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Excellence in Taxation

October 2021

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TAXAdviser

The global spotlight

Chris Sanger and *David Snell* consider how public country-by-country reporting will put tax in the spotlight, page 10

PLUS Health and Social Care Levy – VAT – SDLT surcharge – Statutory notices – E-sports

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Vice President’s page

president@ciot.org.uk
Gary Ashford

Raising taxes?

Many of us are now returning to work after months of working from home but I am unsure if working in offices will ever be the same again. Most organisations that I speak to are looking to downsize and, in accordance with the wishes of their staff, introduce new flexible working arrangements. These new arrangements will potentially revolutionise the working week, and from what I have seen possibly assist in addressing the long running UK productivity gap. It also may help to significantly address some of the issues of climate change – and I would not bet against it also providing longer term benefits to our health.

There has been much noise from the government about Covid-19 debt, and the recent introduction of increased National Insurance. Additionally, as we move into the next phase of life after Covid, government fiscal policy needs to take account of some of the quite significant changes from so many people working from home.

I think most of us recognise that something is going to have to happen to pay for Covid-19, and that will most likely involve increases in taxation. We have already seen a few proposed changes: increases to corporation tax from 19% to 25% in 2023; and the recent Health and Social Care levy of 1.25%. I think this is a great opportunity to undertake a wider review of the tax system and to ensure it is fit for a post-Covid world and addresses the significant challenges of protecting the planet.

Here are some suggestions of how we can create a more dynamic tax system and economy.

Property taxes: My starting point is the taxation of property, particularly our homes. The main protection from capital gains tax (CGT) is the private residence relief (PRR) (TCGA 1992 s 222), which can in many cases exempt the property from CGT altogether. There have been a few changes to PRR in recent times, mainly to reduce the period available for disposing of the property and still securing PRR.

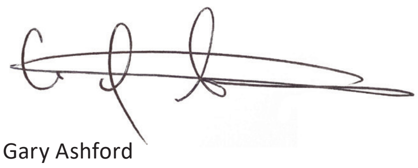
But many of us left the confines of our offices, armed with our laptops, to work from home. As many tax commentators have pointed out, in the event of a sale PRR will potentially not be available, because of the restrictions within the rules that any part of a dwelling used exclusively for a trade, business or a profession will not qualify. In my opinion, PRR rules need to change to take account of the many new working arrangements being put in place. The increasing digitalisation of the economy will also benefit from looking further at this.

Employment taxes: The UK tax rules for deductions against earnings are often very much focused on the workplace, or temporary workplace, and where the costs are incurred wholly, exclusively and necessarily for the purposes of the employment. HMRC provided some guidance that those who must work from home may be able to claim additional expenditure costs. But they also stated those costs were not available for relief where the individual ‘chooses‘ to work from home. Surely this part of the tax system also needs modernisation?

In terms of climate change, in my view home working provides a significant opportunity to address climate change challenges. But that is only effective if our homes are very energy efficient. There is a huge opportunity for the government and its ‘build back better’ policies to introduce various capital expenditure initiatives to help with home fuel efficiency. Yes, there will be upfront capital costs for this, but this could also create significant additional jobs, with all the taxes that would raise.

Digital economy: As stated above, I think home working is here for good. But other challenges are also taking hold, as the economy becomes ever more digital. As someone working in a law firm, with significant market experience of Technology, Media and Entertainment (TME), I am seeing this first-hand. From transactional work of those tech start-ups to companies making good use of the various government Creative Credits regimes to the development business opportunities operating around smart contracts and digital coins, the world is at an interesting crossroads. Crypto assets are part of that story, with many tax advisers currently assisting clients with undeclared gains and income, but this is only a small part of the tax story around crypto. In the years to come, I expect to see central banks introducing their own currencies, and possibly a wholly new crypto market and environment. We are already seeing significant movement into digital financial services and I expect this only to grow, and impact upon us all. For those of us with financial services tax experience, it will be interesting to see how fintech and other initiatives start to reach into the more traditional economy.

I end this article in optimistic mood. To different degrees we have all been affected by Covid-19, whether losing a loved one, or having significant effects to our work. But with vaccines in place, I feel we are entering a different phase. Walking around London has a positive feel and hopefully from some of the points mentioned above, the next few years will be interesting, as the country comes back to life, with the accelerated help of the digital economy.



