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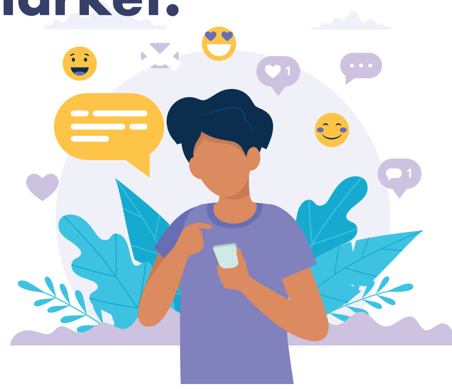

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GENERAL FEATURE

President's page

president@ciot.org.uk
Peter Rayney

All around the world

As I write this President's page, the England football team have just beaten Croatia in their opening Euro 2020 game at Wembley and the sun is shining – so *I'm* in good spirits.

Massive global tax changes

Moving from the 'Euros' to the wider global stage, international tax is certainly big news at the moment. The G7 finance ministers have just given their full support to a global minimum 15% corporate tax rate on a country by country basis. They also agreed to eliminate all their digital services taxes in favour of a coordinated approach to allocating taxing rights between base and market countries. This prepares the ground for the G20 finance ministers and central bank governors meeting in Venice this month, building on the collaborative work of the G20/OECD over the last few years.

The Institute has been busy commenting in the national and international media on these proposals, focusing on how the system currently works and the challenges in reaching a comprehensive agreement all nations can sign up to. You can see our latest 'explainer' on this topic at www.tax.org.uk/blog/1

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All this means there has never been a better time to improve your knowledge with ADIT (Advanced Diploma in International Tax), the next step for CTAs and other professionals interested in international tax.

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International tax legends

ADIT's excellent standards are maintained by its Academic Board of leading international tax experts, who comprise:

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- Jefferson VanderWolk (Squire Patton Boggs, USA)
- Prof. Richard Vann (University of Sydney, Australia)
- Jim Robertson (UN Subcommittee on Extractive Industries Taxation, UK) and Chair of ADIT

We would like to thank our many legendary international tax experts for their continuing support. They and the rest of the ADIT team, ably assisted by Rory Clarke and Rhiannon Pardoe, have established ADIT as one of the most respected and recognised international tax qualifications in the world.

Let's hope the good weather continues. Remember to look after yourselves and stay safe.

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

> "You will find ADIT has something to suit everyone, since it has a flexible choice of modules allowing you to tailor the qualification to suit your ambitions.

ATT welcome

page@att.org.uk
Jeremy Coker

Everyone shall sit under their own vine

I have had the immense honour and privilege to serve as ATT President for two years and this seems a good time to reflect on what has happened since my appointment on the 4 July 2019. The date takes on more significance now as incidents across 'the pond' have influenced us a lot more in the last two years than I can remember.

As I write, the Biden tax proposals have just impacted upon the G7 leaders' 'historic' agreement. There is still much to be done before we see how this will affect the taxation of multinationals.

Unfortunate events in Minneapolis last May brought matters of equality, diversity and inclusion to the fore. The then CIOT President Glyn Fullelove and I wrote a joint Welcome page in July 2020, expressing both organisations' commitment to recognising and celebrating the diversity in our profession.

Pre-lockdown I was able to attend our Branch conference and meet many of the volunteers on our branch network, which remains the pride and joy of both organisations. I hosted and attended the Joint Presidents' Luncheons in Cardiff and Edinburgh; was hosted by the Merseyside, North East and Northern Ireland branches; and it was an absolute delight to host our Admission Ceremony at the House of Lords. I have since had the slightly dubious honour of having hosted or attended the first online versions of most of these events.

It is impossible to look back and not recognise how Covid-19 has changed everything. We have all been impacted by the pandemic and my thoughts and prayers go out to those who have lost loved ones or been adversely affected by it. It has made us all reassess our lives and appreciate the importance of both physical and mental health.

This is the main reason why, instead of going through what we have achieved, I would like to use this page to acknowledge some of the people that have helped the ATT. In a period that saw Trump, Boris, Brexit and Biden, there is also not enough space on this page to do it justice. Apologies to those I miss but it has been a heroic team effort and I am so proud of and grateful to everyone.

My thanks in no particular order: Anthony Thomas for his immense support; John Andrews, behind the scenes; past Presidents, Natalie Miller, Yvette Nunn and Ralph Pettengell; Helen Brookson and David Bird who left Council; Tanya Wadeson and Michael Steed (also a Past President) step down before the AGM this year and Julian Millinchamp will be retiring; we mourned the loss of Andy Pickering, our first Executive Director; Roz Baxter, Jude Maidment, Helen Stainton, the Education and Examination teams, for delivering the online exams; Lisa Drakley, Clara Roberts and the events team; Hamant Verma, for his patience and help with external relations; our technical team of Will Silsby, Helen Thornley and Emma Rawson who continue to assist members with their encyclopaedic knowledge; Jane Ashton, our Chief Executive and Helen Whiteman, the Chief Executive of the CIOT, who have both been simply amazing; Glyn Fullelove, CIOT President through most of this journey; Peter Rayney, the current CIOT President; Lakshmi Narain, who introduced me to the joys of volunteering so many years ago; and thanks also to Richard Oury and all the other Partners at Oury Clark, where I work, who have been so supportive of me during this time.

The work of the ATT continues.

We continue to get reports of rogue advisers in the R&D market and our response to the recent consultation (see bit.ly/3gN64JH) reiterates our members commitments to PCRT, as well calling on HMRC to tackle those who give our profession a bad name.

For those of us involved in compliance, completion of individual and corporate tax returns requires reporting SEISS and CJRS grants. Hopefully, not many of us will have a different view to that taken by our clients.

HMRC's service levels have been less than perfect during the pandemic. While we appreciate that these are difficult times, it is hoped that the restoration of the Agent Dedicated Line for some queries will help.

What all this means is that these continue to be exciting times in tax. I have been ably supported by the Leadership team and Council and I am confident in the ability of Richard Todd, who takes over as President at the AGM, that our Association remains in safe hands. I wish him all the very best.

In conclusion, as I thank you all from the bottom of my heart for the honour, your help and support, and write this page 'One Last Time' it seems fitting to borrow a quote from across 'the pond':

I want to sit under my own vine and fig tree,
A moment alone in the shade
Happy with this Association we've made

Jeremy Coker
ATT President
page@att.org.uk

> **The pandemic has made us all reassess our lives and appreciate the importance of both physical and mental health. I would like to acknowledge the people that have helped the ATT.**

The problem with platforms

Bill Dodwell considers the impact that the gig economy is having on employment and asks how we can tax it more fairly

PROFILE

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

The topic for discussion at the latest CIOT/IFS debate on 23 June was 'How should platforms and gig economy workers be taxed?' The speakers were Stuart Adam (IFS), Neil Ross (Tech-UK), Meredith McCammond (LITRG) and me.

A good place to start is to ask what we mean by the gig economy. BEIS and the Institute for Employment Studies conducted some valuable research in 2018 (see bit.ly/3vMXro1), where following definition was put forward:

> 'The gig economy involves the exchange of labour for money between individuals or companies via digital platforms that actively facilitate matching between providers and customers, on a short-term and payment-by-task basis.'

4.4% of the population in Great Britain had worked in the gig economy in 2017 – about 2.8 million people. Individuals working in the gig economy are on average younger than the general workforce, with over half under 34. There was much greater participation in London than elsewhere. Average income is low; 87% said they had earned less than £10,000 in the last 12 months and 65% earned less than 5% of their total income in the gig economy. 32% of survey respondents saw the income from the gig economy as an extra source of income on top of their regular income. Fewer than one in ten respondents (8%) saw the money earned in the gig economy as their main income.

Individuals interviewed as part of the research valued the flexibility of working in this way:

> '...experiences of the gig economy were very much dependent on the respondents' circumstances. Although the perceived advantages of working in the gig economy varied, the ability to work flexibly and the control this afforded individuals was a commonly cited perception. However, some might find themselves financially vulnerable when working in this way, due to fluctuations in the amount of work available and a limited ability to save. Despite this, many seemed unquestioning of this flexible and patchwork working life, in which income is derived from a variety of sources.'

Taxing the gig economy

How should we approach the tax issues of the gig economy? Surely the gig economy should be taxed in similar ways to the rest of the economy? There is no realistic way to define gig participants in a different way from other individuals and, given that most gig participants have other sources of income, different treatment would not be sensible.

This means that we have another attempt to consider the employment status question. Tax practitioners are aware of the challenges of defining whether someone is an employee. There continue to be an unhelpfully large number of cases going to the Tax Tribunal. Part of simplification must be helping engagers/employers and individuals to have a clear understanding of status. Despite the much-improved Check Employment Status for Tax (CEST) tool (see bit.ly/3gToDgF), too many uncertainties remain.

I wonder whether now is the time to design a new test of employment for tax purposes and put it in statute. The new test should not be the codification of the existing case law; rather, we should take the opportunity to ask in what circumstances an individual should be treated as employed. Perhaps a points-based test, such as is used for the statutory residence test, would be helpful, given that there are a range of factors to be weighed.

The point of defining employment is simply to help classify individuals and essentially determine who directly pays tax and national insurance to HMRC. It does not tackle the much bigger question, concerning the significantly lower levels of tax and national insurance borne by the self-employed. Whilst large differences remain, there will be an economic incentive to encourage a greater level of self-employment than might be the case if tax levels were similar.

A new approach

There are two general approaches to consider: a contractor levy, which would be payable by the engager; and a significantly higher level of national insurance paid by self-employed individuals. The advantage of a contractor levy is that it is paid by the engager, just as employer national insurance is paid by the employer. Optically, it may be easier to explain, and it would also operate in the most obvious areas of cross-over: freelancers. The challenge would be in defining exactly when the contractor levy might be payable.

There are several points to make in relation to platforms, where there is a wide variety of different operational approaches. Not all platforms have a physical presence in the UK. Not all platforms handle money. Possibly the most important point is that platforms – and other intermediaries – could be required to provide information both to tax authorities and to individuals using the intermediary to sell goods or services.

Reports from the OTS have highlighted that many individuals do not understand their tax responsibilities as a self-employed person – and this is corroborated by many case studies from LITRG. Engagers could have a valuable role in helping everyone by providing information to HMRC.

The gig economy is here to stay; the tax approach should be to support participants with help and advice leading to tax compliance.

Tailoring our support

Jim Harra considers the future for HMRC and the tax profession after Covid-19, how the way we all work is changing, and the importance of maintaining open and frequent communications with the agent community

KEY POINTS

- **What is the issue?**
For HMRC, our 'new normal' will not be exactly what it was before the pandemic. We have learned from our experiences during the pandemic, and this will shape how we work in the future.
- **What does it mean for me?**
We understand that many of our customers – individuals and businesses alike – have been adversely affected by the Covid-19 pandemic, and that some of them face uncertain financial circumstances in the months ahead.
- **What can I take away?**
We are going to need your engagement and support more than ever. The need for robust, honest and constructive dialogue between HMRC and tax agents will be more vital than ever.

The past year has been truly historic and has left its mark on us all in very different ways. At the time of writing, it appears that the vaccination programme is making a huge difference and, while we are yet to see the full easing of lockdown restrictions, the UK is gradually returning to something like normality.

For HMRC, our 'new normal' will not be exactly what it was before the pandemic. We have learned from our experiences during the pandemic, and this will shape how we work in the future.

HMRC has a vital role to play in helping the UK's economy and its public finances to recover from the pandemic. Fortunately for us, we have the support and involvement of a wider tax community – tax agents and advisers make an invaluable contribution to tax administration, and their skills support us and their clients in achieving tax compliance and helping those who have got into trouble with their tax.

I feel it is important to take a look at HMRC's recent major changes and how we intend to operate going forward, as well as considering how we will strengthen and protect the way we work with agents.

How we work is changing

For over a year now, most people in HMRC have worked entirely at home, and like many other organisations we are now thinking about how we will support colleagues as they begin to return to the office. If there is one thing that we have learned during this pandemic it is that plans are always subject to change, and we must factor in the need to follow government guidance. While social distancing is still a requirement, the plans for colleagues to return to offices will be paced so we can meet these health guidelines.

Beyond that, our recent pay and contract reforms involved a key change to the way we work. For those colleagues who can perform their work from home, there will be the option to continue doing so for at least two days a week, and we are committed to making hybrid working a success and becoming an exemplar of a modern and flexible employer.

But almost everyone in HMRC will return to working in the office for some of their time, as we believe that is important to the cohesion, team working and learning that the Department needs. Our regional centre programme, transforming HMRC to working in fewer, purpose-built, modern premises, has continued at pace during the pandemic, with some new regional centres and specialist sites opening since March last year. As a result, over 20,000 colleagues will be returning to work in a different office from the one they left 15 months ago.

Our customer service

Like other customer service organisations, we had to adapt quickly last March to the unprecedented environment and make choices about our work. Our priorities since then have been clear:

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PROFILE

Name: Jim Harra
Position: Chief Executive and First Permanent Secretary
Firm: HMRC
Profile: Jim began his career in the Inland Revenue as an Inspector of Taxes in 1984. In January 2009, he was appointed Director of Corporation Tax and VAT, responsible for optimising the design and delivery of these business taxes. He became Director of Personal Tax Customer Operations in March 2011, and Director Personal Tax Operations in October 2011. He was appointed Director General Business Tax on 16 April 2012. Jim took up the post as HMRC's Second Permanent Secretary and Deputy Chief Executive on 1 January 2018. In October 2019, Jim was appointed by the Prime Minister as Chief Executive of HMRC.

- to protect livelihoods – for instance through our delivery of the government's support packages like the Coronavirus Job Retention Scheme (CJRS) and Self Employment Income Support Scheme (SEISS);
- to deliver the UK's smooth transition from the European Union; and
- to keep delivering the essential services that keep the tax system running.

Any one of these priorities on their own would be a challenge, and we are grateful for the help that the agent community and professional bodies have given us in delivering during this period and in providing real-time feedback that has been invaluable, for instance in our design of the support schemes.

Inevitably, the delivery of these priorities has impacted on service levels in some of our usual work, where we have also seen significant spikes in customer demand in areas like P87 claims for working from home expenses. Throughout the pandemic, we have done our best to deliver across all of our work, but I acknowledge that the response times in some of our services have fallen short of the high standards we want to deliver. We are working hard to rectify this, and a recent change which I hope will be welcomed by agents is that we have reinstated a priority service on the agent dedicated line, to answer complex enquiries that can't be dealt with through our digital services.

Managing tax debts

We understand that many of our customers – individuals and businesses alike – have been adversely affected by the Covid-19 pandemic, and that some of them face uncertain financial circumstances in the months ahead. We also appreciate that many customers are worried as the financial support schemes start to wind down, and so we want to offer them practical support wherever we can.

As the UK emerges from the pandemic and economic activity resumes, we are restarting our debt collection work and will be contacting customers who have fallen behind with their tax during this difficult time. At all times, we will take an understanding and supportive approach to dealing with those who have tax debts or are concerned about their ability to pay their tax.

Our message to customers is simple: if you can pay your taxes then you should do so – but if you're struggling, we want to work with you to agree a plan based on your financial position.

We think it's vital that we continue our debt collection work for a number of reasons. It is not just about bringing in money to fund UK public services like schools and the NHS; it is also about creating a fair and level playing field for all businesses. We will continue to do everything we can to help businesses with temporary cash-flow problems to survive into better times.

As agents and accountants will know, when a customer has a tax debt we always try to contact them by phone, post or text message so we can talk about their situation and agree a way forward. We urge customers to respond to these communications as soon as possible because, unless we can discuss their situation, we cannot tell if they need support or are simply refusing to pay.

In all cases, we want to work with customers to find a way for them to pay off their tax debt as quickly as possible, and in an affordable way for them. Everyone is different, so the support we offer varies from customer to customer – we tailor our support to their individual needs. For instance, we can discuss affordable payment options, such as a 'Time to Pay' payment plan where customers pay what they owe in affordable instalments. We typically have more than half a million arrangements in place at any one time, and more than nine out of ten of them complete successfully.

We understand that many of our customers – individuals and businesses alike – have been adversely affected by the Covid-19 pandemic.

From September 2021, in cases where customers are unwilling to discuss a payment plan, or where a customer ignores our attempts to contact them, we may start the process of collecting the debt using our enforcement powers, including taking control of goods, summary warrants and court action including insolvency proceedings. We only use them as a last resort and we take great care to use them fairly and carefully, but we have a responsibility to take action when a business's finances have little chance of recovering, not least to protect their competitors and viable businesses in their supply chains. It is in no one's interests to simply allow unsustainable debt to build up unchecked.

We really appreciate the influential and difficult role that agents and accountants play in supporting those whose businesses are struggling and at risk, and we are grateful for the valuable feedback these groups give us to help develop our services. Thank you, and please keep it coming.

Working with agents

Having explained a little about where we are and where we're heading in these aspects of our work, it's important to take a closer look at how we intend to support agents and maintain a close working relationship in the months to come.

Building on the last year, we are working to maintain and continuously improve open and frequent communications with the agent community.

We're providing regular sources of tailored information in the form of blog posts, agent talking points and webinars, and email updates on specific topics like EU transition and Covid-19 support schemes. Appreciating the need to keep agents informed as things change rapidly post-pandemic, we have increased the frequency of our regular 'Agent Update' on GOV.UK to monthly from bi-monthly, starting in May of this year. And we're providing various toolkits designed to help tax agents ensure that their clients get their tax returns right from the start to the benefit of all parties.

We're also making it easier to engage with us on various topics which matter to the agent community, whether these are general or specialist.

We have a range of platforms for such exchanges, in addition to the Agent Online Forum, which is a dedicated space to raise system issues or ask for clarification. The forums are a fantastic source of expertise, blending scheduled and bespoke calls to address topical issues, and we're grateful to all those who help to make them so useful.

Following our call for evidence on raising standards in the tax advice market last year, we committed to collaborating with professional bodies to understand their approach to supervision, support and raising standards, and we know that they have an invaluable role to play. We regard professional bodies as key to raising standards and we are proud to work in partnership with them, sharing best practice and ideas for potential future interventions.

HMRC is keen to support the majority of diligent and skilled agents, and we believe one way to do this is by tackling poor and unacceptable agent behaviour. We are currently undertaking an internal review of our available options to ensure that we reinforce and uphold our Standard for Agents as part of the wider work on raising standards in tax advice. This will help us to identify the actions we can undertake to deal with breaches of the Standard appropriately, consistently and effectively. We look forward to sharing the outcome of this review with the wider agent community, alongside the results from our recent consultation on introducing a requirement for all tax advisers to hold professional indemnity insurance.

Raising standards across the tax advice market has benefits for everyone – customers get better quality tax advice, good agents receive more work from clients, and HMRC can reduce time spent dealing with those who tarnish the reputation and credibility of the sector.

Our shared future

At the start of this piece, I referred to the lessons which we have learned in the last year and looked ahead to what is next. The economic shock of the pandemic is sadly going to echo long after we have recovered our physical freedoms.

We are going to need your engagement and support more than ever. The need for robust, honest and constructive dialogue between HMRC and tax agents will be more vital than ever.

Better together?

The frozen VAT registration threshold means there is a big incentive for creating separate legal entities to trade below this limit. *Neil Warren* considers practical examples and the views of both HMRC and the courts

KEY POINTS

- **What is the issue?**
The VAT registration threshold has been frozen at £85,000 since 2017, and will continue unaltered until at least 2024. There is an incentive for growing SME clients to try to avoid registering by trading through two different entities, so that each entity gets a separate threshold.
- **What does it mean for me?**
If a business split is not carried out properly – for example, record keeping and trading issues overlap – HMRC might seek to retrospectively register the entities as a single business, on the basis that they were never separate in the first place.
- **What can I take away?**
It is important to ensure that business owners have a clear intention to create separate entities. Both entities must have a properly defined trading structure; for example, for invoicing arrangements and liaising with customers.

An undeniable outcome of the annual VAT registration threshold being frozen at £85,000 since 2017 is that more clients and advisers are interested in the controversial topic of business splitting. In other words, can we separate our business into two different legal entities, so that each entity gets its own VAT threshold? This potentially means annual VAT free sales of £170,000 – happy days!

For a service business making sales to the general public, or a business such as a restaurant that has zero-rated inputs (food) but standard-rated sales (meals), the incentive to stay out of the 'VAT club' is massive. In this article, I'll consider the important question: where are we now as far as business splitting is concerned?

Business splitting in practice

Imagine the following situation: Mario trades as a mobile hairdresser with annual sales of £60,000. He has decided to buy a salon as a going concern, which will be operated by staff rather than himself – it has annual sales of £130,000. Mario must immediately register for VAT as far as the salon is concerned. With a transfer of a going concern (TOGC), the buyer is treated as making the sales of the seller for the previous 12 months, meaning that he must register for VAT from his first day of trading because the historic sales are more than £85,000.

The problem for Mario is that if he buys the salon as a sole trader, his mobile hairdressing fees will also be subject to VAT – an annual loss of £10,000 with the output tax liability (£60,000 x 1/6). So, would it make sense for him to buy the salon in a different legal entity, perhaps a limited company where he is the sole or majority shareholder? The company will still need to register for VAT but his sole trader earnings are protected.

LEGISLATION ON BUSINESS SPLITTING

Value Added Tax Act 1994 Sch 1:

1A(1) Paragraph 2 below is for the purpose of preventing the maintenance or creation of any artificial separation of business activities carried on by two or more persons from resulting in an avoidance of VAT.

(2) In determining for the purposes of sub-paragraph 1A above whether any separation of business activities is artificial, regard shall be had to the extent to which the different persons carrying on those activities are closely bound to one another by financial, economic and organisational links.

