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TAXAdviser

A complicated gift for an employee

Mark McLaughlin looks at the tax 'life' of restricted securities from acquisition to disposal
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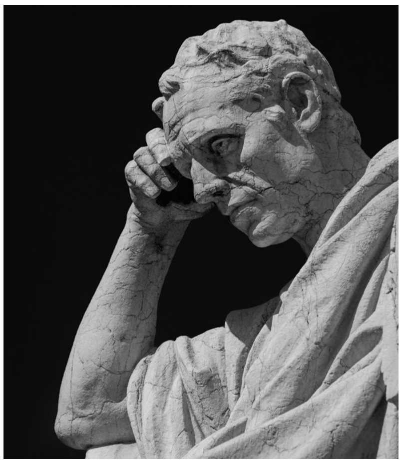

President's page

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Glyn Fullelove

The ongoing issue of the loan charge

As I approach the end of my Presidency, I would like to address an issue that has been running since well before I became President, and looks like it will continue for some time afterwards. That issue is the loan charge.

The measures enacted in Finance Act 2020 have reduced the impact of the loan charge for some, and the Covid-19 outbreak has pushed the issue down the news agenda. However, many people remain affected and face substantial tax liabilities. There is continuing media coverage of the loan charge, the Parliamentary APPG remains active and lobbying of government continues.

There is also continuing disguised remuneration activity. There has been publicity around schemes targeting agency workers returning to work in the NHS; and HMRC has a specific call for evidence open in regard to tackling promoters of disguised remuneration schemes.

The nature of the debate has changed during the course of my Presidency. Back in early 2019, the loan charge was definitely seen as a problem of tax avoidance. On social media, some were still defending the use of loan schemes. There was a great deal of discussion and criticism about how HMRC was pursuing enquiries, and a debate amongst tax professionals about whether the loan charge was a proportionate response to the avoidance schemes the charge targeted.

There was recognition that this disguised remuneration avoidance was unusual, in that loan schemes had been used by a relatively large number of taxpayers compared to most avoidance schemes. Alongside the eye-catching 20 year 'look back' in the loan charge provisions, this demonstrated that all sides were dealing with something going beyond past experience with tax avoidance. The traditional HMRC enquiry approach was under considerable strain, and it was no surprise when the review into the loan charge headed by Sir Amyas Morse was announced about a year ago.

The CIOT's evidence to the Morse enquiry is available elsewhere. In short, we advised that the loan charge was clearly a disproportionate approach for at least some of those involved in loan schemes; however, it could be an appropriate remedy for some recalcitrant taxpayers who did fully appreciate the nature of what they were doing. We acknowledged that there was a continuum of cases between those extremes.

The Morse review resulted in a number of now-enacted relieving measures which were welcomed by the CIOT, though these still leave many taxpayers with life-changing tax liabilities.

A key factor was the change in law in the Finance Act 2011, announced in December 2010; Sir Amyas Morse concluded that this put beyond doubt the fact that such schemes did not work. Some still have concerns, but as someone said to me recently, after the 2011 changes no reputable tax adviser would touch loan schemes with a barge-pole. HMRC has acknowledged that after this legislation, the market for such schemes was increasingly driven by a relatively small number of unregulated promoters.

Sir Amyas Morse concluded that the tax position was sufficiently clear after December 2010 for taxpayers to have been aware of the position and their responsibilities. This is hard to argue with, but leaves the question of why schemes still continued to be sold and used so extensively? One answer would be that after December 2010, loan schemes were being mis-sold by promoters. This suggests to me that for these more recent years we should look at the selling of disguised remuneration schemes – including loan schemes – as less of a tax avoidance issue, and more of a consumer protection issue. In its current consultations on tackling the promoters of disguised remuneration schemes, HMRC recognises that there is a significant consumer protection element to stopping the sale of abusive schemes.

Where does that leave those still facing large liabilities under the loan charge provisions? Ongoing campaigns to change tax legislation have been firmly resisted by the government, and seem to have little chance of success. My view is that if any further relief is to be available to such taxpayers, their campaign needs to shift to focus onto the mis-selling element; the focus should be on whether these schemes were basically mis-sold financial products, rather than on the tax avoidance involved. This could open up a fresh approach to resolving this issue, without the need for further tax changes. It also firmly places those who promoted such schemes, when it was clear they would not work, at the centre of enquiries.

The times remain strange and challenging. However, I hope you all have a good month, and I will return with some wider reflections on my Presidential term in November.

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"We should look at the selling of disguised remuneration schemes – including loan schemes – as less of a tax avoidance issue, and more of a consumer protection issue.

ATT welcome

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Richard Todd

The lessons of history

Last month the focus shifted back to Brexit, after a summer when we have had other important issues to consider. A major sticking point was about continued access to UK waters – fishing rights. I remembered seeing a map of the UK's territorial waters and how they would appear next year when Brexit is supposed to be done; and I noticed that both Lough Foyle and Carlingford Lough (those are the bits of water where Northern Ireland and the Republic butt together) were split in half. With all the talk about trade negotiations between the UK and EU, I wondered how easy was it to agree our split in 1922.

When I started to look into this more closely, I discovered that the issue remains unresolved even today, almost a hundred years later. The problem appeared to stem from the Government of Ireland Act 1920, when Ireland was partitioned by reference to the land mass (six counties in Northern Ireland and 26 counties in Southern Ireland). The matter of territorial waters was not an issue because the whole island of Ireland was still part of the UK. The issue only reared its head when Southern Ireland left the UK in 1922.

Sir James Craig, the Prime Minister of Northern Ireland at the time, asked the question in the UK Parliament – do the territorial waters surrounding Northern Ireland also form part of Northern Ireland and therefore the UK? Sir Douglas Hogg (Attorney General) opined that the territorial waters did indeed belong with Northern Ireland. But in a subsequent Irish court case relating to fishing rights in 1923, the court decided Ireland's territorial waters extended to the low water mark on the shoreline around County Londonderry.

In 1927, perceived illegal fishing on Lough Foyle had become so grave that Sir James Craig (still Prime Minister) contacted his Irish counterpart, hinting that he might introduce a Bill giving the police powers to stop and search vessels on Lough Foyle. Ireland asserted that all of Lough Foyle was Irish territory and that, as such, a Bill would be rejected by the Republic of Ireland and its introduction would create 'a very serious situation'.

With the fall of France in 1940, the British Admiralty ordered convoys to be re-routed through the north-western approaches, which would take them around the north coast and through the North Channel to the Irish Sea. However, escorting those convoys raised a problem: it became imperative to establish an escort base as far as possible to the west in the UK. There was one obvious location, being Lough Foyle, but it remained unclear where the border was between the UK and Ireland in Lough Foyle.

In the early months of 1941, the Royal Navy increased its use of Lough Foyle but remained concerned that there might be a challenge to its use of the Foyle on the grounds that ships navigating the river were in the waters of neutral Ireland. The Royal Navy continued to use its new base on the Foyle until 1970. When both Ireland and the UK joined the European Communities in 1973, the issue lost all importance because the disputed waters were now European territorial waters.

The territorial dispute between Ireland and the UK concerning Lough Foyle and Carlingford Lough is still not settled. As recently as 2005, when asked to list those areas of EU member states where border definition is in dispute, a British government minister stated:

> 'Border definition (i.e. the demarcation of borders between two internationally recognised sovereign states with an adjoining territorial or maritime border) is politically disputed between Ireland and the UK.'

In June 2009, the UK's Foreign & Commonwealth Office underlined its view that the whole of Lough Foyle is within the UK, but also recognising that the Irish Government does not accept this position.

This does not bode well for the future. I am sure the matter will come to the fore again the next time there is a dispute about fishing rights in the Lough.

On a lighter note, I trust you tuned in to Professional Standards – Updates and Reminders webinar on 15 September. A very important and very interesting session…

All the very best.

Richard Todd
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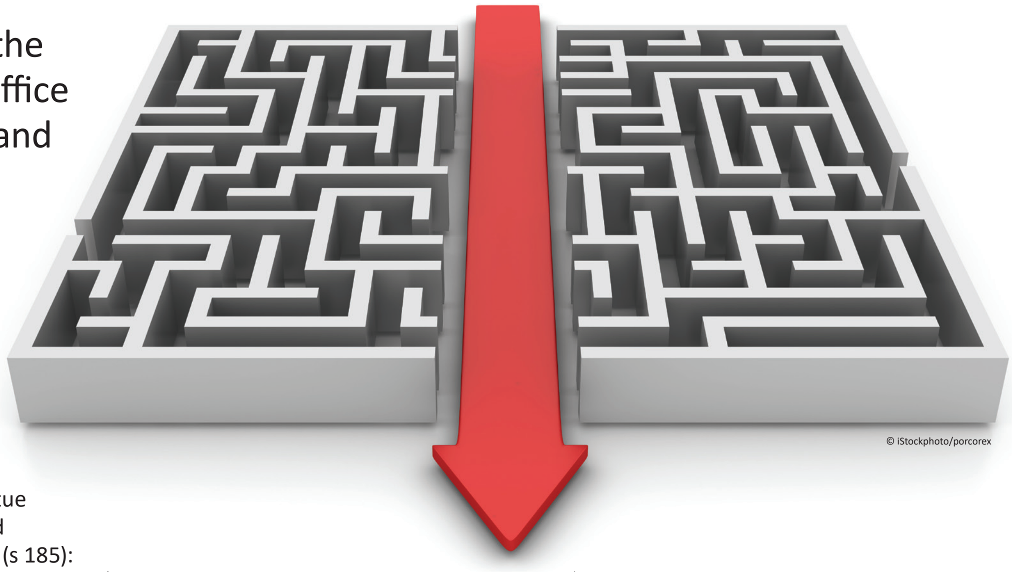
"With all the talk about trade negotiations between the UK and EU, I wondered how easy was it to agree when Southern Ireland split from the UK in 1922.

The complexity of simplification

Bill Dodwell reviews the issues faced by the Office of Tax Simplification and its efforts to address complexity in tax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One of the seemingly perennial questions concerns what exactly the Office of Tax Simplification is supposed to do. What is simplification? The OTS was given statutory authority in 2016, by virtue of the Finance Act 2016 Sch 25 and ss 184-190. The Act has this to say (s 185):

1. *The OTS must provide advice to the Chancellor of the Exchequer, on request or as the OTS considers appropriate, on the simplification of the tax system.*
2. *For the purposes of this section and s 186:*
   - (a) *'the tax system' means the law relating to, and the administration of, relevant taxes;*
   - (b) *'relevant taxes' means taxes that the Commissioners for Her Majesty's Revenue and Customs are responsible for collecting and managing; and*
   - (c) *a reference to 'taxes' includes a reference to duties and national insurance contributions.*
3. *References in this section and s 186 (however expressed) to the simplification of the tax system include references to improving the efficiency of the administration of relevant taxes.*

The Act thus doesn't define simplification, other than making it clear that it includes improving the efficiency of administration. We therefore need to consider the ordinary meaning of the word.

What does it all mean?

The Cambridge Dictionary defines simplification as 'the process of making something less complicated and therefore easier to do or understand'.

Sir Edward Troup, speaking in February 2019, suggested that simplification relates particularly to certainty, the burden of undertaking tax compliance, and the tax system's comprehensibility (see bit.ly/3hutlyt). He pointed out that the OTS's work has at times involved suggesting reforms where it can especially have a role in preparing the ground, seeking to revise how the system operates. Optimistically, Troup also saw the OTS as acting as a restraint on the government through its wider influence.

Administrative improvements and beyond

Possibly the greatest part of OTS reports is focused on administrative improvements; and in recent years, due to the pressure on parliamentary time, it has been important to work on these matters. Good examples here include the 2018 report on HMRC Guidance and the first inheritance tax report, which focused on improving the administration of the tax. The current study on claims and elections will doubtless include many suggestions for improvement.

Simplification must go further than administrative improvements if it is to be truly successful, however. It was striking to find from the inheritance tax survey, completed by over 3,000 people, how little was understood about the tax by potential taxpayers. Some of the recommendations for inheritance tax policy change are designed to make the scheme of the tax easier to follow – by those without tax expertise.

Changes to achieve this ambition have been criticised by some experts, but surely remain at the heart of the Office's mission. The chief focus of the Office is on benefiting the majority of taxpayers, with particular (but not exclusive) consideration given to those without ready access to tax advice. Having an understandable framework is a simplification, even if there are some complexities in the law.

The complexity of choice

Choice is in many ways a good thing. However, in taxation too much choice, or unhelpful choice, adds complexity. An individual wishing to be self-employed can provide services directly or can exercise choice to establish a company to provide those services. The taxation consequences are quite different – and complicated.

The OTS heard in its 'Simplifying everyday tax for smaller businesses' report that many people ended up with a company, which they didn't understand (see bit.ly/2FzFpkO). Individuals didn't realise that a company is a legal person separate from its owners and directors. Evidence shows that the overwhelming majority of small (micro) companies have a tax agent, almost certainly because the owners don't understand how to manage a company. Yet 30% of self-employed individuals manage their accounting and tax affairs without help.

We cannot (and should not) remove from people the choice of legal form but providing more help and support to those starting up on their own could help. Others have argued that looking in more depth at the neutrality of the overall tax system would make it easier for choice to be based primarily on business reasons, rather than for tax reasons.

A further area of complexity is created by distortions in the tax system. There are numerous examples where different tax treatments encourage people to do something in a particular way to achieve a tax advantage. If the distortions were reduced, people would act in a simpler way. One example concerns gifts of chargeable assets by a parent to children. Often the capital gains tax advice will be to hold on to the asset, to benefit from the market value step-up on death; yet the better approach, from a business or family perspective, might be to pass on the asset much sooner.

PROFILE

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Stimulating consideration

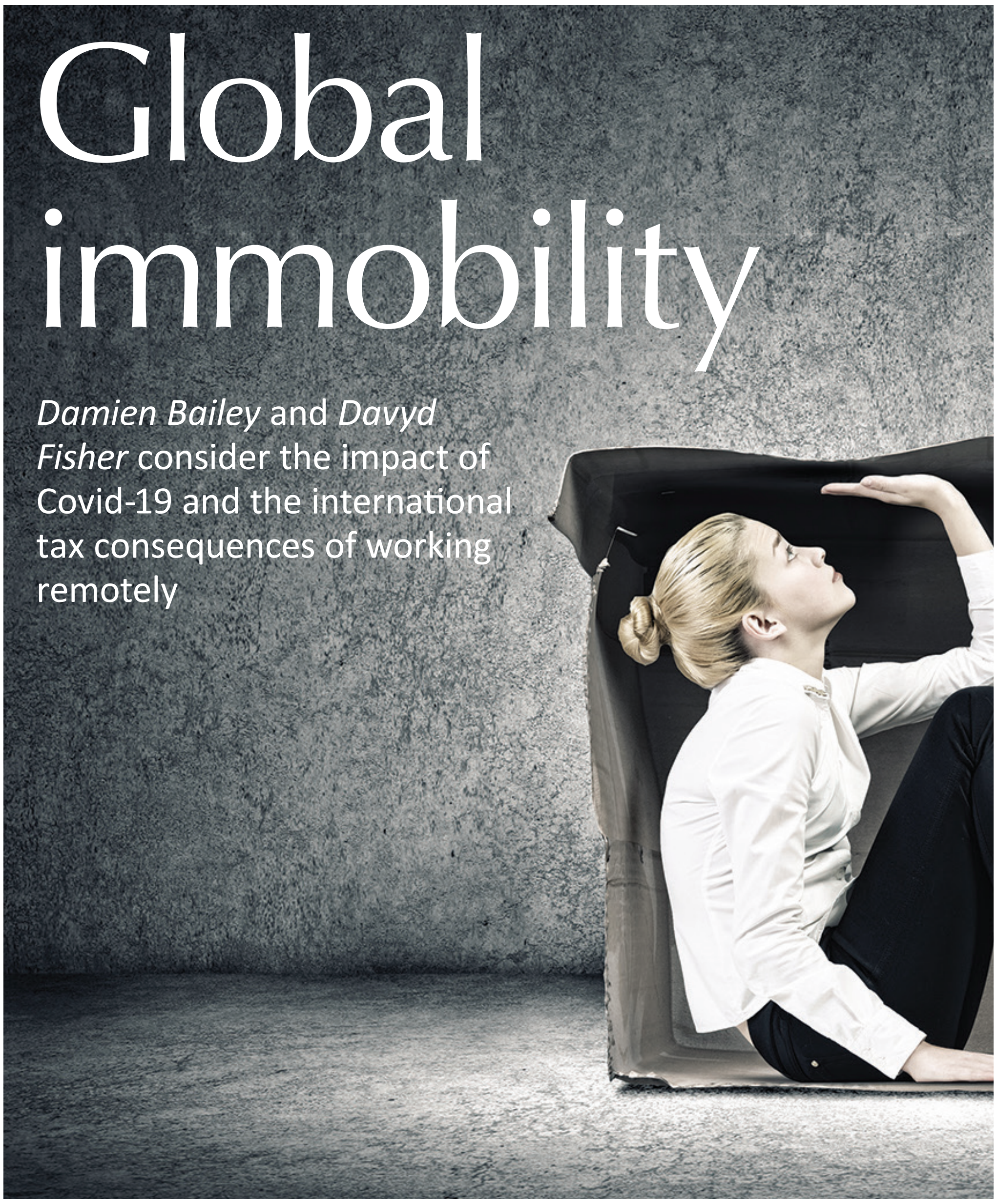
One of the challenges for the UK tax system generally is how best to stimulate consideration of possible changes. After all, general consent is an important part of the effectiveness of any tax system. I would argue that in some areas the Office of Tax Simplification is best placed to lead this broader review of future options. The Office has done work of this sort in the past; for example, with its exploration of a common base for income tax and national insurance. A more recent example is the scoping report on Reporting and Paying Tax, which looked at the case and opportunities to extend third party reporting to help self-employed individuals and landlords with their tax compliance obligations (see bit.ly/3mpZVFm). The review suggested that there are some parts of the economy where this type of reporting is possible and would be helpful.

The Financial Secretary to the Treasury Jesse Norman MP, speaking the recent Tenth Anniversary OTS conference, welcomed that the OTS 'has been prepared to have that engaged, intelligent, expert conversation with government that allows it to address policies that affect large numbers of taxpayers'. He also strongly reaffirmed his support for simplification of the tax system – both as an end in itself and as a way to reduce costs for taxpayers and for HMRC. (The conference recording is available at bit.ly/35TiDzt.)

Ultimately, the work undertaken by the OTS depends to a great part on what interests the chancellor, HM Treasury or HMRC – since they have the decision-making power. The independence and the unusual public sector/private sector mix of the OTS means that it is well placed to research and recommend substantive improvements to the UK tax system.

Global immobility

Damien Bailey and *Davyd Fisher* consider the impact of Covid-19 and the international tax consequences of working remotely



KEY POINTS

- **What is the issue?**
The Covid-19 outbreak has had an impact on the mobility of the internationally mobile workforce. What are the implications of allowing employees to return to their home countries to work during the pandemic?
- **What does it mean for me?**
There are tax and social security risks that employers need to balance with the flexibility they are able to offer their employees.
- **What can I take away?**
This is something employers should be thinking about – either because they need to mitigate their tax risk during the pandemic, or they are open to the potential benefits of a non-centralised workforce in a post Covid-19 world.

The Covid-19 outbreak has no doubt had an impact on the mobility of the internationally mobile workforce. However, it has also had a profound impact on the way we work and the rise and acceptance of homeworking.

Global mobility specialists are receiving questions on a daily basis on the implications of allowing employees to return to their home countries to work during the pandemic; and in many cases, employees have taken it upon themselves to do so. Many employers are already aware of the risks that exist but want to support their employees as best they can. Some may consider this to be a temporary response to the outbreak, believing that 'normality' will resume in due course; others, however, will see this as the big push towards the 'new normal' – a change that was inevitable even without a global pandemic to set wind in its sail.

GlobalWorkplaceAnalytics.com revealed in a study in 2018 that 56% of employees in the US have jobs that could be accomplished remotely (see bit.ly/2CiiM2V). Many employers, such as Facebook, are aware of this shift, setting in motion plans for a 'Work from Anywhere' strategy in the new few years. Covid-19 has forced many employers and employees globally to be unwitting participants in this experiment.

Whatever happens in a post Covid-19 world, there are tax and social security risks in the here and now that employers need to balance with the flexibility they are able to offer their employees. These risks may change going forward as governments adapt to the ever increasing global mobility of the workforce.

Corporate presence and permanent establishments

Many businesses are aware that if they operate within another country, that country may seek to tax the profits deemed to arise there. This could typically arise either by having a corporate tax residence in that country or a permanent establishment.

Corporate residence

Under UK domestic law, a company is deemed to be tax resident if it is incorporated in the UK or if its place of central management and control is in the UK.

Due to the disruptions caused by Covid-19, there is a risk that the place of central management and control of a non-UK incorporated company could inadvertently shift to the UK; for example, if the UK directors are unable to travel outside of the UK for board and other strategic decision meetings. However, HMRC recently published guidance (INTM261010) stating that it does not consider a company to have become tax resident in the UK because a few board meetings have been held in the UK over a short period of time. Businesses should exercise a degree of caution in this area and detailed record keeping is crucial.

However, not every country takes this approach and the domestic law of each jurisdiction should be considered. This is particularly relevant where mobile workers have returned to their homes overseas and are making decisions on behalf of a UK company outside the UK. Relevant tax treaties should be reviewed to determine the ultimate place of corporate residence or whether an entity might be dual resident.

Permanent establishment

A taxable presence can also arise for an employer if it has a permanent establishment in another country. If a tax

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treaty exists between the two contracting states, then what defines a permanent establishment is typically enshrined within the tax treaty.

Under the OECD Model tax treaty (which forms the basis for many treaties – but note changes under the BEPS Multilateral Convention), a permanent establishment can arise where:

- an entity has a fixed place of business in another contracting state; or
- a person habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts, that are routinely concluded without material modification.

The first leg of the permanent establishment test is particularly relevant, as employers could be said to be conducting operations of their business at a 'fixed place of business' in an overseas country if an employee is working from their home there.

Under the OECD model, and as explained by the OECD in a recent statement (see bit.ly/3fkAqR7), there needs to be a 'degree of permanence' to the arrangement for it to be 'fixed'. The fixed place in question, such as a home office, must also be at the disposal of the enterprise and its business must be carried on partly or wholly from that fixed place. It is the OECD's view that a remote location should be deemed to be temporary to the extent that it does 'not become the new norm over time' and therefore may lack the degree of permanence necessary to create a permanent establishment.

With respect to the second leg of the permanent establishment test regarding agencies, HMRC guidance and the OECD statement referred to above emphasise that the agent's role relating to the conclusion of contracts must be habitual. Therefore, as reflected in the OECD statement, a permanent establishment should not arise where activities are undertaken in a home for a temporary or transitory period due to government directives impacting on their normal workplace.