Gary Ashford
Vice President, CIOT
president@ciot.org.uk

“Most of us recognise that something is going to have to happen to pay for Covid-19, and that will most likely involve increases in taxation.

monitoring

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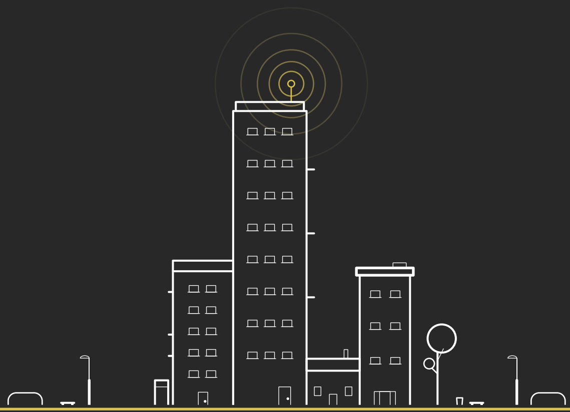

verb

1. observe and check the progress or quality of (something) over a period of time; keep under systematic review.

2. more game-changing innovation in the IR35 space.

IR35 SHIELD

THE IR35 COMPLIANCE STANDARD

ATT President's Page

page@att.org.uk
Richard Todd

The onward march continues

Goodness. Very exciting times ahead. All that talk last month about a proposed increase to National Insurance to fund the cost of social care for the elderly, and the repercussions about who would be hardest hit (probably the younger generation). And it does seem to fly in the face of the 2019 Election Manifesto – no increase to income tax, NI contributions and VAT.

What I found really interesting was that the funds raised by this tax would be used to reduce the NHS waiting lists in the first year. And did anybody foresee the increase to the rate of dividend tax? Or even the new Health and Social Care Levy from April 2023?

Gone are the days when a tax was directly linked to a purpose (NI contributions and health care). I recall the days of Gordon Brown when, as the Chancellor of the Exchequer, NI contributions were initially increased by 1%, and subsequently by a further 1%, to tackle the hospital waiting lists.

The march towards digitisation continues – all VAT registered businesses must become MTD compliant for VAT from April 2022. That is now less than six months away. For the tax practitioner, one might expect this to be a straightforward affair – we have already brought other VAT registered businesses into MTD, so it should not be too difficult to bring the remainder in.

Presumably you have identified and been in contact with those businesses to help steer them along the path towards MTD for VAT?

And of course, April 2022 sees the possible (or probable) start of the migration from the 'current year basis of assessment' to the 'tax year basis of assessment'. If you are unsure of how this could affect your business clients, I recommend you take a look at the webinar 'Basis Period reforms & MTD for ITSA' that was delivered by Emma Rawson, one of our ATT Technical Team, last month. Thank you, Emma, for your explanation and foresight.

If you have any thoughts or comments about this proposed change, please do get in contact with us.

You will see that we have continued to deliver CPD courses online during the pandemic, and it is our intention that this should continue until at least the end of this calendar year. If you have any ideas of topics that would be worth covering by an online course, please do get in touch with us. As the courses are now presented online, one is no longer restricted to attendance at a local venue.

This month sees the second of our special webinars available to Fellows of ATT. I thank Jeremy Coker, our most recent Immediate Past President for his delivery of the first Fellows' webinar, and I hope you find this month's webinar equally relevant to your work. And November sees our second virtual Admissions' Ceremony. If you are one of our new Members being admitted that evening, I look forward to seeing you.

And of course, I do wish to thank Jeremy again for agreeing to remain as President during the previous two years, and for his time and effort devoted to ATT. Jeremy has set a high standard for me to maintain.

I look forward to the next nine months, working with Jane Ashton (ATT's CEO), David Bradshaw (my Deputy President), Simon Groom (my Vice President) and all the Members of Council.

Together we will endeavour to ensure that ATT leads the debate on current tax issues – such as compulsory PI insurance for those providing tax services; the possible regulation of the tax profession; ensuring that our exams remain relevant for a career in tax; and encouraging more students to take (and hopefully pass) our exams.

I believe the nine months ahead of me will be busy months. And I would like to thank my employer and colleague, William Wilson, for his support.

Stay safe.

Richard Todd
ATT President
page@att.org.uk

"We have continued to deliver CPD courses online during the pandemic, and it is our intention that this should continue until at least the end of this calendar year.

It's time to complete your 2020 Annual Return. Don't get caught out. Stay compliant.

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

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

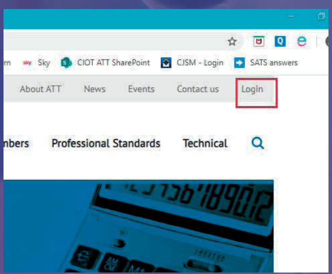
Please check that you have completed yours by logging on to the Members Portal (https://pilot-portal.tax.org.uk) then going to Secure area/Members Area/Compliance/Annual Return where you will be able to complete any outstanding form.