HMRC powers

HMRC has the power to treat two separate businesses as a single partnership if they are closely associated by 'financial, economic and organisational links.' See ***Legislation on business splitting***. However, there are three important facts:

- HMRC's power to correct the register applies from a current or future date, as long as the split has been carried out correctly. This means that each entity has separate bank accounts, trading names, self-assessment tax returns, supplier accounts, separate circle of customers, etc.
- The key word in the legislation is 'and'. HMRC must prove all three of the

'financial, economic **and** organisational' links and not just one or two.

- If the split has not been carried out correctly, with record keeping and trading issues muddled between the two entities, HMRC might retrospectively try to register the combined businesses for VAT, going back up to 20 years.

PROFILE

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Case law

The courts have ruled against HMRC in a number of First-tier Tribunal (FTT) cases in recent years, and I will highlight two lost by the department. Both structures had significant shortcomings in the argument that they were separate entities and both involved husband and wife partnerships.

In the case of *Charles Caton v HMRC* [2019] UKFTT 549, the issue in dispute was whether his sole trader business Commonwealth Café was separate from a restaurant run by his wife on the same premises called Waterfront Restaurant. Both entities traded below the £85,000 threshold but HMRC claimed that Mr Caton owned both businesses, with a combined turnover that exceeded the registration threshold between 2009 and 2016.

Factors that indicated there was only one business included the fact that there was a single website, and Mr Caton bizarrely said in a HMRC questionnaire that he owned the restaurant and his wife was an employee, and all card payments for both businesses were banked into Mr Caton's account. They also shared the same washing up area and used the same main supplier.

However, Mrs Caton controlled the menu in the restaurant and each business had separate tills and staff. The key issue that persuaded the tribunal in favour of the taxpayer was a clear intention by the owners to run separate entities: 'Mrs Caton wanted to "do her own thing rather than rely on John".' The appeal was allowed.

A similar victory came in the case of *Graham Belcher v HMRC* [2017] UKFTT 0427 (TC) for hairdressers Mr and Mrs Belcher. The Belchers even completed a partnership self-assessment tax return but still managed to convince the court that they owned separate sole trader salons with their own sales. Each salon traded below the VAT registration threshold. The judge commented that there was 'no conscious intention to run a single business in a partnership'.

Despite these taxpayer wins, it is better for splitting arrangements to be done properly in the first place, with all operational and accounting issues kept at arm's length and on a commercial basis, rather than having to back pedal when HMRC comes knocking at the door.

Family challenges

All inter-trading between two closely connected entities must be carried out on an arm's length basis; i.e. proper recharges are made for shared expenses and overheads. This outcome is harder to achieve when families are involved – there is not the same incentive to keep costs separate when money all belongs to the same family pot. The charging process can sometimes score a VAT own goal because it will increase the taxable sales of the business making the charges. See ***Carpenter crisis: problem with recharges***.

Final challenges

The VAT issues are not clear cut. Advisers and HMRC might reach different conclusions on the same situation. Here are three practical scenarios – what is your view?

- Jack and Jill own a DIY store that is VAT registered as a partnership. They have decided to start a new venture, selling Christmas trees online. There will only be tree sales in November and December and total sales will be less than the VAT registration threshold. They decide to form a limited company for this activity.
- Landscaper John provides gardening services for private householders. His business has boomed and he is close to the registration threshold. He wishes to divide his business between a sole trader entity for 'gardening work' and a husband-and-wife partnership for 'grass-cutting services', giving each customer separate invoices.
- Plasterer Mike operates as a sole trader and has formed a separate business with his wife for liquid floor screeding, keeping both entities below the registration threshold.

CARPENTER CRISIS: PROBLEM WITH RECHARGES

John is a carpenter, earning £80,000 each year, and so he is below the VAT registration threshold. His son Peter is also a carpenter with his own business with annual sales of £50,000. John can get better discount terms with local wood suppliers than Peter, so buys all the wood himself and recharges it to Peter at cost price. He treats the recharges as 'negative purchases' in his accounts rather than 'positive sales' but HMRC would see this differently – if the annual recharges to Peter exceed £5,000, John will need to register for VAT on a compulsory basis.

Note: It would make more sense for Peter to receive the better discount terms because he can charge his father up to £35,000 each year without creating a VAT problem.

The verdict?

In my view, there is no problem with the tree proposal made by Jack and Jill. Selling DIY goods in a store is a very different activity to selling Christmas trees online. It will be easy to keep separate records and there will be a different circle of customers for each activity. However, there is clearly only one business activity for John, a garden maintenance service for private householders. He is on dodgy VAT grounds trying to make a split.

VAT enthusiasts might recognise the facts for plasterer Mike, which are based on the FTT case of *Darren Vaughan v HMRC* [2018] UKFTT 776, which was surprisingly won by the taxpayer in 2019.

Vaughan was a sole trader plasterer until 2012 but was then advised by his accountant to form a partnership with his wife for the screeding work to avoid a VAT registration problem; i.e. a business split was carried out. HMRC ruled that there had only ever been a single sole trader business and the combined turnover of both activities meant a registration date (retrospective) of 1 March 2013. The situation was not helped because there was confusion with purchase invoices being made out to the wrong business. The main conclusion of the judge was that the Vaughan family 'did intend to separate the appellant's existing sole trader business into two businesses'.

Final thoughts

In each of the taxpayer wins above, the judge made a comment about the importance of what the business owners intended to do; i.e. to create separate entities. This conclusion about intentions seemed to be given more priority than some of the practical shortcomings, such as the muddling of purchase invoices in the *Vaughan* case. So, as a practical tip, make sure that your clients are clearly focused in their mind about the commercial reality of the split.

Finally, always stand back and look at the important issue of customer perception. Do customers realise that they are dealing with separate entities when they part with their hard-earned cash? If the answer is 'no', there will almost certainly be a potential VAT problem lurking in the background.

In the case of Mario and his hairdressing operations, I think it will be fine to form a separate entity for his new salon – just about!

prevention

/prɪˈvɛnʃn/

noun

1. the action of stopping something from happening or arising,
e.g. your firm at a tax tribunal.

IR35 SHIELD

THE IR35 COMPLIANCE STANDARD

KEY POINTS

- **What is the issue?**
Certain investment products are marketed to investors on the basis that up to 5% of the initial investment may be paid each year to the investor without any immediate tax charge.
Top slicing relief mitigates the effect of bringing into charge all in one year an amount of income that accrued over a number of years.
- **What does it mean for me?**
Until recently, HMRC adopted a 'short cut' method to calculate the amount of relief, which is often used to teach this to professional exam candidates. However, tax calculations have become increasingly complicated and short cuts might not give the right answer.
- **What can I take away?**
The difference between the short cut method and the statutory calculation will often be negligible. However, since the introduction in 2010 of the restriction of a taxpayer's personal allowance by reference to total income, the difference can be very significant.

Learn to slice correctly

Tim Good considers top slicing relief, when it should be used and how it works when correctly applied

Anybody who has studied for the CTA qualification will be familiar with the basics of taxing chargeable event gains and calculating top slicing relief. To recap briefly: certain investment products (known variously as investment bonds or non-qualifying life policies) are marketed to investors on the basis that up to 5% of the initial investment may be paid each year to the investor without any immediate tax charge. These 'tax-free' withdrawals can be especially helpful for older higher rate taxpayers in managing their income tax liability. A tax charge may arise, however, if there is a partial withdrawal or complete encashment of the bond or policy and the proceeds exceed the unused 5% allowances.

We need not worry about how the taxable amount (called a chargeable event gain) is determined: the financial institution that issued the policy will provide the taxpayer (and HMRC) with a certificate that shows the amount of the chargeable event gain and the relevant number of years to be used in calculating any tax. Our job is to work out the tax.

Income, not gain

As so often with tax, the terminology is not helpful. Although the taxable amount is described as a chargeable event gain, it is taxed as savings income and is subject to income tax. If the policy is a UK policy (i.e. one issued by a UK resident company), the taxpayer can benefit from a notional basic rate tax credit (reflecting that the income and gains during the term of the policy will have been subject to UK tax payable by the issuing company). No notional tax credit attaches to a chargeable event gain arising on a foreign policy (i.e. one issued by a non-UK resident company).

One technical point of interest for the tax calculation is that a chargeable event gain on a UK policy is treated for the purposes of allocating the different tax rate bands as the highest part of the taxpayer's income (i.e. after dividend income), whereas a chargeable event gain on a foreign policy is treated for this purpose in the same way as other savings income (i.e. before dividends).

What is top slicing relief?

Top slicing relief is a relief given by reduction or repayment of income tax. It is provided for by Income Tax (Trading and Other Income) Act (ITTOIA) 2005 s 535; and is given effect at Step 6 of the income tax calculation that is set out in Income Tax Act (ITA) 2007 s 23.

The purpose of top slicing relief is simply to mitigate the effect of bringing into charge all in one year an amount of income (the chargeable event gain) that accrued over a number of years. As a simple example, suppose that the taxpayer had total income for 2020/21 of £48,000 (and remember that unless a Scottish taxpayer, the higher rate threshold was £50,000) and a UK chargeable event gain of, say, £40,000 for a term of 10 years. Without top slicing relief, £2,000 of the gain would be taxed at basic rate of 20% and £38,000 at higher rate of 40%. This would result in income tax of £15,600 on the chargeable event gain (before the notional basic rate credit).

Top slicing relief is intended to tax the total gain at the rates that would have applied if only one year's worth (the annual equivalent) of the gain were included as taxable income. In this simple example, the annual equivalent is £4,000, of which £2,000 would be taxed at basic rate and the other £2,000 at higher rate. Tax on one year's worth would be £1,200 and on 10 years' worth (i.e. the full gain) £12,000. Top slicing relief of £3,600 will achieve the intended mitigation. (For these purposes, we assume that at least £500 of the £48,000 income is other savings income so that the personal savings allowance is already used!)

How is top slicing relief actually calculated?

This is where it gets tricky. The simple example set out above demonstrates the 'short cut' method used to teach this to professional exam candidates. It also demonstrates the short cut adopted until recently by HMRC. But as we all know, tax calculations have become increasingly complicated over the last decade and short cuts might not give the right answer. As we should also all know, in matters of tax there is no substitute for going back to the legislation and following the statutory provisions, rather than any intuitive or simplified approach.

As it happens, the statutory provisions that set out how to calculate top slicing relief (ITTOIA 2005 ss 535 and 536) can be expressed in relatively simple terms without doing injury to those provisions. The difficulty for HMRC (at least originally) is that converting the statutory provisions to formulae that could fit easily into the HMRC Self Assessment calculator (which, by the way, is a massive Excel spreadsheet that has to be updated every year for any changes to the tax calculation) was far from simple. Until the autumn of 2018, the HMRC calculator effectively used the short cut method described above.

The simple expression of the statutory provisions is as follows:

- First, calculate tax on the full chargeable gain less the notional tax credit.
- Then calculate tax on the annual equivalent less the notional tax credit.

- Top slicing relief is the difference (if any) between tax on the full gain and tax on the annual equivalent multiplied by the number of years.

In performing these calculations, we are instructed by ss 535 and 536 to make a small number of adjustments to the normal basis of calculating a tax liability. The crucial instruction in s 536 is:

> 'Find the relieved liability on the annual equivalent by calculating the individual's liability (if any) to income tax on the annual equivalent, on the basis that the gain from the chargeable event is limited to the amount of the annual equivalent.'

What difference does it make?

The difference between the short cut method and the statutory calculation will often be nil or negligible. However, since the introduction in 2010 of the restriction of a taxpayer's personal allowance by reference to total income, the difference can be very significant.

To take another simple example, suppose that the taxpayer had total income for 2019/20 of £50,000 and a UK chargeable event gain of, say, £100,000 for a term of 10 years. Without top slicing relief, all of the gain would be taxed at higher rate of 40% and this would result in income tax of £40,000 on the chargeable event gain (before the notional basic rate credit). The annual equivalent is £10,000 and, using the short cut method, all of this would be taxed at higher rate. Tax on one year's worth would be £4,000 and on 10 years' worth (i.e. the full gain) £40,000. On this basis, there would be no top slicing relief.

However, the short cut method disregards the clear instruction in s 536 to calculate tax on the annual equivalent 'on the basis that the gain from the chargeable event is limited to the amount of the annual equivalent'.

In *Marina Silver v HMRC* [2019] UKFTT 263, Judge Barbara Mosedale said:

> 'So applying the legislation, both literally and in accordance with Parliament's presumed intent, results in the steps set out in s 23 being applied in full to the hypothetical situation postulated by s 536(1). And that means that, at Step 3 Mrs Silver, hypothetically, was entitled to a personal allowance.'

Performing a full hypothetical calculation in this way for the simple example above would reinstate the personal allowance of £12,500 (but only for the s 536(1) hypothetical calculation) and £10,000 of this allowance would be allocated to the annual equivalent, resulting in nil tax on the annual equivalent and £20,000 of top slicing relief.

The Finance Act 2020 provisions

Two significant changes were made to the legislation with effect from 11 March 2020.

We are now told in s 536 that 'in determining the amount of the individual's personal allowance under s 35 of ITA 2007 (but not the amount of any other relief or allowance), it is assumed that the gain from the chargeable event is equal to the amount of the annual equivalent'.

And a new s 535(8) has been inserted which reads:

> 'For the purposes of the calculations mentioned in subsection (1):
> a. section 25(2) of ITA 2007 (deductions of reliefs and allowances in most beneficial way for taxpayer) does not apply; and
> b. reliefs and allowances are available for deduction from an amount that, for the purposes of those calculations, is the highest part of the individual's total income for the tax year only so far as they cannot be deducted from other amounts.'

Is the HMRC calculator now correct?

Unfortunately, we still cannot rely on the HMRC calculator (or any commercial tax return software that uses the same methodology) to give the right answer. Although the HMRC method now attempts to reflect the Finance Act 2020 provisions, it still fails to perform the hypothetical calculations required by s 536. This can result in differences in the amount of top slicing relief given of tens of thousands of pounds. Agent Update 83, published by HMRC in April 2021, rehearses HMRC's position but should not be accepted uncritically. A detailed critique can be viewed at bit.ly/3xaYmzH.

Further challenges are heading to the tribunal

An appeal has been made (TC/2020/04234) involving a difference in the calculation of top slicing relief in the year of death (2017/18) of £44,000. This case involves three specific issues where it is argued that the HMRC policy is wrong:

- availability (before 11 March 2020) of the personal savings allowance in calculating tax on the annual equivalent (slice);
- retrospective application of the FA 2020 beneficial ordering rule; and
- HMRC's practice of applying ITA 2007 s 25(2) to minimise the tax liability after, rather than before, deducting any notional tax credit on chargeable event gains.

There will almost certainly be further cases involving overpayment relief claims. Agents should make sure that overpayment relief claims for 2017/18 are submitted to HMRC by 5 April 2022.

Agents are at risk of compensation claims if they do not advise affected clients to submit claims or appeals. Sooner or later, an aggrieved client who has lost out on tens of thousands of pounds (perhaps because their accountant did not advise that an amendment, appeal or overpayment relief claim should have been made) will make a negligence claim.

PROFILE

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Sharing the load

KEY POINTS

- **What is the issue?**
Businesses can see tax compliance outsourcing as a disruptive event. There is thinking to do about whether it is the right decision for business, the benefits of such an arrangement and the processes that need to be undertaken to appoint a service provider.
- **What does it mean for me?**
This article considers why businesses are now increasingly looking at tax outsourcing arrangements, and the best practice approach to identifying a service provider and managing the implementation of any change.
- **What can I take away?**
Put simply, outsourcing arrangements can bring good governance and control on routine compliance matters to create long term value to the business.

Binka Layton considers the current trends in tax compliance outsourcing and best practice for implementing arrangements with service providers

Businesses can see tax compliance outsourcing as a disruptive event. There is thinking to do about whether it is the right decision for business, the benefits of such an arrangement and the processes that need to be undertaken to appoint a service provider. Outsourcing arrangements in this context refer to a third party outside of the business taking over the tax compliance and reporting preparation and delivery on a contract basis.

This article considers why businesses are now increasingly looking at tax outsourcing arrangements, and the best practice approach to identifying a service provider and managing the implementation of any change.

For the last decade, multiple megatrends in the business landscape have been disrupting ways of working and encouraging businesses to look at transformational opportunities wherever possible. For routine matters such as tax compliance, change has happened in an incremental manner, with the tax function looking at discrete technology, process improvements, and roles and responsibilities to work out compliance arrangements.

Following the global pandemic, many businesses are now rethinking the overall strategic objectives of their tax function. There is an increasing pace of change in the enforcement paradigms of tax authorities, which require real time data for tax returns and mandatory digital filing of returns. Group restructuring matters – such as acquisitions and divestments, new CFO appointments and wider stakeholders wanting a global view on tax compliance matters – are other reasons for reconsidering compliance models and operations. Outsourcing arrangements are seen as a practical way to manage these changes and help the tax function to do ‘more for less’ with the resources available.

Once the decision has been made to look at an outsourcing arrangement,

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a business will need to undertake a structured approach for the main work-activities to appoint a service provider.

Preparatory stage

The main drivers for outsourcing

Being clear on the main drivers for outsourcing will achieve the desired outcomes envisaged from an outsourcing contract. For example, if the driver is visibility and assurance on compliance filings, one of the outcomes that businesses should expect is reporting on the tax processes in any one compliance cycle, including:

- how they are being progressed;
- the trends in country patterns for late filings; and
- data quality issues feeding into the tax returns.

Similarly, if businesses are seeking access to the latest legislative trends and updates in digitalisation of taxes, they should request reporting on any ongoing basis from the service provider, which will be more than an annual commentary on a country budget.

Choosing what to outsource

Businesses will need to decide which elements of the tax compliance process to outsource. As an example, if the business wanted to optimise its accounting and tax model, then the full end to end processes starting with book-keeping to preparation of accounts and returns should be outsourced. If businesses have multiple service providers across several taxes and are seeking consistency in approach, they could consider consolidating those processes to one single provider.

Stakeholders

It is important to identify the stakeholders in the tax function and other stakeholders in the wider business that need to be involved in the selection process. In a tender process, it is typical to have the procurement team working alongside the tax function. Finance stakeholders are also involved as they are usually the point of contacts for data provision for accounts and tax returns.

Compliance delivery

Businesses will need to be clear about which elements of compliance delivery are important to them to set the selection criteria for the service provider. In practice, there is no one answer and set criteria can range from the cost of service provision to identifying transformation opportunities in the compliance delivery.

The market trends for transformation have been growing in the recent past as businesses use the global reset to think of better alignment of tax function objectives to the wider business. These can range from understanding how better to complete tax returns in an automated manner to bringing wholescale process efficiencies and better governance structures for identifying and managing material tax risks.

Following the global pandemic, many businesses are now rethinking the overall strategic objectives of their tax function.

Supplier meetings and evaluation stage

The evaluation stage by business can be in phases with a request for information being the first phase, followed by the request for a proposal. The recent trends in outsourcing show the request for information being popular, as it helps businesses to obtain value propositions, capability and expertise of the service provider before shortlisting to the pricing and scoping of services.

Businesses, however, need to get ready with background information and outsourcing requirements for both phases, which can involve a number of activities to work through.

Data gathering
Gather data on business background facts and build a compliance inventory of the elements that are to be outsourced. This may seem like a simple step but, in practical terms, it is much more complicated and potentially time consuming. It means pulling data on country and entity details, capturing known past issues on compliance difficulties, and the list of returns to be outsourced, along with the contact details of persons to liaise with the service provider.

Tender document
Write a tender document that is clear in outline and allows for an easy comparison of responses from providers. This should specify:
- the scope of the outsourcing arrangements;
- the term of the contract;
- the expectations of the business under the arrangement;
- pricing information at a granular level on an entity and filing basis;
- details of the service provider's expertise; and
- team details.

Timelines for submission and details of the evaluation process should be set out clearly. In practice, depending on the business profile, it is typical to have three to a maximum of five service providers in any tender process. Obviously, the more service providers that are involved, the greater the time and effort required by the organisation in the selection process.

Meeting selected service providers
Hold meetings with the selected service providers and test submitted responses against the selection criteria and objectives. This is usually in the form of a presentation. Second round questions and meetings are also common after this stage.

Selection stage

Following internal consultation, the business should appoint the chosen service provider. The rationale for the appointment and the expectations from that business partnership, should be communicated within the business.

The steps to appoint the service provider as set out above can take between three and 12 months (depending on the size, scale and complexity of the tender) and businesses should consider this carefully as it requires precision and planning.

With the appointment of the service provider, it is imperative to ensure a smooth transition to the new outsourcing arrangements. Businesses often perceive this phase to be difficult with disruptions taking place in the current ways of workings. However, where businesses are stretched for time and resources or have other priorities, it is common for any incumbent provider(s) and the new service provider to work closely together. Either way, this phase is a critical aspect in establishing the overall framework of working and therefore, worth time and effort from all parties.

The priority is for business to transfer knowledge to the new service provider in a logical manner. Rigorous documentation is needed to capture processes and discussion points on entity and compliance complexities. In practice, the documentation can be as detailed as process maps of who does what, from data provision to return submission.

Whilst undertaking transition, there should be clarity on cut over dates of service commencement, as the danger in any change is that filings get missed. In practice, it is typical to draw up a compliance inventory which comes from the tender process and then to validate that with the new service provider. It is typical to see scope changes at this point; for example, identifying new filing obligations in countries, or where local statistical and supplementary forms are required for core tax returns. Similarly, if corporate income tax (CIT) payments are scoped as part of the CIT return preparation – and it is identified that the profit forecasts are such that there are no advance payments – scope decrease would be in order.

Transition activities can 'add value', as this can allow businesses to identify potential transformational opportunities to partner with the service provider.