Interpretation of the wording of the treaty and OECD guidance can vary for each contracting state. As governments have reacted in different ways to the permanent establishment rules following the global pandemic, it is difficult to give a general view. HMRC considers that the current UK approach is sufficiently flexible to deal with permanent establishment risks arising as a result of Covid-19, and that the approach taken by other tax authorities should be considered separately. It should also be remembered that authorities are increasingly linking up their systems between corporate and employer taxes.

Employer withholding taxes

Unless employees are intending to spend at least until the end of the UK tax year of departure and the significant majority of the following tax year working full time overseas before returning to the UK, they are more than likely to remain UK tax resident under the statutory residence test.

At a personal tax level, if a double tax treaty exists then this may prevent income tax arising for the employee if the conditions of Article 15 of the OECD model tax treaty apply. This states briefly that:

- the employee is either non-resident under the host country's laws or under the treaty residency tie breaker rules;
- the employee is not present in the host country for an aggregated period of 183 days or more;
- remuneration is paid by the UK employer; and
- the costs of the remuneration are not borne by a permanent establishment which the employer has in the host country.

However, each country interprets the double tax treaty in its own way, and this exemption does not necessarily apply to an employer's obligation to withhold income tax in that country. A number of countries have put relaxations in place for foreign employers as a response to Covid-19 and travel restrictions. However, these typically only cover situations where travel restrictions make travel overseas impossible or impractical; therefore, they may not apply, leading to further administration and costs for the employer.

Where withholding taxes are required in the host country, the employer will need to consider how this can be practically applied. If the income is exempt under treaty, then how will the employer or employee recover the tax that has been withheld? It is likely that the employee will need to file a tax return in order to claim a treaty exemption and reclaim any withholding tax.

If the exemption does not apply but a foreign tax credit will instead be given in the UK, how will this be operated in order to avoid cashflow issues for the employee?

An Appendix 5 agreement could be entered into with HMRC so that monthly foreign withholding tax is offset against PAYE. End of year statements are required along with confirmation that the foreign tax has actually been paid. If the withholding does not reflect the actual liability, then the employer or employee will need to inform HMRC, which will then amend the UK liability for the specific tax year.

Alternatively, the employer could enter into a loan arrangement with the employee so that the employer settles the foreign withholding upfront on the agreement that any refund generated by the subsequent foreign tax credit is paid back to the employer. Careful consideration should be given to any contractual documents to mitigate the risk of HMRC deeming the loan to be income. UK tax implications will likely arise if either: the loan amount exceeds £10,000 during the tax year; and/or the employee is unable to repay the full amount of the loan. Consideration should also be given to the overseas tax implications of this loan.

Social security

Further to withholding taxes, an obligation to register, report and pay social security contributions may also arise in the host country. This could be alongside a requirement to continue operating National Insurance in the UK on the same remuneration.

Article 12 of EC Reg 883/2004 (posting of employees to other member states for less than 24 months) will typically apply so that social security continues to arise solely in the UK if:

- the posting is within the European Economic Area (the EU, Iceland, Liechtenstein and Norway) or Switzerland; and
- employees intend to return to the UK before the Brexit transition date of 31 December 2020.

However, for this to apply the employer would need to carry out business activities in the member state; and it would need to have specifically sent the employee to that member state specifically to carry out such activities. As such, it is unlikely to apply in the case of employees freely choosing to work overseas.

Some employers may be framing these 'temporary arrangements' as overseas secondments. This allows for easy application to HMRC for an A1 Portable Document, as an application under Article 12 allows the employer to make the application on the employee's behalf without their input. Strictly speaking, this is unlikely to satisfy the conditions outlined above. However, some employers regard it as a low risk approach where workers are overseas for a short period of time.

In a recent survey by ECA International titled 'Global Mobility and Covid-19', it was found that 60% of companies have allowed assignments to begin remotely if the assignee has not been able to travel to the host location. As a result of Covid-19 and the ability to work remotely, many are now remaining in their home country to work for their new UK employer, having never stepped foot in the UK. This makes it very difficult to argue that under EC 883/2004 social security contributions should arise solely in the UK; it is expected that for Article 12 to apply, the individual should be attached to the social security system of that member state for at least one month immediately prior to their posting.

Article 13 (Pursuit of activities in two or more member states) would then need to be examined in detail. This can be relatively complex. However, this would likely give an answer whereby social security will continue to arise solely in the UK, assuming that: the UK remains their country of habitual residence; and during the previous and following 12 months they perform at least 25% of their working time in the UK.

In exceptional cases, Article 16 may allow two or more states to come to an agreement to disapply Articles 11 to 15. The European Commission has confirmed that where movement between member states arises as a response to combating the Covid-19 outbreak, then member states should seek to invoke Article 16 so that the individuals do not suffer as a result of their vital work (see bit.ly/3jafzSG).

In any case, it would be prudent for employers to obtain an A1 Portable Document in order to certify that social security will continue to arise only in the UK and to avoid the costs and administrative burden of operating social security in another country. If the UK will not provide such documentation, then further advice should be sought to determine obligations in the host country.

Similarly, if the employees have returned to a country outside of the EEA that has a reciprocal agreement for social security contributions (see bit.ly/3gDWeZ9), then once again it would be prudent to consider the facts of the agreement and apply to HMRC for a Certificate of Coverage if necessary.

If the host country is neither within the EEA nor is a country with a reciprocal agreement with the UK for social security contributions, then social security is likely to continue to be operated in the UK with no explicit protection for social security (or often Provident Fund in Asia) also arising in the host country.

Other implications

- Are there minimum wage obligations to consider in the host country?
- Are there any obligations to pay into a pension scheme operated within the host country?
- Are there any company, employment or such legal implications that may need to be considered in the host country?
- Is the individual legally allowed to work in the overseas territory on behalf of their employer?

Overall, this is something employers should be thinking about – either because they need to mitigate their tax risk during the pandemic, or they are open to the potential benefits of a non-centralised workforce in a post Covid-19 world.

In a recent survey by AIRINC (see bit.ly/3ix8uLH), 182 leading multinational employers were asked if they had a policy in place for employees who live and work remotely in another country. Despite their large international presence and experience, only 6% had some form of policy in place to address this, with 40% considering implementing a policy in the future. Being deeper into the Covid-19 outbreak may have shifted their focus now that eyes have been opened to the benefits and risks.

What should employers do?

- Consider where their workforce are currently operating and whether policies should be put in place to limit what and for how long work can be done overseas in order to manage risk.
- Speak to their tax advisors to discuss the tax risks of employees working remotely overseas.
- Seek further advice and support in the UK and host country where necessary.

Special thank you to Dan Dickinson for support on the corporate points. Dan has just joined as a partner at Grant Thornton in Leeds.

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

A search for solutions

Alistair Cliff reviews the responses to the government's 'Call for evidence', which seeks to raise standards in the tax advice market

On 19 March, HM Government issued a 'Call for evidence: raising standards in the tax advice market'. This is a consultation the government committed to in its response to the report by Sir Amyas Morse, following the issues arising from the loan charge, introduced in 2016 to tackle disguised remuneration loan arrangements.

The Morse report includes a summary of tax avoidance arrangements that have sought to take employment income out of the charge to tax, the counter-measures taken, and the impact they had on people and public revenues. It should be of interest to anyone interested in standards of behaviour in relation to tax. It reviewed behaviours of advisers, salespeople, taxpayers, legislators and HMRC. On the subject of behaviours in the supply side of the tax advice market, it concluded that while welcome changes had been made as a result of the 2017 update to the standards in Professional Conduct in Relation to Taxation (PCRT) there remains a market of unscrupulous tax advisers, outside the professional bodies, where change is still needed.

On 21 July, HMRC issued a consultation on tackling promoters of tax avoidance, and a specific call for evidence on tackling disguised remuneration tax avoidance.

This article looks at some of the public responses to the 19 March call for evidence, and the 21 July initiatives, in overview.

KEY POINTS

What is the issue?
On 19 March, HM Government issued a 'Call for evidence: raising standards in the tax advice market'. This is a consultation the government committed to in its response to the report by Sir Amyas Morse, following the issues arising from the loan charge.

What does it mean for me?
At its heart, the call for evidence is a search for solutions to perceived problems in a services market that seeks to support, in a wide variety of ways, one of the closest areas of interaction between the state and the majority of its citizens.

What can I take away?
The 2008 financial crash and the worldwide response to the Covid-19 pandemic are cited as changing public attitudes to tax, which may be premature. However, the government's response is comprehensive, and the calls for evidence and consultation can be taken as evidence that the debate has moved to a new level.

The 19 March call for evidence

The call for evidence asks for views and evidence on a range of issues, including:

- the scope of the market for tax advice and services;
- the characteristics of good and bad practice;
- current government interventions;
- international examples of how good standards might be achieved; and
- possible approaches to raising standards.

At its heart, the call for evidence is a search for solutions to perceived problems in a services market that seeks to support, in a wide variety of ways, one of the closest areas of interaction between the state and the majority of its citizens. Protecting public revenues and providing protection to consumers are key themes.

This article highlights some of the common themes that emerge from the published responses, including those of the CIOT, ATT, ICAEW, ICAS, all bodies whose members are required to follow Professional Conduct in Relation to Tax (PCRT), and the Low Income Tax Reform Group (LITRG).

LITRG is a CIOT initiative working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of people on low incomes. I mention this here because the LITRG response highlights some of the particular challenges presented by the fact that the complexities of our tax system are not confined to those with high incomes or wealth. Nor indeed, are the issues raised in the call for evidence confined to the part of the market where tax advice and compliance services are sought from firms of accountants. Indeed, the fact that the UK tax market is not officially regulated, and that anyone can offer tax services without any restriction, comes as a surprise to many.

HMRC evidence

There seems to be wide acceptance that there is a case for change in some sectors. The call for evidence seeks more evidence to build that case, but many respondents highlight that HMRC must have the most extensive body of evidence, and that it would be helpful if ways could be found to share that evidence more widely, while respecting taxpayer confidentiality.

HMRC does, of course, share some evidence. Examples include the complaints HMRC is able to make to professional bodies whose members HMRC considers to have fallen below the PCRT standards (although the bodies report that the volume of such complaints is relatively low). Critically, there is no equivalent channel to address concerns about tax service providers outside professional bodies, where serious concerns are acknowledged to exist. HMRC also highlights technical areas of concern through its 'Spotlights'. However, few of the recent problems identified in the Morse report stem from members of PCRT bodies, and very few of the taxpayers involved, if any, are likely to read HMRC Spotlights or be directed to them.

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Professional bodies

The tax services market is diverse and evolving. The responses recognise that this diversity means there is unlikely to be a one-size fits all solution. Indeed, trying to impose one could put a disproportionate burden on the already compliant, without tackling extreme cases of concern. Commonly recognised problems include well-meaning advisers who somehow fail to meet necessary standards of competence, and 'bad advisers' who intentionally engage in abusive tax avoidance. Both of these present consumer protection and revenue protection issues.

There is widespread recognition that high standards should be in everyone's interest. The responses highlight that roughly 70% of tax advisers are members of a professional body (not just the PCRT bodies, but also others, including those regulating lawyers), with 30% not affiliated in this way. The call for evidence acknowledges the value that good agents, who come from both populations, bring to the good administration of the tax system. However, as the CIOT points out, this recognition might come as a surprise to some readers.

Professional bodies provide a disciplinary framework to control the behaviour of their members, strengthened through the 2017 PCRT changes, which were agreed with HMRC, and welcomed by the Morse report. Their rules of professional body membership typically require that members hold professional indemnity insurance and maintain their technical competence through continuing professional development programmes, appropriate to the work their members carry out. This combination addresses both revenue protection and consumer protection.

If the solution to the perceived problems with the tax advice market involves a form of regulation for all providers, the professional bodies point out that they already offer one, and suggest that 'option E', maximising the regulatory/supervisory role of current professional bodies, is the preferred route to improving standards in this market. They also recognise that imposing the same rules and oversight on the entire adviser population overnight would be highly disruptive, and so recognise that a phased transition would be required.

Various respondents suggest requiring all tax advisers and compliance agents to be members of an appropriate professional body in five to ten years' time, to allow for market adjustment. This has parallels with the approach taken to the reform to the regulation of independent financial advisers in 2012 following the Retail Distribution Review. The ATT goes so far as to suggest a possible implementation plan.

The possible benefits of a regulator for the professional bodies are recognised, but respondents question whether the costs involved would bring true value for money to all concerned and properly serve the public interest. This is perhaps where the tensions between revenue protection and consumer protection become most pronounced. As the CIOT puts it, the 'costs of regulation generally fall ultimately on the consumers of regulated services, and there is already a problem of cost and availability of tax advice to some sections of the population'. The LITRG gives some stark examples.

Other issues

Respondents also highlight the increasing importance of technology to the tax services market, already present in the software used to prepare accounts and tax returns, and key to HMRC's Making Tax Digital agenda. How long might it be before we see software claiming to give tax advice on particular topics? It seems clear that any framework of regulation and protection emerging from the consultation should apply to all channels of tax services, whether provided at point of delivery by a human or a machine.

Two important parts of the call for evidence focus on HMRC powers and penalties: seeking comments on the effectiveness of HMRC's current powers; and views on the possibility of penalties for advisers, not just taxpayers. Respondents highlight that the law already allows penalties to be levied on advisers under the dishonest conduct rules, enablers and promoters regimes. These are relatively new, and there are consistent calls to see the effects of these regimes before creating more penalties, and for HMRC to make more use of its existing powers before seeking new ones. The 21 July consultation, however, highlights some of the practical problems the existing regimes are running into.

Drawing this all together, there seems to be a recognition that change is needed, but that the benefits of existing regimes of professional regulation, and HMRC powers and penalties, should be maximised and applied consistently across the tax services market before designing new regimes.

The 21 July call for evidence and consultation

The call for evidence on disguised remuneration and the consultation on tackling promoters of tax avoidance develop specific topics relevant to the 19 March call for evidence. The 21 July call for evidence itself includes many examples of the behaviours visible in the disguised remuneration market, and the consultation illustrates the situations HMRC encounters when it tries to tackle avoidance. They reveal the store of evidence that HMRC must be able to share with government.

They also illustrate a recognition that specific solutions are needed for particular problems that are distinct from the broader tax advice market.

The consultation on tackling promoters of tax avoidance sets out proposed changes to existing regimes, specifically:

- disclosure of tax avoidance schemes (DOTAS);
- promoters of tax avoidance schemes (POTAS);
- penalties for enablers of defeated tax avoidance;
- general anti abuse rule (GAAR); and
- disclosure of tax avoidance schemes: VAT and other indirect taxes (DASVOIT).

The deadline for responses will have closed by the time this article goes to print, but the document gives examples of situations where these regimes fail to provide effective measures to counter abuses, along with the proposed solutions and illustrations of the intended effects. As the target is the promoters of tax avoidance, the measures mainly focus on the 'supply side' of abusive arrangements. There is also a modification of the GAAR rules to enable GAAR notices to partnerships.

The call for evidence seeks comments on the effectiveness of HMRC's current powers and views on the possibility of penalties for advisers.

It is welcome to see the consultation highlight the fact that the changes are not aimed at advisers adhering to high professional standards, and state that the promoters of the target schemes are rarely members of professional bodies. The key changes being consulted on seek to achieve the following:

- Prevent promoters seeking to circumvent the effects of the DOTAS regime, by giving HMRC powers to obtain information on schemes that the promoters argue are not disclosable, and publish details of the scheme as a means of consumer protection.
- Accelerate the ability for HMRC to issue 'stop notices', already available under the POTAS regime, to prevent the further promotion of avoidance schemes by lifting the condition for stop notices to follow only once the scheme has been defeated.
- Prevent promoters seeking to sidestep the POTAS regime, by targeting the owners of the businesses used to promote schemes, in cases where the businesses are closed down and the activities moved to a new business.
- Amend HMRC's third party information powers in connection with enablers of abusive arrangements and make it easier for enablers penalties to be charged.

The call for evidence on disguised remuneration notes that the population using such schemes has changed substantially following the 2011 legislative changes. It highlights that the vast majority of the current users of these arrangements are independent contractors in a range of industries, and in some cases, small and medium sized businesses remunerating directors and employees. This is a shift from the large employers involved in such arrangements prior to the 2011 law.

The call for evidence seeks information that will be held by a wide range of people, as it looks not only at promoters and enablers of disguised remuneration arrangements, but also at employment intermediaries – employment agencies and umbrella companies for contractors, as well as the contractors and engagers of services.

It is somewhat of a conundrum that the disguised remuneration market remains at all. It was December 2004 when the then Paymaster General, Dawn Primarolo, told Parliament that the government would close down the avoidance schemes it knew about and gave 'notice of our intention to deal with any arrangements that emerge in future designed to frustrate our intention that employers and employees should pay the proper amount of tax and NICs on the rewards of employment'.

This warning that legislative responses might be retrospective received much comment at the time. Following the Morse report, the government accepted the recommendation that the loan charge, which was introduced in 2016 but brought into effect for schemes used since 1999, went too far in its retrospective effect. This was therefore limited to loans made when the 2011 legislation was announced on 9 December 2010, which was taken to be the point when the law was truly clear. Maybe there is a case therefore for a new style of legislation, one that includes clear statements of purpose before going into the detailed provisions to achieve this?

Changing attitudes?

2004 seems a long time ago, and the 2008 financial crash and the worldwide response to the Covid-19 pandemic are cited as changing public attitudes to tax. However, it would seem premature to assume that the attitudes of every taxpayer and every tax adviser have changed. As Anthony Seely identifies in his House of Commons Library briefing paper from April this year, Denis Healey as Chancellor of the Exchequer in 1978 made a budget statement that struck me as including remarkable parallels to the 2004 statement: '[Tax avoidance] has emerged recently in a new form which involves marketing a succession of highly artificial schemes – when one is detected, the next is immediately sold – and is accompanied by a level of secrecy which amounts almost to conspiracy to mislead. The time has come not only to stop the particular schemes we know about but also to ensure that no schemes of a similar nature can be marketed in future.'

In 1978, the response was aimed at the specific schemes that were causing concern. Today, the government response is more comprehensive, and the calls for evidence and consultation discussed in this article can be taken as evidence that the debate has moved to a new level.


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A complicated gift

Mark McLaughlin looks at the tax 'life' of a restricted security in the hands of a company employee from acquisition to disposal

KEY POINTS

- **What is the issue?**
This article focuses on the tax treatment of an employer company's shares in the hands of an employee, from acquisition to disposal.
- **What does it mean for me?**
The employment-related securities legislation defines 'restricted securities' very widely where there is a restriction on a share resulting in the market value of the share being altered. If the market value of the share is not reduced by a restriction, it is not a restricted security.
- **What can I take away?**
There is a general reporting requirement when shares in a company are issued to employees (including past or future employees). However, it is not necessary to report some transactions.

Many employees will be blissfully unaware of the employment-related securities (ERS) provisions, and the potential implications if they own shares in their employer company. Furthermore, some tax practitioners might be forgiven for underestimating the broad scope of the rules.

The ERS legislation occupies a sizeable chunk of legislation (ITEPA 2003 Pt 7). Entire publications have been written about ERS. There are several different categories of ERS, each with their own tax rules, such as convertible securities, and securities acquired for less than market value.

This article focuses on one category of ERS that is encountered relatively often in practice, namely restricted securities. It looks at the tax treatment of an employer company's shares in the hands of an employee, from acquisition to disposal (all references are to ITEPA 2003 unless otherwise stated).

Setting the scene

The ERS legislation applies to directors, employees and office holders. Subject to certain narrow exemptions (see below), securities and/or options in a past, present or future employer held by an employee are deemed to stem from the employment. 'Securities' includes company shares, as well as (among other things) loan stock, but not cheques, bankers' drafts, etc.

There are certain exceptions from the ERS regime. Perhaps the most common exception is for family or personal relationships; the 'deeming' provision is removed where the right or opportunity to benefit from a share is provided to an individual in the 'normal course of the domestic, family or personal relationships' of that person (ITEPA 2003 s 421B(3)). In most cases, a 'gift' of shares to a family member who works in the family company will be covered by this exception, but the exception can be more difficult to prove where the individual concerned is an unrelated close friend (see HMRC's Employment Related Securities manual at ERSM20220).

Restricted securities

The ERS legislation defines 'restricted securities' very widely (ITEPA 2003 s 423). Those provisions apply where there is a restriction on a share (by reason of any agreement, contract, arrangement or condition) resulting in the market value of the share being altered. If the market value of the share is not reduced by a restriction, it is not a restricted security.

There are three major types of restriction in the ERS legislation:

- **Provision for transfer, reversion or forfeiture:** This applies where a share runs the risk of being taken away from the employee for less than its market value in specified circumstances (e.g. the employee might have valuable shares in the company that he would be required to sell back to the company at par if he left the employment).
- **Restriction on freedom to retain or sell the shares or to exercise certain share rights:** This broadly applies to provisions under which the employee cannot freely keep or sell a share; or keep the proceeds of any sale; or there is provision for any other restriction (e.g. the right to vote, etc.).
- **Potential disadvantages in respect of the securities:** This covers provision for any other restrictions to the potential disadvantage of the employee

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(or certain others). For example, there may be a provision that the employee can receive dividends and vote but must always waive the dividends and vote as instructed.

It is important to establish whether the shares concerned are subject to restriction or whether the characteristics of the share are simply 'generic' to that class of shares in the company. If the characteristics of the share are enshrined in the Articles of the company as applying to all shares of that class, and an employee gets some of those shares, there is probably no 'restriction' (ERSM30310).

An income tax charge arises on restricted securities if there is a 'chargeable event' (ITEPA 2003 s 426). There are three categories of chargeable event (ITEPA 2003 s 427):

- the lifting of all restrictions from the securities, before they have been disposed of to an unconnected person;
- the variation of any of the restrictions, before they have been disposed of to an unconnected person; and
- the disposal of the securities to an unconnected person, before all the restrictions have been lifted.

EXAMPLE 1: TIM AND HIS SHARES

Tim acquired shares in his employer's company (Acme Bibs Ltd) in May 2015 for £1,000. The shares were restricted securities, because if Tim left his employment within three years, he would be obliged to offer to sell the shares back to the company for £1,000.

Due to this restriction, the actual market value of the shares acquired is £2,400. The unrestricted market value of the shares at that time is £4,000. Tim sold his shares in Acme Bibs Ltd in June 2020 for £10,000, after holding them for five years. The tax position of these events is as follows.

May 2015: Shares bought
Shares have been bought for £1,000 that have an actual market value of £2,400. However, there is no income tax charge on the difference because the shares are subject to a forfeiture clause that will expire within five years (ITEPA 2003 s 425(1)).

May 2018: Selling restriction lifted
The lifting of selling restrictions is a chargeable event. At this stage, the unrestricted market value has risen to £8,000; and, as there are no other restrictions remaining, the actual market value of the shares is also £8,000.

