney

And thank you too to all our wonderful volunteer committee members, ensuring we have been able – through these testing times – to deliver a programme of work that is more valuable than ever – to our members and to the wider community.

What next – the hybrid Institute

So what next? We are not through this storm yet. But, let us hope and pray, we will be soon, and will be able to meet and socialise once more, to see clients face to face, to hold physical branch meetings and other events, and to re-open Monck Street. Does that mean that we should go back to how things were? I think that would be a mistake.

A study of the 2014 Tube Strike found that, when some of the lines were shut down, one in 20 commuters forced to find a new route found that new route was in fact better than their old one – and stuck with it after the lines re-opened. Sometimes changes forced on us by circumstance turn out to be preferable to the old ways.

When we moved our branch programme and debates online in the Spring, we found some debates and seminars attracting an audience of some 1,000 attendees – in a few cases more than 1,600. This represented a massive improvement on the typical 'face to face' attendance numbers of around 60 to 100.

However, I know many of our members love and value our branch meetings and the opportunity for direct contact with fellow members. I do too. I can't wait to get that back and see you all face to face. I think we would all agree that our Branch network forms the heart and soul of our Institute – and it shall remain so.

But many others, whether because of location or timing, aren't able to get to the physical meetings, but do want to access the technical and practical knowledge. And we need to cater for them too.

HMRC have found some similar things. Forced into new ways of working by the pandemic, they've found some of them work rather better than they expected. As a consequence, they've broadened their approach to flexible and home working.

The CIOT is already ahead of HMRC on some of these things but the principle stands. If the new ways of working are effective, we shouldn't force people back to the old ways.

And, of course, some of the changes we've made, like moving our exams online, were things we were planning to do anyway. We just hadn't planned on doing them this rapidly!

So – what should our focus be as we head towards 2021? Where should our attentions be directed to deliver most effectively on our public benefit remit?

The Institute's Council has identified three areas of strategic focus: *education, standards* and *voice.*

Education

On education, we need to build on our achievement in moving exams online, ensuring that this month's successful round of CTA exams is followed by a successful round of ADIT exams next month. This offers the potential to make ADIT widely accessible to an ever more diverse global market.

We need to ensure that our qualifications remain relevant in the modern world. That's why we've set up an Education Technology Working Party to look at the growing influence of technology in tax management and reporting for both taxpayers and tax authorities. We must ensure that our educational offering adapts to reflect this.

And, as I said a few moments ago, we are innovating to build a national CPD offering that combines online and, in due course, face-to-face learning to meet the needs of all members.

In these challenging and unprecedented times, when so many of our clients face economic struggles, needing help with ever-changing government support packages, trying to keep their tax affairs up to date, *we* will do what *we* can to help *you* to help *them*.

Accessibility; innovation; information. Those are the keys to our education offer.

Standards

Promoting high standards and technical excellence is at the heart of the CIOT's public benefit remit.

Last week, the government set out the next steps in its plans for Raising Standards in the Tax Advice Market and for tackling promoters of tax avoidance schemes.

The CIOT's views in this area are clear.

First, there is no place in the tax profession for those who devise, promote or sell tax avoidance schemes. We and other professional bodies strengthened our rules in 2017 to make this explicit.

Second, the best approach to guaranteeing high standards in the tax advice market is to work through professional bodies.

Third, if the government is to be effective in tackling those who devise and promote tax avoidance schemes, it needs to take account of the fact that, by and large, these enablers are not tax agents at all and do not present themselves as advisers. Any attempted remedy which aims itself solely at advisers will miss its target.

Last week's statement does not go as far as we would like in some respects. In particular, the government has stopped short, for the time being at least, of our preferred approach of requiring all tax advisers to belong to a recognised professional body. But there are some welcome proposals – in particular, that all tax advisers should be required to have professional indemnity insurance – as professional body members already do – to provide basic protection for their clients.

The proposals for tackling promoters are also welcome. The aim must be to stamp out the activities of those who push avoidance schemes, while not making life harder for the compliant majority of advisers who play a vital role in the proper running of the tax system.

We are clear: this is an issue not just of revenue protection, but of consumer protection, and of the reputation of our profession. We look forward to continuing to work with HMRC, as well as with our friends and colleagues in the other professional bodies, to proactively pursue this agenda, as the public interest demands.