Where country risk areas are known, businesses could consider tailored approaches to transition. In practice, goods and sales tax or VAT returns can be undertaken as 'dry runs' – where a return is prepared by the service provider in parallel to the business/outgoing provider. Checks are then performed by the business as part of the review and approval process.

Transition activities can 'add value', as they can allow businesses to identify potential transformation opportunities to partner with the service provider. Such activities can range from discrete opportunities in the actual preparation of the tax returns to large scale new technology implementation. Service providers will document the findings from the review of the returns in a standard checklist, in order to discuss and agree the material areas that could benefit from adopting a revised approach; for example, amending tax returns for missed tax credits and incentives.

Another trend is in VAT return preparation, where global technology solutions are increasingly positioned in response to the digitalisation and pre-population of data in returns.

There should be a clear governance framework and escalation path for queries and potential issues faced by service providers. Typically, the governance is set out in a structured approach, starting with a transition kick-off meeting between the parties to agree key activities and milestones, the ongoing monitoring and review phase to a final transition meeting to sign-off on the compliance activities being taken over.

There is no set timeline within which transition activities should be concluded but it is typical to expect this phase to be between three to six months depending on scale, breadth and complexity of the outsourcing services to be transferred.

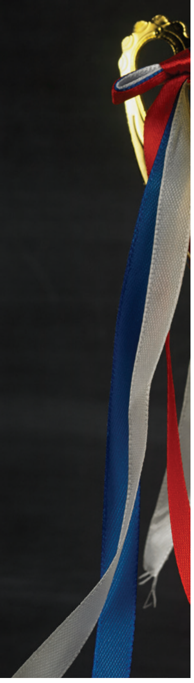
Benefits of outsourcing

Outsourcing arrangements can bring several benefits to the tax function:
- Do 'more for less': free up people to focus on tax advisory and more strategic matters with the outsourced provider taking on the more routine compliance work.
- Stay ahead: the outsourced provider can bring insights from the compliance data and upcoming legislative changes.
- Achieve wider 'strategic objectives': identify transformation opportunities to improve data quality for returns, identify tax risks and benefit from the systems and technology investment that the outsourced provider has made. Service providers, for example, may have established onshore and offshore specialist staff to deliver a cost competitive compliance model often underpinned by technology applications.

Put simply, outsourcing arrangements can bring good governance and control on routine compliance matters to create long term value to the business.

Converting trust losses into winnings

Samara Goeieman considers the non-resident capital gains tax charge on trustees disposing of direct holdings in UK residential property



KEY POINTS

- **What is the issue?**
Capital losses arising to UK resident trusts can, in certain circumstances, be transferred to a beneficiary of the trust and used to offset gains arising on assets transferred to him from the trust. We ask when these rules can be applied to non-resident trusts.
- **What does it mean for me?**
A number of conditions need to be satisfied for the beneficiary to be able to claim the capital loss generated as a result of the appointment to him of the property, and to set it against the later gain arising on the future disposal of the same asset.
- **What can I take away?**
The loss treated as accruing to the beneficiary must be claimed within four years after the end of the tax year in which the loss arose. For the avoidance of doubt, HMRC should be notified in writing.

Capital gains and capital losses arising to non-resident trusts were generally outside the scope of UK capital gains tax until 6 April 2015, when legislation introduced a non-resident capital gains tax charge on trustees disposing of direct holdings in UK residential property. The scope of the charge was extended by Finance Act 2019 to include direct holdings of UK non-residential property and also to gains on all UK property held indirectly through corporate bodies.

Capital losses arising to UK resident trusts can, in certain circumstances, be transferred to a beneficiary of the trust and used to offset gains arising on assets transferred to him from the trust. In this article, I look at the general rules for allowing losses to be transferred to beneficiaries, and also look at the specific circumstances of whether losses arising to a non-resident trust on the disposal of UK property can be transferred to a beneficiary of the trust. We consider these issues by examining the case of Mr Graham.

Example: Mr Graham's trust

Mr Graham is tax resident in Monaco and is the sole beneficiary of The Property Trust ('the trust'), which was created in 2005 by his non-domiciled father. All the trustees of the trust are resident in Monaco, so the trust is not resident in the UK by virtue of the Taxation of Chargeable Gains Act (TCGA) 1992 s 69. The trust owns a UK freehold residential property which is held for investment purposes.

In November 2017, the trustees of the trust decided to wind up the trust and exercised their discretionary powers to appoint the property absolutely to Mr Graham.

The appointment of the property to Mr Graham triggered a deemed disposal of the property by the trustees at market value (TCGA 1992 s 71(1)) and the disposal was chargeable to capital gains tax by virtue of TCGA 1992 s 14B, as it applied in the tax year 2017/18. The trustees were able to rebase the capital gains tax base cost of the property to the market value as at 5 April 2015 by virtue of TCGA 1992 Sch 4ZZB s 5.

The trustees filed a non-resident capital gains tax return declaring the market value of the property at the date of the appointment to be £2 million and its market value as at 5 April 2015 to be £2.45 million, claiming a capital loss of £450,000 as a result of the appointment. Mr Graham now wants to sell the property and has put it up for sale at £2.6 million, expecting to receive around £2.5 million net of all costs. What will Mr Graham's tax liability be on the sale of the property?

Basic principles

Under basic principles, Mr Graham is liable to UK capital gains tax as a non-resident on the disposal of the property by virtue of TCGA 1992 s 1A(3). His capital gains tax base cost is the market value at the date of acquisition (i.e. £2 million) and so he will realise a taxable gain of around £500,000 on the disposal. Rebasing to April 2015 is not relevant as he acquired the property after 5 April 2015. The question I consider in this article is whether the capital loss of £450,000 arising to the trustees on the appointment of the property to Mr Graham is available to reduce his capital gain.

Prima facie, losses accruing to trustees on a beneficiary becoming absolutely entitled to trust property can, under certain conditions, be treated as accruing to the beneficiary instead of to the trustees. TCGA 1992 s 71(2)(a) states the following:

> 'The loss shall be treated, to the extent only that it cannot be deducted from pre-entitlement gains of the trustee, as an allowable loss accruing to the beneficiary (instead of to the trustee).'

The conditions

Four conditions need to be satisfied for Mr Graham to be able to claim the capital loss generated as a result of the appointment to him of the property, and to set it against the later gain arising on the future disposal of the same asset.

Condition 1: Absolute entitlement

The first condition is that the loss must arise as a result of the beneficiary becoming absolutely entitled to the property as against the trustees.

A person may become absolutely entitled as against the trustees in three circumstances:

(a) where a life interest ends and where there is no further life interest;
(b) where a contingent interest vests on the contingency being met; or
(c) where a resolution is passed by trustees of a discretionary trust to transfer property to a beneficiary.

When beneficiaries become absolutely entitled to any settled property as against the

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trustees, the trustees are regarded as having disposed of that property immediately reacquired by them as nominees for the beneficiaries at its market value.

After a beneficiary is absolutely entitled to a trust asset, they, rather than the trustees, are required to return any capital gain, or to claim any capital loss from a later capital gains tax event relating to that asset.

In the case of Mr Graham, Condition C is satisfied by virtue of the resolution of the trustees to transfer the property to Mr Graham in November 2017.

Condition 2: Pre-entitlement gains

The second condition is that the loss must not have been used by the trustees against other gains. Capital losses arising to trustees must, if possible, be offset against any capital gains arising to the trustees in that same tax year. These are called 'pre-entitlement gains' (TCGA 1992 s 71(2A)).

Any excess of losses over the pre-entitlement gains will potentially be available to be treated as an allowable loss accruing to the beneficiary.

If the losses cannot be used in the tax year in which they arise, either by offset against pre-entitlement gains or by transfer to a beneficiary, they are carried forward in the trust to future years.

The trustees had no pre-entitlement gains in 2017/18, and so the whole of the loss arising on the disposal of the property is potentially available to Mr Graham.

Condition 3: Allowable losses

The third condition is that the loss accruing to the trustees must be an allowable loss. Generally, all losses accruing to UK resident trustees will be allowable losses, so the specific issue we need to consider here is whether the fact that the trust was not UK resident at the date of appointment of the property affects the position.

TCGA 1992 s 1E(1) defines when a capital loss is **not** an allowable loss as follows:

> 'A loss is not an allowable loss if it accrues in a tax year at a time when, had a gain accrued instead, the gain would not have been chargeable to capital gains tax under this Act for the tax year.'

If there had been a gain on the disposal, it would have been chargeable to capital gains tax for the year, and so this condition is not offended.

Sections 1E(2) and 1A(3) go on to state the position applicable to non-UK residents. Section 1E(2) states: 'In addition, the only allowable losses that qualify for deduction from chargeable gains under s 1A(3) (non-UK residents) are those accruing to the person on disposals of assets within that subsection.'

Section 1A(3) includes 'assets that are interests in UK land'. Therefore, in the case of Mr Graham, the loss accruing to the trustees is an allowable loss, regardless of whether or not the trustees were UK resident at the time of the appointment to Mr Graham.

Note that the loss would not be an allowable loss if it had accrued to the trustees on an appointment of the property prior to the date when disposals of UK residential property by non-residents became liable to capital gains tax. Similarly, losses accruing to non-resident trustees on disposals of assets that are not chargeable to UK capital gains would also not be allowable losses.

One should mention here that TCGA 1992 s 16A(1) prevents a loss being an allowable loss if it accrues to a person directly or indirectly in consequence of, or otherwise in connection with, any arrangements; and the main purpose, or one of the main purposes, of the arrangements is to secure a tax advantage. However, that seems to be of no relevance here.

Condition 4: Disposal of the same asset

The fourth condition is that the loss treated as accruing to a beneficiary can be used only to the extent that it can be deducted from gains accruing on a future disposal of the same asset. The loss can be used for no other purpose.

Section 71 (2)(b) states:

> 'Any allowable loss treated as accruing to the beneficiary under this subsection shall be deductible under this Act from chargeable gains accruing to the beneficiary to the extent only that it can be deducted from gains accruing to the beneficiary on the disposal by him of:
> (i) the asset on the deemed disposal of which the loss accrued; or
> (ii) where that asset is an estate, interest or right in or over land, that asset or any asset deriving from that asset.'

Mr Graham is disposing of the same asset as the one on which the original loss arose and therefore satisfies this condition. Indeed, all four conditions are satisfied and the loss arising to the trustees will be available to Mr Graham to reduce the gain arising on his future disposal of the same asset.

Making the capital loss claim

The loss treated as accruing to Mr Graham must be claimed within four years after the end of the tax year in which the loss arose. The loss arising to the trustees arose in 2017/18 and therefore a claim must be made by 5 April 2022, otherwise the losses will no longer be available.

It could be argued that the loss claimed in the non-resident capital gains tax report filed by the trustees is sufficient. However, for the avoidance of doubt, a letter claiming the losses should be sent by Mr Graham to HMRC by not later than 5 April 2022 (assuming that he has not already claimed the loss in his 2017/18 tax return).

Conclusion

Mr Graham assumed that he would have a large capital gains tax liability as a result of his proposed disposal of the property. However, on further research he has satisfied the conditions for the loss arising to the trustees to be available to him to reduce the gain arising. By carefully researching the roulette table of the tax legislation, Mr Graham has converted the trust losses into personal winnings.

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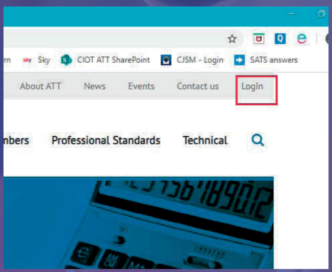

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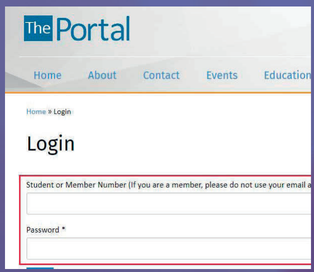
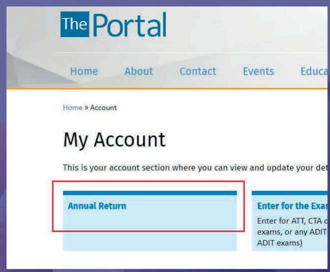


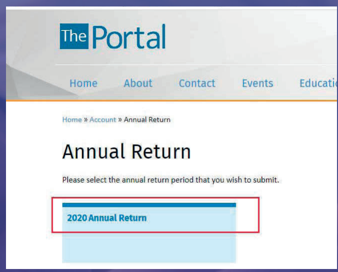
3. Account

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).

Tooth and consequences

Keith Gordon reviews the Supreme Court's long-awaited decision in the case of *HMRC v Tooth*

I have already covered the *Tooth* case, twice before – the Upper Tribunal's decision was discussed in my article 'The honest Tooth' in the May 2018 issue of *Tax Adviser* and the Court of Appeal's decision in my article 'Jaws 2' in August 2019.

The Court of Appeal's decision was HMRC's third successive defeat in its attempts to defend a £475,000 tax bill imposed on Mr Tooth. Nevertheless, the run of three adverse decisions did not prevent HMRC having a fourth attempt earlier this year. To be fair, in the Court of Appeal, the majority concluded that Mr Tooth had made a deliberate inaccuracy in his 2007/08 tax return so as to validate HMRC's discovery assessment made after 5 April 2014 (i.e. more than six years after the end of the relevant tax year). However, HMRC fell foul of the principle that a discovery assessment must be made whilst the underlying discovery is still fresh – in Mr Tooth's case, the relevant discovery had been considered to have been made many years earlier and was therefore deemed to have gone stale before the assessment was finally made.

The Court of Appeal's decision on deliberate inaccuracy raised many eyebrows, and HMRC has long disputed the concept of staleness. The Supreme Court's decision, published in mid-May (*Tooth* [2021] UKSC 17), was keenly awaited.

The facts of the case

In early 2009, Mr Tooth had taken part in an avoidance scheme which (he thought) entitled him to accelerate tax relief through the carry-back rules, so that the relief would be applied to his 2007/08 Self Assessment tax calculation. As the pro forma 2008 tax return did not allow for such a claim to be accelerated in this way, Mr Tooth deliberately used a wrong box on the tax return to achieve his desired purpose, albeit with a white space disclosure explaining what he had done.

HMRC quickly recognised the fact that Mr Tooth's 2008 return did not comply with its views of the law and promptly opened an enquiry. However, rather than enquiring into the return under the Taxes

KEY POINTS

- **What is the issue?**
The Supreme Court's decision was HMRC's fourth successive defeat in its attempts to defend a £475,000 tax bill imposed on Mr Tooth.
- **What does it mean for me?**
The law is now clear: do not drill down into a document to find isolated errors; entries have to be read in their proper context. There is also no concept of 'staleness' in relation to discovery; time limits alone impact HMRC's ability to make a discovery assessment.
- **What can I take away?**
HMRC must act rationally, must not abuse its powers and may be required to respect any legitimate expectation which they have created. If they fail to do so, the taxpayer may seek relief in judicial review proceedings. Such matters are to be referred to legal experts extremely promptly.

Management Act 1970 s 9A, it considered that the carry-back claim had been made outside the tax return (albeit on the tax return *form*). As subsequently confirmed by the Supreme Court in the case of *Cotter* [2013] UKSC 69 (which involved the same avoidance scheme), such carry-back claims should ordinarily be enquired into using the provisions in Taxes Management Act 1970 Sch 1A and this is what HMRC did in August 2009.

However, *Cotter* itself made clear that Sch 1A was not to be used in every case – it depended on the precise facts of the case. *Cotter* has proved to be an exception and it appears that most taxpayers (including Mr Tooth) had put themselves in a situation whereby the correct approach was in fact to use the s 9A provisions. (This was because these taxpayers had taken the additional step to give effect to the tax relief they were claiming by reducing the amount of their self-assessed tax liability. Since a taxpayer's self-assessment forms a part of their tax return, any HMRC challenge must be via s 9A.)

Accordingly, in relation to these taxpayers (including Mr Tooth) HMRC made a series of 'discoveries' in or around 2014 that it had embarked upon its enquiries on the wrong statutory basis. To remedy this, it issued a number of discovery assessments to capture the tax that it ought to have pursued via s 9A.

Because of the timing of these assessments (more than six years after the tax year to which the assessments related), HMRC needed to prove more than merely that the tax was due. It needed to show that the original under-assessment in the return had been brought about deliberately, either by Mr Tooth or by a person acting on his behalf.

The staleness argument related to the fact that HMRC had previously taken the view that Mr Tooth's return was incorrect and that insufficient tax had been paid – this view was apparent when it opened the flawed Sch 1A enquiries. Accordingly, the discovery assessments made over four years later were based on discoveries that, in the meantime, had long gone stale.

The Supreme Court's decision

The case came before Lords Briggs, Sales, Reed, Leggatt and Burrows. The judgment was written jointly by Lords Briggs and Sales, and endorsed by the remaining members of the panel. Its opening paragraph sets out clearly and succinctly the context in which discovery assessments are made, how they fit in with the enquiry process and the main time limits that govern the making of discovery assessments.

On the question of a deliberate inaccuracy, the Supreme Court agreed with the First-tier and Upper Tribunals, but disagreed with the Court of Appeal. The court held that the question as to whether a document is inaccurate can be answered only by looking at the document as a whole. Contrary to the Court of Appeal's view, the use of the wrong boxes was cancelled out by the full and frank explanation elsewhere on the return as to what was being achieved and why.

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The Supreme Court disagreed with both decisions reached by the Court of Appeal, yet nevertheless dismissed HMRC's appeal.

On the question of staleness, however, the court upheld HMRC's position and concluded that the statutory regime imposed no requirement on HMRC to issue a discovery assessment promptly after a discovery was made, but for the ordinary four year, six year and 20 year time limits. Thus, subject to underlying public law principles considered further below, there was nothing to stop HMRC making a discovery of a deliberate under-assessment soon after the tax return was received, but failing to make an assessment for another (say) 15 years. In the same vein, the court said it did not matter how many different officers made the relevant discovery: as long as the officer making the assessment believed it to be justified, that was all that the statute required.

Commentary

It will be noted that, on the two issues before it, the Supreme Court disagreed with both decisions reached by the Court of Appeal, yet nevertheless dismissed HMRC's appeal. This is because HMRC needed to win on both points and the Supreme Court and the Court of Appeal simply disagreed as to which point was to be won by Mr Tooth and which would be decided in HMRC's favour. Nevertheless, the point does illustrate the fact that all litigation is unpredictable.

In relation to the deliberate inaccuracy point, the court's decision restores the law to what it had always been assumed to be. One part of the court's reasoning was the fact that the tax return contains white spaces, with the express purpose of permitting taxpayers to provide additional context for the entries made (or perhaps not made) elsewhere on the return. HMRC tried to dismiss the relevance of these white spaces on the basis that they are not analysed by HMRC's computer which initially reviews the returns when submitted. The court, however, was not impressed. As the judgment says:

> 'If they [HMRC] sensibly include ample white spaces in their approved form of online returns so as to ensure that the taxpayer is not constrained by the limitations of the boxes for figures from making a correct and complete return, then they cannot thereafter assert, for the purpose of advancing a non-contextual interpretation of one or more boxes, that their computer cannot read what is written on the white spaces.'

However, this then leads to the question as to what taxpayers should do when submitting returns (particularly VAT returns) that do not allow for any similar explanations. My provisional view is that an explanatory letter sent to HMRC at broadly the same time as the return is submitted should suffice. However, HMRC's retreat from geographical postal addresses makes even that precaution increasingly difficult to implement in practice.

As someone who has been involved in many of the cases which established the principle of staleness, I cannot fail to be a little disappointed that the concept has been now discredited by the highest court of the land. If I might indulge myself a little, I note that the Upper Tribunal in

Pattullo v HMRC [2016] UKUT 270 had concluded that 'the requirement for the discovery to be acted upon while it remains fresh appears to me to arise *on the natural meaning* of s 29(1) itself' (my emphasis). Now, the Supreme Court is telling us that 'the idea that a discovery which qualifies as such should cease to do so by the passage of time … is *unsustainable as a matter of ordinary language'* (again, my emphasis). Tax law is known to be confusing but matters are not helped when two completely conflicting opinions are both justified on the basis that the statutory language is clear.

However, the decision is not necessarily bad news for taxpayers who wish to challenge HMRC delays in dealing with their cases. Indeed, I have seen many taxpayers latch onto the concept of staleness and argue that this might be a trump card for them. However, in most such cases, the taxpayers have been subject to a statutory s 9A enquiry which has not been actively progressed by HMRC for many years. The former concept of staleness was relevant only to discovery assessments and, indeed, was based on the lower courts' and tribunals' interpretation of the word 'discover'. Accordingly, the knock-out argument that might have been deployed in a discovery case was unavailable to those taxpayers who were within the enquiry regime. However, the Supreme Court's judgment might now give such taxpayers a new glimmer of hope. All HMRC investigations (whether ultimately concluding with a closure notice or with a discovery assessment) must be conducted in accordance with public law principles. As the Supreme Court concluded:

> '[HMRC] must act rationally, must not abuse their powers and may be required to respect any legitimate expectation which they have created. If they fail to do so, the taxpayer may seek relief in judicial review proceedings.'

The law is now clear: one does not drill down into a document to find isolated errors; instead, entries on documents have to be read in their proper context.

The Supreme Court commented that a deliberate decision by HMRC not to assess promptly might amount to irrationality which might in turn provide the basis for a judicial review claim; however, it declined to explore in detail the practical implications of those principles. In my view, it was wise to take that approach. Nevertheless, it will not surprise me if the next few years see a trickle of cases where staleness arguments will be given a fresh airing in judicial review claims.