Applying the formula in ITEPA 2003 s 428, the taxable amount arising on this event is calculated as follows:

UMV × (IUP – PCP – OP) – CE = Taxable amount
£8,000 x (0.75 – 0 – 0) – 0 = £6,000 chargeable to income tax

See ERSM30400 for guidance on this calculation. The abbreviations refer to:

- UMV (unrestricted market value)
- IUP (initial uncharged proportion)
- PCP (previously charged proportion)
- OP (outstanding proportion)
- CE (consideration and expenses)

In brief, the items in the brackets look at the proportion of value to be brought into charge as explained below, and CE relates to any expenses incurred by the employee on the event).

June 2020: Shares sold
The shares are sold for £10,000. This transaction is subject to CGT. The tax charge will be based on the consideration for sale (£10,000) less the cost of the shares and the sums chargeable to income tax during the ownership of the shares (ignoring any reliefs, incidental costs and the CGT annual exemption):

	£	£
Consideration		10,000
Less:		
Cost	1,000	
Income tax charge (May 2018)	6,000	
		(7,000)
Chargeable to CGT		3,000

The restricted securities legislation brings into charge to income tax the proportion of the value of the shares not paid for on acquisition. Another way of representing the position is to state that Tim bought shares with an unrestricted market value of £4,000 but only paid £1,000 for them. In effect, he received a discount of 75%:

	Unrestricted market value	Taxable sum	%
May 2015	4,000	nil	0
May 2018	8,000	6,000	75
Total % charged			75

The full 75% discount enjoyed by Tim has been brought into charge across his period of ownership as the restrictions have been lifted.

EXAMPLE 2: TIM'S ELECTION

If Tim (see **Example 1**) had elected to ignore the restrictions on his shares when he acquired them, he would have been charged as follows:

May 2015: Shares bought
Income tax is charged on the difference between the UMV of the shares (£4,000) and the amount he pays for those shares (£1,000). Tim is therefore charged to income tax on £3,000 in that tax year.

May 2018: Selling restrictions lifted
When the restrictions on the shares are lifted in May 2018, no further income tax charge arises.

June 2020: Shares sold
Tim would be chargeable to CGT on disposal of the shares in Acme Bibs Ltd as follows:

	£	£
Consideration		10,000
Less: cost	1,000	
Income tax charge (May 2015)	3,000	
Total costs (excluding dealing costs)		(4,000)
Chargeable to CGT		6,000

Without making the election, Tim would be subject to tax on £9,000. Of this, £6,000 would be chargeable to income tax with the remaining £3,000 being chargeable to CGT.

With the election, Tim would still be subject to tax on a total of £9,000, although only £3,000 would be chargeable to income tax with the remaining £6,000 being chargeable to CGT.

Given the differential in income tax and CGT rates (and the potential for CGT reliefs and the annual exemption, etc.), the election in Tim's case would be beneficial as his total tax bill would be reduced. However, Tim would have to find the funds to pay the tax liability 'upfront' for 2015/16.

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The variation of a restriction includes the removal of a restriction; in other words, if there is a security with several restrictions attached, a chargeable event will occur on each occasion that one of the restrictions ends.

The income tax charge (under ITEPA 2003 s 428) is based on a rather daunting formula. HMRC's Employment Related Securities manual includes 'simple' examples of the calculation (at ERSM30420), and 'complex' examples (at ERSM30430).

To understand the legislation and HMRC's guidance, it might be helpful to understand what the legislation is trying to do. When a restricted share has been acquired by the employee, a charge would have arisen based on money's worth. This would have looked at any difference between what was paid for the share and its actual market value at the time of acquisition. The actual market value will reflect any characteristics of the share at that time.

If the impact of restrictions on the market value of that share was ignored, it would be reasonable to expect that the market value would be greater; this is referred to as the unrestricted market value.

The difference between those two values (i.e. unrestricted market value and actual market value) is not ordinarily subject to tax on the acquisition of the share (although see above where an election is made). The employee therefore has a share which could potentially give extra value if those restrictions were released or varied, or if the share were sold to someone to whom the restrictions had no impact. The restricted securities provisions are aimed at taxing this potential additional value when a chargeable event occurs (see Example 1).

Election for market value

In Example 1, an irrevocable election could have been made jointly by Tim and Acme Bibs Ltd to ignore the above restriction and replace it with a tax charge based on the full value of the shares on acquisition (ITEPA 2003 s 431(1)). An election must be made no more than 14 days after the shares are acquired; however, it is not submitted to HMRC but must be retained in case it is required for later inspection.

If there is more than one restriction, an election can be made to ignore certain restrictions, but leaving others to be charged to tax on acquisition (ITEPA 2003 s 431(2)). HMRC will not normally extend the time limit for making the election; but varying a restriction can create an opportunity to make an election to deem all restrictions to have been lifted (under ITEPA 2003 s 430(1)). Examples of both election forms are available via HMRC's Employment Related Securities manual at ERSM30450.

The above elections give the taxpayer the opportunity to identify and exclude from the above charge any specific restrictions that are anticipated to be lifted, and which would give rise to an increase in the tax bill (assuming the shares rose in value).

In certain circumstances, an election under ITEPA 2003 s 431 is deemed to have been made by employer and employee. Those circumstances are broadly where shares are acquired under a tax advantaged scheme (e.g. enterprise management incentives), or where securities are acquired as part of an avoidance scheme (see ITEPA 2003 ss 431A and 431B).

Telling HMRC

There is a general reporting requirement (in ITEPA 2003 ss 421J and 421K(3)(a)) when shares in a company are issued to employees (including past or future employees). The relevant return (i.e. HMRC's 'other' template) must be made to HMRC by 6 July following the relevant tax year.

However, it is not necessary to report some transactions; for example, where a limited company is incorporated in the UK and initial subscriber shares are acquired directly on incorporation; or on transfer from a company formation agent, etc. where certain conditions are met (see ERSM140040). Nevertheless, all shares acquired in those circumstances by officers of the company or otherwise, by reason of employment, are employment-related securities.

ERS schemes, including one-off awards or gifts of shares, should be registered with HMRC. The Gov.uk website provides links to end of year return templates, technical and guidance notes (tinyurl.com/Template-ERS).

The business armoury

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Matthew Poli examines the advantages of enterprise management incentives in the time of Covid-19

PROFILE

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Coronavirus has disrupted the economic wellbeing of businesses of all sizes and sectors, in many cases necessitating pay cuts, furloughing staff or cutting performance incentives, such as bonuses. With many companies now in survival mode, it is more important than ever to ensure they retain top talent. Whilst a drop in revenue might limit a fiscal reward for an employee's hard work, businesses are increasingly looking towards enterprise management incentives (EMIs) as an attractive alternative remuneration package.

It is a route that companies should consider if seeking employee benefit schemes during this time. An EMI can be a key weapon in a business's armoury, especially for employers concerned about retaining key talent following business restructures or if remuneration packages have been reduced or halted. Without the need for an immediate fiscal injection, it can help to galvanise internal relationships, particularly in times of uncertainty like these.

An EMI is an approved employee share scheme that is available to most trading companies – with the exception of those in banking, farming, property development, legal services and shipbuilding – that allows employers to grant tax efficient share options to key employees. Unlike unapproved shares, an uplift in share value is not subject to income tax and any subsequent disposal of EMI shares falls within the capital gains tax regime; therefore, any uplift in their value is subject to the lower rates of capital gains tax.

Continued government protection

Since EMIs were introduced in 2000, a host of changes have been made to make the scheme more attractive and to ensure that those using it have been provided with additional protections amidst the pandemic.

On 21 July, the government published draft legislation aimed at ensuring that employees whose working patterns were disrupted by Covid-19 will not be disadvantaged by EMI rules. Pre-pandemic, a qualifying requirement of the scheme was that employees should work no fewer than 25 hours per week at the business or, if less, at least 75% of their working time. For options granted before March 2020, employees will now remain qualified if they were placed on furlough, unpaid leave or were required to work reduced hours.

This is, of course, important because the occurrence of a 'disqualifying event' would ordinarily result in the loss of the tax benefits of the scheme. The company and the relevant employee have an obligation to retain evidence of the reduction of their hours due to Covid-19.

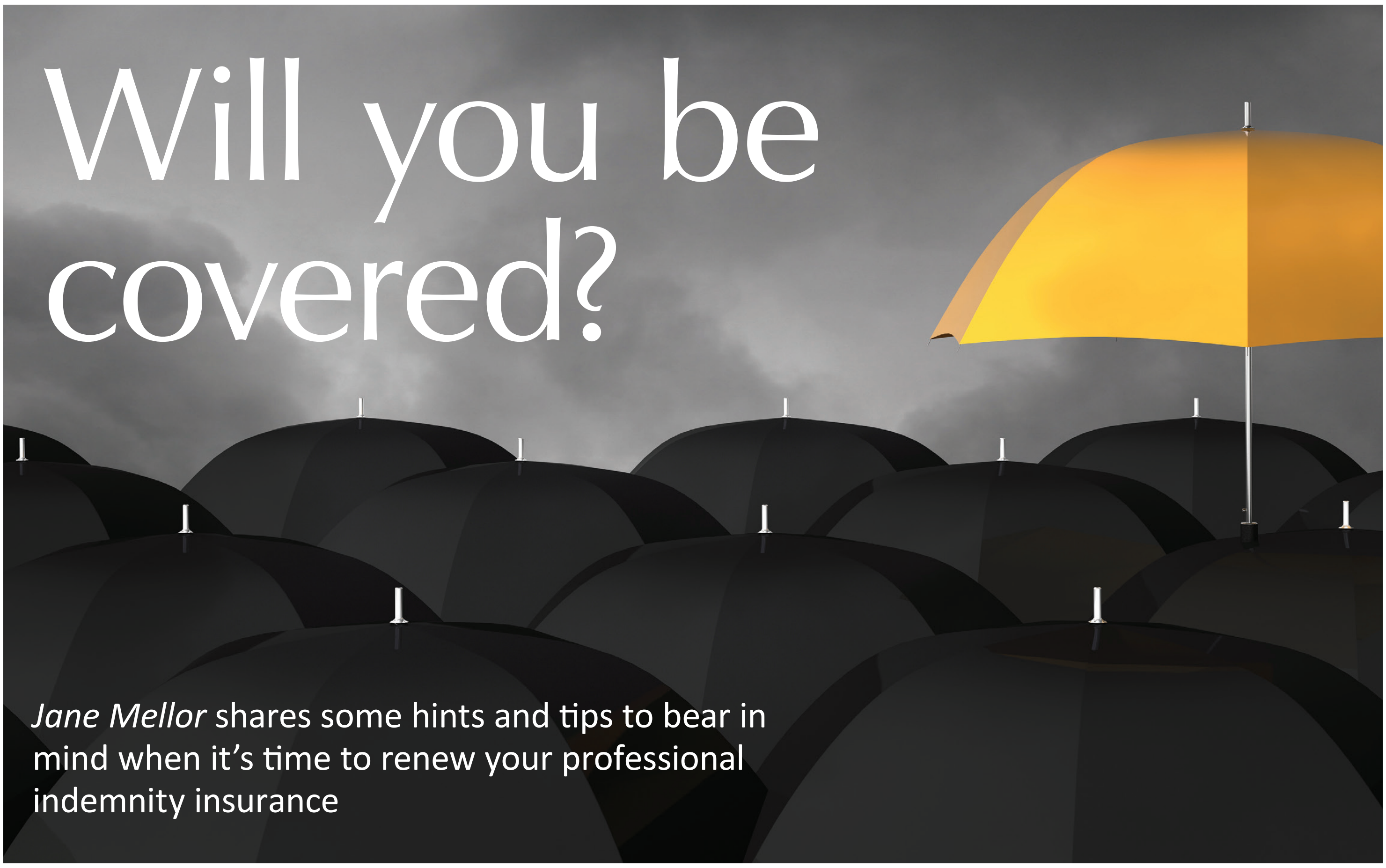
There will inevitably be cases where an employee's contract has been terminated as a result of Covid-19, whether due to redundancy or illness. If the employee was unable to work for an extended period of time, or has died, the scheme rules will need to be checked and advice taken to ascertain the impact of the event on the option.

A key incentive

A number of businesses have been considering restructuring as a result of Covid-19, including restructuring the workforce due to a downturn in business, shrinking markets and faltering customer confidence. EMIs, alongside other tax advantageous schemes, should be considered as part of the positive side to a restructure. Whether or not an employee is directly affected by a restructure, it is important not to lose sight of the impact that it will have on them and the way they view their employer. Even if an employee has been furloughed or placed on reduced hours or pay for business critical reasons, the employee may feel 'hard done by' or unfairly treated, and loyalty and goodwill towards the employer could be eroded. Any restructure needs to be handled with care, but often the perception of events by those affected supplants the reality of the exercise.

Key value-generating employees will need to be retained when the pandemic is over, and acting to secure them now is something all companies should consider. If a company qualifies for an EMI scheme, it can be a relatively simple and cost effective measure to ensure that employees are tied to the company for the long term, and feel that they have a stake in its future success. The granting of a qualifying option can be used to offset the 'pain' of furlough or a salary reduction, and allows an employee to feel part of company's onward trajectory, irrespective of short term challenges.

An EMI scheme should be considered as part of a Covid-19 strategy and as a means of managing the impact of the pandemic generally. Whilst not something to be entered into lightly, such a scheme remains a cost effective, cash efficient way of securing key employees, driving value and growing a business in the time of coronavirus.



Will you be covered?

Jane Mellor shares some hints and tips to bear in mind when it's time to renew your professional indemnity insurance

KEY POINTS

- **What is the issue?**
The professional indemnity insurance (PII) market has hardened considerably over the last 12 to 18 months and members need to be aware of that and plan accordingly.
- **What does it mean for me?**
It is a mandatory membership requirement for CIOT and ATT members in practice to have PII in place which meets the requirements of the PII regulations. Members therefore need to take account of the current market, plan ahead and ensure suitable cover is in place.
- **What can I take away?**
This article includes some tips in relation to PII arrangements which will help to prepare members in relation to renewals.

It is a CIOT and ATT membership requirement that all members in practice have professional indemnity insurance (PII). A member in practice is a principal in a business which provides tax services; i.e. a sole practitioner, a partner in a partnership, a member in an LLP or a director of a company.

Members in practice must confirm that they have PII cover in place when they submit their annual membership return. Any member in practice failing to have cover in place risks referral to the Taxation Disciplinary Board and disciplinary action. Full details of the regulations and associated guidance are available on the CIOT and ATT websites (www.tax.org.uk/PIIregs and www.att.org.uk/PIIregs).

During 2020, we have received a number of queries relating to PII. This article looks at some of the key points which have emerged and which members may find useful before renewing their cover or moving into new areas of work. Covid-19 has, of course, had implications as well and members need to be prepared for questions in terms of how they are operating in the current climate. Here are some top tips for navigating through the minefield.

1. Allow sufficient time for renewal

As highlighted in the May 2020 edition of *Tax Adviser*, it is taking longer to renew PII and that was the case even before the pandemic hit. Insurance companies and brokers have had to close offices and adapt to different working arrangements just as others have, which has compounded potential delays in processing renewal applications.

Members should submit their requests for renewal as early as possible to ensure that they secure cover by the renewal date.

2. Consider the implications of taking on new areas of work

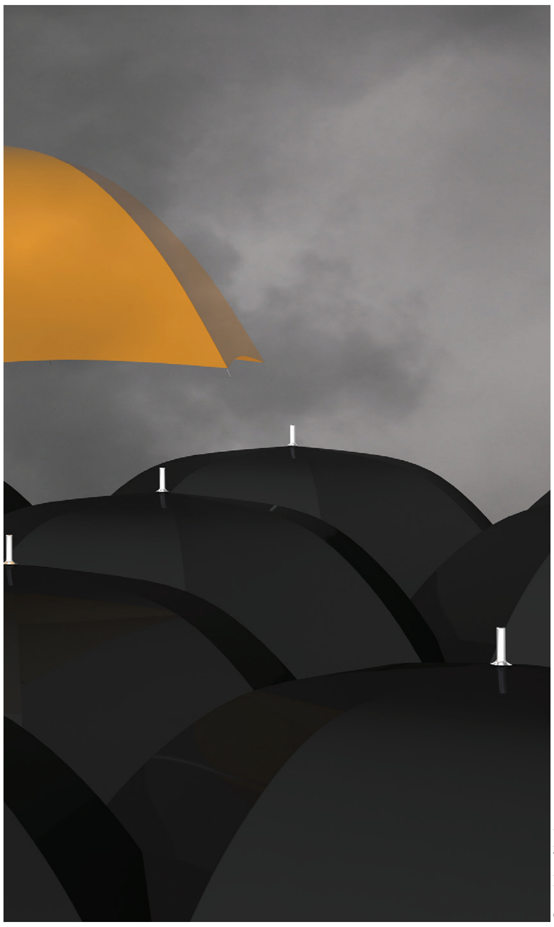
The insurers view some areas of work as being riskier than others. Examples given by brokers include offshore tax, trust work, tax mitigation schemes, investment advice, insolvency, valuations and M&A work. In terms of clients, work for high net worth individuals, famous clients, those in the entertainment industry and solicitors tend to be viewed as being riskier.

If you are considering a new line of work, it would be prudent to alert your insurer and find out whether that would increase your premiums **prior to engaging** with a client to undertake that work.

3. Budget for increased premiums

We have received a number of reports from members in practice of substantial increases in premiums, with some reporting a threefold increase over the previous year's premium.

The insurance market was hit badly by the Grenfell disaster. Whilst this was in the construction industry, the ramifications have been felt throughout the insurance market with insurers looking carefully at the risks they are willing to cover and the associated premiums. In the accountancy sector itself, insurers have been hit by claims in



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PROFILE

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relation to historical tax mitigation schemes and auditing. This has made insurers more cautious in terms of what they are willing to cover. We are told by the industry that historically accountants and tax advisers have enjoyed lower premiums than many other professionals. To an extent, there has been a correction in the market this year.

4. Previous claims (or disciplinary action)? Have a plan.

People make mistakes and sometimes things go wrong. This can be a key issue at renewal time. We understand that in general a current insurer is more likely to 'stick with you' if there has been a problem; sometimes, however, they will refuse to renew and it can be difficult in some cases to obtain insurance from a new provider. Brokers have stressed that where there has been a claim, insurers will want to see what was done to put right any historical problems and what measures have been taken to minimise the risk of a repeat of the same issue.

5. Make sure you have an alternate agreement in place

A recent trend emerging is that some insurers want to know whether a firm has made an arrangement with another firm for cover in the event of illness or death (an alternate arrangement). It appears that insurers may also want to see the formal written agreement in relation to these arrangements, as well as details about the other firm, including professional body membership and even claims history.

Further guidance on alternates and a sample agreement can be found in Professional Rules and Practice Guidelines (PRPG) (www.tax.org.uk/prpg and www.att.org.uk/prpg) and at www.tax.org.uk/alternates and tinyurl.com/y5mgd7zv.

6. Be prepared for questions relating to Covid-19 working arrangements

We are aware that a number of insurers are now asking additional questions in relation to working arrangements during the pandemic and some are excluding cover for Covid-19 risks. As an indication, some of the questions that you might be asked include:

- Does your company have an up to date Business Continuity Plan (BCP) as part of its risk management process, including processes to allow all staff to adequately work remotely?
- For how long can current remote working arrangements be maintained?
- How is the supervision of staff and auditing of files/work maintained during lengthy periods of remote working?
- Is it anticipated that there will be a significant reduction in annual income?

Our Professional Rules and Practice Guidelines state that members should have a business continuity plan. If you do not currently have one in place or your plan has not been reviewed for some time, it would be a good idea to review it.

7. Check arrangements with your insurer prior to retirement or business changes

Members are reminded that if they cease to be in practice, for example through retirement, they must have run-off cover in place for a period of not less than six years after cessation. Standard practice is that it is the incumbent insurer who provides the run-off cover, so this is not a time when members can look to change arrangements and move to another provider.

One point to look out for if you are trading through a limited company is what happens if and when the company is dissolved as the insured entity (the company) no longer exists. It is important to discuss this with your broker before closing the company. See also the PII FAQs on run-off cover (www.tax.org.uk/PIIregs and www.att.org.uk/PIIregs).

8. Use a good insurance broker

A good insurance broker will help firms to work through what is required at renewal time. In many cases, there are standard questions which must be answered for the insurers. The broker will guide you through what is required and which insurance company might best suit your needs. They are there to help ensure that your submission to the insurance company is well presented.

The CIOT and ATT cannot recommend that members take out a particular PII scheme. However, we have arrangements with two insurers who can provide a policy which complies with our PII rules. Details are on the CIOT website (www.tax.org.uk/PIIproviders) and the ATT website (www.att.org.uk/PII).

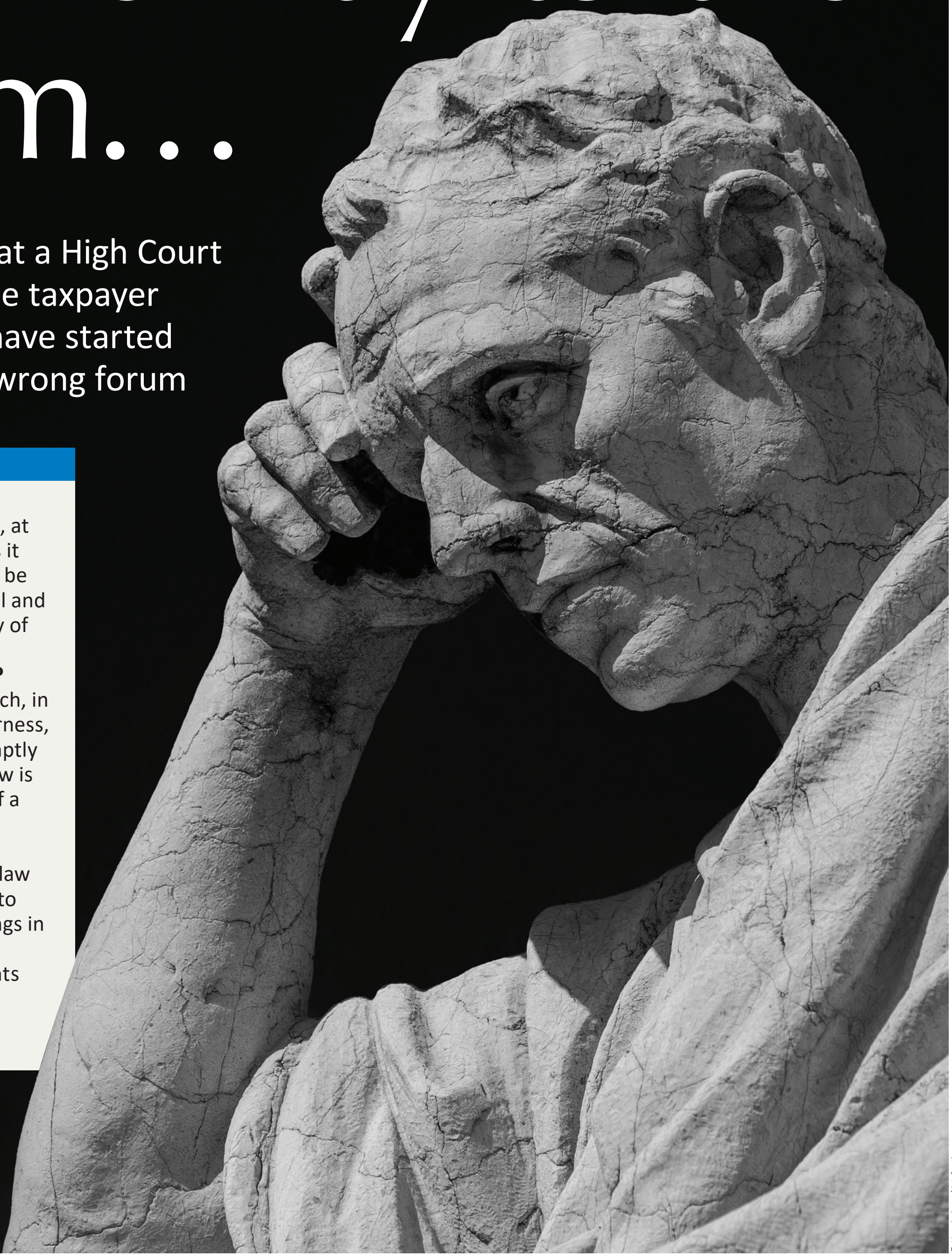
And finally...