Voice

We also seek to raise the voice of our members, bringing our expertise to the public policy debate and demonstrating to policy makers, employers and taxpayers the value that chartered tax advisers bring to society.

I am proud that throughout the pandemic the Institute has worked closely with HMRC, identifying ways in which businesses and other taxpayers might effectively be helped. Of the 22 easements and other changes we proposed in response to the pandemic, 14 were adopted in whole or in part. We continue to work with HMRC on these matters.

Looking ahead, beyond the immediate crisis, it is impossible to ignore the huge fiscal challenges facing policy makers, unprecedented in peacetime. Many commentators believe that major tax reforms will be needed. The House of Commons Treasury Committee is carrying out an inquiry on that basis. I am proud that we were asked to help launch that inquiry, and to appear before it – twice – as expert witnesses. We will continue to support the committee, Parliament and government in their deliberations on tax reform in any way we can.

And we will continue, especially through our Low Incomes Tax Reform Group, to provide a voice for the unrepresented taxpayer. In this vein, I look forward in the next few weeks to helping to launch our new paper containing recommendations on how the tax system can be made clearer, simpler and fairer for those on low incomes.

Conclusion

Colleagues, these are challenging times for all of us. 2020 has been a year of tragedy, upheaval and uncertainty. But our profession is robust and our Institute remains strong. Our work has never been more necessary.

I am very thankful to have a wise and enthusiastic Presidential team working with me – Susan Ball (Deputy President), Gary Ashford (Vice President) and, of course, Glyn as Immediate Past President

I am proud that, for the next 18 months, I will be leading the CIOT as your 56th President.

ATT

The AAT-ATT Sharpen Your Tax Skills Series goes online

EVENTS

The joint AAT and ATT Sharpen Your Tax Skills series was taken online for the first time in November 2020.

A mixture of pre-recorded and live content was presented by Michael Steed, Head of Tax for BPP Professional Development and co-chair of the ATT's Technical Steering Group. Michael was supported at each event by the three ATT technical officers: Emma Rawson, Helen Thornley and Will Silsby. These popular, annual events follow an interactive, case-study based format. Whilst translating this to an online platform posed something of a challenge, a combination of real time Q&A tools and interactive polls allowed delegates to interact and provide their views direct to the presenters.

The series focuses on the kind of practical problems delegates will face in day to day client work. A key subject this year was the range of Covid-19 relief measures and the tax implications of the pandemic. Other topics covered included 30-day reporting for CGT, the VAT implications of Brexit, capital allowances and employment taxes. Delegates were given access to three pre-recorded sessions giving essential information on the various topics covered, and were then able to pick a day to attend three interactive live sessions where they had the opportunity to consider their practical application through the use of case studies.

The switch to online delivery proved to be popular, with over 337 delegates signing up for the 2020 series in total and positive feedback received from attendees. We look forward to building on this success in 2021.

It was good to (virtually) see lots of attendees from previous years returning this year, and we hope to see many of them again – whether in person or virtually – towards the end of 2021.

ATT

ATT Virtual Admission Ceremony

CEREMONY

With the current restrictions on face-to-face meetings, the ATT held its first ever virtual Admission Ceremony on Wednesday 9 December 2020. ATT President Jeremy Coker and Lord McKenzie of Luton (who usually kindly hosts the event at the House of Lords) welcomed 36 new members to the Ceremony.

During his address, Lord McKenzie reflected on the tax changes that had taken place since the start of his career, 53 years ago, and wondered how the job of a taxation technician will be different half a century from now. He said we don't know, but we can be pretty sure that:

- governments will still need to tax;
- tax will still be complicated; and
- businesses and private taxpayers will still need the help and guidance of specialists such as taxation technicians to comply with their tax responsibilities.

After the ceremony, new members had the opportunity to meet with the officers, members of Council and representatives from the professional staff during a Zoom networking event.