*Excludes those who are fully retired and students.

STEP BY STEP GUIDE TO COMPLETING YOUR 2020 ANNUAL RETURN

1. Login

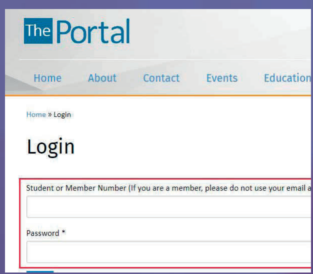
On the ATT website click login located in the top right.
On the CIOT home page please refer to the advert on the right hand side.



2. Portal

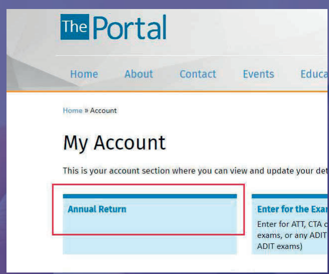
To access your account on the portal please use your:

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



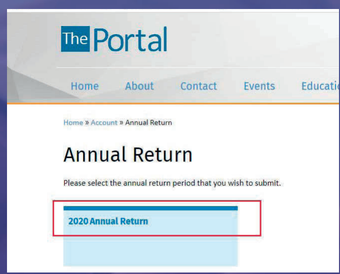
3. Account

Select Annual Return option



4. Period

Select 2020 Annual Return period



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

Health and Social Care Levy

Bill Dodwell summarises the tax changes announced in the Health and Social Care Levy Bill

On 9 September, the Prime Minister announced to the House of Commons (see bit.ly/2XgFe6B) that the government would:

> '...create a new UK-wide 1.25% health and social care levy on earned income, hypothecated in law to health and social care, with dividends rates increasing by the same amount. This will raise almost £36 billion over the next three years, with money from the levy going directly to health and social care across the whole of our United Kingdom.'

Details of the changes were published by the government (see bit.ly/3hzcjSn) with a distributional analysis (see bit.ly/3nClsgZ). The House of Commons supported the measures with an indicative vote on 8 September.

From 6 April 2022

From 6 April 2022, the rates of Class 1 and Class 4 national insurance will be increased by 1.25%, to become those shown in the table on the right. There are no changes to Class 2 (self-employed) or to Class 3 (voluntary contributions).

The rates of income tax on dividends will increase by 1.25% from 6 April 2022 and will become 8.75% (basic rate); 33.75% (higher rate); and 39.35% (additional rate).

From 6 April 2023

From 6 April 2023, a new Health and Social Care levy will be introduced at 1.25% and the national insurance rates will be reduced by 1.25%.

The levy will be payable by employed and self-employed individuals, including those above state pension age in relation to their employment/self-employment income.

The national insurance threshold of £9,568 (individuals) and £8,840 (employers) will also apply to the levy, which will use the national insurance base and be collected through PAYE or Self Assessment.

Existing NICs reliefs to support employers will apply to the levy:

- Companies employing apprentices under the age of 25, all people under the age of 21 and veterans will not pay the levy for these employees as long as their yearly gross earnings are below £50,270.
- Employers in freeports will not pay the levy for freeport employees with yearly gross earnings below £25,000.

The Employment Allowance, which reduces the smallest businesses' employer NICs bills by up to £4,000, will also apply to the levy.

Forecast

The government will present detailed figures on the revenue raised at the next Budget. It estimates these changes will raise about £12 billion annually, of which £11.4 billion will come from NIC/the new levy and £600 million from the dividend tax increase.

The government will provide additional funds to compensate departments and other public sector employers in England at the Spending Review for the increased cost of the levy and provide Barnett consequentials on this funding to the devolved administrations.

Class 1	Employee	13.25%	Above £9,568 primary threshold
Class 1	Employee	3.25%	Above £50,270 upper earnings limit
Class 1	Employer	15.05%	Above £8,840
Class 4	Self employed	10.25%	Above £9,568 lower profits limit
Class 4	Self employed	3.25%	Above £50,270 Upper earnings limit

HMRC: THE ECONOMIC IMPACT OF THE LEVY

HMRC's Policy Paper on the Health and Social Care Levy (published 9 September) includes information on the anticipated economic impact of the Bill (see bit.ly/3tJa9EV).

The measure is anticipated to have a significant macroeconomic impact, with consequences including but not limited to for earnings, inflation and company profits. Behavioural effects are likely to be large, and these will include decisions around whether to incorporate or not, and business decisions around wage bills and recruitment.

Impact on individuals, households and families

The levy will be paid by employed and self-employed individuals earning above the primary threshold and lower profits limit (£9,568 in 2021/22). In 2022/23, an individual earning the median basic rate taxpayer's income of £24,100 would be expected to pay an additional £180; and an individual earning the median higher rate taxpayer's income of £67,100 would be expected to pay an additional £715. Actual losses for individual taxpayers will vary according to individual circumstances.