Members must be prepared for their PII renewal date and ensure that they allow sufficient time and take appropriate steps so that cover is in place by the deadline. PII provides protection to clients and to members and their firms, and it is a key requirement of being a CTA or an ATT in practice. If you do not hold or cannot obtain a PII policy, you will be referred to the Taxation Disciplinary Board.

If you experience difficulty in obtaining or renewing PII please contact the Professional Standards team for guidance and support by emailing: standards@ciot.org.uk or standards@att.org.uk.

On the way to the forum...

Keith Gordon looks at a High Court decision in which the taxpayer was considered to have started proceedings in the wrong forum



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KEY POINTS

- **What is the issue?**
There are certain issues which, at least on the basis of the law as it stands at the moment, cannot be addressed by the tribunal at all and must be raised, if at all, by way of judicial review.
- **What does it mean for me?**
If a taxpayer has a dispute which, in part, turns on questions of fairness, it is essential to consider promptly whether or not a judicial review is needed as well as or instead of a statutory appeal.
- **What can I take away?**
Whatever the true position in law might be, it might be prudent to commence multiple proceedings in different jurisdictions so as to pre-empt procedural arguments that HMRC might make and to ensure that time limits are not missed in the meantime.

Over the past decade or so, a procedural issue that has arisen from time to time is whether or not proceedings have been commenced in the right forum. For example, in the case of *Beadle* [2020] EWCA Civ 562, the Court of Appeal accepted HMRC's arguments that the taxpayer could not challenge the validity of a partner payment notice (PPN) in the course of an appeal against the penalty issued for non-compliance with the notice. This was despite the fact that the tribunal had full appellate jurisdiction over the penalty, and that penalty's own validity turned on the validity of the underlying PPN. According to the Court of Appeal, the taxpayer should have started a judicial review against the PPN and, having failed to do so, the PPN must be assumed to be valid.

On the other hand, in *Higgs* [2020] UKFTT 117 (TC), the First-tier Tribunal was considering an appeal against discovery assessments which were similarly dependent on the effect of prior decisions taken by HMRC (in this case, under ITEPA 2003 s 684(7A)(b)). However, in that case, HMRC persuaded the tribunal that the arguments were not suitable for determination by the First-tier Tribunal but had to be raised instead in the County Court as a defence against any subsequent enforcement proceedings. Added to this is the fact that there are certain issues which, at least on the basis of the law as it stands at the moment, cannot be addressed by the tribunal at all and must be raised, if at all, by way of judicial review. These are public law arguments such as fairness (including arguments about legitimate expectation) where an HMRC assessment might well be correct in (black letter) law – the well-established legal rules that are no longer subject to reasonable dispute – but where the decision to make the assessment offends an overarching public law principle.

In such cases, it can be contrary to principle for HMRC to insist upon the full amount of tax strictly due. Although it was tentatively suggested in 2009 that such matters could be raised in the tribunal (in the course of a statutory appeal), the case law has moved on and HMRC makes it very clear that these arguments may not be considered by the First-tier Tribunal.

Accordingly, in such cases (see, for example, *Aozora GMAC Investment Ltd* [2019] EWCA Civ 1643), the taxpayer had to start two separate sets of proceedings – one in the tribunal and another in the High Court, so that the two different strands of the same case could be separately argued in the appropriate forum. (See my article 'Stuck in second gear' in the December 2019 issue of *Tax Adviser*.)

That then leads to the question as to which set of proceedings should be heard first. This dilemma was particularly acute in the parallel cases of *Gaines-Cooper* and *Davies & James*, which were eventually brought together at the Court of Appeal and the Supreme Court ([2010] EWCA Civ 83, [2011] UKSC 47 respectively). In *Gaines-Cooper*, HMRC successfully ensured that the statutory appeal was heard before the judicial review proceedings, whereas in *Davies & James*, HMRC argued that the judicial review should proceed first and then the statutory appeal (if still appropriate) afterwards.

It is with this background that I consider the recent judicial review proceedings of *R (oao Boulting) v HMRC* [2020] EWHC 2207 (Admin).

PROFILE

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The facts of the case

Mr Boulting was a major shareholder of a company which had traded successfully for a number of years. In 2013, Mr Boulting (who by then had passed retirement age) and the company proposed a succession strategy whereby Mr Boulting would transfer some of his shares to his son, and the company would buy back some further shares held by Mr Boulting.

It was considered by the taxpayers that the circumstances satisfied the conditions in the Corporation Tax Act 2010 ss 1033 onwards for the sale proceeds to be treated as capital and not as an income distribution. However, many taxpayers are advised to seek the reassurance of a pre-transaction clearance from HMRC, as provided for by s 1044. Mr Boulting's company duly sought and obtained a clearance from HMRC. As s 1044 continues to set out, such a clearance has the effect of deeming (irrespective of the actual strict legal position) Mr Boulting's sale proceeds as capital and not as income from a distribution.

However, upon receipt of Mr Boulting's tax return, HMRC decided to withdraw the clearance, relying upon s 1045(6) which provides that 'if particulars provided [in the application or in response to any request by HMRC for further information] do not fully and accurately disclose all facts and circumstances material for [HMRC's] decision [the subsequent clearance given] is void'.

Judicial review claims are at the discretion of the court rather than a matter of inherent right. The court has to give permission before the judicial review can proceed.

HMRC justified its decision on the basis that it had not appreciated how valuable the shares were, and so it did not realise how much tax was saved by treating the share buyback as capital rather than as income. HMRC argued that the company's failure to disclose the company's value amounted to a material lack of candour so as to allow it to treat the clearance as void.

That decision by HMRC is not in itself capable of appeal. On the other hand, the subsequent closure notice given by HMRC (in which it treated the share sale proceeds as income and not capital, significantly increasing the tax payable) may be the subject of appeal in the tribunal. HMRC's position in the closure notice is that the true amount of tax at stake means that the transaction is a part of a tax avoidance arrangement, thereby negating the condition in s 1033(2)(b). Consequently, HMRC's closure notice treats the proceeds as income and not (as per Mr Boulting's tax return) as capital.

In accordance with the current consensus (with which both HMRC and Mr Boulting concurred), any challenge to HMRC decisions (whether appealable or not) on the basis of public law principles must be made by way of judicial review in the High Court and cannot be advanced in the course of a statutory appeal in the tribunal. Accordingly, Mr Boulting (and the company) commenced two sets of proceedings: a judicial review to challenge the withdrawal of the clearance; and a statutory appeal in the tribunal against the additional tax charged by the closure notice.

Unlike statutory appeals, however, judicial review claims are at the discretion of the court rather than a matter of inherent right. One consequence of this is the fact that the court has to give permission before the judicial review can proceed. When a judicial review claim is commenced, the defendant (the public body whose decision is being challenged) has the right to make a brief reply (rather than a full submission with evidence) to assist the court in making its decision as to whether the claim should be permitted to proceed. Initially, permission is considered by a judge on the papers. However, sometimes the court can order an oral permission hearing (and, in any event, if the permission application is rejected on the papers, the applicant usually has the right for an oral hearing to consider permission).

As noted by the Court of Appeal in the *Gaines-Cooper* case, this permission process 'was designed to protect public bodies against weak and vexatious claims … it was to enable judges to decide whether a case might be arguable on a quick perusal of the material available. Nor, I suspect, was the process intended to afford an opportunity to a public body, such as the Revenue, to resist full consideration of matters of great importance not just to the taxpayer but to the Revenue itself.'

However, my own experience is that HMRC routinely ignores this guidance and invests as much energy as possible in trying to prevent judicial reviews from proceeding. This is precisely what happened in Mr Boulting's case.

The court's decision

The case came before His Honour Judge Jarman QC, sitting in the High Court in Cardiff (virtually, at least, given the Covid-19 restrictions).

The judge focused on one of HMRC's principal objections, being that a judicial review was inappropriate in the present case because the taxpayer had an alternative remedy. As I noted my article 'Last chance HMRC' (in the September 2015 issue of *Tax Adviser*), judicial review claims should not be commenced if the applicant has an alternative route of challenge. In other words, the process represents a residual right to strike down a public body's decision where there is no available alternative.

The judge then considered the respective roles of the two sets of proceedings. So far as the statutory appeal is concerned, he recognised that the tribunal's role is to ensure that the correct amount of tax is paid. He felt that the correctness of the closure notice represented the substance of the dispute between the parties. As that was a matter that was squarely within the First-tier Tribunal's jurisdiction, the judge considered that the judicial review proceedings should not be permitted to proceed as there was an alternative forum for the resolution of the dispute.

Commentary

I have no doubts at all that the judge was trying to deal with this case fairly. However, it is my respectful view that he has been led astray.

The purpose of the judicial review was to challenge the withdrawal of the clearance. Mr Boulting had raised a number of public law challenges to that decision (citing, for example, a breach of a legitimate expectation and irrationality). For example, Mr Boulting questions the relevance of the value of the shares to the matter of whether the transaction was undertaken for commercial purposes.

As both parties had accepted, those questions cannot be addressed by the First-tier Tribunal and can be raised only in judicial review proceedings.

I fully accept, of course, the importance of determining the true amount of tax payable in any particular case. Furthermore, I accept that the tribunal's ultimate role is to determine this and, in cases such as Mr Boulting's, this will turn on whether or not the conditions in s 1033 are met. I therefore accept that in many ways this can be described as the essence of the dispute between the parties.

However, when a clearance is given, s 1044 effectively overrides s 1033 because the conditions are 'treated' as having been met. As noted above, this is a deeming provision that overrides (where necessary) the actual facts of the case. Accordingly, even if HMRC is right to say (now) that the conditions in s 1033 are not met, this is irrelevant once a clearance has been given.

If a taxpayer has a dispute which, in part, turns on questions of fairness, it is essential to consider promptly whether or not a judicial review is needed.

It is true that HMRC's withdrawal of the clearance deprives the taxpayer from relying upon the deeming provision in s 1044. But the decision to withdraw the clearance is a public law decision against which there is no right of appeal and therefore, even as the judge accepted, must be challenged by way of judicial review.

Despite the additional procedural hurdles required to commence a judicial review, once permission has been given by the court, such claims are usually far more streamlined and cost-efficient than statutory appeals. In this case, it is my firm view that permission should have been given to proceed with the judicial review claim so that the court could then subsequently decide whether or not, as Mr Boulting sought to argue, to reinstate the clearance. If Mr Boulting were to be successful in that, the statutory appeal would fall by the wayside, with a considerable saving of time and costs for both sides.

Furthermore, in this case there is clearly a good argument to say that HMRC has unfairly withdrawn the clearance. In other words, this was not a 'weak' or 'vexatious' claim. If HMRC had observed the guidance given by the Court of Appeal in *Gaines-Cooper*, it would not have resisted 'full consideration of matters of great importance not just to the taxpayer but to the Revenue itself'.

Had the judicial review been allowed to proceed, we would be able to learn what the court would have made of HMRC's various justifications for withdrawing the clearance, including the argument (which I consider to be the most astonishing one) that to leave the clearance in place precluded HMRC's right to enquire into Mr Boulting's affairs.

I sincerely hope that Mr Boulting will realise how wrong the decision is and that he will decide to appeal against it. However, my even greater hope is that HMRC would stop treating litigation as a Kafka-esque game of chess and not repeatedly rewrite the rules to suit its own ends at every occasion.

I should, however, conclude this section by recording my own personal view that what I described above as the 'current consensus' is wrong and that, in fact, the First-tier Tribunal has full powers to hear public law arguments in the course of statutory appeals. Accordingly, if my view were correct then it would mean that in a case such as this the First-tier Tribunal could consider a challenge to HMRC's decision to withdraw the clearance on the basis that it was that decision on which the closure notice depends. This would avoid a multiplicity of proceedings and allow all relevant issues to be determined by the specialist tribunal allocated by Parliament to hear tax disputes. However, I recognise that I am currently in a small minority on this point.

What to do next

If a taxpayer has a dispute which, in part, turns on questions of fairness, it is essential to consider promptly whether or not a judicial review is needed as well as or instead of a statutory appeal. However, whatever view is taken in any particular case, taxpayers should expect HMRC to put procedural obstacles in their way. Accordingly, whatever the true position in law might be, it might be prudent to commence multiple proceedings in different fora/forums so as to pre-empt procedural arguments that HMRC might make and to ensure that time limits are not missed in the meantime.

Opportunity to be a Trustee serving on CIOT Council

Chartered Institute of Taxation

The CIOT is seeking applications from members (CTAs or CTA (Fellows)), to join the Institute's Council.

As an educational charity all our Council members are trustees who work as a team to ensure that the CIOT fulfils it charitable objects: to advance public education in, and promote the study of, the administration and practice of taxation, together with promoting and maintaining the highest professional standards among the membership.

It is a role that requires a particular skill set. You need to be able to see things from a broad perspective rather than solely your own area of the profession, to build a good working relationship with your fellow trustees and also with the senior management team to be able to challenge effectively.

Diversity is as important on the CIOT Council as it is across the CIOT membership as a whole. The Nominations Committee would like to encourage CTAs from a diverse range of viewpoints to consider this role and put themselves forward.

You may be put off by thinking you don't have the full breadth of experience as an individual, but this is a team effort; do not underestimate what you can distinctively bring if you care about the CIOT's charitable objectives.

Time Commitment: there are four Council meetings per year each lasting approximately three hours. There is also a one-day Strategy meeting most years. Council members are expected to have prepared for each meeting by reading the pack circulated in advance. In addition, Council members often serve on an Institute Committee or might have involvement in the Branches network. Council meetings have been held virtually since March 2020 due to Coronavirus; prior to this they were held in London.

Council members are unremunerated (with the exception of travel expenses and in very limited circumstances which relate to professional lecturing or writing on tax for the Institute or its Branches if that is your main occupation).

Annual training on trustee responsibilities is provided and attendance is mandatory. An induction programme will also be provided.

Further information is available from **https://www.tax.org.uk/about-us/vacancies/chartered-institute-taxation-prospective-council-member** including Charity Commission guidance regarding the trustee role.

If you would like to apply then please return the application form, a brief CV and the Equality and Diversity form to the CIOT's Secretary, Rosalind Baxter, at rbaxter@ciot.org.uk by 5pm on 20 November 2020. The application process runs over this time period to allow you the opportunity to consider standing for the role and have relevant discussions prior to submitting your application.

Your application will be acknowledged within five working days; all applicants will receive a response by 7 December which indicates whether the application will be progressed.

If you have any questions and would prefer to speak on the telephone before applying then please email rbaxter@ciot.org.uk to arrange a phone conversation.

Scotland

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The Scotland Virtual Conference will offer a range of topical lectures presented by leading tax speakers and offers access to CPD opportunities from the comfort of your own home or the office.

Speakers include:

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Charlotte Barbour and Andrew Evans
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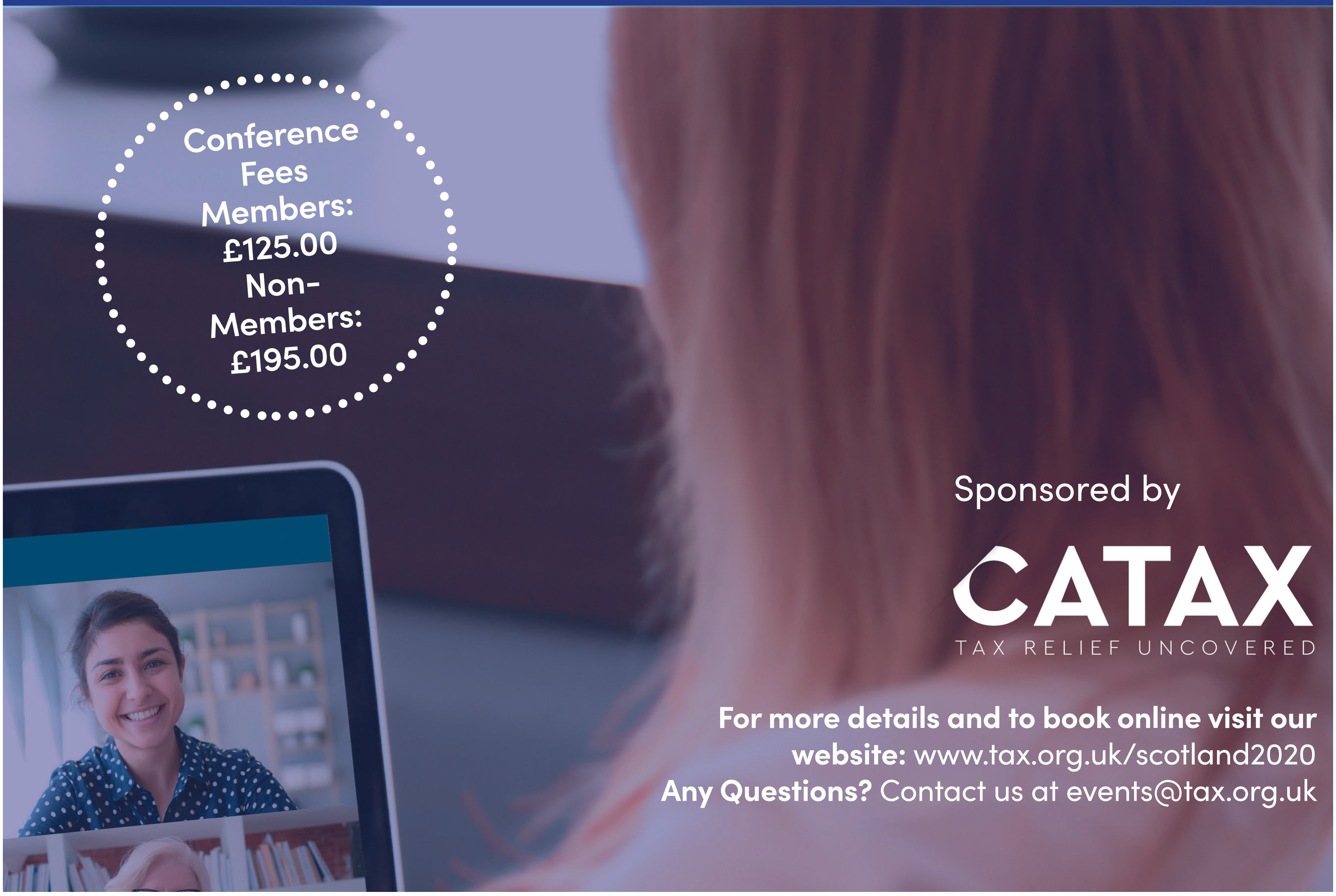

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Opening our doors

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Dr Amy Lawton and *David Massey* demonstrate how the establishment of the North West Tax Clinic can help to bridge the gap between tax academia and the profession

KEY POINTS

- **What is the issue?**
The North West Tax Clinic (NWTC) was opened in January 2020 with a view to helping low-income individuals with their income tax affairs. The project enables undergraduate and postgraduate students to provide free tax advice under the supervision of professional tax advisers.
- **What does it mean for me?**
The NWTC challenges the preconceptions that tax is just for the rich and powerful. Tax clinics offer a way of encouraging more young people to see tax as a potential career.
- **What can I take away?**
Tax clinics can bridge the gap between local communities and the tax system in an approachable and accessible way. Students are also exposed to important learning on the job experience, allowing them to put their theoretical knowledge into practice.

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The North West Tax Clinic (NWTC) opened its doors in January 2020 with a view to helping low-income individuals with their income tax affairs. As a collaboration between TaxAid, Lancaster University and the University of Central Lancashire, the project enables undergraduate and postgraduate students to provide free tax advice under the supervision of professional tax advisers. It is the first such project in the UK.

The Clinic ran as a ten-week pilot until March 2020 and will roll out on a more permanent basis in October. During the pilot, students successfully navigated the choppy waters of technical tax advice and covered common problems including submitting tax returns and appealing HMRC late filing penalties.

Overall, 12 students engaged with 25 clients. The students saved clients over £15,000 in cancelling incorrect charges and securing repayments. They also provided longer term benefits for clients (and HMRC) by correcting PAYE codes and explaining how they could fulfil their continuing obligations. This article will explore how clinical tax projects could help build a bridge between Higher Education and the tax profession.

The teaching of tax

As it stands, the teaching of tax in Higher Education is both sporadic and heavily constrained, depending on the discipline it is taught in. In Law, for example, the teaching of tax does not form the Foundations of Legal Knowledge required by the Solicitors Regulatory Authority or Bar Standards Board under the current legal education system (similar rules apply in Scotland and Northern Ireland). Following the introduction of the Solicitors Qualifying Exam in 2021, tax will feature in the curriculum (see bit.ly/2F4b9Ou), but it is yet to be determined whether traditional universities will attempt to teach it. As such, in Law departments across the UK, the teaching of domestic tax at undergraduate level is not universally offered and is optional even where it is available.

In Business Schools, the teaching of tax is heavily influenced by the syllabuses of the professional accounting bodies. Not surprisingly these concentrate on the issues which accountants are paid to deal with. Many accounting degree courses seek exemptions for their graduates from professional exams. The learning experiences and assessment of our undergraduates therefore concentrate on the tax problems of companies and of individuals who are willing and able to pay for tax services: the elements of the tax system which are not fee-generating tend to get crowded out. For example, the tax paper for which exemption is most commonly sought excludes the £1,000 trading allowance but includes inheritance tax and groups of companies. It requires a student to be able to calculate an accrued income charge (relevant only to those with a significant holding of gilts or corporate bonds) but make a point of omitting any learning about tax deducted at source from savings income (such as on a PPI repayment claim).