Jeremy Coker

WCOTA

WCOTA: the profession's best kept secret

MEMBERSHIP

City of London Livery Companies are sometimes perceived as old-fashioned institutions and many people who would otherwise enjoy and benefit from membership often don't give them serious thought for this reason – which is a great shame because this perception is very far from the truth. The Worshipful Company of Tax Advisers is certainly not old fashioned. It was formed in 1995 (so is celebrating its silver jubilee) and attracts members of all ages and backgrounds. It is very relevant to the London's financial services sector and complements the work of the CIOT and ATT by adding a charitable, civic and social dimension to a career in tax. So, the Company may be the profession's best kept secret – but it shouldn't be, given the contribution it makes to enhancing the standing of the profession in the City of London.

The WCOTA represents the tax profession in the City. We support and fund charitable and benevolent causes associated with taxation and the City of London, including the promotion of tax education and sponsorship of student bursaries and prizes to encourage new entrants to the profession. We participate in the business, governance and ceremony of the City and provide opportunities to network across the profession at a wide range of events, both formal and informal. We also brief the Lord Mayor (two of the Company's members have held this office) on taxation matters and play an important role in the preservation of the history of tax.

The WCOTA is keen to expand its membership and we welcome all those with a professional connection to taxation. Membership is open to Chartered Tax Advisers, Taxation Technicians and individuals who are or were engaged in tax practice or tax administration. The Membership Committee guides those wishing to join through the application process and helps new members to make the most of their membership. The Committee meets four times a year (in February, April, September and November) to consider applications. New members join as Freemen of the Company and can progress, via Freedom of the City of London, to the status of Liveryman. The Company's Liverymen are entitled to participate in the City of London's Common Halls, the traditional gatherings at which the Lord Mayor and City Sheriffs are elected.

One member who has very much enjoyed her progress along this path is Manda Pillay-Maloney. Manda joined the Company in 2016 and became a Liveryman in 2017. Each stage was celebrated at a memorable and unique ceremony. This, she says, made her feel appreciated and welcomed. Her Freedom of the City of London certificate has pride of place in her parents' house. Company membership has been Manda's opportunity to network with a wide range of people and organisations associated with taxation – and not just tax advisers – and through these connections she has developed her professional confidence, experience and knowledge. The evening dinners in the City's grand livery halls are arguably the highlights with their unique combination of wonderful food and wine, great company, art, history and a slice of culture. She has missed these during the Covid-19 pandemic; but has been impressed by how the Company has adapted to the virtual world with its social media presence and online activities. Manda is now a member of the Company's Membership Committee and is keen to broaden the range of times and locations for future events to include all members.

If you would like to know more, full details of what the Company does are available at www.taxadvisers.org.uk. But there is no substitute for hearing from a current member who can answer any questions you may have. If this is of interest, please contact the Clerk at Clerk@taxadvisers.org.uk.

If you only have...

45 minutes - 1 hour

A financial advisor's view on how we can work together and enhance our client service
Leigh Cecil & Tim Blowers
1 hour
Free

Company cars – Current rules, the future and all things Electric Vehicles
David Chandler
45 minutes
Free

Corporate Tax Essential Update
Emma Rawson
1 hour
M £25 | S £22.50 | NM £27.50

Digital Taxation - where are we now
Glyn Fullelove
1 hour
Free

Employment Status and Off-Payroll Working
Emma Rawson
45 minutes
Free

Entrepreneurs' relief post FA 2020: things can only get BADR
Heather Thompson
1 hour
Free

Employment Taxes – COVID 19 update
Rachel Chalmers
1 hour
Free

The Enterprise Investment Scheme: Advising in Practice
Andrew Rainford
1 hour
M £25 | S £22.50 | NM £27.50

Instruments of Variation and Judicial Variation of Trusts
Derek Francis
1 hour
Free

IR35 Mutuality of Obligation ('MoO') - the Taxpayer's Trump Card
Derek Francis
1 hour
Free

Mediation in Tax Disputes – an Indirect Tax Practitioner's Experience of a great Initiative
Veronica Donnelly
1 hour
Free

Penalties for Enablers of Defeated Tax Avoidance
Ken Curran & Lesley Shakles
1 hour
Free

Q&A - Where are we after COVID?
Asim Khan & Craig French
1 hour
Free

Remediation of Contaminated Land Tax Relief
Nigel Holmes
45 minutes
Free

Statutory Residence Test
James Heathcote
1 hour
M £25 | S £22.50 | NM £27.50

Stamp Duty Land Tax update
John Feaster
1 hour
M £25 | S £22.50 | NM £27.50

Tax Issues on Importing and Exporting
Matthew Clark
1 hour
Free

Tax Valuation of Private Companies
Ritchie Tout
1 hour
M £25 | S £22.50 | NM £27.50