What to do next

For any advisers dealing with cases where HMRC is alleging deliberate conduct, particularly in the context of a penalty assessment or to justify a late discovery assessment, such cases should now be reviewed in the light of the Supreme Court's decision. The law is now clear: one does not drill down into a document to find isolated errors; instead, entries on documents have to be read in their proper context. Any alleged deliberateness has to relate to the inaccuracy itself and not merely the decision to make the relevant entry on the document.

So far as staleness is concerned, tax advisers must now consider whether the facts justify commencing a judicial review. If so, such matters must be referred to legal experts extremely promptly, because (in practice) judicial review claims are subject to far more stringent time limits than those ordinarily encountered in tax dispute resolution.

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KEY POINTS

- **What is the issue?**
Brexit has significant implications on the UK international tax rules. While the VAT rules had been a pan EU tax, direct taxes had mainly remained within the competency of member states. They have nevertheless been significantly impacted by the UK leaving the EU.
- **What does it mean for me?**
A number of issues need to be considered post Brexit in terms of EU directives, including the EU Parent and Subsidiary Directive, the EU Royalties and Interest Directive, the EU Merger Directive and EU Directive of Administrative Cooperation, as well as Common Reporting Standards.
- **What can I take away?**
Activities and transactions which have been taken for granted for many years now will need to be considered in detail, in particular to determine whether there will be a withholding tax deduction on an income flow.

A legislative tangle

Gary Ashford considers the implications that the UK's departure from the EU will have on its international tax rules

It feels like a lifetime ago since the UK left the EU at midnight on the 31 December 2020, having secured a free trade agreement. This followed four years of political discussion, several Parliaments, two prime ministers and what amounted to two withdrawal agreements.

There is no doubt that Brexit has significant implications on the UK international VAT rules. Prior to the UK's exit, VAT was (and continues to be for the 27 member states remaining in the EU) a pan EU tax, administered nationally, by virtue of the VAT Directive. The details of the separation are compounded by the state of VAT in Northern Ireland and we propose to deal with this in a future article.

In contrast, direct taxes remained within the competency of member states, subject to Directives agreed unanimously by the member states. Direct taxes must also comply with the EU Treaties (especially the four freedoms) and meet EU state aid rules. The UK leaving the European Union means that we are no longer subject to the EU Directives, the EU Treaties and the EU state aid rules (although there are state aid limits in the free trade agreement).

A number of significant cases over the past years have demonstrated the significance of EU membership in terms of UK direct taxes. Most recently, the EU Commission has claimed that certain national tax provisions and rulings amount to selective advantages under EU state aid rules under the Treaty on the Functioning of the European Union (TFEU) Article 107(1). In 2019, the Commission decided that aspects of the UK's controlled foreign companies' regime breached state aid rules (see bit.ly/3guxgOp) and HMRC sought recovery of the state aid element. The same goes for reliefs, particularly some of the UK research and development reliefs and enterprise investment scheme reliefs for small and medium sized companies and their investors.

This article sets out some of the issues that need to be considered post Brexit in relation to the EU tax directives.

EU Parent and Subsidiary Directive

This directive (90/435/EC) was introduced on 1 January 1992.

The directive prevents the imposition of withholding taxes on dividends paid by a company resident in a member state to a company in another member state where the company receiving the dividend held at least 25% of the capital of the company paying the dividend. The directive effectively overrode any withholding tax provisions between the two countries in any double taxation treaty. The rules extended to member states who joined the EU after 1 January 1992, from the date of their accession to the EU.

The UK leaving the EU brings the UK's compliance with the EU Parent and Subsidiary to an end. From 1 January 2021, therefore, we must turn again to any double tax treaties in place between the UK and the relevant country.

In terms of any dividends paid by UK companies, the UK abolished advance corporation tax (ACT) from 6 April 1999 and with that any withholding tax on dividends. This remains the case today. Therefore, after departure from the EU, a UK company paying a dividend to a parent company anywhere in the EU will continue to pay that dividend gross and without any deduction of income tax. This position is also the case on the payment by a UK company to an individual shareholder.

Therefore, consideration of the deduction and withholding of income tax in relation to dividends from a UK perspective will only become an issue when *received* by the UK parent company or by a UK resident individual shareholder.

Where an EU resident company (or for that matter a company resident anywhere outside the UK) is looking to pay a dividend to a UK company or individual and the country of that company's residence has rules to withhold income tax on that dividend, there may be scope to have the dividend paid gross, with the agreement of the tax authority of the paying company. However, this only applies where an effective double taxation agreement exists between the country of payment and the UK.

EU Royalties and Interest Directive

The EU Royalties and Interest Directive prohibited the withholding of income tax on the payment of certain royalties or interest between associated companies, resident in different member states.

Unlike the position for the payment of dividends, mentioned above, the UK does in principle withhold income tax on the payment of interest and royalties. Therefore, with the UK no longer subject to the terms of this directive, any payment of interest or royalties will require careful consideration to determine whether income tax will need to be deducted and paid over to HMRC. The rate of income tax where required to be withheld is 20%, unless reduced by virtue of the terms of a specific double tax treaty.

Interest

It is important to appreciate that the UK does not withhold income tax on the payment of every type of interest. There are a number of exemptions, including for payments made by banks and building societies. The deduction of income tax is only applied on the payment of yearly interest.

Although there is no statutory definition of yearly interest, there is long held case law on the point.

At its simplest, yearly interest is interest on a loan which does not last longer than 12 months. However, as with many financial services matters, the devil is in the detail and the structure of a debt cannot be without complication. Under UK rules, the deduction of income tax is required at the point of payment, so there is no requirement at the point that interest is accrued or capitalised. That said, it is important to appreciate that there are separate tax rules on capitalised interest, which could accelerate the actual taxing point, but not yet trigger withholding tax if it has not yet been paid.

Royalties

The position on the deduction of income tax on the payment to royalties to non-residents has seen significant change and tightening by the government in recent years. In particular, Finance Act 2016 introduced a number of changes to the withholding of income tax rules, covering the following:

- anti-treaty shopping provisions (this was ahead of the implementation of BEPS Action 6 through the Multilateral Convention);
- broadening the definition of royalty for the withholding tax rules; and
- changing the rules to determine the UK as the source of the royalty.

The anti-treaty shopping rules were introduced in line with the BEPS Action 6 principal purpose test, so will come into play (via Income Tax Act 2007 s 917A) where there is a tax advantage. The rules only apply for connected companies. Where the rules apply, they will prevent any deduction from corporation tax of any tax withheld.

The third point above is of particular interest, even though it is not specifically linked to Brexit. The UK territorial rules on miscellaneous income charge apply to UK tax income (including receipts from intellectual property) arising to a UK resident whether or not it is from a source in the UK. The rules also charge non-residents to UK tax on income if it is from a UK source. The 2016 changes have extended the rules on UK sources to royalties made in connection with a trade carried on through a permanent establishment in the UK.

Just as in many developed countries around the world, the taxation of intellectual property is of particular interest to the UK. It has been the subject of various developments in recent years, including the changes mentioned above and below, and the departure from the EU is likely to see an increase of activity in this area in the UK which may or may not reflect the developments occurring within the EU and as part of international agreements under the BEPS Inclusive Framework.

As well as the introduction of the diverted profits tax in 2015, the UK introduced the digital services tax from April 2020 (a 2% tax, where a group has global turnover of £500 million and UK sales linked to UK users of £25 million).

Less well appreciated are the rules introduced from April 2019 to tax offshore receipts in respect of intangible property (ORIP). The ORIP rules seek to tax foreign residents in the UK to the extent that intangible property is used directly or indirectly to enable, facilitate or promote UK sales of goods or services.

The withdrawal from the EU Royalties and Interest Directive will bring additional focus to payments made and received, and the underlying tax liabilities, as well as the direct impact in relation to withholding tax. This has been done by way of specific legislation within Finance Bill 2021, to take into account the specific tax exemptions held within various parts of the UK tax code.

EU Merger Directive

The EU Merger Directive was introduced on 23 July 1990 (Directive 90/434/EEC) to provide for a common system of taxation applicable to mergers, divisions, partial

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divisions, transfers of assets and exchanges of shares concerning companies of different member states and to the transfer of the registered offices between member states. The rules were broadened in 2005.

The main effect of the Directive was to reduce barriers to group reorganisations within the EU, including limiting any capital gains risks on such reorganisations. The UK already had an extensive scheme of reliefs and thus the impact of the Merger Directive was often more relevant to possible tax charges in other member states.

I do not intend to go into the micro detail of the EU Tax Merger Directive and the loss of access to it as a result of Brexit; however, it will suffice to say that even though the UK has not repealed the legislation, as the UK is no longer a member state of the EU, EU members will deny access to the benefits to UK companies.

EU Directive of Administrative Cooperation (DAC)

The DAC is one of the key tools EU member states use to capture and exchange information automatically. In 2018, the sixth iteration of the DAC was introduced, implementing the BEPS Action 12, Mandatory Disclosure Reporting (MDR).

Under DAC 6, EU intermediaries are required to identify and report upon cross border arrangements which fall within a number of hallmarks (A to E). For some, reporting is restricted to those where a tax advantage is wholly or mainly the main purpose for those arrangements; i.e. the main benefit test.

On 29 December 2020, HMRC on behalf of the UK government confirmed that it will limit the implementation of DAC 6 to hallmark D only. At the same time, the UK will look to adopt disclosure rules based on the recommendations in BEPS Action 12. So what does hallmark D cover?

First of all, it is important to recognise that Hallmark D is not linked to the main benefit test, and so if arrangements are caught within the hallmark D conditions, they will be reportable regardless. But it is not the case that the motivations for the arrangements are ignored, because there is no link to the main benefit test (DAC 6 reports upon aggressive tax planning).

Common Reporting Standards (CRS) avoidance arrangements

The automatic exchange of financial account information

The first reporting requirement is on arrangements which have the effect of undermining the reporting obligation on the automatic exchange of financial account information, including with third countries. (This includes CRS reporting, but potentially could go further into other automatic exchange of information (AEOI) agreements.) The specific arrangements referred to include:

(a) the use of an account, product or investment that is not, or purports not to be, a financial account, but has features that are substantially similar to those of a financial account;
(b) the transfer of financial accounts or assets to, or the use of, jurisdictions that are not bound by the automatic exchange of financial account information with the state of residence of the relevant taxpayer;
(c) the reclassification of income and capital into products or payments that are not subject to the automatic exchange of financial account information;
(d) the transfer or conversion of a financial institution or a financial account, or the assets therein, into a financial institution or a financial account or assets not subject to reporting under the automatic exchange of financial account information;
(e) the use of legal entities, arrangements or structures that eliminate or purport to eliminate reporting of one or more account holders or controlling persons under the automatic exchange of financial account information; and
(f) arrangements that undermine, or exploit weaknesses in, the due diligence procedures used by financial institutions to comply with their obligations to report financial account information, including the use of jurisdictions with inadequate or weak regimes of enforcement of anti-money laundering legislation or with weak transparency requirements for legal persons or legal arrangements.

Whilst this is not within the DAC itself, the OECD guidance refers to the test of whether arrangements are CRS avoidance arrangements where 'it is reasonable to conclude that it is designed to have, or marketed as having, the effect of circumventing CRS legislation'.

In terms of the test of reasonableness, the OECD guidance states that the test will be passed 'where a *reasonable person* in the position of a professional adviser with a *full understanding* of the terms and consequences of the arrangements and the circumstances in which it is designed, marketed, and used, would come to this conclusion [CRS circumvention]'.

Opaque offshore structures

The second reporting category is for arrangements involving non-transparent legal or beneficial ownership chains involving the use of persons, legal arrangements or structures:

(a) that do not carry on a substantive economic activity supported by adequate staff, equipment, assets and premises;
(b) that are incorporated, managed, resident, controlled or established in any jurisdiction other than the jurisdiction of residence of one of the beneficial owners; and
(c) where the beneficial owners are made unidentifiable.

As the UK amended its International Tax Compliance 2015 Regulations by the appropriate 2020 EU Withdrawal Regulations on 29 December 2020, the UK will continue to exchange hallmark D information with the EU.

Finally, on the point of DAC 6, it is worth appreciating that if the cross border arrangements are involving another (non-UK) EU member state, full reporting will still apply via any EU located EU intermediary, even though in the UK we will only be focusing on hallmark D.

HMRC will be consulting on the UK moving to OECD Mandatory Disclosure Regime reporting, which will be very similar to hallmark D reporting as it stands. If and when introduced to UK law, that will expand hallmark D reporting to all OECD member countries, and third countries agreeing to implement the Mandatory Disclosure Regime.

Conclusion

An interesting point will be whether the UK adapts its tax policy after EU membership, to set itself out as a great place to invest and do business, particularly in the new developing industries such as tech, green and bioscience. A significant aspect of much of the funding in those industries comes from grants and tax incentives, and we need to await how exactly state funding will be approached and implemented in the UK as they are freed from the restraints existing within the EU.

Finally, of note is the fact that the UK has specifically legislated to withdraw the key freedoms of the EU, notably freedom of establishment and freedom to provide services. No such legislative action has been taken in relation to the free movement of capital. Presumably, this is because that freedom is not limited to EU member states but extends to third countries. There are therefore questions around the continued access to this freedom for UK businesses and companies, which may provide a route into the EU single market. Previous commentaries on the thinking of freedom of movement of capital did indeed focus on the benefits to the EU of encouraging capital investment from outside its borders.

Blurring the lines

Until recently, there was a clear distinction in EU law between economic and business activities. *Michael Taylor* and *David Anderson* ask what kinds of activity are now within the scope of VAT following recent CJEU rulings

KEY POINTS

- **What is the issue?**
Until recently there was a clear distinction in EU law between 'economic activity' and 'business activity'. A recent CJEU judgment in *Wellcome Trust Ltd*, however, has blurred that distinction.
- **What does it mean for me?**
With the UK VAT regime no longer bound by EU law, there could be considerable uncertainty as to what 'business' really means for UK companies. This *could* mean that certain activities now fall within the scope of VAT, whereas previously they did not.
- **What can I take away?**
Given the disparity in the definitions of 'business', depending on whether it appears in UK or EU legislation, this could cause confusion about how companies can ensure that they comply with their VAT accounting obligations in the post-Brexit era.

Until recently there was a clear distinction in EU law between 'economic activity' and 'business activity'. However, a recent judgment of the Court of Justice of the European Union (CJEU) has blurred that distinction. With the UK VAT regime no longer bound by EU law, there could be considerable uncertainty as to what 'business' means for UK companies.

Economic activity

Economic activity is the concept on which the whole of the VAT system turns. The Principal VAT Directive 2006/112/EC defines economic activity as 'any activity of producers, traders or persons supplying services', including the 'exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis'. Anybody engaged in economic activity is a 'taxable person', and it is a taxable person 'acting as such' who is obliged to charge VAT on his supplies of goods or services. To this end, the CJEU has repeatedly held that a 'taxable person acts as such where he acts for the purposes of his economic activity'; for example, see *Klub OOD* (Case C-153/11).

Conversely, any activity that is undertaken by a taxable person which is *not* economic activity is *non-economic* activity, and this activity falls outside the scope of VAT altogether. Well-known examples of non-economic activity include buying, holding and selling shares, making charitable donations, and undertaking non-commercial construction work.

Business activity

The EU law concept of 'business activity', however, is subtly different. The judgment of the CJEU in *VNLTO* (Case C-515/07) explained that a taxable person is engaged in *business* activity where it is acting in respect of its 'main corporate purpose'.

It therefore follows that 'business activity' is a slightly wider concept than economic activity, and that a taxable person's economic activity *and* his non-economic activity can both constitute *business* activity so long as such activities serve the taxable person's corporate purpose.

This subtle distinction between 'business' and 'economic' was reaffirmed by the CJEU in *Landkreis Potsdam-Mittelmark* (Case C-400/15). The court stated that 'a distinction is made between economic and non-economic activities according to *criteria that are different* from those distinguishing between business use and use for non-business purposes, in particular for private purposes'.

Blurring of the lines

Until recently, therefore, there was a clear distinction in EU law between 'economic activity' and 'business activity'. A recent judgment of the CJEU, however, has blurred that distinction, and with the UK VAT regime no longer bound by the provisions of the EU's Principal VAT Directive or the CJEU's decisions on VAT, there could be considerable uncertainty as to what 'business' really means for UK companies. This *could* mean that certain activities now fall within the scope of VAT, whereas previously they did not.

Wellcome Trust Ltd: a taxable person acting as such?

In its recent decision in the case of *Wellcome Trust Ltd* (Case C-459/19), the CJEU considered whether the phrase 'taxable person acting as such' in Article 44 of the Principal VAT Directive should have the same meaning – that is,

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a taxable person who is engaged in economic activity – as it has everywhere else in the Directive, and in particular Article 2 (which sets out the scope of VAT as applying to, inter alia, 'the supply of services for consideration within the territory of a member state by a taxable person acting as such'). Perhaps surprisingly, the court concluded that the phrase in fact referred to *business* and not *economic* activity.

The Wellcome Trust is a charitable trust which makes grants for medical research. It funds these grants through a range of investments, in respect of which it receives investment management services from both inside and outside of the EU. The Trust sought to recover VAT it had accounted for under the reverse charge mechanism on supplies of investment management services received from outside of the EU. The basis for its claim made under VAT Act 1994 s 80 was that, in an earlier decision (Case C-155/94), the ECJ (as it then was) had held that the Trust's investment activities did not fall within the scope of 'economic activities' for the purposes of VAT and, accordingly, the Trust was not a 'taxable person acting as such'.

Article 44 of the Principal VAT Directive sets out that the place of supply of services to a 'taxable person acting as such' is the place 'where that person has established his business'. The Trust considered that, since (per its earlier decision) it was not a taxable person acting as such, Article 44 did not apply and the place of supply was the place where the supplier belonged. Therefore, for services received from non-EU investment managers, reverse charge VAT should not apply.

In its decision, the court did not consider the *travaux préparatoires*. (These are the working documents that encapsulate the discussions of the EU institutions when creating legislation such as the Principal VAT Directive, and which are often used as interpreting aids by courts as they can show the intentions of these institutions.) In the Trust's submission, these showed that when the EU legislature was drafting Article 44, it not only rejected the 'business versus private' distinction, but also intended explicitly that 'the taxable person *has to act as a taxable person* in order to apply this [Article 44] rule'. Those documents had been informative to the First-tier Tribunal in its earlier decision granting the Trust's appeal. (The Upper Tribunal later referred the matter to the CJEU on HMRC's appeal.)

The CJEU disagreed with the Trust's analysis, after applying a close textual analysis of the provisions. It held that 'taxable person acting as such' in Article 44 had a different meaning to Article 2(1). The court considered that ordinarily the EU legal order required 'unity and consistency', such that 'the terms used by the measures adopted in the same sector must be given the same meaning'. However, it found that was not the case 'where the EU legislature has expressed a different intention' at [35].

The Court discerned a contrary intention in Article 43, which set out 'an extended and derogating definition of the concept of "taxable person" solely for the purpose of applying the rules concerning the place of supply of services' at [37]. Article 43(1), it held, provides that for the purposes of applying the place of supply rules:

> 'a taxable person who carries out both taxable supplies of services, within the meaning of Article 2(1) of that directive, and activities "that are not considered to be taxable supplies of … services in accordance with [that provision] shall be regarded as a taxable person in respect of all services rendered to him".' [37].

It concluded that Article 44 represented an exception to the general meaning of that phrase. Given that it was common ground that the Trust carried out its activities for business, albeit non-economic, purposes, it was caught by Article 44 and the supplies were accordingly within the scope of EU VAT. In doing so, the CJEU held that the fact that it had previously held that the Trust's investment was akin to a private investor was not the same as meaning that it was doing so on a private basis.

This begs the question: where else in the Principal VAT Directive and in EU law more generally does the phrase 'taxable person acting as such' now refer to business activity and not economic activity?

What does this mean for UK companies?

The situation in the United Kingdom is even more complicated because the UK Parliament has used the term 'business' to refer to both business activity *and* economic activity. For example, the VAT Act 1994 s 94 transposes and defines the Principal VAT Directive's concept of economic activity as 'business'. Indeed, the phrase 'economic activity' does not appear even once in the VAT Act 1994.

Since 1 January 2021, when the United Kingdom completed its withdrawal from the European Union, the Principal VAT Directive has ceased to be the fount of VAT law (except, perhaps, in Northern Ireland). Accordingly, one might think that the distinction between business activity and economic activity is irrelevant.

However, if the concepts of economic activity and business activity are distinct – *and they appear to be* – and if UK laws enacted before 2021 must be construed as giving proper effect to the provisions of the Principal VAT Directive (as required by the Brexit legislation), where does this leave us?

The UK courts and 'economic activity'

In the case of *Longridge on the Thames* [2016] EWCA Civ 930, the Court of Appeal considered the nature of 'economic activity'. This is now the senior UK authority on this issue. It was common ground between the parties in this case – and the Court of Appeal confirmed at [104] – that 'business' in the VAT Act 1994 meant the same as 'economic activity' in the Principal VAT Directive. But what was the test for this concept?