Challenging preconceptions

In both Law and Accounting departments, therefore, tax syllabuses focus on the tax issues of the wealthy, generally ignoring the tax issues faced by low-income individuals. The NWTC opens the doors to challenging the preconceptions that tax is just for the rich and powerful. It opens up the prospect of introducing tax into Higher Education syllabuses in a way which is more relevant and accessible to students from all backgrounds.

At a time when both the university sector and the tax profession are seeking to widen the diversity of our participants, tax clinics offer a way of encouraging more young people to see tax as a potential career.

Student-led clinical projects to help low-income individuals are not completely novel in the UK. The NWTC is, however, the first *tax* clinical project in the UK. What this means is that our students are the front-facing element of the NWTC: they liaise with the clients, identify their tax issues and draft advice under the supervision of qualified tax professionals. At a minimum, they are recruited from students going into the final year of their Law or Finance undergraduate degrees. These are individuals that therefore stand at the cusp of their professional careers, one step behind a new graduate tax trainee.

This step behind does not mean that undergraduate students cannot act in a professional tax context, as illustrated in our client satisfaction survey: 'Thanks, my tax issue was sorted so quickly… The staff and students were [experts] in their knowledge, professional, polite, supportive and helpful.'

Bridging the gap

Our students demonstrated that they possessed the maturity and competence to draft tax advice to the clients. That being said, the benefits of being detached from the tax profession mean that our students, while well-developed, are not yet indoctrinated into the technical tax language that comes with experience in the tax field. We found that our student volunteers were able to communicate with our clients in a clear, accessible way – they translated the jargon of tax into plain English. This is especially important when dealing with individuals who have a limited exposure to the tax world, as another response to our client satisfaction survey demonstrates: 'Absolute relief at not having to ring HMRC myself and getting the guidance and support to stop the tax fines which have been scaring me to death. Looking forward to receiving info on how to complete tax returns in future!'

The NWTC allows us to bridge the gap between our local communities and the tax system in an approachable and accessible way. We found that many clients had genuine difficulties accessing HMRC's services either by telephone or online. They had struggled to find help in understanding, and then resolving, the tax authority's demands of them.

Practical learning

Beyond the benefits that the students bring to clients, the NWTC also brings the subject of tax alive. It brings the constrained, limited academic syllabuses into the real world. Students are exposed to important learning on the job experience, allowing them to put their theoretical knowledge into practice. Michal Chodorowski, a TaxAid student volunteer, found his time in the NWTC rewarding:

> 'I found the North West Tax Clinic to be a genuinely refreshing and fulfilling experience. It had allowed me to give back to the community whilst acquiring valuable tax law experience. Under the umbrella of TaxAid, I have been able to help people with problematic tax affairs when they had no one else to turn to for help.'

By providing a safe space for students to come to grips with practical tax issues, the NWTC offers an opportunity to encourage students to enter the profession. Indeed, following the pilot, three of the student volunteers have already accepted graduate tax positions.

A lesson in altruism

Academic research has shown that clinical projects help to foster altruistic tendencies in individuals. As Deborah Rhode of Stanford Law School has observed:

> 'By the time an individual launches a legal career, it is too late to alter certain personal traits and experiences that influence public service motivations. Such factors include a willingness to empathise, a sense of civic or group responsibility, and earlier positive exposure to volunteers and volunteer work.'

Whilst she talks specifically to the legal profession, we believe it applies equally to the wider tax profession. Our aim is for the NWTC to foster the emergence of good citizens into the profession in future generations. Volunteering in the tax profession is already well established through the likes of TaxAid and Tax Help for Older People; and the NWTC (and tax clinical projects like it) will continue to nurture empathetic individuals who will continue to contribute and develop the pro bono culture in tax.

In addition to feeding empathetic, tax-aware graduates into the profession, the NWTC could also create a two-way relationship between higher education and the tax profession. From October 2020, volunteers from local practices will be supervising students in the NWTC. For more junior tax professionals, the clinic provides a safe environment to work on leadership and management skills. These professional volunteers will be trained as Team Leaders by TaxAid and will foster positive mentoring relationships, further encouraging students (and practitioners) to develop a passion for tax. Professionals will also be exposed to new technical tax experience: tax in the low-income context – something that they may well be unfamiliar with when working for a larger tax or accounting firm. Exposure to this more vulnerable environment will also help to normalise the idea within the tax profession that tax is not just for the wealthy and healthy. In this way, it is hoped that clinical projects can give back to the tax profession.

The NWTC team would like to offer thanks to the team of tax professional volunteers who will be joining the project from October 2020. Thanks to the support of the CIOT in advertising the project to its members in the North West, students will receive fresh insights into the tax world.

If you would like to read more on pro bono and clinical projects, see:
Linden Thomas and Nick Johnson, *The Clinical Legal Education Handbook* (University of London Press 2020) (see bit.ly/2QRopZB, free download).

Avoid the trap

Laurence Field considers the risk to companies of being fined millions due to inconsistent Covid-19 guidance

It's not too late for some joined up government thinking in response to Covid-19. Clearer, more coordinated guidance from the relevant authorities around corporation tax filing deadlines could save UK businesses from exposure to fines and penalties. In the meantime, organisations need to stay on top of the requirements and not fall into the trap of assuming that all government agencies are doing the same thing.

Earlier in the summer, Companies House outlined a series of extensions to key filing deadlines for documents such as financial statements. For private companies, a blanket extension to the filing date of three months was granted where the normal filing date falls between 27 June 2020 and 5 April 2021 – extending the filing deadline at Companies House by three months to 12 months. Companies with a 31 December year end must now file their financial statements by year end.

However, if a company takes advantage of this blanket extension, it should not assume that the tax filing deadlines have moved as well. These financial statements need to be included (and tagged) as part of the corporate tax return, as well as being the basis of the tax calculations, which must be filed within 12 months of year end. This could certainly make for a busy year end. Ordinarily there would be a three month gap between the financial statements and tax filing deadlines but the mismatched guidelines now mean that, this year, there is potentially none.

Complex times

Covid-19 has meant that many businesses have had difficulties in completing and auditing their financial statements. The dislocation of finance department staff and emergence of more pressing priorities, such as engagement with banks, the Coronavirus Business Interruption Loan Scheme (CBILS) and handling the furloughing process, along with a changing business environment, may all have played a part in the normal accounts preparation process slipping. Businesses and their auditors have also had difficulties in accessing records and making the necessary accounting judgments. This has made the process of finalising and filing financial statements more difficult, expensive and time consuming amidst unprecedented economic circumstances.

It may seem a minor detail but, in recent months, when the financial statements are not available by the filing deadline, HMRC has shown a welcome flexibility in agreeing to an extended filing period. However, this isn't available automatically. In reality, it requires taxpayers to contact HMRC to agree a tax filing extension if they wish to avoid penalties. A number of taxpayers may assume that the Companies House extension automatically applies for tax purposes – it doesn't!

HMRC problems

Government authorities are, of course, not immune from the disruptive effect of the pandemic. We know that HMRC has suffered some disruption and anecdotal evidence suggests that the waiting times to get through to the helplines to request extensions have been longer than ideal. The process seems a little hit and miss, with some companies being advised to call back nearer the time, even close to the deadline, and written confirmation from HMRC hard to come by. The ultimate outcome has also not always been consistent, meaning that some taxpayers are permitted a longer extension than others, with some taxpayers fined as a result of not understanding the process. While it's understandable that HMRC wants to review the facts and circumstances of each case, it will have already received the tax due or agreed a deferral so the payment of tax is not dependent on the filing.

This could all be made so much easier if HMRC were to agree to a blanket three month extension to the tax filing deadline, mirroring the additional three months at Companies House. Businesses wouldn't need to clog up helplines, especially at a busy time of year, and the UK's 4.1 million companies wouldn't find themselves at risk of late filing penalties. An extension would reduce the administrative burden on both sides, eliminate the danger of confusion and make a public show that the government is not intentionally raising late filing penalties on businesses that inadvertently assume extensions are aligned and uniform across all government departments.

At a time of great administrative – and even existential – stress for many organisations, the hope is that HMRC is sympathetic to those businesses that are either unaware or are lacking the clear guidance they need. Indeed, this would be the perfect opportunity for the government to demonstrate some joined up thinking in helping UK businesses navigate Covid-19.

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Mitigating tax leakage

Bastien Voisin and *Laura Charkin* consider the latest tax considerations in structuring Luxembourg private equity funds for investors from the UK, the US and the EU

KEY POINTS

- **What is the issue?**
The tax structuring generally used by private equity funds to reduce administrative burdens for investors is now caught up in the widespread and comprehensive changes underway in the global tax landscape arising from the Base Erosion and Profit Shifting project.
- **What does it mean for me?**
It is critical for investors that their commitment to investing with a fund manager does not expose them to additional tax costs that they would not suffer if they invested directly into companies.
- **What can I take away?**
Sponsors and investors should carefully assess the potential impact of recent legislative changes in international taxation, especially when investing in Europe. The complexity of these new rules is such that it requires a comprehensive tax analysis.

Private equity investments have traditionally been associated with a high degree of flexibility in terms of structuring and tax optimisation of the investment platform. The investor base of such funds is made up to a large extent of tax exempt investors. It is critical for these investors that their commitment to investing with a fund manager does not expose them to additional tax costs that they would not suffer if they invested directly into companies. In the past, the EU has recognised the specific needs and difficulties faced by these investors in investing across Europe, looking at ways of removing barriers to cross-border investment. However, the tax structuring generally used by private equity funds to also reduce administrative burdens for investors is now caught up in the widespread and comprehensive changes underway in the global tax landscape arising from the Base Erosion and Profit Shifting project. The key area is Action 6 of the 15 actions, covering Treaty Shopping.

Indeed, there has recently been multiple legal changes across Europe which operate to limit the tax efficiency of certain international investment structures. As a result of broadly drafted and far-reaching legislation, private equity investors and sponsors now have to consider a wider spectrum of tax considerations. These new rules are not targeted at tax exempt institutional investors, but neither are they designed to cater to their particular needs. Efforts being made to curb perceived potential tax avoidance can lead to increasingly complex structuring considerations that create barriers for private funds.

This article will consider the main tax drivers applicable to different investors across a range of jurisdictions and examine the key tax considerations – and how Luxembourg has usually become the 'go to' jurisdiction for private equity funds to address these matters.

Investor objectives

Regardless of the jurisdiction of incorporation of the fund vehicle or of its target acquisitions, investors all share certain key expectations. The fund vehicle must be able to guarantee limited liability for the investor and protect the investor to the extent possible against unfavourable regulations in their countries of residence, whilst not distorting that investor's tax position.

Sponsors should carefully choose a jurisdiction with a favourable tax regime. Investors are keen to minimise any local tax liabilities that may arise in the countries where the fund is located and from which it is managed, as well as where the fund ultimately makes its investments. A further key objective is to reduce any withholding taxes on interest and distributions from the country where an investment is located, and to do so without subjecting investors to potentially onerous tax filing or reclaim obligations.

As a practical matter, advisers should also carefully plan for the tax issues that arise upon disposal of the acquisition target. An efficient exit from an investor's point of view involves efficient upfront tax planning, the mitigation of certain additional costs and the reduction of phantom income risk.

Different types of investors can have varying tax objectives when investing in a fund. Given the specific and occasionally conflicting demands of investors, care is needed during the process of admitting investors to the fund not to agree to demands that will hamper the sponsor when it comes to structuring and implementing its investment strategy.

Sovereign investors

Sovereign investors, investing in a state-owned investment fund, will generally be interested in mitigating tax leakage in the fund structure on the basis

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that, had they invested in the underlying asset directly, their sovereign immunity would have protected them from any such leakage. Sovereign investors that use their immunity for US investments can be extremely sensitive to deriving commercial activities income, which can jeopardise their sovereign immunity for US tax purposes. Commercial activities income is generally any income derived, directly or indirectly, from the conduct of a commercial activity other than through an entity that is treated as a corporation for US federal income tax purposes. Such investors often require some level of commitment to block them from receiving any such income.

Non-US tax exempt investors
Investors that benefit from a tax exemption by reference to their status similarly want to mitigate any tax leakage that they would not have suffered themselves on a direct investment. They may prefer to invest in transparent structures, such that they can more robustly rely on their own tax status or available treaty relief.

In the event that the status of any other investors results in tax costs within the fund structure, tax exempt investors may require assurance that the fund is able to properly allocate the burden of those costs to those investors that caused them. Perhaps most important to some tax exempt investors is prevention from exposure to certain types of income such as trading income (to which their tax exemption may not apply), which may require blocking arrangements. In addition, tax exempt investors can be especially sensitive to tax filing obligations as they often do not have any internal tax capabilities. Any degree of tax administration can be a significant burden to them.

Tax paying investors
Tax paying investors may also benefit from treaty relief and will want to mitigate against double taxation on returns, so may have a preference for a transparent structure giving access to tax credits. On the other hand, they will also be keen to avoid dry tax charges, in particular any for which credit cannot be obtained. Local controlled foreign company rules may also play a part in the fund structuring concerns of tax paying investors, and they may have a preference for certain types of returns if they benefit from an exemption in this regard.

US investors
US taxable investors, the bulk of whose income is derived from the sale of investments, generally seek to generate income that will be treated as long-term/ capital gain – generally subject to reduced rates of taxation.

US tax-exempt investors are generally exempt from US federal income tax on investment income, such as dividends and interest, as well as gain from the sale of capital assets. Such investors are, however, generally subject to US federal income tax on their unrelated business taxable income, which includes operating income from businesses operated in pass-through form rather than corporate form for US federal income tax purposes. They are also subject to unrelated debt-financed income, which generally refers to income from an investment with respect to which there is or has been within the past 12 months 'acquisition indebtedness'. As a result, US tax-exempt investors often prefer to avoid investments in operating entities that are held as pass-through investments or want to have such investments made through entities that are treated as corporations, referred to as 'blockers'. In addition, if a private equity fund incurs fund-level debt to make investments, they may prefer to invest through a non-US entity treated as a corporation for US federal income tax purposes, which would allow those investors to avoid a tax liability generated solely as a result of debt financing.

German investors
German tax-exempt investors may prefer to invest in a fund which is not a 'deemed trading' partnership so that their tax status is not jeopardised. The involvement of a so-called 'managing limited partner' can often be a solution to this. On the other hand, German taxable investors may prefer to invest in a deemed trading partnership because the income derived from such a partnership is not subject to German trade tax. A possible solution is to a have a 'deemed' trading partnership in which the German taxable investors invest directly together with a tax transparent blocker, such as a vehicle which qualifies as an

investment fund for German tax purposes, through which the tax exempt investors invest in the deemed trading partnership.

Further, German investors typically request certain tax information from the fund to be able to comply with their tax filing and reporting obligations. If several German residents are invested in a foreign partnership fund, German tax law requires that a special tax return is prepared and filed which stipulates the income attributable to those German investors.

French investors

As a general rule, tax optimisation is not the key driver for French investors when considering an investment in a private equity fund. However, they expect that the total burden of tax suffered will not be higher than if they were to make the same investments directly. Notwithstanding, French investors may also be less reluctant than others when it comes to possibly having to file tax returns or pay taxes in non-French tax jurisdictions. In such cases, sponsors are expected to assist them in accomplishing the corresponding formalities.

French investors are becoming increasingly focused on how sponsors intend to navigate through the various anti-abuse provisions and new tax disclosure obligations. Sponsors must explain the internal processes that they have put in place to assess and, importantly, ensure compliance with such rules.

Global tax changes affecting funds

Private equity funds invest mainly through holding companies and other legal entities located in jurisdictions which offer certain tax treaty advantages and respond to the demands of investors.

However, the global tax landscape has changed in recent years, affecting both multinationals and investors which have sought to use so-called treaty shopping structures.

BEPS

The base erosion and profit shifting project (BEPS) has been adopted by 137 countries globally – the BEPS Inclusive Framework. The BEPS action plan aims to neutralise tax benefits in a number of different circumstances, which can impact the way in which a fund finances its investments, as well as the fund manager's own internal operating model.

The project prevents the movement of taxable profits to low-tax jurisdictions, notwithstanding economic activity being undertaken elsewhere. In practice, this means practitioners will need to show sufficient substance (in other words, a greater degree of operational activity) in the home country of a vehicle for it to be able to claim taxing rights over, and benefits in respect of, income generated. From the private equity sponsor's perspective, this means additional costs as it implements an appropriate decision making process and enters into various service agreements, including with potential third party providers.

ATAD

Following the BEPS project, participating countries have accepted change to combat tax avoidance practices. The European Union, for instance, adopted separate anti-tax avoidance directives: Directive 2016/1164 and Directive 2017/952/EU ('ATAD'). ATAD implements mandatory BEPS Actions, as well as some additional EU-specific changes. ATAD aims to prevent hybrid arrangements arising from different characterisation of the same entity or instrument by different jurisdictions, thereby creating a mismatch in taxation.

From a private equity fund's perspective, this has significantly complicated structuring to 'block' certain types of income used for US tax purposes in particular, and the fund's constitutional documents must carefully document and deal with the consequences and potential liabilities which may be incurred should there be tax leakage in connection with the investor base. Increasingly, fund managers find that they must ask investors for information regarding their jurisdiction of residence or organisation and tax status, as well as the treatment and characterisation of certain instruments and entities in investors' home countries.

Investor disclosure rules

An important issue which has been subject to increased international scrutiny is that of beneficial ownership. The concept of beneficial ownership looks set to play an important role in this new tax environment, with there being a movement towards tax systems operating on a more granular basis, looking through structures to the ultimate beneficial owners. It is therefore important for the sponsor that limited partners in a private equity fund can be required to provide certain information about their beneficial owners.

It is likely to be increasingly the case that common holding structures will need to either demonstrate economic activity and enjoyment of the income received, or alternatively disclose beneficial ownership information, in order to claim benefits under certain tax treaties and EU directives.

The Luxembourg fund platform

With €4.718 trillion of assets under management as at 31 May 2020, Luxembourg is by far the largest investment fund centre in Europe. This is mainly due to the great variety and corporate flexibility of its investment vehicles, as well as its tax efficiency as a holding platform when it comes to structuring investments. While a Luxembourg regulated fund is exempt from corporate tax and benefits from a VAT exemption on management services, a Luxembourg holding company generally held under the fund as a regional investment platform will allow investors to benefit from the wide network of Luxembourg tax treaties and an attractive participation exemption regime.

The type of Luxembourg fund vehicle with which international investors are most familiar is the Luxembourg special limited partnership (SCSp) – which is substantially similar to an Anglo-Saxon limited partnership and commonly used for fundraising. The SCSp is a flexible tax transparent entity, which means that non-resident investors, and the investment vehicle itself, are not subject to local Luxembourg taxes.

A recent trend has seen the use of the Luxembourg corporate partnership limited by shares (SCA), sometimes in combination with the traditional SCSp. Indeed, an SCA should not in principle create an issue with respect to the new anti-hybrid rules to the extent that it is considered for tax purposes as a corporation (versus a partnership) in Luxembourg and also in the investor countries most of the time, which avoids any tax qualification mismatch. This is not necessarily the case with a SCSp, which qualifies as a partnership in Luxembourg but which can sometimes be considered a corporation in certain investor jurisdictions. An SCA with the Reserved Alternative Investment Fund regime can still offer investors the corporate tax exemption they benefit from with an SCSp in Luxembourg.

Conclusion

Sponsors and investors should carefully assess the potential impact of all these recent legislative changes in international taxation, especially when investing in Europe. The complexity of these new rules is such that it requires a comprehensive tax analysis. Fund structures are evolving to better accommodate these changes and adjustments may be needed to many tried and tested structures. As such, it is now critical for sponsors to have access to a well-integrated and experienced international tax team when operating in the investment fund sector.

The authors would like to thank Romina Weiss, Charlotte Haywood, Heiko Penndorf, Marie-Laure Bruneel, Tara Drai and Matthew Dunay for their assistance with this article.

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Welcome to the October Technical Newsdesk

Trying to dispel the myth that men can't multi-task, I am writing this introduction whilst listening to a Treasury Committee evidence session in relation to its inquiry 'Tax after coronavirus', which the CIOT helped to launch in the middle of July. CIOT, ATT and LITRG provided written evidence early in September, and (alongside colleagues from ICAEW and ICAS) John Cullinane, the CIOT's Tax Policy Director, is now providing oral evidence.

This inquiry is just one of a large number of consultations, inquiries and calls for evidence that kept our technical teams busy over the summer. This explains why my introduction this month is so brief – there is much to report on. We have prioritised those issues with a broader interest this month, particularly as they include our responses on raising standards in the tax advice market, HMRC's Charter, etc.

Other responses will be reported on next month, but in the meantime do take a look at the full list of submissions at the end of Technical Newsdesk if there is something of particular interest.

COVID-19: Update on the Self-Employment Income Support Scheme and the Coronavirus Job Retention Scheme

MANAGEMENT OF TAXES EMPLOYMENT TAXES

There are important deadlines during October affecting the Self-Employment Income Support Scheme (SEISS) and the Coronavirus Job Retention Scheme (CJRS) which advisers should be aware of. First, for the SEISS no further claims can be made after the scheme closes on 19 October 2020; and second, for both schemes 20 October 2020 is the first deadline for notifying HMRC of any overclaims or overpayments.

The SEISS closes on 19 October 2020

Claims for the second grant, which covers the period from 14 July 2020 until 19 October 2020, must be made on or before 19 October 2020. The business must have been adversely affected by coronavirus on or after 14 July 2020 and the self-employed individual or partner must also meet all the other eligibility criteria at the time of the claim to qualify for the second grant. A person does not need to have claimed the first grant to claim the second one. Eligibility will be checked by HMRC at the time of the second claim.

Once the claim has been completed and HMRC have verified it, they will pay the money directly into the claimant's bank account within six working days.

Like the first grant, taxpayers must make the claim themselves. Tax agents cannot make the claim on their clients' behalf. If an agent uses their clients' Government Gateway credentials to make claims on their behalf, it will trigger a fraud alert and the claim will be rejected and the business will have to reapply. This will therefore result in delays in receiving payment.

A person should still proceed with their claim even if they disagree with the amount. They should make sure to print or screenshot HMRC's calculation. If they have an agent, they should discuss it with them. If they still disagree with the amount, they can ask HMRC to review it (to contact HMRC by telephone or webchat, see tinyurl.com/y76wzzvg). Agents can request a review of their client's award amount by contacting HMRC using the same link.

The scheme also closes on 19 October 2020 for both the first and second grant if a person qualifies under the extension which applies to individuals who would otherwise not be eligible due to the effect on their trading profits and other income in the 2018/19 tax year of military reservist activities or having a child.

The CJRS ends on 31 October 2020

Phase two of the CJRS ends on 31 October 2020 and while, at the time of writing, we do not know the closing date for submitting claims, based on phase 1's end date, this is likely to be the end of November. Claim periods must start and end in the same month and, usually, cannot be less than seven days. Grants are usually paid six working days after the claim is submitted.