There may be an impact on family formation, stability or breakdown as individuals, who are currently just about managing financially, will see their disposable income reduce.

Impact on business, including civil society organisations

This measure is expected to have a significant impact on over 1.6 million employers who will be required to introduce this change. One-off costs will include familiarisation with the change and could also include updating software or systems to reflect the change. A further one-off cost could include updating employee payroll records to reflect this change. This measure will also impact payroll software providers who will have one-off cost of familiarisation and will also be required to update software to reflect this change, the cost of which may be passed onto customers.

Customer experience is expected to remain broadly the same as this measure does not significantly alter how employers interact with HMRC.

A historical oddity?

© Getty images/iStockphoto

Bill Dodwell asks whether it's time to condemn the UK's idiosyncratic tax year end to history

PROFILE

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

In 1582, Pope Gregory XIII introduced the new calendar, to correct inaccuracies from the older Julian calendar. The Julian year was slightly too long and so a 10-day correction was implemented to sort out the problem that had arisen over 13 centuries. It took Britain until 1752 to adapt to modern ways, by which time an 11-day correction was needed. The tax year at the time ended on 25 March, one of the traditional quarter days for rent payments. In 1758, Parliament decided to move the tax year forward by 11 days to match the new calendar.

Roll forward 260 years – and the UK is still using 5 April as the individual tax year end. It's one of only two jurisdictions to do so (the Isle of Man is the other). Ireland moved to 31 December in 2002, as a requirement for joining the euro.

In June, the Office of Tax Simplification launched a review on whether the UK should adopt a different individual tax year. The trigger for the review was the forthcoming launch of Making Tax Digital for Income Tax – where self-employed individuals and landlords will be required to keep digital records and upload quarterly data to HMRC. The issue is whether the 5 April year end adds complexity for individuals as they move towards using accounting software to manage their affairs.

The review was published on 15 September (see bit.ly/3hYXnxi). The Office looked in some detail at the benefits of moving to 31 March, with a high-level look at the benefits of 31 December. The review considered the costs and practicalities of moving the tax year, which led to the first conclusion: it would not be feasible to move the tax year before the adoption of Making Tax Digital for Income Tax, originally set for 2023 and now 2024.

The modern way

We now live in an internet age and the systems of the past no longer help us with our daily lives. There are clear benefits in adopting a tax year which is either aligned with the calendar year or with a calendar month-end. Increasing automation, internet-enabled commerce and digitisation of financial services and financial information generally increase the need for a more intuitive cut-off date. The more seamlessly accounting systems generally align with tax requirements, the more easily information can be transferred between systems.

It was only a few years ago that exchange of information between countries was a purely manual process. Yet today we have already seen several years of automatic exchange of financial account information for individuals – and there is more to come. The challenge for the UK in using the data received is that the reference period is the calendar year – which is the tax year for most countries globally. Advisers and taxpayers will know of the confusion created when trying to reconcile calendar year data to the UK tax year.

The exchange of platform data is coming, under an OECD template – again, by reference to the calendar year. Sticking with something else means that the UK is going into the internet-enabled age hobbled. Instead of the platform telling its UK customers the value of their sales by calendar year and passing the same data to HMRC, businesses will need a separate set of figures for their tax return, no doubt accompanied by a reconciliation attempt. Having the same tax year as most other countries would also help with double tax relief and moves to and from the UK. Anyone with investment income taxed in two countries would also prefer that those countries used the same tax year.

A painful change

What's the problem, then? Transition. Changing public sector and private sector systems to work with a different tax year would take a huge effort to get right. We must remember that the systems we're talking about are those which pay salaries, pensions and benefits – affecting almost everyone. The National Audit Office's report on underpayment of the state pension (see bit.ly/3zz2z0R) makes it clear that the DWP has several manual, unconnected systems to pay 12 million people their state pension. No one could afford a glitch. We should not think this is just a public sector problem: similar issues exist in some very large private sector payroll systems.