UK/US tax and succession issues for private clients
Mark McKeown & Sarjul Patel
1 hour
Free

Wales: Devolved Taxes - The Journey So Far
Lakshmi Narain, Kate Willis, Laura Fox, Andrew Hewitt
1 hour
Free

90 minutes – 2 hours

A guide to formal insolvency options for SMEs
Nicole Southwell
90 minutes
M £40 | S £36 | NM £44

Back to Basics for the Sole Proprietor and Partner
Various speakers
90 minutes
M £50 | S £45 | NM £55

Commercial property taxation: what could possibly go wrong? Tax pitfalls and some possible solutions
Various speakers
2 hours
M £50 | S £45 | NM £55

Corporate Tax Update
Emma Rawson
90 minutes
M £40 | S £36 | NM £44

Employment Taxes
Alexandra Durrant
2 hours
M £50 | S £45 | NM £55

Employment-related securities
Oliver John
90 minutes
M £40 | S £36 | NM £44

Employment Taxes – Benefits in Kind
Sarah Hewson
90 minutes
M £40 | S £36 | NM £44

Finance Act 2020
Reshma Johar
90 minutes
M £40 | S £36 | NM £44

Implementation Period Completion Day – Where is the Customs Law?
Jeremy White
90 minutes
M £40 | S £36 | NM £44

Managing Tax Liabilities in a Recession
Paul Howard
90 minutes
M £40 | S £36 | NM £44

Second Homes: Israel and the UK
Experts from London and Tel Aviv
2 hours
M £40 | S £36 | NM £44

Tax Enquiries Update
Guy Smith
90 minutes
M £40 | S £36 | NM £44

Tax Implications on Divorce
Sofia Thomas
90 minutes
M £40 | S £36 | NM £44

The Generation Game - Advising Families and their Next-Gen Leaders
Jodie Barwick-Bell & Rennie Hoare
90 minutes
M £45 | S £35 | NM £65

VAT Update – a year of change
Anne Holt
90 minutes
M £40 | S £36 | NM £44

VAT Update Including Brexit
Simon Buchan
90 minutes
M £40 | S £36 | NM £44

3 hours

A Capital Taxes Update
Emma Chamberlain
3 hours
M £60 | S £54 | NM £66

Anti-avoidance, litigation and case law update
Michael Thomas
3 hours
M £75 | S £67.50 | NM £82.50

Buying, selling and letting property
Robert Jamieson
3 hours
M £75 | S £67.50 | NM £82.50

Business succession – preparing for the inevitable
Philip Ridgeway
3 hours
M £60 | S £54 | NM £66

Capital Allowances
Steven Bone
3 hours
M £75 | S £67.50 | NM £82.50

Farming Tax Update
Julie Butler
3 hours
M £75 | S £67.50 | NM £82.50

Inheritance Tax and Trusts - An Advanced Guide
Robert Jamieson
3 hours
M £75 | S £67.50 | NM £82.50

IHT Planning by Will, Variation and Lifetime gifts
John Bunker
3 hours
M £50 | S £50 | NM £55

IHT Calculations - A Masterclass
Megan Saksida
3 hours
M £75 | S £67.50 | NM £82.50

Residence, Domicile and Offshore Trusts
John Barnett
3 hours
M £75 | S £67.50 | NM £82.50

Update on Trusts, Wills and Pre-Owned Assets - Planning for 2020/21 and Beyond
Robert Jamieson
3 hours
M £75 | S £67.50 | NM £82.50

International Tax Manager
Leeds – to £52,000 + bens

This is a growing team with lots of interesting work for an ACA/CTA/ICAS qualified tax specialist wanting to specialise in international tax issues. This is a broad role where you will be responsible for managing a portfolio of clients, and will deal with both the compliance and advisory work for these companies. You will also work alongside specialists in areas such as Transfer Pricing. My client will look at either Assistant Manager or Manager level candidates. **Call Alison Ref: 3015**