Employers can only claim under phase 2 if they have previously furloughed an employee before 30 June 2020 and submitted a claim by 31 July. Only employees furloughed in phase 1 are eligible to be furloughed in phase 2 (with an exception for employees returning from statutory parental leave). Phase 2 allows employers to bring furloughed employees back to work flexibly.

The first notification period for overclaims and overpayments ends on 20 October 2020

We explained in September's issue that HMRC have issued guidance on how taxpayers should notify and repay SEISS and CJRS grants which they overclaimed or were not entitled to receive, and the possible penalty consequences if overpayments are not notified to HMRC. For details see www.taxadvisermagazine.com/SEISSCJRSupdate.

By way of reminder, for the SEISS, the notification period ends on the later of:

- 20 October 2020, for grants received before Royal Assent of Finance Act 2020 (22 July); or
- 90 days after the date received, in all other cases.

For the CJRS, the notification period ends on the latest of:

- 90 days after the date the grant was received; or
- 90 days after the day circumstances changed so that you were no longer entitled to keep the grant; or
- 20 October 2020.

Ongoing work

The CIOT and ATT are continuing to work with members and HMRC to address queries on both schemes and provide support.

The CIOT and ATT are holding a third webinar on the SEISS on Thursday 8 October 2020 at 10am which will look at the key points to consider before the scheme closes, as well as focusing on compliance aspects once it has closed. Please look out for announcements on our websites. A recording of our first and second webinars held on 7 May 2020 and 7 July 2020 respectively and the slides used can be found on the CIOT (www.tax.org.uk/COVID19SEISSJUL) and ATT (www.att.org.uk/COVID19SEISSJUL) websites.

All the latest information can be found on the ATT and CIOT websites. The CIOT pages covering the SEISS (tinyurl.com/tg2qpo4) and the CJRS (tinyurl.com/y33dd3do) are frequently updated as we receive more information, as are the ATT detailed guidance notes on the SEISS (tinyurl.com/y83kycjy) and accompanying FAQs (tinyurl.com/yaufvsnn) and the guidance notes on the CJRS (for employers, see tinyurl.com/y3kkg2kn; and for employees, see tinyurl.com/y23o4ak9).

Please continue to send queries and feedback on the schemes to either technical@ciot.org.uk or atttechncial@att.org.uk, and do keep an eye on our websites for all the latest information.

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COVID-19: Indirect tax topical reminders and updates

INDIRECT TAXES

We have highlighted below some indirect tax COVID reminders and updates for October.

- The temporary zero-rate applied to PPE from 1 May 2020 ends on the 31 October 2020 (Revenue and Customs Brief 4/20).
- The domestic reverse charge for supplies of building works or construction that was due to go ahead on 1 October is deferred to 1 March 2021.
- MTD businesses in the deferred group were due to have digital links in place between all parts of their functional compatible software by 1 October, but all taxpayers have a digital links deferral to the first VAT return period starting on or after 1 April 2021.
- The import duty and VAT reliefs for protective equipment, relevant medical devices or equipment brought into the UK from non-EU countries ends on 31 October 2020.
- HMRC has confirmed to the CIOT that a business that has been temporarily closed due to government COVID-19 restrictions would be viewed similarly to a seasonal business or a business that may shut temporarily for refurbishment, which can be examples of where the 'break in trading' rules do not affect the TOGC status, where all other TOGC criteria is met.

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Tackling the tax gap: CIOT response to the Public Accounts Committee's inquiry

GENERAL FEATURE

Our response to the Public Accounts Committee's inquiry 'Tackling the tax gap' (tinyurl.com/y4bzq6kr) called for a simpler tax system and better guidance in order to reduce mistakes. In order to deter illegal behaviours, it also called for measures to increase the perception of being caught.

The UK tax gap is proportionately low, reflecting a high level of compliance by taxpayers in the UK, and the result of HMRC's compliance and other activities. It has fallen by a third in five years, and around 90% of tax due is paid without HMRC intervention. Whilst it is, of course, desirable to reduce the tax gap further, we stated that any efforts to do so should be properly targeted and minimise burdens on those already seeking to be compliant. HMRC could share more granular data, on a confidential or informal basis, with professional bodies and other business representatives, as that would enable those bodies to help HMRC address residual or difficult areas.

We remain concerned at the level of tax lost due to 'mistakes' (reported in the tax gap as error, and failure to take reasonable care). We believe this is a combination of a number of factors, including a complex tax system and inadequate guidance. We stated that until there is real, meaningful simplification of the tax system, this rate of errors will continue. We further stated that we do not believe that technology (for example, Making Tax Digital) represents the answer to complexity; rather the tax system needs to be simplified to ensure that digitisation delivers tax efficiencies.

We said that the behavioural element of legal interpretation needs further explanation. At the moment, we are concerned that it should not be part of the tax gap at all – at least to the extent that it includes situations where HMRC's interpretation turns out to be incorrect.

We observed that the illegal behavioural elements of the tax gap remain stubbornly high. Whilst HMRC should be commended for the in-roads they have made in relation to criminal attacks, the other components of illegal activity – evasion and hidden economy – have generally remained constant. In large part, we believe this is due to the perceived risk of being caught, which is too low. HMRC need to change this perception in order to reduce illegal behaviour.

Finally, on avoidance, we noted that for the last seven years this has consistently been the smallest behavioural element of the tax gap, yet it seems to generate the most attention from the press and parliamentarians. This has led to an abundance of anti-avoidance measures in recent years, and an increasing sense of trying to squeeze the last drop out of countering avoidance. Whilst we do not condone tax avoidance, or suggest that its tax gap share of £1.7bn is an insignificant amount, we said that the government and HMRC should be paying more attention to the other behaviours, rather than the diminishing returns from avoidance.

Our submission will be published on our website (www.tax.org.uk/submissions) once the PAC itself publishes it.

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Raising standards in the tax advice market: responses to HMRC's call for evidence

GENERAL FEATURE

HMRC's call for evidence on raising standards in the tax advice market closed on 28 August. CIOT, LITRG and ATT each responded to the consultation.

Background

The call for evidence sprang from the Morse review of the loan charge which had concluded, among many other things, that the government must 'improve the market in tax advice and tackle the people who continue to promote the use of loan schemes' and 'establish a more effective system of oversight, which may include formal regulation, for tax advisers'. The Treasury response, published on the same day as the Morse review, indicated that 'the government will consider carefully the wider implications of the Review for the market for tax advice. The government will launch a call for evidence on what steps it can take to raise standards in this market to give taxpayers more assurance that the advice they are receiving is reliable.'

HMRC's call for evidence includes both a presumption that standards need raising and a call for evidence on the case for intervention. To the extent that HMRC provide evidence in support of intervention, it is mainly through examples of what most tax advisers would regard as wholly unprofessional behaviour. Whilst that strengthens the case for targeted action against the few, it does not convincingly demonstrate the case for widespread changes which would impact the many.

Our responses

Both the CIOT and the ATT responses note that HMRC is already likely to be the body that is best placed to identify relevant evidence on existing standards in the tax advice market. Both responses stress that more targeted counteraction is required against the minority. CIOT emphasises the need for specific solutions to deal with recalcitrant promoters; and ATT warns that founding the case for profession-wide change on the historical bad practice and poor standards of a minority of advisers risked landing on inappropriate solutions. Both responses then proceed to review what measures might be further explored if the eventual conclusion from the call for evidence was that there was a demonstrated need to raise standards in the general tax advice market (as distinct from measures for those described by Morse as unscrupulous tax advisers).

The consultation considers a wide range of topics, including: the definition of tax advice and services; the value added by good tax advisers; the impact of poor practice; consumer protection; the impact of government interventions in the market; domestic and international examples of regulation. and approaches to raising standards. It poses 31 specific questions and identifies six possible approaches (not necessarily mutually exclusive) to raising standards.

Both LITRG and ATT narrowed their focus to particular aspects of the consultation and endorsed CIOT's more wide-ranging response. The CIOT response expressed support for the LITRG and ATT responses.

CIOT response

The CIOT response opens with the observation that the imbalance of information and experience between taxpayers and their agents is a classic justification for regulation of any market. It notes that this places more weight on the need for high standards and good behaviour from agents – but also puts more pressure on them in their role of intermediating between the taxpayer and HMRC.

The CIOT response repeatedly emphasises the importance of building on what the professional bodies have collaboratively built, pointing to the adoption of principles governing behaviour to protect both the consumer and the public revenue, and the focus on training, messaging, continuing professional development and ultimately disciplining to enforce high standards. It observes that whilst the profession should always be open to ideas for further improvement, the greater focus should be on ensuring more consistency of these standards across the whole market and not just those who are currently members of professional bodies.

In relation to the first four of the six options identified in the consultation, the CIOT response suggests that a more granular engagement between HMRC and the professional bodies is likely to be more beneficial than the use of specific coercive powers. It also suggests that improving consumers' rights of redress and helping consumers make better choices are conceptually attractive but unlikely to deliver the benefits expected or address the problems identified in the consultation. It dismisses the option of penalties for tax advisers as offering no benefits and points out that this would risk taking the focus off the real culprits who might not present themselves as advisers at all.

In relation to each of the two more radical options – the introduction of a legal requirement for anyone who wanted to provide tax advice on a commercial basis to belong to a recognised professional body (Option E) or to register with a government regulator before they could operate in the market (Option F) – the CIOT response highlights a common question. Would the resulting benefits – in reducing the evidenced problems – be worth the costs, bearing in mind that the costs of regulation generally fall ultimately on consumers?

The CIOT notes that the key differentiator between these two more substantive options is that Option E builds on what has already been achieved by the professional bodies working together with each other and HMRC to raise standards; whereas Option F would effectively ignore that and in some respects might serve to undermine it. The response concludes that Option F risks being costlier and less effective, and that it raises the constitutional issue of whether it would ever be appropriate for the state (which requires its citizens to pay tax) to also regulate those whom taxpayers engage to help them with their tax obligations.

LITRG response

The LITRG response focuses on the impact of regulation of the tax advice market on unrepresented taxpayers. As the cost of accessing high-quality tax advice for those on lower incomes may already be prohibitive, it stresses the importance of proper consideration being given to this group and says that the quality agenda must be supplemented by a structured initiative to expand and enhance the provision of non-profit tax advice.

In addition, the LITRG response considers the issues of accessibility and funding for not-for-profit organisations. It urges the government to do more to make it easier for unrepresented taxpayers to find high-quality advice; for example, through a centralised tool on GOV.UK. In order for grant-in-aid funding to be properly targeted, LITRG also stresses the importance of ensuring that organisations which receive funding to provide tax advice actually have proper tax expertise.

The LITRG response uses high volume repayment agents as a case study to demonstrate that more needs to be done about the factors which drive taxpayers towards 'bad' tax advice. For repayment claims, it notes these as including the complexity of the claims process, the reluctance some taxpayers have to engage directly with HMRC, and the fact that an individual does not understand what is claimable or even that they need to make a claim in the first place. It says that HMRC should also do more around excessive fees charged by these agents, and make it easier for taxpayers to view, amend or remove deeds of assignment.

ATT response

The ATT response reviews the potential of the six options and concludes (like CIOT) that Option E merits greatest attention if intervention is required. It comments on some of the challenges (well expressed in discussions during the extended consultation period) which would need to be overcome. It then seeks to identify a possible transition route from the current disjointed structure of the paid tax advice market to the position envisaged in HMRC's Option E of a legal requirement for anyone who wanted to provide tax advice on a commercial basis to belong to a recognised professional body that meets defined high standards.

The ATT response includes in tabular form what it describes as a sketched vision, rather than a blueprint of a possible route towards an Option E outcome which attempts to address the identified challenges. This envisages a phased path to common professional standards across all recognised professional bodies in conjunction with routes that would enable currently unaffiliated tax agents and advisers to seek membership (or some alternative form of affiliation) with a professional body. Over an appropriate period – at least five years and possibly longer – the criteria for qualification as a recognised professional body would increase concurrently with the professional obligations of the members of those bodies.

At the professional body level, the ATT response suggests that the starting point could be a requirement for all members to have professional indemnity insurance and to subscribe to defined standards of conduct. It also proposes that membership would be a prerequisite for their acceptance by HMRC as an agent. Additional consumer protection measures such as disciplinary and complaints procedures would then be phased into the criteria for recognised professional bodies. It would be clear from the outset what the full criteria would be, so the incremental staging would enable all existing professional bodies to be part of the solution from an early stage. It would provide them the opportunity to adapt or introduce relevant processes and assess their capacity (or willingness) to assume responsibility for currently unaffiliated agents. It would also enable them to consider any necessary strategic alliances and the scope for sharing relevant resources.

The CIOT response is available here: www.tax.org.uk/ref661.

The LITRG response is available here: https://litrg.org.uk/ref386.

The ATT response is available here: www.att.org.uk/ref357.

In addition to their separate responses, CIOT and ATT are signatories to a joint response prepared by the PCRT bodies.

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HMRC Charter: LITRG and ATT responses to the consultation

GENERAL FEATURE

The CIOT response to HMRC's consultation on the Charter was reported in September's edition of *Tax Adviser*. This item summarises key points from the responses of LITRG and ATT.

The Low Incomes Tax Reform Group (LITRG) is concerned that this is the fourth iteration of the Charter since it was launched just over 10 years ago and believes HMRC should consider the reasons why the previous versions of the Charter have not been as effective as they had intended. In its response, LITRG considers that this lack of success is more to do with a failure to systematically embed the Charter within HMRC systems, rather than any specific problems in the wording of previous versions. Unless HMRC put the Charter at the heart of what they do, by training staff, embedding it throughout the organisation in day to day work and committing adequate resources to publicising it to the public, a revised Charter will be no more effective than the previous versions and will therefore be of little use to either HMRC or those who interact with HMRC.

The LITRG response strongly disagrees with the description in the draft Charter in relation to collecting tax that HMRC 'do this working in partnership with you'. This means that the unequal balance of power between HMRC and the general public is not recognised within the draft Charter; it is not an equal partnership; indeed partnership is not an appropriate term to describe the relationship. HMRC have greater powers so they should also have more responsibilities. The Charter should explicitly acknowledge this.

In addition to the consultation's questions, LITRG's response includes a section on how the draft Charter could be improved to help unrepresented people interact with HMRC. LITRG would like the Charter to include what support is in place for people trying to resolve issues between HMRC and other government departments, and also a commitment to improve tax education in order to increase confidence amongst unrepresented low-income and vulnerable individuals when sorting out their tax and tax-related benefits.

The ATT response makes substantially similar comments. It recognises the challenge of encapsulating in a short document the standards and values which should determine the relationship between a large government department and almost the entire population of the UK. It suggests that the solution lies not in a change to the Charter wording but in a commitment on the part of HMRC to consider its implications (at both corporate and individual levels) for the wide variety of interactions which arise between the department (whether through its human staff or technological process), its customers and its stakeholders.

The ATT response also recommends a requirement within HMRC for all new policy proposals and systems to be confirmed as Charter-compliant, for regular and challenging training on Charter implications for all departmental personnel, and for the inclusion within the Charter itself of a commitment to higher expectations of performance. In addition to these suggestions as to how the Charter should be used *within* the department, the ATT response suggests that HMRC should use the Charter to support Spending Review bids in order to ensure that the department has the resources needed to meet the aspirations which Parliament requires HMRC to express in the Charter.

The ATT response includes a copy of the draft Charter with tracked suggestions about the wording.

The LITRG response is available here: https://litrg.org.uk/ref384.

The ATT response is available here: www.att.org.uk/ref356.

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

GENERAL FEATURE

CIOT, ATT and LITRG have all participated in the first, high level, stage of the Office of Tax Simplification's call for evidence on the Capital Gains Tax Simplification Review published on 14 July.

CIOT

CIOT raised three areas of concern. First, whilst recognising the difficulty in distinguishing 'simplification' from 'policy' changes and proposals as they are inevitably interlinked, we wonder how a central line of enquiry into extending capital gains tax (CGT) to the taxation of gains on death fits within the function of the Office of Tax Simplification (OTS) as set out in Finance Act 2016 s 185(1), which states that it is to 'provide advice to the Chancellor on the simplification of the tax system'.

Second, we felt that there appeared to be inadequate appreciation of the differences between capital gains, realised on the one-off disposal of a capital asset, and income receipts, arising on an annual basis; a capital gain potentially represents two elements, an increase in value relating to inflation and a real 'profit' which has built up over time. We noted that the tax system has, at different times, recognised the inflationary element by providing an indexation allowance, a tapering of the tax rates, and lower tax rates on capital gains than on income.

Third, we stressed that the current approach whereby an asset is rebased to its market value on death has the merit of simplicity in both concept and administration. Personal representatives are spared the difficulties of establishing historic base costs in circumstances where they may have had little (if any) personal knowledge of the deceased or their affairs, and where the deceased's records may be inadequate or even non-existent. IHT is primarily charged on death and CGT is charged on lifetime disposals. Changing one element – the CGT uplift on death – to a no-gain/no-loss holdover would upset that 'balance' and should be the subject of a wider discussion on capital taxes generally. We suggested that a *quid pro quo* might be a general CGT holdover for all lifetime gifts to provide neutrality in the CGT treatment for gifts, whether made during life or on death. We further pointed out specific areas of complexity if it were decided to apply a CGT 'no-gain/no-loss' holdover regime only where an IHT relief or exemption applies.

ATT

The ATT's written response to the initial stage of the review focused largely on practical matters.

In response to the OTS's specific request to consider the annual exempt amount (AEA), the ATT concluded that, although the AEA has its limitations, there are a number of practical advantages. The AEA is simple, straightforward and widely understood – and consistent with the personal allowance in income tax. The ATT therefore considers that the OTS should focus their efforts on the simplification of other aspects of CGT.

The ATT highlighted private residence relief as an area which could be usefully considered by the OTS, with plenty of scope for simplifications and updating of the rules.

A large number of ATT members have expressed concerns about the new 30 day reporting requirements for residential property, highlighting a range of issues including costs, administrative burdens (especially for the digitally excluded) and lack of awareness. While CGT remains assessable on a tax year basis, in-year reporting such as this is unhelpful as it involves duplication of work and costs for taxpayers. This is very much an area that the ATT would like to see picked up in the review.

The ATT also highlighted the challenges faced by divorcing couples who only have the tax year of separation in which to transfer assets between them while still benefiting from the favourable no-gain, no-loss transfer rules. The ATT would like to see married couples and civil partners given a window of at least 12 months following the date of their separation to make transfers under the no-gain, no-loss provisions.

Other aspects covered in the ATT response included a suggestion that the OTS should review whether it was time to review rebasing. While there would potentially be some significant winners from moving rebasing from 31 March 1982 to a later date, the practical benefits would include eliminating some record keeping and making it easier to deal with assets which have been held for some time and where records are patchy.

LITRG

LITRG's comments highlighted the difficulties for unrepresented taxpayers dealing with disposals of properties which have at some point been their only or main residence. It also picks up on the fact that most CGT taxpayers either pay no income tax or only pay it at the basic rate, urging the OTS to focus on simplifications for this population and highlighting the importance of the annual exemption as a protection against onerous reporting obligations for those making small gains.

As part of its written response to the main call for evidence, LITRG will also be exploring measures to make CGT reporting easier for low-income unrepresented taxpayers. It also considers whether there may be additional exclusions from the obligation to make a 30 day report for those disposing of UK residential property and suggests how to improve taxpayer awareness, such as placing obligations on conveyancing solicitors and improved guidance on GOV.UK.

Our written contributions may be read at www.tax.org.uk/ref721 (CIOT) and www.att.org.uk/ref363 (ATT).

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HMRC call for evidence on Data and Transparency: CIOT response

MANAGEMENT OF TAXES

The CIOT recently responded to a call for evidence by HMRC which was seeking views on how public understanding of HMRC's use of its powers and the operation of taxpayer safeguards might be improved by the publication of data which is currently not in the public domain, and what information it would be most important for HMRC to publish to improve trust and transparency in relation to powers and safeguards.

In our response, we set out our views on the data and information that HMRC currently publishes, and suggest where improvements could be made and what other data and information could be published with the aim of helping to improve trust and transparency and public understanding of HMRC's role as the UK's tax administrator and collector.

In order to gather input, HMRC asked four questions:

1. ***Do you know where HMRC publishes information and how to access it?***

We note the CIOT's interest in seeing data relevant to all aspects of HMRC's work, including how the department's performance is measuring up to its targets, as well as data specific to particular areas of the tax system or particular taxes. This type of information is published by HMRC in a variety of places online, such as on GOV.UK and in its annual report, particularly that which is relevant to tax disputes within the Tax Assurance Commissioner's Report section. Data is also published each year in the document 'Measuring tax gaps'. We generally know where to look for it because we are familiar with it. We expect, however, that much of this information will not be very visible to non-tax specialists, or even to most tax specialists. The challenge for HMRC is how to most effectively raise the visibility of the data that is published and for which audiences.

HMRC's performance targets are set out in their single departmental plan, updated on 1 October 2019. These include a number of customer-orientated measures, such as call handling times and post turnaround. These measures are reported by HMRC on a monthly and quarterly basis on GOV.UK. We are pleased to see that HMRC are collating additional data on an 'experimental' basis, including debt management, customs and customer experience metric, and the number of closed civil and criminal compliance checks, total prosecutions and criminal sentences and the outcomes of court decisions, and we encourage this to continue so that further trends and performance factors can be identified.

2. ***Do you think if HMRC published further data it would improve your understanding of how they use their powers and the operation of taxpayer safeguards?***

We strongly agree with this. Additionally, we think that the presentation of some of the data that is already published could be improved. This could help make it more widely accessible. The information in HMRC's quarterly and monthly performance update spreadsheets is not particularly 'user friendly', for example, and in our experience, it takes some time to compare it to the previously published data and to understand what the figures mean.

This led us last year to publish a schedule on our website and to provide some commentary on the raw figures published by HMRC. In the schedule, we identify the customer-orientated performance measures such as call handling times and post turnaround, and highlight how HMRC have performed against them on both a monthly and quarterly basis using a green and red 'traffic light' system to identify which targets have been met by more or less than 5%, and which have been missed by more or less than 5%. See www.tax.org.uk/HMRCperformance for our commentary on HMRC's latest published figures.

3. ***What information do you think it most important for HMRC to publish to improve trust and transparency?***

We suggest that more data should be published about the following areas and make some specific suggestions about what information should be published:

- information powers;
- criminal investigations;
- Code of Practice 8 and 9 investigations;
- disclosure facilities;
- enquiries/compliance checks;
- yield;
- penalties;
- dealing with deliberate defaulters; and
- tax debt.

We appreciate that HMRC may not wish to publish certain data if they consider it to be sensitive but it is not satisfactory that the only way at present to obtain data about many of these areas is through third party Freedom of Information requests.

4. ***Why do you think this would help improve trust and transparency?***

Publishing data on how HMRC are using their powers, following the Litigation and Settlement Strategy and Code of Governance, would help to improve transparency on how HMRC are doing against their strategy (of promoting compliance, preventing non-compliance and responding to non-compliance using a range of measures) and improve trust that their use of their budget is effective and value for money whilst being fair.