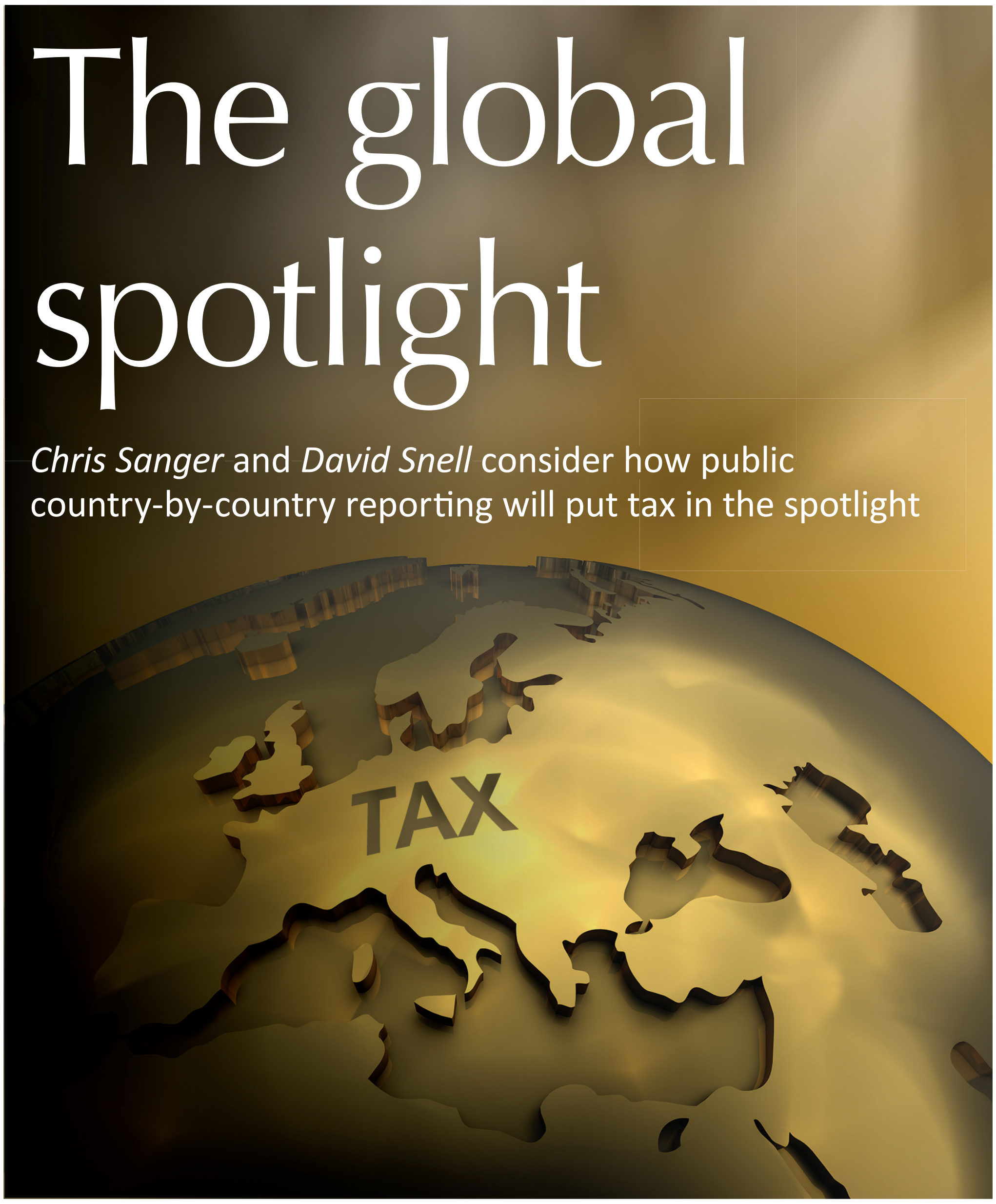
Choosing between 31 December and 31 March is another complexity. If December were adopted, the UK might need to change its financial year, which could affect the devolved administrations and any public sector spending body, such as local authorities and the NHS. Moving by three months will always be more complicated than moving by five days – although the long-term gain should be more significant.

If the government is minded to adopt a modern tax year – and the OTS does not make a recommendation – significant planning would be needed. This would be a big multi-year project. The OTS does recommend that any change should only take place once major systems have been delivered, such as the new Single Customer Account.

We hope the report will help the government consider whether or not to adopt a modern tax year.

The global spotlight

Chris Sanger and *David Snell* consider how public country-by-country reporting will put tax in the spotlight



KEY POINTS

- **What is the issue?**
Multinational enterprises which do not already do so will be required to publish details of the amounts of tax they pay in each EU country under 'public country-by-country reporting' (CbCR) rules.
- **What does it mean to me?**
UK-based MNEs will be 'non-EU based' under the proposed CbCR rules. It remains to be seen whether the EU agreement reaches the multilateral threshold the UK government has in mind to introduce a requirement for additional UK legislation.
- **What can I take away?**
Many MNEs will take positive steps towards greater tax transparency before public CbCR becomes mandatory, with some rethinking their entire approach to tax communications.