At [109] of its judgment, the court laid out a series of principles which it derived from the case law of the CJEU and the UK courts. It found that economic activity occurs, in summary, where:

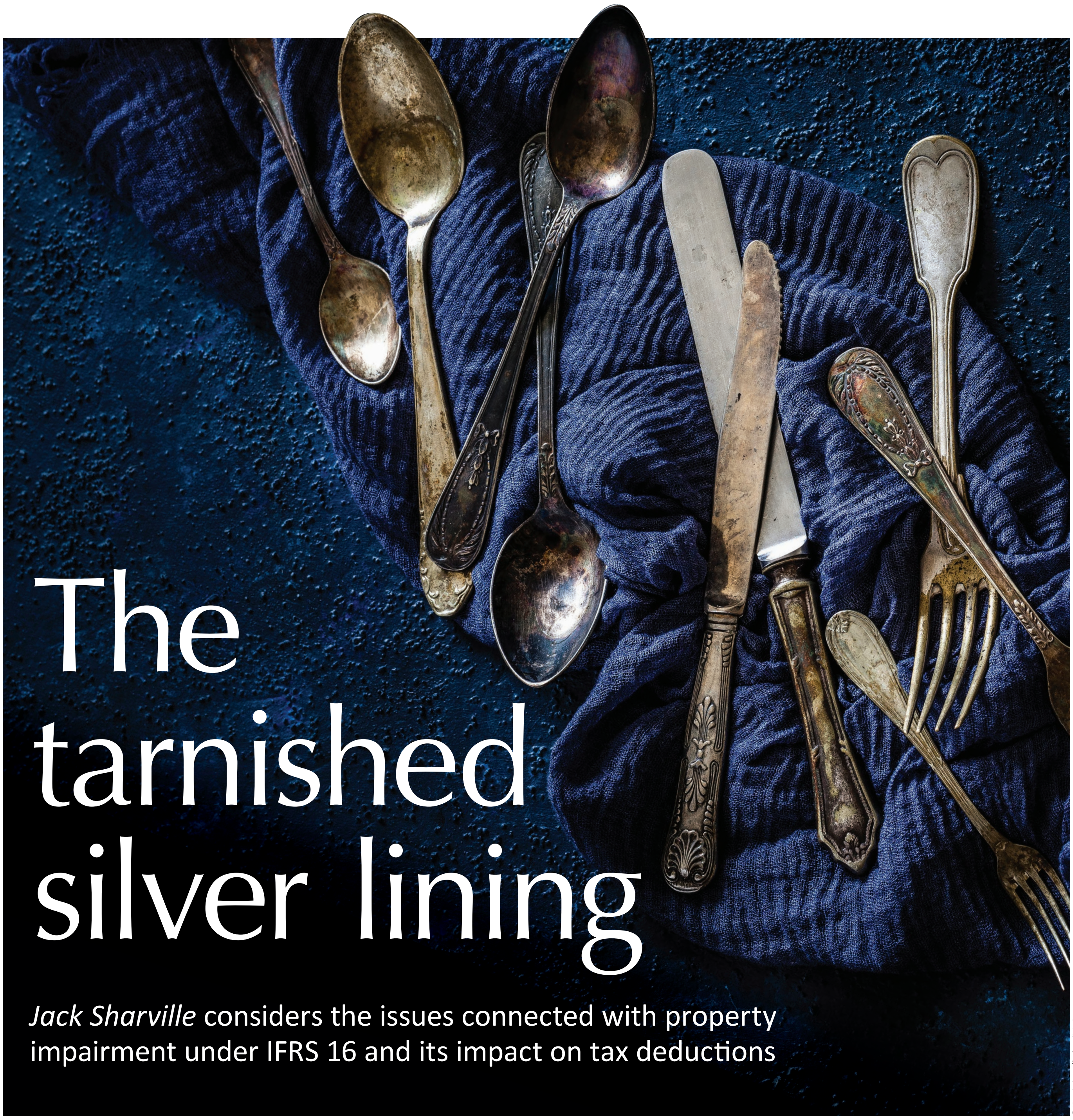
- supplies of goods and/or services are made for a consideration;
- there is a direct link between the consideration and the supplies; and
- the supplies for consideration are made on a permanent basis.

Further, the Court of Appeal held that the activity of a company can be 'economic' in nature even if its purpose is charitable or not-for-profit, and even if the company's objective is subjectively non-commercial. It also held that the test is an objective one.

Questions for UK companies

So, what does this mean for UK companies? Given the disparity in the definitions of 'business', depending on whether it appears in UK or EU legislation, can we be sure that 'business' in the VAT Tax Act 1994 means 'economic activity' in the *Longridge* sense, or 'business' in the *VNLTO* sense of corporate purpose encompassing non-economic activity?

This could cause confusion about what kinds of activities are subject to VAT and how companies can ensure that they comply with their VAT accounting obligations in the post-Brexit era.



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The tarnished silver lining

Jack Sharville considers the issues connected with property impairment under IFRS 16 and its impact on tax deductions

KEY POINTS

- **What is the issue?**
IFRS 16 Leases are relatively new to balance sheets. What happens for tax when they are impaired?
- **What does it mean for me?**
Impairments to leases are likely in many companies considering changes in consumer habits following lockdown, and it is important to treat them correctly for tax.
- **What can I take away?**
If the accounting is right, the tax follows it, except where capital costs are being impaired.

As the lockdown changes the way people work, rest and play, the value of real property must also be reconsidered. Most commercial buildings, from shops to warehouses, to bars and restaurants, have been impacted in one way or another. IAS 36 Impairment of Assets requires that companies conduct impairment tests on those properties. Clearly, where the value of a property has been severely impacted, this will in turn also impact the business's income statements and balance sheet. But why should the tax professional take note?

Not so very long ago, an impairment to land or buildings was only a tax reporting issue, rather than a tax compliance one. The impairment would be capital in nature and would not be deductible against taxable business profits, treated similarly to depreciation. However, for periods beginning on or after 1 January 2019, companies that report under International Financial Reporting Standards (IFRS) or the FRS 101 Reduced Disclosure Framework were required to follow IFRS 16 Leases.

This meant that most property leases that had previously been accounted for as operating leases (known as 'off balance sheet') would now be accounted for in a similar way to existing finance leases and the distinction between the two would no longer be required for accounting purposes.

The lessee is required to recognise:

- a right of use asset, representing its right to use the underlying leased asset; and
- a lease liability, representing its obligation to make lease payments.

To understand the tax treatment of an impairment to that right of use asset, one should first consider the tax treatment of a right of use asset without impairment.

Tax deductions for lessees of IFRS 16 Leases

Where there is an IFRS 16 lease, the profit before tax will include depreciation of the right of use asset and the interest expense on the lease liability. The accounting works such that this is, across the life of the lease, equivalent to the lease rental costs. Therefore, HMRC agrees (BLM51005) that these are deductible against trading profits, and that no adjustment to trading profits needs to be made.

From a practical perspective, this means that depreciation of right of use assets must be able to be separated from depreciation of other assets, so that it is not inadvertently disallowed. The exception is where the right of use asset includes any capital costs; for example, the capital element of a lease premium, or any capital element of a predicted dilapidations expense. These should be added back as they accrue.

Impairment of a right of use asset

Where a right of use asset is impaired, then tax will follow the accounts. This means that a deduction can be taken against taxable profits of a trade in respect of the impairment, to the extent that it does not relate to capital costs as described above. HMRC concurs with this treatment in BLM51020. This merely accelerates the deduction, and typically rental payments will still be made for the remaining years for which no further deduction is available.

It should be noted that the accounting tests for impairment are stringent. If the impairment does not follow IAS 36, then HMRC is likely to challenge the deduction, effectively reinstating the asset for tax purposes.

Is this silver lining tarnished?

At first, this accelerated deduction may seem like a fillip of good news to the unfortunate business having to impair their properties. One would typically be sure that jam today trumps jam tomorrow. However, when considering the net present value of the tax deduction, it is important to remember the rising tax rate.

An upfront deduction of 19% of an impairment might be worth less to a business than 25% of right of use depreciation further down the line, depending upon their cost of capital. Similarly, a company that is making losses – not unlikely where they are impairing assets – might create tax losses that will be subject to the loss restriction rules.

Is there a sting in the tail?

Another thing to consider is that whilst the right of use asset is reduced by the impairment, the lease liability remains. Typically, this would be extinguished by the payment of cash, from balance sheet to balance sheet.

However, in light of the poor performance of this asset, it is not unlikely that a business might seek to terminate the lease early. That lease liability will then go to the income statement as profit, reduced by any exit premium paid. The profit from the reversal of the lease liability element is taxable, but any exit premium is not deductible. This is because case law has found an exit premium to be capital in nature (see *Mallett v Staveley Coal & Iron Co Ltd* (1928) 13 TC 772 and other cases).

Taking a step back, overall, this seems reasonable. The deduction for the impairment of the right of use asset was given on the basis of it being representative of the rental payments. If a subsequent event means the rental payments no longer have to be made, then it cannot be unexpected that the deduction given is, in effect, clawed back. The accounting does this without a tax adjustment being required. That lease exit premiums are not deductible is something all businesses have had time to come to terms with!

Again, a reasonably likely downside particular to the timing of events might mean that a business receives a significant tax deduction on an impairment whilst the tax rate is at 19%, only to have a taxable profit arise on surrender at 25%.

Difference to IAS 17: Is this anything new?

Under IAS 17 (and FRS 102), many of the leases described above would be treated as operating leases. There would be no right of use asset, nor would there be a lease liability. However, under IAS 37 a company would be required to consider whether there was an onerous contract.

Where that provision is made in line with GAAP, it is tax deductible, as demonstrated by *Herbert Smith v Honour* [1999] STC 173. Similarly, where an onerous provision is reversed, the result is taxable, so the 'sting in the tail' point remains.

There is therefore no difference in the tax treatment of an impairment of a right of use asset or providing for an onerous lease. But do the accounting tests differ? For a provision to be made, IAS 37 defines an onerous contract as 'a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it'.

In effect, this is a similar test to the impairment test for an IFRS 16 right of use asset. However, there are a few differences:

- Under IFRS 16, a lease might form part of a cost generating unit (CGU), along with other assets, or perhaps will be separately allocated across several CGUs. This might prevent an impairment where an onerous contract might exist; or may create impairment where no onerous contract exists.
- Under IAS 17, the IAS 37 definition tended to focus on a lease contract-by-contract basis. There is an argument that trading losses might arise not just from that lease contract, but also from other costs such as labour or goods. This could be the cause of the perception that onerous contracts on leases can only arise where a property is made vacant. This may mean that an onerous contract provision is less likely than an impairment.
- Regardless of the rules, most tax professionals considering accounts prepared under IFRS are likely to be reliant on the financial statements they receive and the accountants that prepare them. It is therefore useful to remember that most accountants will look at what is in front of them (i.e. their balance sheet assets), rather than what is not, which is a potentially onerous lease. This means it is possible for an impairment under IFRS 16 to be more likely than a provision under IAS 17.

Conclusion

The impairment of a right of use asset, as long as it is in line with GAAP, is deductible. This can accelerate tax deductions, but perhaps that's not quite always as good as it sounds!

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Learn to adapt; adapt to learn

Phoebe Mak and *Iffat Ahmad* share their reflections on the impact that lockdown has had on junior tax associates and how we can all develop our working practices

It's been over a year since we left our office desks for dining tables, swapped sushi bars for home cooked meals and adventures abroad for local walks. In the beginning, it seemed as though there were endless challenges and no silver linings, but with time we have adapted and thrived in different ways. Our article aims to highlight the key challenges faced by junior members of the team. We also set out our hopes for future working practices in light of the possible return to the office later this summer.

The workspace conundrum

Unsurprisingly, the first major hurdle was adapting to the change in workstation. In the office, there was a clearly established place at which we could work. A large proportion of junior associates live in small or shared spaces and don't have a home office or dedicated room in which to establish a permanent working station. Many began to work at the dining table but, whether you lived with flatmates or had returned to the family home, this was problematic when others wanted to eat or socialise. Several associates ended up working on their bedroom floors or coffee tables and it became a real point of stress. The uncertainty of the duration of the pandemic made us hesitant to seek more permanent arrangements.

Living and working at home also resulted in additional caring responsibilities for some junior associates, such as supporting vulnerable family members or assisting with childcare for nieces and nephews. It's important to share these additional demands on your time with your team. There may be a general assumption that you are able to respond at any time, so they don't understand when and why you may not be available.

Teambuilding and networking

Losing the camaraderie amongst colleagues in the office was also challenging. For junior associates, particularly new joiners and newly qualified associates, going for coffees and lunches is a key method in building relationships with people in your team. In many businesses, senior management, social committees and secretarial teams made a conscious effort to keep team morale high and integrate new joiners. But there is a personal element to face-to-face conversations that perhaps is not possible to replicate virtually.

However, there has arguably been more opportunity to connect with people in the wider firm. From the beginning, regular departmental and team calls have allowed us to catch up and kept us updated with the firm's changing policies and government guidelines. Senior management have shared their thoughts and experiences in town hall meetings and company emails. These have made us feel more connected as we navigate the pandemic together. It also paved the way to open conversations with individuals you would not have ordinarily come across in the office, and many firms have made an effort to encourage people to take some time to chat and socialise with other employees, for example by introducing virtual coffee mornings.

Networking with junior associates at different firms has been more of a challenge, though. Industry events were cancelled early on, and although they have been replicated online they have not been structured in a way to allow collaboration. At a conference, you would normally mingle with other attendees during the breaks or during breakout sessions. Although breakout rooms could have offered some of these opportunities, several of the virtual conferences we attended included breaks but not an actual breakout room. This was probably a calculated decision to prevent screen fatigue but the networking opportunity was lost.

This has highlighted the need for online industry events to enable junior associates at different firms to connect and build relationships with others at similar stages. For example, Phoebe Mak and Iffat Ahmad (the authors of this piece) connected when they were both speaking at 'Lockdown Stories: Conversations with women in tax', an event organised by BDO and Women In Tax.

Knowledge and training

The lockdown has had a minimal impact on structured training due to the investments in technology that a lot of firms had already made. Weekly knowledge meetings have seamlessly transitioned to the online, home delivery format (though we have missed the lunches that often followed!). The same preparation continues to go into these meetings and with well-prepared slides shared on screen it is easy to follow from home.

External training courses, such as those for the CTA qualification, were delivered to the same quality online. Universities and professional courses providers already had online versions of many of their courses and experience in delivering courses virtually. This has in fact saved us a lot of time and energy (removing the need to travel to and from the course carrying heavy tax legislation!). However, there hasn't been an

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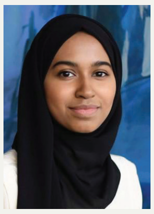
PROFILE



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opportunity to collaborate with our classmates during tutorials (and again, breakout room functions could have helped with this).

One aspect of the office experience that arguably cannot be replicated is 'learning by osmosis' – the knowledge that juniors gain by being in the presence of more senior colleagues, learning from conversations about the commercial and legal issues affecting the firm's clients.

In the office, senior associates and partners often invite junior associates at short notice to join conference calls or sit in on client meetings. These impromptu opportunities not only allow you to learn about unfamiliar matters, but help you to develop technical knowledge and soft skills – such as how to run through technical and legal issues with a range of clients.

A possible solution to this may be to run regular practical knowledge meetings, in addition to technical training. At BDO, Phoebe has been involved in a task simulation initiative where juniors and seniors discuss the task over a coffee to replicate learning by osmosis at home. Managers and partners are notably trying to engage with junior associates to check in on how we are feeling about working from home and allay any concerns.

Partners often have days filled with back to back meetings, so we're all accustomed to quickly discussing an issue with them between meetings as a way of seeking confirmation that we're on the right track. We appreciate that most people are busier than usual due to additional responsibilities at home, so we've been more hesitant to make unplanned calls to partners or struggled to find a slot when they're not 'on a call'. As a result, it's been really valuable for our confidence to have these scheduled virtual catch ups and benefit from informal mentorship.

Future working patterns

There have been unique challenges with working from home but overall we have triumphed. We've learned to work more independently and efficiently, and to manage additional responsibilities at home alongside work. We've demonstrated that we can continue to be relied upon without physically being seen. Not only should the experience of the last 15 months completely stamp out any final remaining embers of presenteeism, we hope that it will also make employers more open minded towards employees who have greater demands on their time or who have access difficulties with travelling into the office.

This experience has proved that it is possible for us to work remotely successfully. It would be difficult for any law firm or accountancy business to say otherwise. This will not be the death of the office, as our work does benefit from physically being in the presence of our colleagues. But it is arguable that with creativity we can replicate learning by osmosis at home.

There is a desire amongst junior associates to return to the office but not on a full-time basis. As firms start to release their updated working policies, we hope to see a synergy between working from home and being in the office.

MENTAL HEALTH

During lockdown, we haven't just lost the benefits of working face to face with our colleagues in office; we have also lost the social interactions and physical activities that ordinarily give our days a clear and defined structure.

Supporting employees' mental health was already on employers' radar before the pandemic and it's been great to see the services that were offered pre-pandemic continue to be offered – whether these are lunchtime fitness classes, guided meditations or cooking masterclasses. Externally led virtual socials, such as murder mystery games and escape rooms, and guided tutorials such as pottery and wreathmaking, have also been brilliant for team morale.

It's important to remember that we've been forced to work from home as a result of a global pandemic. We've had to process spells of increasing daily cases and death rates, as well as the deadly impact that Covid-19 has had globally. We are the most globally connected we have been in human history and many of us have friends and family abroad, who have been even more severely affected than we have here in the UK. It's fair to say that had we been working from home in the absence of a global pandemic, we wouldn't have had as strong a challenge to our mental health.

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Welcome to the July Technical Newsdesk

Can you believe we are already half way through 2021? Perhaps if you are like me the first six months seem to have gone in a flash – a likely result of volume of work, not much time off (what's been the point?), and a sense of 'groundhog day', having worked from home for the past 15 months.

I recall earlier this year discussing with volunteers the need for member guidance to deal with the Self-Employment Income Support Scheme (SEISS); in particular, for when they are completing tax returns for clients. Seemingly in the blink of an eye, due to the quality and quantity of engagement we are having with HMRC and others, the tax year ended and returns for 2020/21 are now being filed. I am pleased to say that we launched the guidance in relation to SEISS claims early in June, and by the time you read this we should have issued similar guidance in relation to the Coronavirus Job Retention Scheme (CJRS). Please read on for more detail.

We have also been firmly in consultation mode – you may recall that around 15 consultations were launched at the Budget or on 'Tax Day', as well as a few more since then. HMRC have consulted again on the government's new policy to require large businesses to notify HMRC where they have adopted an uncertain tax treatment, and the CIOT remains unconvinced that the policy aims will be met effectively or proportionately. HMRC have also consulted on further measures to clamp down on promoters of tax avoidance, and whilst we are pleased that HMRC recognise that most tax advisers adhere to high professional standards, neither the CIOT nor LITRG are convinced that the proposals will adequately deal with today's avoidance. HMRC's wide-ranging consultation on R&D was welcomed by CIOT and ATT, and we made a number of suggestions to bring clarity to the schemes and how they operate. As usual, we report on all our recent submissions in this month's Technical Newsdesk.

Written submissions are only a small part of what the technical teams do, and we are having an increasing number of meetings and similar engagement with policymakers; the ease with which 'face to face' engagement can be arranged has been facilitated by online working and meetings. As mentioned in my introduction last month, these are not only tax technical meetings, but also focus on practical aspects and the 'customer experience'. The Issues Overview Group combines professional bodies and HMRC representatives, with a view to progressing important operational issues or problems with HMRC's systems. We report on our recent discussions with HMRC.

Whatever the next six months brings, I am confident that we will maintain our high levels of activity and engagement and have plenty to report in these pages.

Update from the Issues Overview Group

GENERAL FEATURE

An update from the recent meeting of the Issues Overview Group, and a progress report on some of the issues being escalated by the group, including the UK property reporting service.

Members may be aware that the Issues Overview Group (IOG) is a joint forum of professional bodies and HMRC that progresses important operational issues or problems raised on the online Agent Forum, or otherwise identified by HMRC or professional bodies. Further background can be found at tinyurl.com/ysrx59fk and in HMRC's Agent Update publications (tinyurl.com/yspjczkc). The CIOT and ATT are both represented on the IOG.

'Normal' IOG meetings

The IOG meets approximately quarterly, and the last meeting was held on 26 May. A large part of the meeting was devoted to the operation of the Agent Forum (tinyurl.com/db28ud84). Noteworthy aspects include:

- HMRC have now implemented an 'Escalation Board', where it is possible to identify which issues have been escalated by the professional bodies on the IOG. This escalation process is used for issues which are considered to be particularly problematic or widespread. Current escalated issues include the UK Property Reporting Service (30 day CGT – see below), authentication of software for HMRC's application programming interfaces (APIs), and issues with the data reported by the HMRC Self-Assessment API.
- HMRC have added some tips on how to search the Agent Forum, to help deliver more relevant results, as the search function does not distinguish between the Agent Forum and the Customer Forums.
- CIOT and ATT have proposed some changes to the good practice guide. The current guidelines are quite sparse, and we think that more prescriptive rules are needed in order to ensure that posts remain relevant to the purpose of the Agent Forum, and to minimise inappropriate posts.

If you are not already a member of the Agent Forum, you can find out more at www.att.org.uk/agent-forum.

We also discussed a number of the current issues on the Agent Forum, as well as some of the responses from HMRC. In particular, we expressed dissatisfaction at HMRC's responses which simply set out HMRC's processes, when it is precisely those processes which cause problems.

'Bespoke' IOG meetings

When an issue has been escalated by the professional bodies on the IOG, we will often meet with the HMRC personnel responsible for that area – both in respect of the *policy* and the *process*. Historically, we have had meetings to discuss matters such as Class 2 NICs and the Trust Registration Service. Often it is not possible to resolve the issues with these services, but these bespoke meetings give us the opportunity to have a frank discussion with HMRC, understand what can and cannot be improved, and encourage transparency and guidance where issues cannot be fixed.

On 9 June, a bespoke meeting was held to discuss the UK Property Reporting Service – the system for reporting and paying CGT within 30 days of completion. A whole host of issues were discussed at the meeting, including the interaction with self-assessment (including the offset of CGT overpayments), the digital handshake, the backlog of paper returns (and therefore when the payment is due), non-resident taxpayers, and level of supporting evidence needed when reporting. We urged HMRC to expand their guidance to cover these and other scenarios which are currently causing problems and have been promised some Q&As to address current pressing issues. We also reiterated our concerns about the extent of the problems, and that the measure was not paused in order to ensure that it could work effectively before being introduced.