It could also illustrate: (a) whether HMRC are using their powers; and (b) whether the exercise of those powers actually makes a difference to taxpayers' behaviour in the medium term. This is important because if HMRC's powers and processes are ineffective, then research should be conducted on what would make them more effective so that they can be changed.

The additional potential benefit of transparency in publishing all these statistics is that they are likely to be publicised further, thus raising awareness in the general public of HMRC's work to challenge non-compliance.

However, the data needs to be publicised and published in a way that is accessible and easily comprehendible by users. The quarterly performance updates, for example, do not meet these criteria, so we doubt that many people outside HMRC are aware of them. If people are unaware of them, then they will fail to improve trust and transparency.

The CIOT's response to the recent Charter consultation (see www.tax.org.uk/ref648) addressed how the publication of additional data can also help to demonstrate the extent to which HMRC are meeting their Charter obligations.

Our full submission is at www.tax.org.uk/ref696.

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Tackling Construction Industry Scheme abuse: CIOT response

EMPLOYMENT TAX

The CIOT is concerned that changes being made to the Construction Industry Scheme have not been thought through and are not properly being consulted on but is supportive of further consultation aimed at preventing fraud in construction supply chains.

The CIOT has responded to the consultation document on ‘Tackling Construction Industry Scheme Abuse’ published on 19 March 2020 and expressed its disappointment that the government has chosen not to consult on many of the proposed changes to the Construction Industry Scheme (CIS).

The consultation concerned ways that HMRC might tackle abuse of CIS. It sets out various suggestions to prevent tax loss within construction supply chains and invites feedback on the same. It is intended to build on the VAT reverse charge for the construction industry, which is due to come into effect on 1 March 2021, and off-payroll working rules for the private sector which take effect from 6 April 2021.

The document also explains a new power for HMRC to adjust the CIS deduction amounts claimed by limited company sub-contractors that are employers via their PAYE Real Time Information (RTI) Employer Payment Summary (EPS); and seeks views on the implementation of this new power but not the policy rationale for this change. In addition, the document sets out changes to existing CIS rules aimed at clarifying their meaning or expanding their scope, which are not being consulted on, and seeks views on other changes that could be made to the CIS rules to tackle abuse.

Correcting the CIS deductions claimed on an EPS

This concerns offset claims by limited company sub-contractor employers to offset CIS deductions suffered on payments from contractors against their in-year employer liabilities. The proposed approach is for HMRC to be empowered to ‘correct the CIS deduction figure an employer has recorded on an EPS; and to prevent the employer from setting further CIS deductions against their employer liabilities for the rest of the same tax year where the correction power has been used’. This seemed to us a somewhat muted response to what appeared to be characterised as a deliberate intent to misrepresent the amount of CIS deductions that a sub-contractor has suffered. Of course, in reality, over-claims for CIS deduction offsets can arise in a range of circumstances from genuine mistakes, to careless claims, to deliberate attempts to defraud. Hence, we thought the proposed ‘one size fits all’ approach is not the right solution and, instead, that the appropriate compliance response from HMRC should be tailored according to the underlying reason for the incorrect claim.

We also thought that the proposed 14 day period for the employer to provide evidence of CIS deductions suffered or to correct their return is too short and suggested that it should be at least 21 days and, preferably, 30 days. In addition, we suggested that HMRC should tailor their responses to sub-contractor employers so that the response is calibrated and proportionate to the reason why the over-claim arises.

Deemed contractors and the trigger for CIS registration

This concerns the current rule to determine whether/when a business undertaking ‘construction operations’ is a ‘deemed contractor’. The consultation document indicates that the rule is open to abuse without explaining what precisely this abuse is and why a new definition based on rolling spend on a construction contract is to be preferred. In our view, moving away from measuring total spend on construction operations by reference to periods of account will add to the administrative burden for contractors in tracking such spend. We are also concerned that the proposed process to allow deemed contractors to deregister from CIS only when no further payments on any construction operations are expected to be made may prove impossible, given that there is likely to be some ongoing, albeit minimal, construction works.

Deductions for materials

HMRC believe that there is a problem with the way in which contractors take a deduction for materials purchased by sub-contractors when calculating the amounts on which CIS deductions should be applied to (where gross payment status is not held by the sub-contractor). However, it is unclear to us what the ‘mischief’ is that needs correcting. We would expect CIS deductions to apply only to labour costs and not to the actual costs of materials. This is regardless of which entity in the supply chain actually purchases the materials.

Expanding the scope of the false registration penalty

The proposal is that the existing penalty for providing false information when registering for the CIS should be extended to apply to a ‘relevant person’, which is to be defined broadly as anyone HMRC believes is able to exercise control and direction over a business and/or the person making the CIS registration. We thought that the proposed new measure was fair enough in principle, but proposed that there be a defence available where it can be shown that the person concerned was not involved or had no knowledge of the wrongdoing – and that the burden of proof should rest with HMRC.

Consultation on supply chain proposals

The consultation document noted that ‘organised fraud in labour provision is being used to extract cash from the tax system. The fraudsters insert themselves almost anonymously into construction supply chains, artificially lengthening those chains to make it difficult for HMRC to reconcile the main contractor’s CIS declaration to all sub-contractors below it.’ We welcomed this early stage discussion as to what could be done to address this issue and agreed, in principle, that focusing on supply chain measures is an appropriate response to addressing the issue.

We suggested a further exploratory consultation on what more a contractor could reasonably require of its immediate sub-contractor(s) around tax compliance and what obligations and requirements could reasonably be placed on contractors when deciding who it will and will not contract with. We also suggested focusing on what each contractor/sub-contractor in a chain might reasonably be expected to do as regards ensuring tax compliance of the sub-contractor(s) they immediately contract with, rather than imposing an obligation solely on the main contractor in relation to every sub-contractor below them in the chain, however remote.

Our response is available here: www.tax.org.uk/ref662.

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Preventing abuse of the R&D tax relief for SMEs: ATT response

LARGE COPORPORATE | OWNER MANAGED BUSINESS

The ATT has responded to the latest HMRC consultation regarding the cap on the repayable credit available under the SME R&D scheme, which is due to come into effect from April 2021.

It was announced at the Budget in March this year that the introduction of a cap on the repayable credit available under the R&D scheme for SMEs would be delayed by one year to April 2021 to allow more time for consultation.

A further consultation (tinyurl.com/vsnywhq) on the design of this cap was subsequently released on 19 March 2020. This proposed a number of measures to reduce the impact of the cap on genuine businesses, including:

- a £20,000 threshold below which claims will be allowed in full; and
- an exemption from the cap where the claimant company:
  - can provide proof that they are actively managing (or will actively manage) the intellectual property arising from the R&D; and
  - has no more than 10% of their overall expenditure paid to a related party or for externally provided workers.

The ATT response (www.att.org.uk/ref358) to this consultation focuses on the second of these proposals, and in particular the practicality of asking SMEs to provide proof of active management of intellectual property. The ATT's main concern is that the smallest and newest SMEs (which are most likely to be in need of the support offered by the payable credit) are unlikely to have considered intellectual property management activities at any length. Even where they have, it is unlikely that these considerations will have been documented in much detail.

The consultation lists examples of possible intellectual property management activities, and evidence SMEs may be able to provide for these. The ATT response notes that whilst these may seem reasonable for established or larger companies, they are likely to be less reasonable for a start-up or very small company. The ATT is therefore concerned that such companies may struggle to provide the required evidence to qualify for this exemption from the cap.

As an alternative to requesting evidence of intellectual property management, the ATT response suggests the introduction of a statutory declaration that the claimant company will actively manage the intellectual property arising from, or expected to arise from, the R&D project. Companies which make this declaration would then benefit from the exemption from the cap. This could be backed up by targeted compliance activities, as well as powers to allow HMRC to clawback amounts paid where a declaration is made incorrectly and to apply penalties in the case of fraudulent declarations.

If the proposal for claimants to provide proof of active intellectual property management in order to be exempt from the cap is adopted, the ATT response stresses that it will be important for HMRC to issue clear and practically focused guidance, including for smaller businesses.

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Wales: The Senedd Finance Committee inquiry into the implementation of devolved taxes

GENERAL FEATURE

The CIOT and LITRG have responded jointly to the Senedd's Finance Committee inquiry into how the devolved taxes align with the Welsh government's principles and how successful the administration of Welsh taxes and the Welsh rates of income tax has been to date.

Our view is that both the land transaction tax and landfill disposals tax were developed through highly collaborative processes involving extensive informal and formal consultation, the results of which are reflected in their final design, successful implementation and administration.

However, changes to the devolved taxes are to some extent driven by changes made by the UK government to the predecessor taxes as a consequence of the effect of such changes on the Welsh government's tax revenues through block grant adjustments. The need to make consequential changes may impinge on both stability and the ability of the Welsh government to consider change through collaboration and involvement of stakeholders, particularly where changes are announced with little notice and an immediate adjustment is required to preserve revenue.

Wales has not introduced a Disclosure of Tax Avoidance Schemes regime; therefore, the Welsh Revenue Authority's (WRA) awareness of potential threats to the devolved tax base due to avoidance is more dependent on robust strategies for assessing tax risk and from exchanges of information between HMRC and the WRA.

It is too early in the development and assessment stage to evaluate whether the proposed new taxes (a vacant land tax, a social care levy, a disposable plastics tax and a tourism tax) will, if taken forward, adhere to the Welsh government's tax principles.

We commend the current approach of promoting a positive case for taxation by illustrating the link between taxes and spend on public services in Wales and building knowledge and awareness of Welsh taxes across Wales. However, we are concerned that, anecdotally, awareness and understanding of the Welsh rates of income tax by the public in Wales remains fairly low despite efforts to engage the public. We acknowledge the difficulty in generating interest when effective rates are unchanged.

The fact that income tax is only partially devolved with allowances, base and reliefs all decided at a UK level means that the scope for a fundamentally different approach to taxation and future tax changes has some limitations.

In line with our submission to the Senedd's previous inquiry, we consider that robust research is needed to establish Welsh taxpayer attitude to paying more or less tax in return for greater or less social funding, and how much increases in income tax rates would in fact increase the tax take, taking into account behavioural effects such as migration across the porous Wales/England border.

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Draft Finance Bill: tax checks on licence renewals and amendments to HMRC's civil information powers

GENERAL FEATURE

LITRG has commented on two measures in the draft Finance Bill 2020-21.

Licence renewals

Under the draft legislation, from 4 April 2022 licensing authorities in the taxi, private hire vehicle and scrap metal sectors would be required to give guidance to first-time licence applicants about their tax obligations. LITRG has stressed that the guidance given to first-time applicants must be appropriate, taking account of the demographics of this group.

Before the licence can be renewed, however, the licensee must undergo a ‘tax check’ with HMRC. However, LITRG highlights concerns regarding this process, suggesting that deadlines need to be easier to determine and that HMRC should be obliged to complete the tax check within a certain timeframe. It also highlights that the tax check seems to go beyond the policy intent of checking whether the taxpayer is properly registered for tax.

HMRC civil information powers

A separate clause provides HMRC with the power to issue statutory information notices to financial institutions without the approval of either the taxpayer or a tribunal, as well as for the new purpose of tax debt collection. LITRG has expressed regret that the statutory safeguard of taxpayer/tribunal approval for third-party information notices is to be removed, even in the limited case of where that notice is issued to a financial institution.

Information notices under FA 2008 Sch 36 bring the individual upon whom the notice is served potentially in scope of penalties of up to £1,000 a day for failing to comply. LITRG has expressed concern that HMRC may use the threat of such penalties to vulnerable taxpayers with tax debt issues, pointing out that such an approach is unlikely to be effective.

Our submissions are available here: litrg.org.uk/ref394 and here: litrg.org.uk/ref393.

Tom Henderson
thenderson@litrg.org.uk

CIOT	Date sent
SDLT house builders relief Schedule 6A www.tax.org.uk/ref720	10/08/2020
OTS Capital Gains Tax Simplification Review - Stage 1 High Level Issues www.tax.org.uk/ref721	12/08/2020
Departure from retained EU case law by UK courts and tribunals www.tax.org.uk/ref689	13/08/2020
Powers and Safeguards: views on Data and Transparency www.tax.org.uk/ref696	17/08/2020
Plastic Packaging Tax: policy design www.tax.org.uk/ref657	20/08/2020
Hybrid and other mismatches www.tax.org.uk/ref660	20/08/2020
Raising standards in the tax advice market www.tax.org.uk/ref661	25/08/2020
Notification of uncertain tax treatment by large businesses www.tax.org.uk/ref663	26/08/2020
Tackling Construction Industry Scheme Abuse www.tax.org.uk/ref662	28/08/2020
Draft Finance Bill 2020/21: new tax checks on licence renewal applications www.tax.org.uk/ref715	10/09/2020
Draft Finance Bill 2020/21: increasing HMRC’s Civil Information Powers www.tax.org.uk/ref706	10/09/2020
Tackling Promoters of Tax Avoidance www.tax.org.uk/ref697	10/09/2020
LITRG	
HMRC Charter litrg.org.uk/ref384	13/08/2020
Pensions dashboard: data call for input litrg.org.uk/ref387	19/08/2020
Raising standards in the tax advice market: call for evidence litrg.org.uk/ref386	26/08/2020
Department for Business, Energy & Industrial Strategy Consultation on Carer’s Leave litrg.org.uk/ref382	02/09/2020
Draft Finance Bill 2020/21: tax checks for taxi drivers and scrap metal dealers litrg.org.uk/ref394	08/09/2020
Draft Finance Bill 2020/21: increasing HMRC’s civil information powers litrg.org.uk/ref393	08/09/2020
ATT	
Raising standards in the tax advice market www.att.org.uk/ref357	10/08/2020
HMRC Charter www.att.org.uk/ref356	14/08/2020
Preventing abuse of the R&D tax relief for SMEs: second consultation www.att.org.uk/ref358	28/08/2020

Journal of The Chartered Institute of Taxation and The Association of Taxation Technicians

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CIOT

CIOT: Minutes of the AGM 2020

AGM

Minutes of the Annual General Meeting of members of the Chartered Institute of Taxation held via virtual means on Tuesday 28 July 2020 at 16.45

Present: The President, Glyn Fullelove, was in the Chair. 39 members; the Chief Executive, Helen Whiteman; Secretary, Rosalind Baxter; and Chief Finance Officer, Karl Cerski, were in attendance.

The President welcomed all those present to the first ever virtual AGM of the CIOT. He explained that throughout the AGM, members could submit questions and vote on live polls using Slido, and gave the website address and event code. He also informed everyone that questions would only be considered if their name had been given and that anonymous questions would be disregarded.

The President explained that over 1,400 members had voted electronically in advance of the meeting and he reminded everyone that if they had already voted electronically, they must not vote again on Slido during the meeting.

1. Apologies

The Chief Executive reported that apologies had been received from three members.

2. Notice convening the meeting

At the invitation of the President, it was agreed that the Notice convening the meeting be taken as read.

3. Minutes of the last meeting

The President reported that the Minutes of the last Annual General Meeting were approved for signing as a correct record by the President at the meeting of the Council held on 2 July 2019.

4. Ordinary business

4.1 Annual Report and Financial Statements

The President called for any questions. No questions were raised on the Annual Report and Financial Statements.

On the proposal of Tracy Easman, seconded by Keith Bell, it was RESOLVED that the Annual Report for the year ended 31 December 2019 be received and adopted. The votes on Slido were in favour. It was reported that over 99% of the proxy votes were in favour.

On the proposal of Keith Bell, seconded by Tracy Easman, it was RESOLVED that the Financial Statements for the year ended 31 December 2019 be received and adopted. The votes on Slido were in favour. It was reported that over 99% of the proxy votes were in favour.

4.2 Election of Council members

The President reminded those present that anyone named could not vote for themselves.

On the proposal of Margaret Curran, seconded by Richard Wild, it was RESOLVED that Gary Ashford, Susan Ball, John Barnett, John Endacott, Glyn Fullelove, Chris Lallemand, Daniel Lyons, Ray McCann, John Preston, Peter Rayney, Jonathan Riley, Nichola Ross Martin and Mike Thexton, having retired under Members' Regulation 21 and offered themselves for re-election, be and were thereby re-elected members of the Council. The majority votes on Slido were in favour. It was reported that over 96% of the proxy votes were in favour.

4.3 Appointment of auditor

On the proposal of Peter Rayney, seconded by John Cullinane, it was RESOLVED that Buzzacott LLP be and were thereby re-appointed auditor to the Institute to serve from the termination of the meeting until the termination of the next succeeding Annual General Meeting. The majority votes on Slido were in favour and it was reported that over 97% of the proxy votes were in favour.

The President thanked the auditors, noting that it had been a particularly difficult year for them with additional work due to the late changes to the reporting standards resulting from the Coronavirus pandemic. He was grateful to them for their efforts and the efforts of the CIOT's own Finance Team.

The President checked again if members wished to ask any questions but there were none. He explained that this concluded the AGM formalities, he thanked members for making the time to attend and hoped that they would stay on to listen to his address to the Institute. This had been pre-recorded to avoid any potential internet issues. He hoped to see members in person at the next AGM which was likely to be held at the usual time in May 20201.

5. President's address

The text of the address is set out opposite.

CIOT

CIOT President's AGM Address


Glyn Fullelove

AGM

28 July 2020

Good afternoon. As you are aware, there are many differences between today's AGM and those of recent years. Instead of making an address as the outgoing President, I am remaining in office for a further four months. Rather than reflecting on my term, which I will do in November, I will give you my view on how the Institute stands today.

Strategy and Finance

I said at the AGM in May last year that the appointment of a new CEO was an important moment for any organisation, and that the Council of the CIOT would work with the incoming CEO to set a strategy for the Institute. This would need to take into account external forces such as pressure for regulation, increasing complexity in legislation, the demand for international services and qualifications and the impact of technology; and goals such as increasing our diversity and delivering services to members efficiently and cost-effectively. Shortly after last year's AGM, we appointed Helen Whiteman as our new CEO.

At the Council awayday last November, Council confirmed that the strategy of the Institute needed to focus around three main areas:

- Respond to the challenges of technology in our examination system, both in terms of using technology to examine and ensuring that our qualifications reflect its use.
- Be a leader in the discussion on greater regulation, and have the systems and capabilities to meet whatever regulatory change requires.
- Increase the Institute's influence and voice in the public arena on tax matters.

By this point, Helen had already identified that the Institute had in certain areas begun to outgrow its existing infrastructure. Whilst we had invested heavily in technology in recent years, and were continuing to do so, we had under-invested in the associated learning and development required to support this in our operations. Our financial information reporting was not as good as it should be, and budget accountability was not properly delegated. Project management skills were in short supply. As a result, we had a tendency to overspend on capital projects.

The Institute was very aware of its public interest role and charitable objectives, and took care to ensure that money was only spent in accordance with such goals. However, we were less adept at assessing the benefit of such spending.

Sometimes, we were running events or supporting initiatives that were undoubtedly supporting tax education; however, the beneficiaries of such events might well be other educational bodies rather than ourselves. Whilst there is nothing wrong in partnerships, we should not be so keen to help that we end up effectively subsidising those who can happily stand on their own two feet. Unfortunately, we had no way of assessing whether we were actually doing that, rather than investing in our own products.

Whilst the Institute did have – and still has – healthy reserve levels, we should approach managing our finances with a suitable level of commercial acumen. If we are to achieve any of our goals, we have to have the financial stability to achieve that; and our members expect us to spend their subscriptions wisely. Our finance function and systems needed strengthening, and I am pleased to report that Helen made this an immediate priority. Karl Cerski joined us as Chief Financial Officer last November and budgetary processes have been revamped, with accountability now at departmental levels, and information to senior management and Council has been greatly improved.

Governance and Council

As noted in lay observers reports, Council has been focused in recent years on ensuring that the Institute meets its public interest role and charitable objectives, and on this count we have done well. However, Council also has a role in scrutinising the operations of the Institute, and our lay observers have rightly challenged whether our current processes and procedures allow that to take place efficiently. It is also clear that Council does not currently fully reflect the diversity of our profession in terms of gender, ethnicity and other protected characteristics. Council has thus been considering what is the most appropriate governance model as we enter a new decade, and has committed to determine what changes are needed by next January.

We have already agreed some measures; the timetable of committee and council meetings will be changed to be more in tune with the annual business cycle of the Institute. This will allow, for example, more timely scrutiny of budgets at the Finance Committee level, before sign-off by Council, and timing the first Council meeting of a calendar year so the draft financial results of the previous year can be reviewed.

We have also decided that appointments to Council will be made by a transparent and open process, overseen by a nominations committee. This is intended to improve the diversity of Council. We should celebrate that we are a very diverse profession, and this should be reflected in our leadership.

For my own part, I believe the membership of Council needs to more accurately reflect its various roles. The first of these is ensuring that our charitable educational goals are achieved, which encompasses our technical scrutiny role and educating the wider public on tax matters, as well as setting examinations and providing CPD. Council also needs to provide leadership to the profession on matters such as regulation.

Thirdly, it needs to scrutinise the operations of the Institute. These differing roles require Council to have a variety of skills. It should not be comprised solely of eminent tax professionals; whilst it clearly does need such persons, it also needs those who are comfortable discussing educational developments such as online examinations and those with relevant operational and management expertise in running a business (which is not an advisory business). It also needs a wide and diverse representation of the profession. It should be prepared to delegate scrutiny of operations to its committees, led by chairs who are specialists in the relevant fields, and focus on the strategic challenges faced by the Institute.

Discussions in Council on changes in governance have tended to focus on the size of Council, and whether all members should be charitable trustees. It is time to work out what is needed for it to perform its roles. Determining this will point the way on those details.

The response to Covid-19
I congratulate Helen, her management team and all the staff at Monck St – including Jane Ashton and our ATT colleagues – on the way they have responded to the challenges of the pandemic. By moving all staff to homeworking, they enabled the Institute to continue working on behalf of members in safety. Moving our branch CPD programme online has enabled members to continue to receive this vital service in a cost-effective way, and has enabled many more members to participate in popular events. Many thanks to the Membership and Branches team for making this possible. We have also been able to hold Council and Committee meetings virtually and effectively. Whatever happens in the future, we now know that we do not need to haul members all the way into Westminster for our business to be carried on effectively. We have been able to engage with a wider audience of members and students which we will build on.

Special thanks and congratulations should go to the Technical and LITRG teams who have provided a constant stream of advice on the various government schemes introduced to alleviate the impact of the pandemic. The LITRG site has been recording record volumes of visitors. Our External Relations team has also substantially increased our presence on social media, ensuring that information we receive from government reaches the widest possible audience.

Our strengthened Finance team has also risen to the challenge; much additional work had to be done to satisfy our auditors that we met revised going concern guidelines, and intense effort was devoted to providing Council with the clearest possible view of the Institute's financial position. We cannot say that there is no financial challenge to us arising from the pandemic, but we can say that the work that Karl and the team have done should mean we will have ample warning of any financial pinch points, and be able to react accordingly.