For a multinational enterprise (MNE), communicating its approach to taxation to stakeholders is becoming ever more important. The publication of additional information on tax, both voluntarily and through mandatory requirements, is on the rise.

In the latest development, MNEs which do not already do so will be required to publish details of the amounts of tax they pay in each European Union country. These 'public country-by-country reporting' (CbCR) rules will apply to over 550 UK-based MNEs. Businesses that span the energy, extractive, retail and financial services sectors are likely to be those most affected. Coverage extends beyond the previous Capital Requirements Directive (CRD IV) currently applying to credit institutions and investment firms, and differs from that in the Accounting (and Transparency) Directives (Country by Country Reporting) applying to the extractive and logging industry.

Moves towards tax transparency

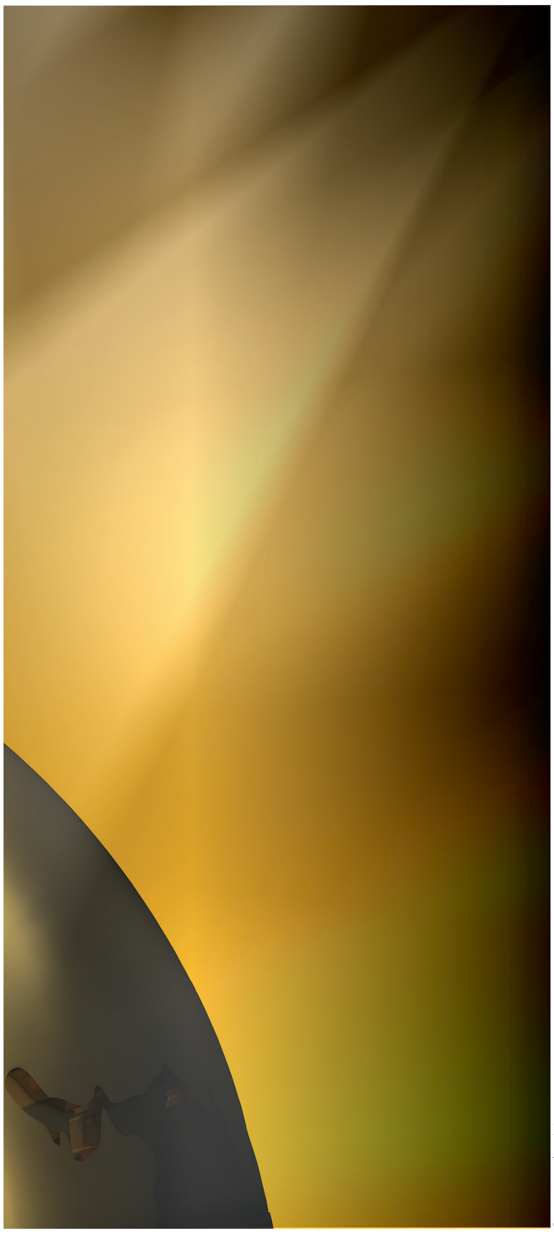
The provision of tax information has been seen as going some way towards addressing concerns raised by non-governmental organisations (NGOs) as to how the corporate tax system operates today. It covers two core elements:

- the provision of information by taxpayers and third parties to tax administrations; and
- the publication of information by taxpayers (or tax administrations).

On the first point, there is general agreement that tax administrations should have the information that they need to undertake the role that governments require of them. But the tax administration should not want to obtain excess tax information, with the attendant costs of processing, compliance and increased confidentiality risks.

The second issue – that of increasing demand for public information on taxation ('tax transparency') – is becoming one of the key challenges in modern tax administration. While NGOs often consider that greater transparency can only ever be positive, for some businesses the sharing of confidential information regarding contracts and operating models could be considered a risk to their competitiveness. Standard-setters and MNEs need to strike a balance between the right to confidentiality and the desire for transparency. Increasingly, there seems to be a move towards promoting disclosure at the expense of privacy and confidentiality, with the EU's move just the latest example.

Debate concerning the global tax landscape has, for some time, been moving towards a new social contract between business and government. Governments, NGOs and elements of wider society are looking for businesses to justify their contribution to society by way of tax payments. Increased global government spending as a result of Covid-19 is leading to a greater focus on the alignment of where tax is paid and the MNE operates. This combines with an increasing recognition by some MNEs of the wider societal benefits generated from seeing the tax they pay in a country as a requirement of doing business in that country. Some investors are also encouraging business to demonstrate a responsible attitude towards taxation and recognise the financial returns from social stability. Proactively using tax transparency can generate a positive narrative for business, creating an opportunity to improve communications and adding long-term value.