Agent Dedicated Line

Whilst on the subject of 'bespoke' meetings, it is worth explaining that similar meetings are held under the auspices of the Representative Bodies Steering Group (tinyurl.com/4tv7nx8d) or the Virtual Communications Group (another cross-professional body engagement group with HMRC). Historically, we have had meetings to discuss matters such as debt management, COVID-19, and publication of Coronavirus Job Retention Scheme employer data.

We are currently having a series of meeting with HMRC about the Agent Dedicated Line (ADL). These discussions are continuing, but in the meantime priority for the ADL has been re-established, with the proviso that it will only handle issues that cannot be dealt with by the agent online, or by obtaining the information from their client. We will be monitoring how this is progressing but do report any issues with the ADL on the Agent Forum.

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Self-Employment Income Support Scheme and Coronavirus Job Retention Scheme: Professional Standards guidance

GENERAL FEATURE

We have published guidance to help members comply with their professional obligations when they advise clients who have made claims under the Self-Employment Income Support Scheme or the Coronavirus Job Retention Scheme.

Self-Employment Income Support Scheme (SEISS)

Agents were not able to make grant claims on behalf of their clients, although many agents will have helped their clients to understand their eligibility for the grants, and assisted them in making their claim.

Throughout the scheme, subjective judgements had to be made in considering eligibility, such as whether the business had been 'adversely affected' by coronavirus. Also, the eligibility criteria for the SEISS grants changed subtly from grants 1 and 2 (where the criteria were broadly the same) to grants 3 and 4 (which incorporated additional criteria to increase the focus of the scheme).

Whilst it is not necessary to apply hindsight in relation to claims, members have been concerned to ensure that they act appropriately, particularly when completing the 2020/21 self-assessment tax return, on which the first three SEISS grants must be reported. Accordingly, our guidance is intended to provide assistance in relation to the reporting of the first three SEISS grants, principally where you may be in disagreement with your client's intentions or eligibility for the grant. The guidance has been reviewed by HMRC.

Coronavirus Job Retention Scheme (CJRS)

Earlier this year, we produced some guidance to help to illustrate what HMRC would consider to be errors in relation to CJRS claims, and the corrective action necessary. We also published some illustrative examples. The reason for publishing that guidance was because the CJRS has changed numerous times since its introduction, with many alterations to published guidance (and the underlying Treasury Directions). It was often unclear, therefore, whether a particular claim was correct, or at least a reasonable interpretation of the rules in force at the time. That guidance was reviewed by HMRC.

Further to the preparation of the SEISS guidance above, we have expanded the CJRS guidance so that it also provides assistance in relation to the reporting of the CJRS grants, again focusing on where you may be in disagreement with your client's intentions or eligibility for the grant.

Both sets of guidance are designed to provide outline principles rather than prescriptive rules. In line with all tax-related matters, it will be necessary to exercise professional judgement in individual cases.

The guidance can be found under 'Coronavirus related guidance' on the Professional Conduct in Relation to Taxation page in the Professional Standards section of the CIOT and ATT websites (tinyurl.com/3vu4aed7and www.att.org.uk/PCRT respectively). If you have any comments on the guidance, or further questions, please send them to standards@ciot.org.uk or standards@att.org.uk.

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Notification of uncertain tax treatment by large businesses – second consultation: CIOT response

LARGE CORPORATE

The CIOT responded to the second consultation on the government's proposal for a requirement that large businesses notify HMRC about uncertain tax treatments. This was the second consultation on this proposal, following a welcome delay to the introduction of this measure until April 2022. We remain unconvinced that this measure will achieve the stated policy aims effectively or proportionately.

CIOT responded to the second consultation document on the proposal for notification of uncertain tax treatment by large businesses published on 23 March 2021 and also had a discussion with HMT and HMRC on this proposal in May 2021.

In our response, and discussion with HMT and HMRC, we noted the changes to the proposed measure for notification of uncertain tax treatment by large businesses reflected in the second consultation document and said that we appreciate that these changes mean that the measure in itself is now more objective. We welcomed, in particular, the reduced scope to corporation tax, VAT and income tax (including PAYE). However, we also said that the measure will still impose significant compliance costs on all large businesses for very uncertain benefits for the Exchequer and HMRC and that there remains room for considerable improvement.

The policy objectives of this measure are summarised in paragraph 2.14 of the second consultation document (tinyurl.com/yebc8srh), which states: '[T]his measure is intended to help reduce the legal interpretation portion of the tax gap …. The aim of the measure is to identify and clarify uncertainties earlier than they would otherwise be identified (if at all) and identify businesses that are pushing the legal boundaries'.

Our response set out the areas where the detailed proposals still lack clarity, both with regard to how they are expected to bring about the stated intended outcomes and as to their practical implementation and impacts. Overall, we do not think that the case has yet been made to demonstrate that the measure will achieve the policy aims or be effective (and efficient) at doing the job required of them from HMRC's perspective. Broadly, it seems to CIOT that this measure will be wholly inefficient. This is primarily because the compliance burden on large businesses and the additional administrative resource required by HMRC will be disproportionate to any benefit, but also because similar outcomes could be achieved within the existing tax administration framework by steps that might well be worthwhile and effective in their own right. We pointed out that most of these steps will be needed in any event if this compliance measure is to be capitalised on; and/or is to achieve its intention of not duplicating a requirement to disclose matters already brought into discussion with HMRC and otherwise not adding to the burdens of the compliant. Thus, we are not convinced that legislation is necessary to achieve the stated policy aims.

Our response also discusses the 'triggers', which will define what uncertain tax treatments are. Our view is that these require a significant amount of further work in order to ensure that they are sufficiently clear and objective, as well as removing some elements in order to lessen the amount of overlap. There are seven triggers – (a) to (g) – suggested in the consultation document. We suggested that the triggers should be tightened up and the number of these reduced.

The proposal contains an important exception from the requirement to notify in respect of uncertainties that HMRC are already aware of. Whilst this exception is welcome, we noted that it will have to be set out very clearly in legislation in order for large businesses to be able to rely on it and achieve the policy aim of mitigating the increased compliance burden. A number of questions in relation to its potential application in practice must be resolved and clarified.

Our response also noted that in addition to the significant compliance burden on large businesses, we anticipate that significant additional resource will be required for HMRC. The Assessment of Impacts notes that 'HMRC will require some additional resources', but no detail about these resources or the cost of providing them is given. However, as noted above, it is our view that these additional resources for HMRC could be employed to address the legal interpretation area of the tax gap more effectively than this measure would, and may be a worthwhile investment in any event.

Looking forward, we welcomed the confirmation during our discussions that the government recognises that there is still a significant amount of work required in relation to several areas of this proposal in order to achieve better focus and targeting of the measure; in particular, the triggers and the proposed exception in respect of uncertainties that HMRC already knows about. We said that CIOT remains very willing to engage in further discussion to assist with this, although it is fair to say that we remain unconvinced that the main detailed features of this measure will achieve the stated policy aims effectively or proportionately.

Our full response can be read at: www.tax.org.uk/ref782.

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Transfer pricing documentation – a consultation: CIOT response

INTERNATIONAL TAX LARGE CORPORATE

The CIOT responded to the Transfer pricing documentation consultation document published on Tax Day (23 March 2021) and also had a discussion with HMT and HMRC on the proposals contained in that consultation document in May 2021.

In our response, we note that the current requirements around transfer pricing documentation are being looked at due to the passage of time since the government adopted the minimum standard relating to the Country by Country (CbC) reporting regime, which came out of the G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan and, specifically, Action 13. The consultation document explains that the government is considering whether to introduce a requirement for multinational enterprises (MNEs) to keep documents in a standardised form as encouraged by the Action 13 Final Report and later incorporated into Chapter 5 of the OECD's Transfer Pricing Guidelines (2017), and also to file an annual return summarising their cross border transfer pricing transactions with associated businesses. The government considers that this will ensure that the UK is more in line with the requirements of comparable jurisdictions.

Our response said that we understood that the measures proposed are intended to serve different policy aims. The first, around the retention and production (if required) of specific documentation (the master file and local file, including an evidence log) is intended primarily to have a behavioural impact, perhaps increasing the focus of transfer pricing throughout the year within the business, which will feed into the tax return. The second measure around keeping, and including with their annual return, details about material cross border transactions with associated enterprises (the international dealings schedule (IDS)) is intended to provide HMRC with better data to inform its risk assessment and profiling.

CIOT's response said that we support the policy aims of increasing certainty for businesses around transfer pricing documentation, and can see a potential benefit to both HMRC and taxpayers from improved risk assessment by HMRC and, therefore, better focused enquiries. However, we also noted that the proposed measures would inevitably be burdensome and costly for businesses. Thus, we said, it is important that each of the measures is justified on the basis of the expected costs and benefits. It is also important to maintain an overview of the whole picture: we asked whether all the measures are required.

Each of the measures considered in the consultation document will present different compliance burdens for MNEs that may be more or less significant depending on the business. However, we agreed that it is probably correct that most groups that are in CbC reporting already will have master files, so a requirement to produce a copy of this would not be onerous. We said that preparing local files may be helpful from a perspective of consistency, but that it is harder to justify the additional compliance burden on the basis that HMRC can already obtain the relevant information, and, in our view, a requirement to produce an evidence log in support of a local file could be disproportionate. We said that we thought that an IDS could improve HMRC's ability to spot and evaluate risks, which in turn could be of benefit to taxpayers by leading to more efficiency in enquiries, provided this is carefully designed and implemented alongside clear commitments from HMRC on how the data will be used.

We welcomed the early stage of this consultation and that there will be further consultations around the detail. We emphasised that time should be taken in the development and design of the IDS measure, in particular to ensure that it does its job from the outset, as the implementation for MNEs would be very expensive, even for relatively simple businesses.

Our response highlighted that each of these measures would produce a large amount of additional information for HMRC, and said that we would like to be convinced of HMRC's capacity to process the additional information they would receive to good effect, in order to justify the additional compliance burden for businesses. We said that these measures will be judged by whether and how useful the information received by HMRC actually is (and is seen to be by MNEs), particularly the extent to which it reduces the burden of enquiries.

Our full response can be read at: www.tax.org.uk/ref771.

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Clamping down on promoters of tax avoidance – a consultation: CIOT and LITRG responses

MANAGEMENT OF TAXES

The CIOT and LITRG have recently responded to HMRC's consultation document 'Clamping down on promoters of tax avoidance'.

The consultation (see tinyurl.com/484a9ett) was seeking views on further proposals to tackle promoters of tax avoidance schemes which complement proposals consulted on in summer 2020 that are now in Finance Act 2021. The latest proposals would give HMRC the ability to intervene earlier than they can now to disrupt promoters' activities, ringfence assets to protect HMRC's ability to collect penalties, and apply strong sanctions for promoting or enabling tax avoidance. HMRC are also proposing to provide more information on the promoters and their schemes to help support taxpayers to steer clear of avoidance schemes and to exit them more quickly.

In its response, the CIOT says that the government is right to be taking a robust approach to those who continue to devise, promote or sell tax avoidance schemes. There should be no place for such people and their schemes in the tax services market. We welcome the fact that the consultation document recognises that most tax advisers adhere to high professional standards and provide sound advice and support to taxpayers, and that the extensions being proposed to HMRC's powers are not aimed at advisers adhering to high professional standards but are aimed at promoters who seek to exploit every opportunity to profit personally by sidestepping the rules. Indeed, many of these promoters – perhaps a majority – are not tax advisers or tax agents at all. We would like to see a clear statement from the Financial Secretary to the Treasury to this effect.

HMRC's figures indicate that around 20 promoters have left the tax avoidance market since 2014, so the introduction of various measures to tackle promoters since then is having some success. However, there are around 20 to 30 active promoters still operating. We have yet to see any meaningful assessment of how much use HMRC are making of their existing powers; how many penalties under the various anti-avoidance regimes have been successfully charged; and how many Promoters of Tax Avoidance (POTAS) 'stop', 'conduct' and 'monitoring' notices have been issued, etc. It is therefore difficult for us to gain an understanding of how effective those powers are in reducing avoidance and tackling the 20 to 30 promoters still in the market. We do wonder how successful more legislative and other measures will be in tackling this 'hard core' of promoters who clearly do not wish to play by the rules.

We are pleased that HMRC are exploring more ways in which they can support taxpayers to identify and steer clear or exit tax avoidance. We have been calling for wider communications around the risks of avoidance and the types of schemes being promoted. However, we have concerns that the measures proposed will not be enough to address all the issues we are seeing today in the current tax avoidance market, in particular the proliferation of disguised remuneration schemes. HMRC statistics show that contractor loan and disguised remuneration avoidance arrangements were the principal type of avoidance in existence by 2018/19 (98% of the market compared to 60% in 2013/14).

There is an implicit assumption in the consultation document that those buying schemes – including disguised remuneration schemes – are 'in the market for tax avoidance'. Whilst there are undoubtedly still people who have an appetite to use tax avoidance schemes and who make an active decision to use one, we do not believe this is the 'norm' any longer and we are concerned that the consultation misunderstands the current position and consequently that the measures will fail to be effective. There appears to be a strong case for decoupling the disguised remuneration type schemes from HMRC's other efforts and presumptions in tackling tax avoidance.

LITRG's submission focused on this part of the consultation and provided strong support for such a 'decoupling', saying that the arrangements they see are basically a variation on the theme of an agency worker being paid (through an umbrella company that they have probably been told to sign up to) a minimal amount of taxable income, topped up with a purportedly non-taxable element (whether it be loans, investment payments, advances, grants, loans, credits, etc.), with little or no paperwork to support the 'planning'. LITRG said that while some umbrella companies may be doing this as part of a bigger avoidance supply chain, others will have casually concocted such schemes in-house without any real 'promoter' behind them.

LITRG said it would appear that the agency workers are increasingly being paid via disguised remuneration schemes, with no understanding at all of the set-up, for the non-compliant umbrella companies' own gains. Naming promoters, the websites they use and the schemes they promote at the earliest possible stage, so that HMRC could share that information publicly to warn taxpayers of the risks, will do nothing to assist those who are being paid via disguised remuneration unknowingly. They will also do nothing for those who may have little choice to be paid by a non-compliant umbrella company if they want the work.

As against the backdrop described, LITRG urged HMRC to explore alternative strategies to tackle disguised remuneration, beyond narrowly focusing on promoters and changing taxpayer behaviour.

In terms of the other HMRC promoter proposals, CIOT also said that by the stage that a person or entity is threatened with any of the sanctions proposed in Chapters 2, 3 and 4 of the consultation document, this will be well outside the expertise of a tax adviser, even those experienced in dispute resolution. Any person or entity in this situation would need to take legal advice from a suitably qualified and experienced lawyer. Our comments on these measures are therefore necessarily limited since only a minority of tax advisers are lawyers. We also say that the measures should cover future actions and not have any retrospective effect, given that the intention behind them is to change these behaviours and stop these schemes once and for all. They should all be widely published before being brought in, as well as targeted at the active promoters and enablers HMRC know about, so that anyone who might be affected is put on notice to change their behaviour.

We recommend that a formal and consultative review of these measures, and HMRC's powers in relation to them, should take place in about three to five years' time. These measures are being introduced to tackle specific problems in the tax avoidance market that exist now, but in five years' time the tax avoidance market may look very different to the way it looks today. A future review would enable the measures to be examined to ensure that they are still fit for purpose and operating effectively and as intended. We think this may be something for HMRC's Powers and Safeguards Evaluation Forum to consider.

The CIOT's response can be found here: www.tax.org.uk/ref775.

LITRG's response can be found here: www.litrg.org.uk/ref2469.

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R&D tax relief – a consultation: CIOT and ATT responses

LARGE CORPORATE | OMB

The CIOT and ATT have responded to the government's wide ranging consultation on R&D tax reliefs.

Earlier this year, the government published a wide ranging consultation on R&D tax relief (tinyurl.com/9awxr83r). This consultation sought views on the nature of private sector R&D investment in the UK, how that is supported or otherwise impacted by the small and medium-sized enterprise (SME) and large company R&D relief schemes, and where changes may be appropriate.

CIOT response

The CIOT welcomed the wide review of the UK's R&D relief schemes and agreed that it is important to review these schemes to ensure that the reliefs remain 'fit-for purpose' and to consider their effectiveness. We noted that R&D relief is a long-standing form of government intervention into economic activity that is supported throughout the business world. We welcomed the continued government focus on encouraging innovation and the importance of R&D tax relief in the context of the UK's international competitiveness. The CIOT's response also reflected our understanding of the matters under consideration in the consultation document following a discussion with HMT and HMRC about the consultation on R&D tax reliefs in May 2021.

Our response confirmed that CIOT supports the policy aim of ensuring that R&D tax relief delivers 'additionality', as this has obvious attractions from the perspective of getting best value for public money spent. We also said that certainty for businesses has a large part to play in delivering additionality. A number of factors pay a part in establishing certainty: consistent and preferably simple legislation; clear, consistent and developed guidance; and a consistent approach to auditing and enforcement. A lack of these factors can undermine certainty, however. This concept ran through our responses to the detailed questions, pointing out that if it is hard to design rules to require 'additionality', it is unfortunately easy to discourage it. The more uncertainty there is about what types of activity qualify for relief (and in which contexts), the less likelihood there will be of the relief actually stimulating expenditure on R&D. We said that such uncertainty can arise for a number of reasons: from changing and uncertain interpretations of statutory terms, to difficulties in interpreting the facts on the ground even against clear statutory criteria.

We welcomed this review of the R&D tax relief regimes in the round, which offers an opportunity to clarify the policy intentions of the reliefs and, to the extent necessary, make legislative changes to ensure that the law clearly delivers those policy aims, including ensuring additionality. Our response referred, in particular, to ongoing discussions with HMRC about the application of the rules relating to contracted out R&D and subsidised expenditure, where there is currently disagreement around the interpretation of the rules. We said that legislative change could avoid what may otherwise turn out to be a long period of market adaptation to a less favourable regime that arises from HMRC's current interpretation, and considerable uncertainty (and perhaps litigation) over what will qualify for SME relief. We noted that, overall, HMRC's current approach to what is contracted out R&D and subsidised expenditure will have the effect of greatly reducing the circumstances in which SME R&D relief is available, limiting it to circumstances of 'blue sky' R&D – that is to say, when a company undertakes R&D completely independently and before any customer is involved. We said that this consultation offers an opportunity for the government to consider whether as a matter of policy the SME scheme should operate on a more limited basis than we had previously understood to be the case, and if so, to be clear as to the economic and Exchequer impact from this policy approach.

Finally, our response also welcomed a general focus on improving the quality of R&D advice. The CIOT has done a lot of work in this area, including the addition of the topical guidance section on R&D in the professional conduct in relation to taxation (PCRT) rules that the CIOT has developed alongside the ATT and other representative bodies. We suggested that continued focus on professional conduct is the best way to address any concerns around fee arrangements, such as contingent fees, which, in our view, can in some circumstances be appropriate within a proper professional relationship.

The CIOT's full response can be read at: www.tax.org.uk/ref769.

ATT response

The ATT response sets out that, in general, members find the SME scheme simple to explain to clients, and that it is easier to demonstrate the benefits of an SME scheme claim than a Research and Development Expenditure Credit (RDEC) claim. The ATT does not believe that there is a case for consolidating the two schemes into one – the current differences between the two schemes reflect the very different natures and needs of SMEs and larger companies. Merging the two schemes would require claimants and their advisers to adapt to new rules, potentially causing confusion and increasing the risk of errors without, in our view, delivering any particular benefit.

The ATT response raises concerns over the possibility of decoupling R&D claims from the ordinary corporation tax self-assessment (CTSA) system. Whilst this could be welcome if it sped up the processing of claims, the ATT is concerned that allowing R&D claims to made on a standalone basis could weaken the 'sense checking' which comes from involving a company's regular agent in making a claim, and could also lead to rushed claims being submitted which are not subject to the full scrutiny of the CTSA process.

With respect to improving standards of claims, the ATT response highlights that members are required to adhere to the requirements of the PCRT, including recently published specific guidance on R&D services (tinyurl.com/fcpa8xzy). However, 'rogue' advisers may not be members of a PCRT body, and HMRC should consider how best to target these advisers to ensure they are held to the same standards.

Other suggestions in the ATT response include introducing a more robust sign off for claims (with specific declarations by both the claimant and the adviser preparing the claim), education campaigns to raise awareness amongst claimants and their agents, and introducing a route for concerned advisers to report suspicions regarding inappropriate claims, advice or promotional material.

The ATT's full response can be read at: www.att.org.uk/ref370.

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Enterprise Management Incentives – a call for evidence: CIOT response

EMPLOYMENT TAX | OMB

A summary of the CIOT's response to the call for evidence reviewing the Enterprise Management Incentives scheme.

In this article, we summarise the CIOT's response to the call for evidence reviewing the Enterprise Management Incentives (EMI) scheme and whether it achieves its objective of providing support for high-growth companies in recruiting and retaining talented employees.

The government's review objectives

The government's objective for this call for evidence was to gather evidence to understand whether the EMI scheme should be extended to include more companies. In particular, whether:

- the current scheme is fulfilling its policy objectives of helping small and medium-sized enterprises (SMEs) to recruit and retain employees;
- companies that are ineligible for the EMI scheme because they have grown beyond the current qualification limits are experiencing structural difficulties (i.e. in the labour market) when recruiting and retaining employees;
- the government should expand the EMI scheme to support high-growth companies and how; and
- other forms of remunerations could provide similar benefits for retention and recruitment as EMI for high-growth companies.