Director/Partner Designate
Holmfirth, West Yorkshire – £excellent

Great role in the heart of 'Last of the Summer Wine' country. Would suit an ACA or CTA qualified corporate tax specialist who enjoys all round OMB work. Our client is looking for a partner designate who will run the tax team in Holmfirth and ultimately be an equity member of the overall firm. You may be a senior manager or director at present. Could suit someone who is looking for a more local role and the opportunity to work and live in the Yorkshire Dales. Great client base and a growing, progressive independent firm make this a really exciting opportunity. **Call Georgiana Ref: 3009**

R&D Senior Manager
Leeds/Manchester – £excellent + bens

The R&D tax team at this large firm is looking for a Senior Manager with experience of preparing claims and winning new work. You will be required to use your knowledge of R&D tax incentives to help clients from a variety of industry sectors make claims for R&D tax relief. You will prepare claim summaries (often on complex projects) for submission to HMRC, and work with HMRC specialists to facilitate the agreement of the claims. You must also have a broader knowledge of wider tax issues. **Call Alison Ref: 3014**

Assistant Manager – Advisory
Manchester – £excellent

Our client is one of the fastest growing accountancy firms in the UK. They seek an assistant manager to join their Manchester office. It is likely that you be at least ATT qualified, but may well be CTA, ACA or ICAS qualified. This team deals with predominantly advisory work for HNW families with property investment businesses. The clients are 'Big 4' standard, and it is an exciting place to work with lots of opportunity for progression. They have great training and a team of experienced directors who will help you with your personal and professional development. You may currently work in corporate, personal or mixed tax and be looking for a role with scope to develop. **Call Georgiana Ref: 3018**

Corporate Tax Senior Manager or Director
Leeds – £excellent

Large independent firm looking to fill a key role. They need a tax all rounder – someone to help lead and develop the Yorkshire tax practice. This would suit a senior manager or director with a corporate or mixed tax background. Someone who can help the partners with advisory work and get involved with man management and business development responsibilities. The client base is primarily owner managers and their businesses. This is a great opportunity with no limit on progression. **Call Alison Ref: 2983**

Transaction Tax Manager
Birmingham – £45,000 to £55,000 + bens

Top 10 firm seeks a qualified tax professional (ACA, CTA or equivalent) with a corporate tax background and experience of transaction (M&A) tax work. This role focuses on dynamic owner managed businesses which need advice on a wide range of transactions from joint ventures to overseas aquisitions to passing on businesses to the next generation or MBOs. Would suit a manager who wants to specialise in this area. You will ideally have a strong academic background and sound report writing skills. Great flexible working available. **Call Georgiana Ref: 3013**

YOUR TAXATION RECRUITMENT SPECIALISTS

OPPORTUNITY TO BE AN INDIRECT TAX EXAMINER FOR THE CIOT

Chartered Institute of Taxation

We are looking to strengthen our examining teams for future years and are seeking specialists in the following area who would like to join us:

- **Indirect Taxation**

Applications are invited from those with at least three years' post qualification experience who can offer the skills required to help to maintain and enhance the standard of our examinations. The key requirements for the role are:

- **Strong technical skills**
- **The ability to keep to the tight timetable for the preparation and review of the exam questions and for the marking of scripts**
- **Good written communications skills**
- **The ability to work as a member of a team**

You would be part of a team responsible for drafting, reviewing and marking one of the Advanced Technical examination papers and for ensuring that the examinations are of the highest possible quality. The time commitment varies from paper to paper, but most examiners continue to work full-time and carry out CIOT work at weekends and in the evenings. Typically, an examiner in an Advanced Technical team will be part of a team of four and will write and review half of a paper once a year and will mark questions they have set. If appointed you will be required to attend training in early 2021. This training will be conducted via Microsoft Teams.

The 2021 syllabus and recent exam papers can be found here:

Past exam papers: https://www.tax.org.uk/students-qualifications/studying/past-exam-papers

2021 syllabus: https://www.tax.org.uk/students-and-qualifications/cta-qualification/cta-prospectus-and-syllabus

Remuneration is commensurate with the strong skill set demanded for examiners.

If you are interested then please email **Jude Maidment** a copy of your CV in the first instance (**jmaidment@ciot.org.uk**). This will be passed to the Chief Examiner. If you would like to discuss the examiner role then please contact Jude on 020 7340 0577.