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PROFILE

Name: **Chris Sanger**
Position: Head of Tax Policy
Firm: EY
Email: csanger@uk.ey.com
Tel: +44 20 7951 0150
Profile: Chris leads Tax Policy for EY, and was formerly HM Treasury's Head of Business Tax Policy. He is the Chair of the Financial Secretary to the Treasury's Tax Professionals Forum, and the ICAEW's Tax Faculty's Technical Committee. He is a member of the CIOT's Tax Policy and Oversight Committee and a Council Member of the Institute of Fiscal Studies. The views expressed in this article are not necessarily those of the above organisations.

Name: **David Snell**
Position: Director, Tax Policy
Employer: EY
Tel: +44 2071 970865
Email: david.snell@uk.ey.com
Profile: David Snell works with EY's EMEIA (Europe, Middle East, India and Africa) Tax Policy team. He has over 20 years of experience serving big corporates, advising ministers and working across governments. Previously, at the New Zealand Treasury he led teams advising on the performance of the Crown's commercial and financial investments, the government's balance sheet and its tax strategy.

Voluntary public tax transparency disclosures have been adopted by a wide range of businesses, although mandatory public disclosures apply to certain sectors or countries. Tax transparency standards and frameworks vary significantly in the scope of taxes covered, levels of disclosure and type of information required. There are a wide range of voluntary initiatives such as:

- the World Economic Forum–International Business Council's 'Measuring Stakeholder Capitalism' report, which includes: total tax paid as a core metric; expanded tax metrics covering additional tax remitted; and total tax paid by country for significant locations;
- the Global Reporting Initiative's tax standard (GRI 207), which includes country-by-country reporting; and
- the B Team Responsible Tax Principles, which aim to establish an approach to taxation that companies can endorse to demonstrate responsibility and 'play their part in creating a stable, secure and sustainable society' (see bit.ly/38BLjwJ).

In recent years, we have seen an expansion in mandatory or quasi-mandatory but limited scope standards (such as CRD IV or the Extractive Industries Transparency Initiative), and the UK and Polish requirements for published tax strategies.

We can expect further developments, notably following the European Commission's May 2021 announcement that it plans to take forward the publication of effective tax rates paid by large companies, based on the methodology under discussion in Pillar 2 of the OECD. The United Nations High-Level Panel on International Financial Accountability, Transparency and Integrity (FACTI) has also recommended that 'all private multinational entities publish accounting and financial information on a country-by-country basis'.

Content of the EU's proposed public CbCR rules

The directive will apply to both EU-based MNEs and non-EU based MNEs doing business in the EU through a branch or subsidiary with a total consolidated revenue of more than €750 million in each of the last two consecutive financial years. They will be required to disclose publicly the income taxes paid in each member state and other tax-related information such as a breakdown of profits, revenue and employees per country. Provision is made to avoid double reporting for the banking sector MNEs, which report on all of their activities under CRD IV.

According to the final compromise text available from the EU (see bit.ly/3gXtJYJ), information to be disclosed will include:

- the name of the ultimate parent undertaking or the standalone undertaking, the financial year concerned and the currency used;
- the nature of the activities;
- the number of employees;
- the total net turnover made;
- the profit made before tax;
- the amount of income tax due in the country by reason of the profits made in the current year in that country;
- the amount of tax actually paid during that year; and
- the accumulated earnings.

Information must be separately listed for each EU member state where the group is active; and for each jurisdiction deemed non-cooperative by the EU or that has been on the EU's 'grey' list (i.e. Annex II of the EU list of non-cooperative jurisdictions for tax purposes) for a minimum of two years. All other jurisdictions can be aggregated.

Once the directive is formally agreed, member states will have up to 18 months to enact it in their domestic legislation. In practical terms, this means that if the directive is formally adopted on 30 September 2021 (say), the first financial year of reporting on income tax information will be the year starting on or after one year following the 18-month transposition deadline; i.e. the first financial year starting on or after

30 March 2024. This is a 'long stop' date, as individual member states would have the option to implement the rules earlier, as happened in some cases with the mandatory disclosure rules. Groups with calendar year-ends should not therefore automatically assume that they will only fall within the rules from 2025.

Could the UK follow the EU's lead?

As the UK is now a third country, UK-based MNEs will be 'non-EU based' under the proposed CbCR rules. But could the UK introduce comparable rules on its own account? Following a cross-party initiative, the government accepted an amendment to the 2016 Finance Bill to enshrine in law support for the principle of public CbCR with the power for it to be introduced when appropriate. As yet, that power has not been exercised. In April 2021, prior to the EU reaching agreement, Jesse Norman MP, the Financial Secretary to the Treasury, said in Parliament that the UK government's position on public CbCR was as follows:

> 'Only a multilateral approach to public country-by-country reporting with wide international support would be effective in achieving transparency objectives and avoiding disproportionate impacts on the UK's competitiveness, or distortions regarding group structures. The government firmly believes that that should remain voluntary and that no further legislation is needed unless and until public country-by-country reporting is agreed on a multilateral basis.'