Last but not least, thanks must be recorded to the Education team, both staff and volunteers, who undertook a mammoth project to convert our paper-based exams to online delivery in a matter of months. Our pilots ran early this month and we are now preparing to deliver all our exams online in November.

Governance
Since the last AGM, Anne Fairpo, Keith Bell and Mandy Pearson have retired from Council or are retiring today. I would like to thank you all for the service you have given Council, which is greatly appreciated. I know you will all continue to be involved with the CIOT in some capacity, and I look forward to seeing you and thanking you in person in due course.

Many thanks also to all our volunteers on our committees in our branches and elsewhere in the CIOT family, including those who support our tax charities. I know it has been a strange year for many of you, adapting to virtual meetings, and being unable to meet up socially in the last few months. However, we have continued to fulfil all our functions, and we could not have done this without your time and dedication.

A strong and healthy Institute
Although we have had our challenges this year, as I said at the AGM in 2019 this is a house built on rock not sand, and I am even more convinced of that now.

It has been a busy and challenging time as I predicted, though sometimes for reasons I could not have expected. I have had tremendous support from Peter Rayney, Susan Ball, Ray McCann and Gary Ashford since he joined the Presidential Team earlier this year. Jeremy Coker, the ATT President, has been a marvellous companion at many events and has become a great friend. I have already mentioned our CEO Helen Whiteman a number of times, and she and the whole Institute staff have been hugely supportive over the last year. You are an amazing team. There is still some work for me to do as President, and when Peter *[Rayney]* speaks to you next year, I am convinced he will have much progress to report.

Disciplinary reports

Findings and orders of the Disciplinary Tribunal

TAXATION DISCIPLINARY BOARD

Mr Steven Heath

NOTIFICATION
At its hearing on 4 August 2020, the Disciplinary Tribunal of the Taxation Disciplinary Board considered complaints raised against Mr Steven Heath of Plymouth, a member of CIOT.

The Tribunal found the following Charges proved against Mr Heath:

Charge 1 (Professional behaviour)
In breach of rules 2.1, 2.6.2 and/or 2.6.3 PRPG 2011, and/or rules 2.1, 2.6.3 and/or 2.6.4 PRPG 2018, Mr Heath acted without the required level of professional competence and due care in that he:

(a) performed his professional work, or conducted his practice or business relationships, or performed the duties of his employment improperly, inefficiently, negligently or incompletely to such an extent or on such a number of occasions as to be likely to bring discredit to himself, to the CIOT or to the tax profession.

Charge 2 (Ceasing to act)
In breach of rules 2.1, 2.6.3 and/or 10.1.3 PRPG 2018, Mr Heath acted without the required level of professional behaviour in that:

(a) Mr Heath performed his professional work, or conducted his practice or business relationships, or performed the duties of his employment improperly, inefficiently, negligently or incompletely to such an extent on such a number of occasions as to be likely to bring discredit to himself, to the CIOT or ATT or to the tax profession; and

(b) Mr Heath continued to act without taking reasonable steps to notify the client that he was no longer acting and without following the strong recommendation that before ceasing to act a member should notify the client in writing that they are no longer acting.

The Tribunal determined that Mr Heath be censured and pay costs in the sum of £5,299.35.

The decision of the Tribunal can be found on the TDB's website at: www.tax-board.org.uk/disciplinary-hearings.

ATT

ATT: Minutes of the AGM 2020

AGM

Minutes of the 31st Annual General Meeting of the members of the Association of Taxation Technicians held by Zoom on Thursday 9 July 2020 at 14:00

1. Apologies

There were no apologies.

2. Notice convening the meeting

At the invitation of the President, it was agreed that the Notice convening the meeting be taken as read.

3. Minutes of the last meeting

The President reported that the minutes of the last Annual General Meeting held on 4 July 2019 had been approved and the minute book copy signed as a correct record by the President at the meeting of the Council held on 26 September 2019.

The President reminded those present that anyone who had already voted electronically must refrain from voting during the meeting. He reported that 903 members had voted in the AGM.

4. Annual Report and Financial Statements for 2019

No questions were raised on the Annual Report of the Council and the Financial Statements for 2019.

Upon the proposition of Helen Thornley, seconded by Emma Rawson, it was **RESOLVED** that the Annual Report of the Council for 2019 be adopted. It was reported that 99.77% of the proxy votes were in favour.

Upon the proposition of David Bradshaw, seconded by Will Silsby, it was **RESOLVED** that the Financial Statements for the year ended 31 December 2019 be adopted. It was reported that 99.66% of the proxy votes were in favour.

5. Election of Council members

Upon the proposition of Emma Rawson, seconded by Helen Thornley, it was **RESOLVED** that Graham Batty, David Bradshaw, Richard Freeman and Kay Mind having retired from the Council in accordance with Regulation 43 and offered themselves for re-election, be and were thereby re-elected as members of Council. It was reported that 98.45% of the proxy votes were in favour.

6. Appointment of the auditor

Upon the proposition of Will Silsby, seconded by David Bradshaw, it was **RESOLVED** that Buzzacott LLP be and was thereby reappointed auditor to the Association to serve from the termination of the meeting until the termination of the next succeeding Annual General Meeting. It was reported that 96.36% of the proxy votes were in favour.

7. President's Address

The President, Jeremy Coker, thanked everyone for attending the virtual meeting and explained that his speech had been pre-recorded.

The meeting finished at 14:10 and the recording of Jeremy's speech was played.

CIOT

Capital gains tax – where next?


Katherine Bullock


Robert Palmer


Stephen Herring


Stuart Adam

EVENTS

CIOT – IFS online event, September 2020

Introducing this event, CIOT president Glyn Fullelove said that capital gains tax (CGT) was shaping up to be a 'hot topic' in tax reform in the wake of the coronavirus pandemic. So it was timely that the CIOT and Institute for Fiscal Studies joined forces for their second online debate of 2020 to discuss the future of the CGT regime and consider options for reform.

Over the course of a lively debate, guests heard calls to increase the tax, were warned of the need to keep rates low to protect investment and promote entrepreneurship, and were also told to be mindful of the need to ensure reform delivers clarity and certainty for taxpayers.

Event chair Helen Miller described CGT as an area ripe for reform, having developed over time into a muddled regime with a myriad of rates and reliefs, but no overall strategy.

Robert Palmer of Tax Justice UK also said the time was right for reform but that economists agreed almost 'universally' that immediate tax rises were unnecessary because of quantitative easing and the government's ability to borrow cheaply. Despite this, the political case for reform had been made in the Conservatives' 2019 manifesto – which had attracted the support of voters on medium incomes and below – with a pledge to limit 'arbitrary tax advantages for the wealthiest in society'.

A recent Tax Justice report showed broad support for tax rises and a rejection of the austerity agenda of the 2010s, with particular support among Conservative voters, said Palmer. He suggested the equalisation of CGT rates with income tax as an option. He said it was 'deeply unfair' that someone earning £15,000 per year could pay a tax rate equivalent to the very highest earners who were able to use the CGT regime to their advantage.

Stephen Herring, formerly of the Institute of Directors and now a member of the TaxPayers' Alliance's advisory council, rejected this idea. He said the present system helped to encourage investment and entrepreneurship. He also warned of the consequences of discouraging investment and damaging the economy that could come from the introduction of a more punitive regime.

Herring argued for the merger of CGT with inheritance tax, saying this would be popular with the public and would help to simplify the tax system. He urged the chancellor to leave a legacy as a tax reformer, a tag he said very few chancellors – if any – had achieved since the days of Nigel Lawson.

Katherine Bullock, a barrister at Field Court Tax Chambers, said that CGT was 'one of the more straightforward taxes' dealt with by practitioners, in part because the tax was paid by relatively few taxpayers and that many common assets – such as a family home, cars and pensions – were excluded from the regime. She said that realigning income and capital gains would simplify the system, but she was less sure whether it would be seen as either good policy or a source of increased tax revenue. Bullock said changes must be properly communicated and taxpayers provided with the certainty that they were fulfilling their obligations.

Stuart Adam of the IFS said there was a compelling argument in favour of the taxation of income and capital gains at a similar level but he also acknowledged the concern that this could act as a disincentive to investment. It was with this in mind that he set out a case for reform of CGT based on a restructuring of the tax base, the equalisation of tax rates across multiple sources of income and actions to incentivise investment and entrepreneurship.

Adam said that offering more generous tax deductions upfront (as opposed to on disposal) would help to encourage investment. He said that this needed to be supported with a more flexible regime for capital losses to reduce disincentives for risk taking. He also spoke in favour of reforms to abolish uplift at death – which he argued should be considered alongside wider policy debates on reforming the IHT regime and the reform of social care.

The IFS proposals drew a mixed reaction from the panel, with Bullock giving the plan broad support in principle and Herring against upfront tax relief 'for any investment'.

In the audience debate that followed, questions focused on the idea of taxing primary residences, the administration of a reformed system along the lines proposed by Adam, twin-track reform of IHT and CGT and the political practicalities of large scale reform.

We'll find out later this year whether the chancellor is planning changes in this area.

WCOTA

News from WCOTA

EVENTS

Alison Lovejoy introduces the new Master.

On 22 September, the Court of the Worshipful Company of Tax Advisers met via Zoom to install the new Master, Sue Christensen, and the Deputy Master and Wardens for the year 2020/2021. It was a somewhat low-key event compared to the usual Installation service and dinner at a Livery Hall.

Sue was born in Widnes in 1949, the youngest child of the McCann family. Her parents met in the 1930s in the parish amateur dramatic society and theatre, dance and music was a big part of life growing up in a town mainly known for rugby league and chemical factories.

She was educated at Broughton Hall Convent in Liverpool, where she says she only excelled at maths and music, and played in the same Liverpool junior orchestra as Simon Rattle! She also sang with the Royal Liverpool Philharmonic Choir. On 4 July 1966, immediately after 'A' levels, Sue joined the Inland Revenue in Liverpool. The civil service was intended to be a stop gap before proceeding to Music College to study voice but a move to Garnett Crewdson & Co Chartered Accountants in Manchester in 1970 proved to be a turning point. The head of tax, Peter Lowry, was keen on the staff (including the women) studying for the ATII exams. After two years studying part time at Music College, Sue decided her professional future lay in tax and the singing career was put on the back burner.

After the birth of her son in 1973, Sue formed her own company when her employers made it clear that they were not willing to employ women with babies. As a mother and grandmother, she is glad to see that women's rights at work have now been substantially improved.

Her tax practice is mainly concerned with the entertainment industry and the client base spreads across the globe. Many clients are London based and if over the last 20 years you have seen a West End musical production, then you will have seen or heard her clients at work.

Sue became a Liveryman in 2010 and was appointed Renter Warden in 2017. She also serves as a member of the Committee for Brigantes, the association for London Liverymen who live in the North of England, and is a keen event organiser with them.

Sue's year begins when no physical Livery functions are taking place, but she says there is still much work to be done – we just have to change how to go about things. She has drawn up a list of virtual tax lectures and fun events and hopes that the company will further its important role in the charitable sector during this time.

Sue says: 'I have the honour to become Master for our 25th year. We want to mark this year with an increase in our charitable giving. We have already begun with a donation to St John Ambulance of £25,000 but we want to do much more. Charitable giving of both time and money is a major facet of the Livery movement. I want to see more women join the Livery: it is very relevant to modern life and helping others. Whether our events are virtual or physical, I want to see us raise more money for our charities and provide greater financial help at this difficult time. We hope that normal life will return soon to enable us to hold physical events but the current situation galvanises the mind and is making us more inventive with our event planning.'

Pro bono work has always been important to our new Master. She has worked for a variety of charities over the


Sue Christensen

years, including Macmillan, NSPCC and Tax Help for Older People, as well as various sports clubs and music societies. A keen rugby union fan, she spent four years in charge of the catering for her local rugby club dispensing large quantities of pies, beans, chips and tea every Saturday in the rugby season.

From 1998 until 2001, she was the audit governor of a sixth form college in Manchester with the remit to improve its music department, and find areas of saving to assist with its financial problems.

Outside of work and Livery there is still time for music, reading and gardening and an increasing number of grandchildren ranging from two to 21 years old. As Sue says, life is never dull!

For full details of events, past and present, or if you would like to join the WCOTA, please visit our website at: www.taxadvisers.org. Any further assistance from the Clerk, Stephen Henderson at: clerk@taxadvisers.org.uk.

Correction: In the September issue of Tax Adviser within the results for the May 2020 exam session (sat in July), we listed that Andrew Cornett had been awarded a distinction for the Application and Professional Skills: Taxation of Owner-Managed Businesses paper. Andrew's firm was listed incorrectly. Andrew works for Wylie Ruddell in Armagh. We apologise for the original error.

Branch Webinars
October 2020

Our Branch Webinars are open to members, students and non-members alike.

Book your Branch Webinars online at:
www.tax.org.uk/branch-webinars
www.att.org.uk/branch-webinars

Pricing Key
M Member | S Student | NM Non-member

Where are we now after COVID? Commercial Impact
Panel Discussion
1 October
1 - 2 PM
Glasgow Branch
Free

Statutory Residence Test
James Heathcote
2 October
1 - 2 PM
Leeds Branch
M £25 | S £22.50
NM £27.50

Tax Implications on Divorce
Sofia Thomas
5 October
5 - 6:30 PM
Severn Valley Branch
M £40 | S £36 | NM £44

A financial advisor's view on how we can work together and enhance our client service
Leigh Cecil and Tim Blowers
7 October
12:15 - 1 PM
Bristol Branch
Free

Commercial property taxation: what could possibly go wrong?
Panel Discussion
13 October
4 - 6 PM
Merseyside Branch
M £50 | S £45 | NM £55

Mediation in Tax Disputes – an Indirect Tax Practitioner's Experience of a great Initiative
Veronica Donnelly
14 October
1 - 2 PM
Edinburgh Branch
Free

Residence, Domicile and Offshore Trusts
John Barnett
15 October
2 - 5:15 PM
Thames Valley Branch
M £75 | S £67.50
NM £82.50

Employment Status and Off-Payroll Working
Emma Rawson
16 October
12 - 12:45 PM
Leeds Branch
Free

Company cars – Current rules, the future and all things Electric Vehicles
David Chandler
19 October
12 - 12:45 PM
Severn Valley Branch
Free

Entrepreneurs' relief post FA 2020: things can only get BADR
Heather Thompson
21 October
1 - 2 PM
Edinburgh Branch
Free

Managing Tax Liabilities in a Recession
Paul Howard
21 October
5 - 8:30 PM
East Midlands Branch
M £40 | S £36 | NM £44

Personal Tax
Mark Morton
22 October
5 - 6:30 PM
Essex Branch
M £40 | S £36
NM £44

HMRC Enquiries
Guy Smith
23 October
6:30 - 8 PM
South London Branch
M £40 | S £36 | NM £44

Remediation of Contaminated Land Tax Relief
Nigel Holmes
23 October
12 - 12:45 PM
Manchester Branch
Free

A Capital Taxes Update
Emma Chamberlain
23 October
2 - 5 PM
North East England Branch
M £60 | S £54 | NM £66

International Tax
Panel Discussion
26 October
6:45 - 8:45 PM
Harrow and North London Branch
M £75 | S £67.50
NM £82.50

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Italian-Speaking Personal Tax Adviser

Mayfair – £40,000 - £50,000

Our client is a boutique, international accountancy firm, with expertise in advising UK res non doms and multi-national businesses. Their client base includes a significant number of HNW Italian clients. They now seek a personal tax adviser (preferably CTA) to undertake tax compliance and ad hoc planning for a prestigious portfolio. **Ref 4873**

Private Client Tax Senior Manager

London – c.£80,000 - £90,000 + Bens

An opportunity for a CTA Manager or Senior Manager to join one of London's high-profile Private Client Tax teams. Advise new-money entrepreneurs, non doms, family offices and trusts. Enjoy a healthy work/life balance. Benefit from the Partners working with you on your own road map to partnership. **Ref 4867**

Assistant Manager, Non Dom Advisory

London – £48,000 - £53,000 + Bens + Bonus

Do you want to undertake high-end personal tax advisory work for HNW/UHNW UK res non doms? If you are CTA qualified with demonstrable experience of undertaking personal tax planning for international entrepreneurs and multi-jurisdictional families, this award-winning team offers fast-track progression to Manager and Senior Manager grades. **Ref 4869**

Personal Tax Senior – Sports Clients

London – £Excellent + Bens

This high-profile accountancy firm is well-known for its expertise in advising sports, entertainment and music clients. They now seek an ATT or CTA qualified Personal Tax Senior with previous experience of advising sports professionals on UK personal taxation. A good grasp of residence and domicile issues is also important. Very much a client-facing role. **Ref 4854**

For details of these and similar opportunities visit our website:

www.howellsconsulting.co.uk

HOWELLS CONSULTING

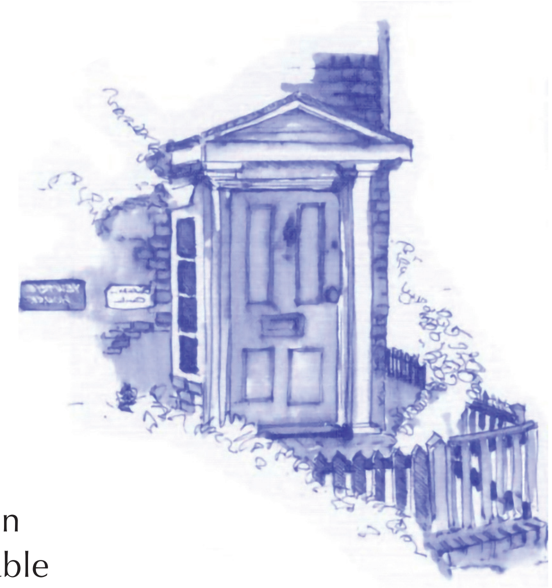
Specialists in Private Client Appointments

E: michaelhowells@howellsconsulting.co.uk
T: 07891 692514

dmc partnership limited
chartered accountants
business and taxation advisers

Partner Designate

Salary – negotiable



DMC Partnership has been in business for over 50 years and the team presently consists of 15 enthusiastic and dedicated professionals providing a comprehensive range of accounting and taxation services.

We are seeking a qualified accountant with CTA or equivalent experience, who may currently be in a senior position in practice, but might enjoy a change of location and a new challenge. This opportunity is for an individual with strong tax expertise who will be comfortable looking after a varied mix of small and medium sized owner managed businesses. These generate a steady flow of ad hoc business and taxation work that arises in addition to the annual compliance responsibilities. Contributing to practice management and development will be a significant part of the role along with providing taxation and business expertise to the practice as a whole. This will lead to early partnership for the right person.

We are a progressive, friendly and successful practice with a modern and fresh outlook. We have plans in place to sustain steady growth and are committed to maintaining our outstanding reputation for excellence. We work from our own offices located in a village in East Sussex midway between Gatwick and Tunbridge Wells. The practice provides the full array of audit, accountancy, taxation, payroll, start-ups and general business advisory services.

Please email an outline of your current employment situation and why this position appeals to you, along with your CV to **bruce@dmcpartnership.com**

We would be happy to reply to any questions you may have at this early stage.

DMC Partnership, Yew Tree House, Lewes Road, Forest Row, East Sussex RH18 5AA

www.dmcpartnership.com

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

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

R&D Tax Senior Manager or Director
Manchester – £excellent + bens + bonus

Looking for something a bit different? An opportunity with progression? Our client is one of the fastest growing accountancy firms in the UK. Headquartered in Manchester, this firm has a strong and growing R&D tax practice which works on both a UK and international level, dealing with a range of technical tax reliefs. This business seeks an experienced R&D tax professional (you may be CTA qualified, a former engineer or scientist). On offer is flexible working, a mix of home and office working, a fantastic entrepreneurial culture. **Call Georgiana Ref: 2955**

Tax Compliance Manager
Manchester – £excellent

You will review the corporate tax computations and returns for a portfolio of varied and technically interesting clients. Previous experience of working on large groups is desirable, as is experience of managing junior staff. You should also have knowledge of specific technical areas such as capital v revenue treatment, group relief, transfer pricing and share scheme adjustments. The firm will consider candidates looking to work full time or part time, flexibly and remotely. **Call Alison Ref: 2969**

Tax Consultancy Partner
Glasgow – £excellent

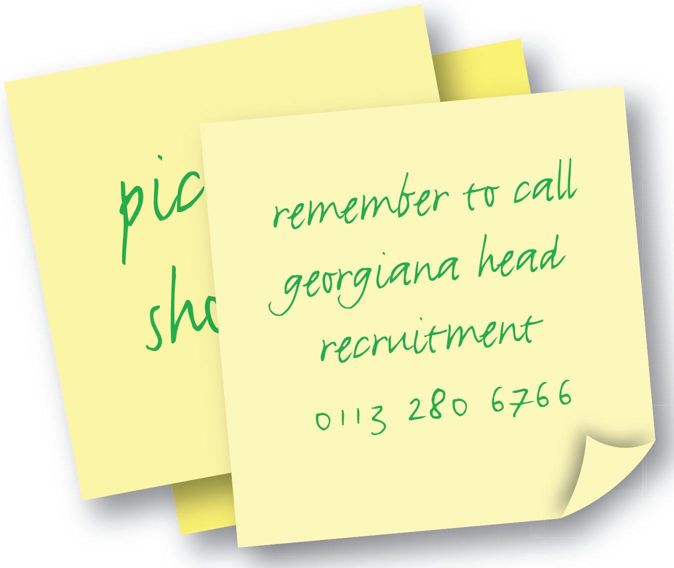
This is a fantastic opportunity to help grow the tax consultancy practice in this large independent firm. You may be either an experienced partner looking for a change or a senior manager or director with barriers to progression at your current firm. This role encompasses all of the taxes and the client base is primarily owner managed businesses and their owners. In addition to the technical work, you will also have man management and business development responsibilities. **Call Alison Ref: 2963**

Transfer Pricing Manager or Senior Manager
Manchester. Leeds or Birmingham

A great opportunity for a Transfer Pricing specialist to work outside of the Big 4. This Top 20 practice offers considerable autonomy, client contact and promotion prospects. You may currently work in industry, and TP may be just one element of your role. This new vacancy could offer you the chance to specialise. Our client would consider someone looking to relocate back to the North – you may, for example, live in London and be looking for a better work-life balance and more affordable housing. Full or part time hours, home-working or flexible working possible. **Call Georgiana Ref:2965**

Tax Consultancy Partner
Leeds – £excellent

This is a fantastic opportunity to join a supportive firm and help grow their tax consultancy offering the North of England. You may either be an experienced partner looking for a change or a senior manager or director with barriers to progression at your current firm. This role encompasses all of the taxes, and the client base is primarily owner managed businesses and their owners. In addition to the technical work, you will also have man management and business development responsibilities. **Call Alison Ref: 2960**



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**.