CIOT's response

In our response, we stated that the EMI scheme is fulfilling its objectives of helping SMEs to recruit and retain employees. We considered that for many it is the 'go to' scheme for employee incentivisation, and that more and more smaller companies and start-ups are aware of, and using, the scheme. That said, we thought that extending the eligibility criteria for EMI to include more companies would help them to grow, especially post-pandemic.

In our evidence, we stated that companies that have grown beyond the current eligibility criteria do face significant additional costs in recruiting and retaining employees. Often, these companies are not large enough to cost-effectively implement other tax-advantaged share schemes, and cash-flow limitations may restrict their ability to otherwise match remuneration offers from EMI eligible companies or much larger companies. We suggested extending the eligibility criteria to assist these companies in recruiting and retaining employees. We also thought that extending the EMI criteria to a wider range of SMEs, including larger companies, would be unlikely to distort the ability of existing qualifying companies and smaller SMEs to attract and retain employees. While we recognised that increasing the limits to a set of slightly larger companies would shift the 'pinch point' at which companies begin to face difficulties in attracting and recruiting employees, we consider that being larger, they would be more capable of managing the need to offer alternative remuneration incentives to attract and retain employees.

We also recommended that the current EMI scheme's eligibility criteria be reviewed and the thresholds increased. For example, thresholds such as the number of qualifying employees and gross asset value should be increased to reflect inflation and current business needs. We suggested fixing the qualifying point for EMI eligibility so that the number of employees or gross asset value is set for a 12 or 18 month period, as this would help companies whose employee numbers or gross assets flex above and below the qualifying limits to know whether they qualified. We also thought that this would help those companies that grow rapidly during such a period to retain and recruit employees. And it would ease administration as the company would know whether or not it qualifies over a particular period.

Lastly, we suggested that the eligibility criteria for other forms of tax-advantaged share schemes be reviewed and increased to aid the recruitment and retention of employees. Coupled with administrative simplifications, we thought these schemes could then become more attractive to SMEs, and especially to those that do not meet the qualifying trades requirements or which have recently grown beyond the EMI scheme qualifying limits.

Matthew Brown
mbrown@ciot.org.uk

Pensions: net payment arrangements v relief at source payroll mistakes: how common are they?

PERSONAL TAX EMPLOYMENT TAX

The Low Incomes Tax Reform Group understands that it may not be uncommon for employers to make errors with tax relief on workplace pensions. Can you help us to gather evidence of the need for clear guidance on how to rectify the position when such mistakes are uncovered?

There is huge potential for confusion about the methods for giving tax relief via the payroll on employee pension contributions to workplace pension schemes.

There are two ways that an employee's pension contributions can be taken from their pay, depending on the type of pension scheme chosen by their employer:

- Under 'net pay arrangements' (NPA): where 100% of the pension contribution due is deducted before tax is calculated on wages (meaning that employees who earn more than the personal allowance should receive tax relief then and there); and
- Under 'relief at source' (RAS) arrangements: where 80% of the pension contribution is deducted after tax is calculated on wages and the pension scheme reclaims basic rate tax relief from HMRC.

Due to the counterintuitive naming, there will be employers who misunderstand what the two tax relief mechanisms mean and get them back to front.

This can lead to the following situations:

- A contribution is taken from an employee's pay as if it were under RAS but where the pension scheme is set up as NPA. In this situation, tax will have been overpaid and insufficient employee pension contributions will have been paid into the employee's pension pot.
- A contribution is taken from an employee's pay as if it were under NPA but where the pension scheme is set up as RAS. In this situation, there is double payment of tax relief – once through the payroll and then once when the pension scheme adds the 20%.

If an incorrect method of tax relief is being applied via the payroll, it is crucial that employers identify this at the earliest opportunity, change the method of tax relief being applied, and consider how to deal with what happened in the past. Of course, such mistakes will often only come to light when there is a fresh pair of eyes, such as a tax adviser getting involved.

Interestingly, in terms of rectifying past mistakes, there seems to be no specific guidance available to help employers understand what to do. This is despite the fact that liabilities (either to HMRC or the employee/pension provider) can be significant, especially where the error has happened over many years.

To help us gather evidence of the need for guidance, we would be interested in hearing about any members' experiences of such situations.

If you have clients where this has been an issue, please email litrg@ciot.org.uk with the subject line 'Pension errors' letting us know:

- How many and what type of client they were (for example, sole trader, small business, etc.)?
- What was the size of the error?
- Have you ever been asked for advice about correcting this problem?
- What have you advised?

Any evidence, examples or further information that you could provide us with will be very helpful. Thank you.

Meredith McCammond
mmccamond@litrg.org.uk

CIOT		**Date sent**
Enterprise Management Incentives: call for evidence	www.tax.org.uk/ref768	26/05/2021
Transfer pricing documentation	www.tax.org.uk/ref771	03/06/2021
Clamping down on promoters of tax avoidance	www.tax.org.uk/ref775	04/06/2021
Notification of uncertain tax treatment by large businesses: second consultation	www.tax.org.uk/ref782	04/06/2021
R&D tax reliefs	www.tax.org.uk/ref769	04/06/2021
Aviation tax reform	www.tax.org.uk/ref779	14/06/2021
ATT		
R&D tax reliefs	www.att.org.uk/ref370	01/06/2021
LITRG		
Clamping down on promoters of tax avoidance	www.litrg.org.uk/ref2469	01/06/2021

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CIOT & ATT

Your personal brand journey

PERSONAL DEVELOPMENT

Joanne Herman explains how you can start your personal brand journey by sharing your story.

Welcome to another blog instalment about your personal brand.

Over the past few months, I've shared a number of articles about how important it is to build your brand and start taking action when it comes to 'brand you'. Not had a chance to make a start? Fear not. In my January article, I explained we have two profile building campaigns, courtesy of ATT and CIOT.

Our first high profile campaign, **'Changing the Face of Tax'**, is still running. In March, we featured Kate Pace from Bishop Fleming. As part of our web and logo launch campaign, we asked her how she has adapted to change since lockdown and what she thinks about building her own brand alongside the firm's. You can still get involved. To be part of this progressive campaign, all you need to do is contact me at jherman@ciot.org.uk

Our second high profile campaign **'Share your Story'**, which is coinciding with both our recent ATT and CIOT admission ceremonies, celebrates you and is based around sharing your own journey of how you became a chartered tax adviser. To be part of this progressive campaign, all you need to do is drop me a line and I'll send you a series of questions to answer.

Both campaigns offer you the opportunity to:
- feature here in *Tax Adviser*;
- feature upon the ATT or CIOT website; and
- be promoted across both ATT and CIOT social media channels.

What next?

We are proud of all our CTAs, which is why it's time to champion you and your hard work. Although for some of you, your studies may have come to an end, we are still here to actively support your career development.

Both campaigns offer you the opportunity to:
- incrementally build your brand – step by step;
- start thinking of yourself as a selling point;
- encourage you to blow your own trumpet and encourage others to advocate you;
- feel good about yourself – think of it as self-care and a way to improve your mental wellbeing; and
- give back to your employer – it is a win-win strategy, both for you and your employer.

Inspire others & raise your profile

SHARE YOUR STORY

CIOT & ATT want to hear from you!
We are currently seeking success stories to inspire others to follow a career in tax.

THIS IS YOUR CHANCE TO FEATURE IN

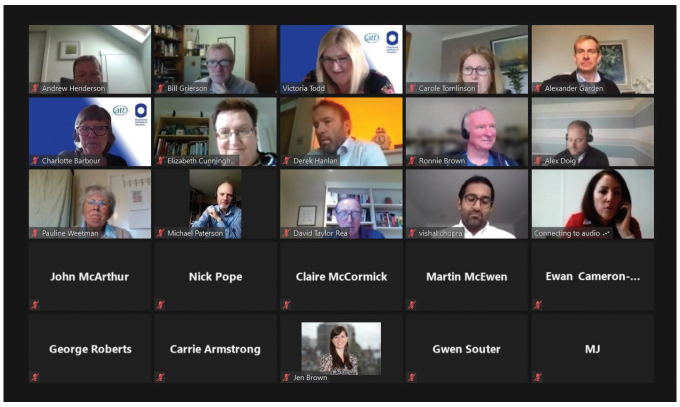
- **TAX ADVISER**
- **NEW CIOT WEBSITE**
- **NEW CAREER LITERATURE**

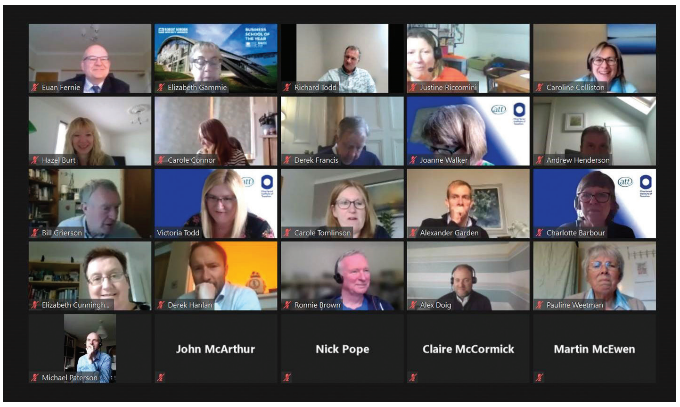
att | Chartered Institute of Taxation.

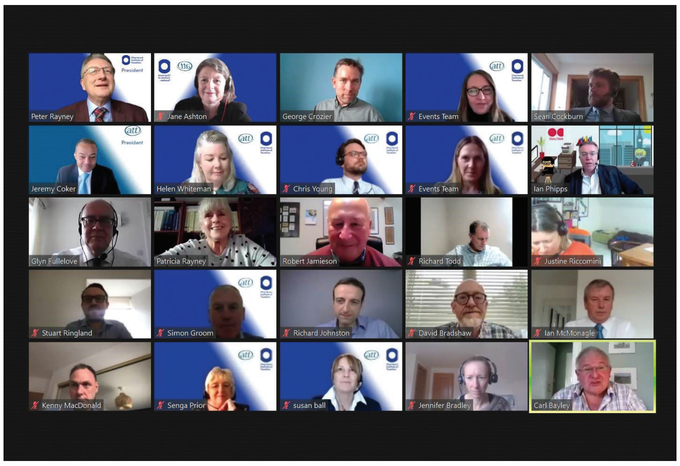
For more information contact
Jo Herman jherman@ciot.org.uk

CIOT & ATT

CIOT/ATT Joint Presidents' luncheon







EVENT

Senior representatives from the world of Scottish tax gathered at the end of May for the annual CIOT/ATT Joint Presidents' Luncheon, with figures from Scotland's tax and accountancy businesses, government and the legal profession joining the online event.

Last year's lunch was one of the last face-to-face events held by the Institute and Association before the pandemic.

CIOT President Peter Rayney reflected on this in his welcome speech, as he also spoke of his pride in the way that the tax profession has reacted to the challenges of the Coronavirus pandemic, and his hopes for the future of the profession as society begins to reopen.

For ATT President Jeremy Coker, the event was also a chance to reflect on how Scotland had been 'indelibly woven' into the history of the Association.

It was a Scot, Wreford Voge, who as President of the (then) Institute of Taxation from 1984 to 1986, saw the potential for the creation of an organisation dedicated to those providing tax compliance services.

Coker also spoke about the role played by members, volunteers and staff in adapting to the challenges of the pandemic, the ongoing debates around regulation of the tax profession, and the campaign to promote equality across CIOT and ATT.

This year's guest speaker was Jamie Andrew OBE, an accomplished mountaineer and motivational speaker who overcame the loss of his hands and feet following a climbing accident to scale summits like the Matterhorn and Kilimanjaro, becoming the first quadruple amputee to achieve this. Jamie's story of success in the face of adversity, reminding us that nothing is impossible, struck an optimistic and upbeat view.

It was a timely tone with which to bring the 2021 event to a close, as we look forward with hope to a return to greater normality.

ADIT

New ADIT prize launched in honour of Dr Tom O'Shea

PRIZE

The CIOT was deeply saddened by the death late last year of Dr Tom O'Shea CTA (Fellow), a distinguished expert in European and international tax. Tom was a very active and dedicated contributor to a number of initiatives relating to tax education, as well as an expert authority of considerable renown on various subjects such as EU tax law.

Tom played an enormous role in the development and success of our ADIT qualification, recognising its applicability to international tax students from around the world. He keenly promoted ADIT to his students at Queen Mary University of London as a complementary qualification to the university's prestigious International Tax LLM degree.

Recognising Tom's contribution to ADIT learning, CIOT is establishing a new Tom O'Shea prize, to be awarded to the best performing candidate sitting the ADIT EU Direct Tax module in each of our twice yearly exam sessions. The following prizes are also awarded for achievement in the various ADIT exams:

- The Heather Self Medal for the best overall performance in Principles of International Taxation;
- The Raymond Kelly Medal for the best overall performance in the United Kingdom module;
- The Croner-i Prize for the best overall performance in the Transfer Pricing module;
- The Wood Mackenzie Prize for the best overall performance in the Upstream Oil and Gas module; and
- The Worshipful Company of Tax Advisers Medal for the best overall performance in the remaining Thematic modules.

The next group of ADIT award winners, including the recipient of the inaugural Tom O'Shea prize, will be announced on 18 August, recognising the highest achievement in the June 2021 exam session.

CIOT

Address by CIOT President Peter Rayney

ADDRESS

Address by the CIOT President Peter Rayney, following the AGM of the Chartered Institute of Taxation held on 25 May at 16.45.

Peter Rayney

Good afternoon everyone,

This is an unusual AGM for unusual times. We are online, of course. And there is no presidential handover – I am afraid you're stuck with me for another 12 months. But it is an appropriate time to reflect on the past year, to report back on the Institute's current priorities, and to look ahead to what the next 12 months and beyond is likely to present to our Institute, our profession and the taxpaying public.

A year of tragedy, challenge and achievement

First of all, I do want to reflect for a moment on the year just gone. A year of enormous human tragedy. And of unprecedented economic challenges that have resounded through every business sector, including our own.

But for all the challenges, there has also been tremendous resilience and remarkable adaptation.

We might not have chosen to spend all our days Zooming and Teaming, and staring at each other through screens. But we did. We learned the new skills. We adapted to the 'new normal'.

We supported our clients – many of them struggling to keep their heads above water as their businesses were shut down – or rendered unviable because of the need for social distancing.

In 2020, HMRC really rose to the occasion, putting in place, at speed, huge schemes to support jobs and income.

More than 12 million people have benefited from these schemes. But they would not have been the success they have been without the enormous efforts of our profession:

- publicising them;
- making sure people understood the rapidly changing rules;
- picking up furlough calculations; and
- putting in, in many cases, long hours of work not charged for.

As the Financial Secretary told us last month: 'Your involvement ... has been crucial.'

HMRC can be proud of the work they have done providing this support.

Tax professionals can be proud of the work *we* have done helping businesses access it.

I want to thank all those who have helped our Institute through this difficult period – our indefatigable professional staff and our wonderful army of volunteers.

Institute staff have been working from home for more than 14 months now. That is not always easy. I want to thank you for your determination and drive that has enabled us to deliver a service to our members and others that we call 'Business as usual – with a difference' – the difference in question being that we are delivering it remotely and online.

Moving our entire events programme onto the internet has been an immense achievement for which many people deserve credit, including the volunteers on our branch committees.

And what brilliant results:

- a 73% increase in registrations for our member conferences;
- over 4,000 viewers of our Self-Employment Income Support Scheme webinars;
- over 1,500 delegates for our first ever Global CTA Webinar, held with our CTA partners in Australia, Ireland and Hong Kong; and
- a massive 30,000 participants in our online CPD programme in the last year

And, of course, the greatest achievement of all, moving our exams online, professionally and securely. All in all, more than 4,000 exams were sat online – a fantastic achievement by our education team.

Those are the most visible ways in which the Institute adapted to the pandemic, but there are many, many others, and I thank Helen Whiteman, our chief executive, and all of our staff for their hard work over the past year.

And I want to thank all our members for their strong support. Our membership rose again in 2020, despite the cancellation of our spring exams, and our retention rate remains an incredible 98% – the only leavers are usually by retirement.

Finances and governance

Thanks to the loyalty of our members, and to the determined efforts of our professional staff, the Institute's finances are healthy and, after two years of running deficits, we made a modest surplus last year.

At last year's AGM, my predecessor Glyn Fullelove set out our intention to improve the diversity of the Institute's Council – both in terms of gender, ethnicity and other protected characteristics, and in terms of the variety of skills and experiences of its members. We also wanted to open up our Council recruitment process.

I am pleased to say that we have done this, holding an open, transparent and widely publicised application process for new Council members last autumn. Nineteen applications were received. Our new Nominations Committee shortlisted and conducted interviews. And I am really delighted to welcome five new members of Council as a result – Joanna Bello, Sarah Hewson, Mobeen Ismail, Ashley Makoni and Christopher Shrubsole.

I would also like to take this opportunity to thank three members who retired from Council over the last year – John Voyez, former President John Preston and Mary Monfries. A massive thanks to you all for your tremendous service.

Three areas of focus

So, what should our focus be for the year ahead?

The Institute's Council has identified three key areas:

education, standards and voice.

First, education. The emphasis here is on technology. We're already using technology to examine.

We plan to keep on using technology to provide a national, online CPD offering even after our face-to-face events return. And we've set up a Working Party to consider the growing influence of technology in tax management and reporting for both taxpayers and tax authorities, so we can make sure our educational offering reflects this.

Second, standards. We want to be a leader in discussion on regulation of the profession.

Last year, the government consulted on ways to raise standards in the tax advice market. Now they are consulting further on a proposal that everyone offering tax advice should be required to hold professional indemnity insurance – as members of professional bodies already do. This is a sensible idea, but it may not on its own be sufficient.

In the end, I suspect the choice will come down to effective self-regulation or having external regulation imposed on us. I favour the former and that is what CIOT advocated in our response to last year's consultation.

Third, our voice, bringing our expertise to the public policy debate.

It is clear that our voice is listened to by policy makers of all kinds. During debate on this year's Finance Bill, ministers and shadow ministers alike once again cited CIOT views when making their cases.

Throughout the pandemic the Institute has worked closely with HMRC, identifying ways in which taxpayers might effectively be helped. Of the 22 easements and other changes we suggested in a letter to the Financial Secretary in March last year, 14 were adopted in whole or in part. The extension of loss relief carry back, which I made the case for in discussions and correspondence with the minister last year, is being legislated for.

And when the House of Commons Treasury Committee began an inquiry last year into tax after the pandemic, they turned to us to help them launch it, and to give evidence – twice – as expert witnesses. And when they launched their findings they asked us to host this too. I am extremely proud of the contribution our Institute made to this report – the most substantial and ambitious report on tax reform ever produced by the UK Parliament.

Future tax reform

That brings me to the final part of my remarks today. What does the future hold for the tax system?

Ultimately, all of these are contentious political questions – who should pay tax and how should they pay it? But the tax profession, and CIOT in particular, has an important role to play in:

- providing forums for debate;
- identifying practical challenges and opportunities; and
- scrutinising proposals and spotting unintended consequences.

Currently, I see seven broad agendas for reform on tax.

Most obviously, there is the imperative to raise more money – what the Treasury calls 'strengthening the public finances'. We see this in the big proposed corporation tax increase and in the freezing of a whole range of allowances and thresholds, most notably for income tax. Unless growth is unexpectedly good, I suspect this has a lot further to go.

At the same time, the government is trying to kick start the economy, looking for measures to incentivise investment and stimulate growth – like the capital allowances super-deduction. I think we'll see a lot more of this too.

Slightly counter-intuitively, given Brexit, I foresee an increase in international co-operation on tax, led by the new US government. It is an interesting prospect that we have left the EU and the single market, in part prompted by fears of having our hands tied on areas like tax, only to find the scenery shifting and the prospect of voluntarily restricting our freedom of manoeuvre as part of a great global compact.

I will just observe that if we are to have a global minimum rate on corporate profits, the challenge will be not only in agreeing the rate but in defining the scope. Will a small profits rate be allowed?

One area where international co-operation is surely needed is on tackling climate change. Those of you who joined me for this year's CTA Address a few weeks ago will have heard a truly enlightening talk by Sir Dieter Helm. He made a strong case for a global carbon tax – or failing that a domestic carbon tax with levies on imports – as the centrepiece of our efforts to combat climate change. This is surely a debate that will continue to grow in salience.

As will the debate on tax devolution. Most notably in Scotland, where the argument about further transfer of powers is already a live one, including among some unionists. The CIOT is keenly engaged in the tax debate in Scotland, as we are in Wales.

It is not for us to say which taxes should be devolved but we can point out – as we did in a paper published last month with ICAS – some of the practical issues involved, where the system might generate inconsistencies and anomalies, and how greater devolution requires *closer* co-operation between Westminster and the devolved governments.

Then there is the increasing role that technology, and data in particular, will play in the tax system of the future. It is at the heart of HMRC's ten year strategy, which promises:

- more use of third-party data;
- more effective pre-population of data; and
- more timely uploading of data.

This presents opportunities, but also risks – data security and data accuracy to name just two. You only have to look at what happened with the Post Office's Horizon system to see the consequences of trusting too blindly in fallible technology. But HMRC are right to be pursuing this agenda, and we are right to be engaging with them, to shape digital processes and ensure that safeguards are built in, including the right of taxpayers to have an agent act for them in a digital tax world, and adequate provision for those who struggle to access services digitally.

And, talking of the digitally excluded, finally there is the task of getting the tax system working better for taxpayers on low incomes. This is an agenda being led by the Institute's Low Incomes Tax Reform Group, which published a paper in December containing practical steps to make it clearer, simpler and fairer. They've met with ministers and shadow ministers from the four largest parties to discuss them and there are already improvements to guidance as a result of their working with HMRC. This is an important agenda, and it needs to be backed in to HMRC's strategy at every stage.

So:

- raising more money, while stimulating growth;
- agreeing rules internationally, while anticipating greater divergence within the UK; and
- harnessing technology, while providing proper safeguards and protections.

Nobody *ever said* tax policy making was easy!

These agendas offer plenty to keep policy makers, and our technical committees, very busy over the years ahead.

Conclusion

So, in conclusion, I look forward to talking to many of you about them and about the Institute's plans when I see you over the next 12 months – whether that is virtually or in person.

In the meantime, thank you so much for your support for the Institute over the past year and in the year ahead.

Finally, I am extremely grateful for the wonderful privilege of being your President.

ATT

Feature a Fellow: Amanda Fisher

PROFILE

Amanda Fisher, ATT(Fellow) CTA, tells us about her career and how she has found ATT Fellowship useful.

Why did you pursue a career in tax?

I definitely fell into tax! My first ever employment was working for an insurance company, amending motor insurance policies on the VDUs (it was a long time ago!). I then applied for a job as an Administration Officer within the government sector and when I turned up for the interview, I found this to be for the Inland Revenue. I politely turned down the first offer, but was then offered a more significant role which helped transition the paper records into the first computer system.

My first achievement in tax was to enter the details of all of the Oxfordshire self-employed businesses into those computers for the Oxford districts. Wow, that's brought back some memories!

From then, my experience in tax and my tax qualifications developed and so I'd started to build a career that I then wanted to continue. I've enjoyed my career in tax so far and wouldn't change a thing.

What are the highlights of your career?

There have been many, but these are a few highlights:

- In the early years of self-employment, I had the opportunity to do some student teaching for their tax exams. I remember closing the door, ready to take my first class. I was a trifle nervous but it was a turning point for my future of student teaching and CPD lecturing. I love sharing practical client examples and encouraging tax colleagues.
- Being an Examiner for the ATT, for about four years.
- Becoming the Branch Chair for Thames Valley branch. It's been great to give some time to the Association and to the profession. If any of this is inspiring to others, it's good time spent.

Amanda Fisher

Why is the ATT qualification important?

I applied for membership of the Association as a validation of my career to that point. It was an instantly recognisable stage of my career and it still is. So although I am also a CTA, it's natural that I retain the ATT membership, particularly now that I am an ATT Fellow. The Association is proactive towards the growth of the students and members and that sits well with my ethos.

Why did you apply for Fellowship?

I'm going to be honest and say that I applied for the prestige. I am proud of the qualification and my experience and so it's good to have the title, to help me stand out while building strong connections.

What advice would you give to people starting off in their career?

I would advise any newbie to use the tax legislation as early as possible. I had the most wonderful colleague that used to encourage me to make reference to the legislation and that helped. The familiarity with tax legislation can help progress a career, without a doubt. Combine this with your experience and personality, and you can have an enjoyable career in tax.

Disciplinary reports

Findings and orders of the Disciplinary Tribunal

TAXATION DISCIPLINARY BOARD

Mr Thomas Byng

NOTIFICATION

At its hearing on 23 April 2021, the Disciplinary Tribunal of the Taxation Disciplinary Board considered a complaint raised against Mr Thomas Byng of Hertford, a member of The Chartered Institute of Taxation.

The tribunal found the following charge proved against Mr Byng:

1. In a settlement order with the Institute of Chartered Accountants of England and Wales (ICAEW) published on 20 February 2020, Mr Byng admitted two complaints of dishonest conduct, and agreed to be excluded from membership of ICAEW. By reason of the fact and/or circumstances of his exclusion from ICAEW, Mr Byng:
   (a) failed to avoid any action that discredits the profession (rule 2.1); and
   (b) conducted himself in an unbefitting manner, which tends to bring discredit upon himself, and/or may harm, the standing of the profession, and/or the CIOT (rule 2.6.3).

The tribunal determined that that the appropriate sanction was that Mr Byng be expelled from membership of CIOT and that he pay the TDB's costs in the sum of £2,045.

A copy of the tribunal's decision can be found on the TDB's website at www.tax-board.org.uk.

Mr Ian Wadhams

NOTIFICATION

At its hearing on 23 April 2021, the Disciplinary Tribunal of the Taxation Disciplinary Board considered a complaint raised against Mr Ian Wadhams of London, a member of The Chartered Institute of Taxation.

The Tribunal found the following charges proved against Mr Wadhams:

Charge 1: Provision of information to CIOT

In breach of Rule 2.12.1 of the PRPG 2018, Mr Wadhams has:

(a) failed to provide information reasonably requested by the CIOT without unreasonable delay; and
(b) failed to reply to correspondence from the CIOT which requires a response without unreasonable delay.

Charge 2: Responding to correspondence from the TDB

(c) In breach of Rule 2.13.2 of the PRPG 2018, Mr Wadhams has failed to respond to correspondence from the TDB without unreasonable delay.

The tribunal determined that that the appropriate sanction was that Mr Wadhams be censured and that he pay the TDB's costs in the sum of £1,995.

A copy of the Tribunal's decision can be found on the TDB's website at www.tax-board.org.uk.

BTG

Interview with Jonathan Peacock

TAX CHARITIES

Alison Lovejoy interviews Jonathan Peacock, QC on his involvement with the tax charities.

Jonathan Peacock QC of 11 New Square, Lincoln's Inn, is a Trustee of Tax Aid and an Ambassador for the fundraising initiative by Bridge the Gap. He explained how he became so closely involved with Tax Aid and looks at recent activities of the charity.

When did you first find out about Tax Aid and Tax Help and decide to get involved?

I was always aware of the great work done by Tax Aid. However, it was not until Steve Edge of Slaughter and May asked me to become an Ambassador for the Bridge the Gap fundraising drive that I got to see the range of activities and the huge difference that Tax Aid makes to people who are stuck with seemingly intractable tax problems. It served as a valuable reminder that the UK system, however well administered, is simply baffling to 99% of the taxpaying population and many simply do not know how to meet their obligations.

At its starkest, it was (I confess) a shock to me that homeless people can have tax problems, but it is now all too possible for low-paid workers, perhaps in the gig economy, to hit financial problems and find themselves without a home – and still to have tax issues from past periods of work.

And, for me personally, putting something back was hugely important – most tax professionals (and certainly many at the Bar) spend their time working on complex issues for those who can afford the fees. If we have skills and knowledge that we can share with those who cannot afford professional help, we should help. Working with the tax charities is the most powerful and effective way of helping people who really need it.

What difference do you think Tax Aid makes?

The mission of Tax Aid is to help people on low incomes (those on £20,000 or less a year) when they get into difficulties with their tax affairs. It aims to help people understand the bits of the tax system that apply to them, pay only the right amount of tax and help them resolve crises when things go wrong. The charity was set up by tax professionals who were concerned that people were being made bankrupt unnecessarily on tax demands based on estimated figures, that people had been overpaying tax for years because they didn't understand the rules and that unrepresented people did not know how to access their rights of appeal.

The need for tax advice has grown significantly since then. There has been a large increase in the number of self-employed people over recent years (indeed, people who did not know that they were 'self-employed' or who were forced into it by those that engaged them), and many of them are on low incomes and vulnerable to unexpected, and often unexplained, tax demands. Equally, there are many people in multiple employments to supplement their income and so have much more complex tax positions. The demand for help and advice has also grown because the tax system has become much more complex for those on low incomes: there are consequently more 'casualties of the system'. This includes late filing penalties, the greater focus on compliance activity and tightened practices on debt collection. All these changes are harsh for those on low income.

Alongside its caseload, Tax Aid is able to discuss common problems with HMRC in cases where the tax system is unfair, inefficient or reduces incentives to work. Tax Aid provides advice by email, runs a national helpline and provides face-to-face services in London, Manchester, Birmingham and Newcastle upon Tyne, and provides training to other front-line agencies.

How has Tax Aid been helping during the Covid pandemic?

In addition to the ongoing caseload, Tax Aid has also been able to offer targeted support for those affected by the impact of Covid-19, who are self-employed, and also those who need urgent help to understand and implement the government's furlough scheme for themselves.

In particular, Tax Aid has operated a bespoke helpline, backed up by email, for those who have been affected by coronavirus, cannot afford an accountant or cannot access the support needed to file a tax return. Detailed guides have been provided to help people understand the framework of the self-employed support and furlough systems (in particular, those working via agencies and umbrella companies) and to keep the right evidence to support claims made. And much of this help was made available on YouTube!

How have the tax professions helped Tax Aid?

Tax Aid and the Bridge the Gap fundraising drive have been given huge financial support by the bigger accounting firms and the large solicitors' firms, including the US based firms. Just as impressive, however, has been the input – of money, time and people – from other firms (large and small) and from individual professionals all around the UK.

I have been very impressed that people have only needed to be asked, whether that is for fundraising events, volunteer time or plain, hard cash. We have been very fortunate to have people – current and retired tax professionals and the judiciary – give up their time and experience to spread the word.

There is always more to do – and Tax Aid still cannot always meet all of the demands on its time – but despite the pandemic, huge progress has been made in streamlining how support is delivered to ensure cost-effectiveness.

How do you see the way forward for the charities and how do you think the professions can get more involved?

The tax charities have done a lot to develop their vision, modernise and set themselves up for the future over the last few years, and I'm proud that the tax professions have been able to support them. We are very much looking forward to further fundraising events and to seeing people in the real world and not on screen!

On a personal level, I am looking forward to making a contribution as a Trustee of Tax Aid and to the wider funding drive of the Bridge the Gap campaign, which will help to support valuable work in the future. Solving tax problems for people who are often desperate by the time they arrive at Tax Aid makes a real difference to their financial position and their mental health – the professions as a whole have a duty to see that this work continues.

If you would like to become involved in the work of the tax charities please get in touch with Alice Devitt at alice@taxaid.org.uk. Also, if you would like me to include information about your work for the tax charities in a future article, either about your general support or specific projects, please get in touch with me via Alice.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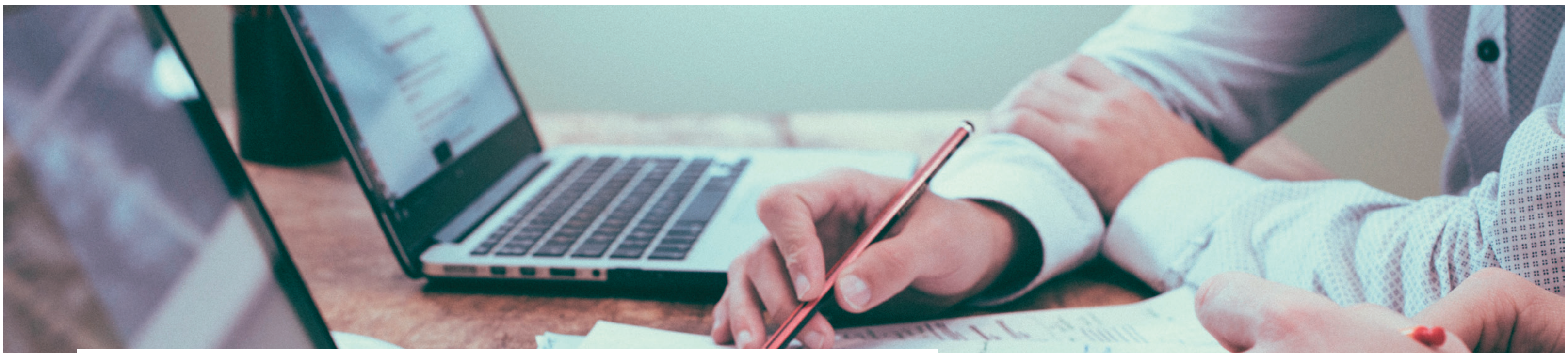

Fairhurst
Accounting for your potential

Private Client Senior Manager or Director

Remuneration Package

To £90,000 dependent on experience

About the Role

Supported by the Tax Partners, you will lead the firm's private client tax services where your main responsibility will be to manage a portfolio of entrepreneurial private clients, advising on areas such as:

- **Shareholder issues on transactions / MBOs**
- **Reorganisations and demergers**
- **Private equity and EIS applications/compliance**
- **Remuneration planning**
- **Share schemes**
- **Capital taxes planning**

You will also support the Tax partners with business development by spotting opportunities to win new work from both existing and new clients and will be responsible for the general running of the private client department including managing junior staff and reviewing personal tax returns.

Key Requirements

You should be ACA or CTA qualified with strong technical knowledge and experience in the private client tax advisory space which will include an awareness of other taxes. You will most likely be currently working at a Top 10/20 firm and be looking for a role outside of a large firm but without compromising on the quality of the clients or work.

About Fairhurst

Fairhurst is firmly established as one of the leading independent chartered accountancy practices in the North West, with a high quality client base and high calibre team. It has successfully acted for many owner managed businesses for over 70 years, including a number of UK and overseas Plc's, as accountants, auditors, tax specialists and trusted advisors and has built a fantastic reputation during this time.

The partners and managers, many of whom qualified with Big 4 and large national firms, form the backbone of the firm, ensuring their experience, expertise and enthusiasm is directed towards assisting with managing the financial affairs of its clients.

Opportunities like this do not come around very often so get in touch today for a confidential discussion to find out more!

Contact **Ian Riley** on **07720 974 653** or at **ian@taxrecruit.co.uk**.

All direct applications, and those by third party recruitment agencies, will be forwarded to **Longman Tax Recruitment.**

Tel: 0333 939 0190
Web: www.taxrecruit.co.uk

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Georgiana Head Recruitment

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Indirect Tax In-house
Alderley Edge – £40,000 to £50,000 + bens

Our client is a large property group and in line with their plans for growth they seek a commercial Indirect Tax Manager to join their Finance Team in the head office in Alderley Edge. Reporting to the Group Tax Director, the Indirect Tax Manager will have responsibility for robust VAT compliance process, including overseas jurisdictions in Spain, China and UAE. The group extends to c.120 companies with c.15 VAT registrations. There will also be a significant amount of indirect tax advisory work across a variety of businesses. Can be part home worked. **Call Georgiana Ref: 3055**

Corporate Tax – Insurance
Leeds – £excellent

Big 4 firm in Leeds seeks a qualified corporate tax professional who will specialise in clients working within the insurance industry. You do not need previous insurance industry experience, just sound UK corporate tax knowledge. A strong background in corporate tax is required, with experience of tax advisory work, tax compliance and tax accounting. The Insurance Tax team provides tax services to all sectors of the insurance market, including general insurers, life & health insurers, international groups reinsurance carriers, brokers and the Lloyd's of London market. **Call Georgiana Ref: 3101**

In-House Indirect Tax Manager
Hull – £excellent + bens

Reporting to the Group Head of Tax and Treasury, this role would suit someone looking for a new challenge with an international remit. Responsibilities will include overseeing global indirect tax compliance, responding to operational tax queries, evaluating the transition to MTD, reviewing and testing the group's VAT control environment, providing tax support for M&A related activities and project work as required. A flexible working pattern (including part homeworking) and part time applicants will be considered. **Call Alison Ref: 3105**

International Tax Advisory Senior Manager
Leeds or Newcastle – £excellent + bens

This Big 4 firm seeks an ACA/CTA qualified senior manager to provide international corporate tax advisory services to a wide range of clients, including one of the UK's largest privately held groups. You will manage the technical delivery of complex UK and international structuring projects, including refinancing transactions, group re-organisations and M&A. You must have the gravitas to hold high level conversations with senior stakeholders in the markets, and be a confident and successful networker. **Call Alison Ref: 3120**

Corporate Tax Assistant Manager
Liverpool – £excellent

This role is a mix of complex tax compliance work and advisory projects for clients including large OMBs, entrepreneurial companies and PE backed businesses and listed groups. Your work will be varied, and you will get exposure to international tax, M&A tax, transfer pricing and R&D issues. This role would suit a recently qualified tax specialist or maybe someone from an independent firm who is looking to work on larger clients and more complex technical work. **Call Alison Ref: 3082**

Customs & Excise Manager
Crewe – £60,000 to £65,000 + car + bens

Our client is an international group whose in-house tax team seeks an experienced customs practitioner for a Customs & Excise role. You may not currently have excise experience. Post Covid, the plan is for staff to be in the office 1-2 days a week – so this role can be part remote worked. Great benefits including 16% pension contribution, and this business has Investors in People Gold Status so is a great place to work. **Call Georgiana Ref: 4000**

www.georgianaheadrecruitment.com

Personal Tax Senior
Leeds – to £30,000

This independent firm is based on the outskirts of Leeds. They are looking for an experienced tax senior to assist the tax manager with a portfolio of predominantly personal tax work. You will assist with the preparation and submission of the self assessment returns for a portfolio of clients, and will also be involved in ad-hoc tax advisory work. You should be AAT/ATT/CTA/ACA/ACCA qualified, with a minimum of 3 years' taxation experience. Flexible working is available. **Call Alison Ref: 3020**

Tax Advisor – Variety of Levels
Warrington – £excellent

Our client is a long standing, growing practice, with a dynamic client base of OMBs and HNW individuals. The tax team focuses on advisory work for both businesses and owner managers. The majority of the compliance work is dealt with by a separate general practice team, but some more complex cases are dealt with by the tax team. Our client seeks several hires from recently qualified through to experienced senior manager level. Ideally, you will be CTA qualified; but other qualifications such as ICAS, ACA, ATT and former Inspectors will also be considered. **Call Georgiana Ref: 3122**

Mixed Tax Senior
Leeds – to £30,000

Reporting to the Tax Manager, you will manage the tax compliance for a portfolio of circa 300 personal tax clients including high net worth individuals, company directors and partnerships, deal with client and HMRC queries, prepare Forms P11D and assist with the preparation of corporation tax returns and computations. You will ideally be ATT or CTA qualified, with a minimum of 5 years' experience. Full and part time candidates will be considered. **Call Alison Ref: 3100**

VAT Manager
North West (Various Locations) – £excellent

This Top 50 accountancy firm is looking for a VAT specialist who enjoys working in a small team and can deal with issues that span the full range of VAT and indirect taxes. You will provide practical, commercial advice on complex VAT and other indirect tax issues. You will also manage HMRC enquiries, assist with ADRs, prepare cases for First-tier Tribunal and deal with all indirect tax aspects of company acquisitions and disposals. **Call Alison Ref: 2994**

M&A Tax Manager or Senior Manager
Cardiff – £excellent

Do you dream of returning to or living in Wales? You might currently work in London as a tax lawyer or CTA and be looking for a different type of lifestyle. Our client is looking for an experienced transaction tax specialist to join their team in Cardiff. You will have access to London quality transaction tax work but can be based partly from the office in Cardiff and partly from home, enabling you to live in rural Wales or in Cardiff. A variety of backgrounds considered, including a tax lawyer, or tax accountant (ACA, ICAS, CTA or equivalent). **Call Georgiana Ref: 3117**

Group Tax Manager
Leeds – £65,000 to £80,000 + bens

Our client is a major international group. They seek an experienced corporate tax professional to head up tax from the UK. It is likely that you will already have some in-house experience or will have trained in a large accountancy firm and have dealt with international groups. Some experience of transfer pricing would be advantageous, but the main thing is large group CT experience. This is a classic in-house role for a senior manager or experienced manager, and there is scope for you to get involved in treasury and broader finance projects. Mix of home and office working possible. **Call Georgiana Ref: 3114**

YOUR TAXATION RECRUITMENT SPECIALISTS

Churchill Tax Advisers

Churchill Tax is a fast growing and one of the leading specialist tax consultancies in the UK. Due to our increased market share via acquisitions and organic growth we are recruiting at senior levels to join our national team. Both roles will be based around **80% on working from home** with occasional visits to the London/regional offices to meet clients where necessary.

Senior Tax Advisory Manager/Director

Up to £100k plus bonus & partnership

The successful Senior Tax Advisory Senior Manager/Director will be responsible for:

- Meeting with new and prospective clients, onboarding and agreeing terms of business
- Providing bespoke advice to private clients on inheritance tax and capital gains tax
- Advice to high net worth individuals / landlords
- Residence and domicile tax advice, onshore and offshore tax planning
- Corporate restructuring, HMRC clearance, negotiations with HMRC
- Stamp duty and some knowledge of VAT

To be successful in the role, it is essential that the Senior Tax Advisory Manager has the following experience:

- At least 10+ experience in a similar role
- Track record of meeting billing targets and debt recovery
- A track record of developing bespoke tax planning strategies for clients
- Preferably CTA qualified or ACA/ACCA with strong tax advisory experience “within a large firm”
- Experience with tax advice to high net worth individuals and companies
- Strong written and verbal communication skills
- Ability to conduct meetings with new clients independently

In return for your commitment the successful Senior Tax Advisory Manager/Director will benefit from a quick route to partnership, a salary of up to £100k+ per annum PLUS bonus.

Senior Tax Investigations Manager/Director

Up to £85k plus bonus & partnership

- At least 8 years solid experience in handling and managing HMRC tax investigations
- Must be able to independently manage HMRC investigations and enquiries relating to VAT Income Tax, Corporation Tax, PAYE
- Solid experience of dealing with Code of Practice 8 and Code of Practice 9 investigations (tax fraud investigations)
- Experience of dealing with appeals in the Tax Tribunal and representing clients
- Solid/ provable experience of negotiating with HMRC to reduce clients’ tax liabilities
- Should have track record of defending clients in complex investigations
- Ability to communicate and correspond with HMRC
- Meetings with clients and HMRC
- Preferably ACCA/ACA/CTA qualified or ex-HMRC Inspector
- Strong written and verbal skills

If you would like to apply, please send your CV to Andrew Edmond on **andrew@churchill-tax-advisers.co.uk** or call on **020 7998 1834**.