It remains to be seen whether the EU agreement reaches the multilateral threshold the government has in mind to introduce a requirement for additional UK legislation.

Financial statements not meeting tax transparency needs

All of this activity suggests that the tax-related disclosure within financial statements today falls short of full 'tax transparency'. Financial statements have become so large and complex that some have argued they are of limited value to their users, including investors, management and external stakeholders. The perceived lack of transparency in financial reporting creates uncertainty, with implications for investors' trust and their willingness to invest. There is a limit to the extent to which an MNE's tax contribution can be captured through mandated reporting requirements alone.

Today, many of the world's leading organisations look beyond pure financial results and wish to make a positive impact on society as a whole. This is increasingly becoming a prerequisite for their employees, customers and investors. Creating and communicating an MNE's long-term value proposition to this wider stakeholder community is growing increasingly complex. Clarifying the drivers of long-term value, as reflected by the intangible value, is becoming a strategic and management priority. In response, most annual reports from MNEs go well beyond their minimum financial reporting obligations. They include messages explicitly meant to build confidence in the company's future and setting out its contribution to wider society. Many would argue that those wider messages could encompass greater openness on tax, with the potential for MNEs to demonstrate the value added through their tax payments to society as a whole.

How can MNEs respond?

What is clear is that many MNEs will take positive steps towards greater tax transparency before public CbCR becomes mandatory, with some rethinking their entire approach to tax communications.

MNEs have options on how to respond to the pending requirements:

- Some companies may choose to make tax a central part of their long-term strategy and to communicate their tax strategy externally within a long-term value framework. Organisations that embed their purpose across the whole of their business, with a focus on creating a positive, sustainable impact across all of their stakeholders, are best positioned to benefit from, demonstrate and measure the long-term value they create.
- Others could communicate on tax issues as a standalone basis, considering whether they should go beyond the upcoming mandatory standards in their voluntary disclosure. The upcoming obligation to provide selected information on the role that taxes play creates an opportunity for MNEs to communicate the positive steps they are taking to all of their stakeholders. Several MNEs already publish detailed CbCR on a voluntary basis, seeing public disclosure as an opportunity to demonstrate their longstanding commitment to transparency.
- As a minimum, MNEs will need to monitor mandatory developments in the EU and elsewhere. Additional disclosures can be deferred for now but not ignored. Businesses taking this more reactive approach should start to consider how to collate and validate the necessary information, along with the implications for stakeholder engagement of additional disclosure in the future. When complying with public CbCR in the future, could competitors without substantial operations requiring disclosure in the EU exploit the information provided and obtain a competitive advantage?

Building a public tax transparency framework

It is likely that many MNEs will consider the first two options. They could take the opportunity created by public CbCR to enhance their public tax transparency framework. A typical approach would be to take the following steps:

1. Set objectives for public tax transparency: determine the overarching message with reference to the MNE's corporate strategy, external environment and tax policy.
2. Determine how to deliver that message: within corporate social responsibility reporting, as a standalone publication or a dedicated web page.
3. Identify the target audience: engage with stakeholder groups to understand their interest and objectives.
4. Set a public tax transparency strategy: identify frameworks, standards and principles that mirror companies' and stakeholders' requirements for tax payment disclosure and support the MNE's overall objective. This may well extend beyond the EU's proposed public CbCR rules.
5. Implement systems and assure data accuracy: set up the process and leverage technology for preparation and assurance of tax reporting disclosures (working at a minimum to the EU proposed CbCR rules).
6. Monitor and refine the approach: improve disclosures and processes to reflect changes in the internal and external environment.

Developing an appropriate public tax transparency strategy for an MNE will be driven by company context, interested stakeholders' objectives, the value created and potential risks that could be raised. Choosing a strategy should also take into account peer practices, industry, regional and local practices.

It is said that the ideal time to plant a tree is 20 years ago, and the second best time is today. The same may be true for determining a tax transparency strategy. MNEs have a golden opportunity to take the lead, and drive positive change ahead of the imposed public CbCR. The clock is ticking and it is time to get planting.

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Wednesday 13 October 2021

14:00 – 15:30 BST

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Talk on new late filing and payment penalties (with Q&A) – Will Silsby

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- Can we improve HMRC online services for agents? – Helen Thornley
- Goodbye basis periods and interaction with MTD – Emma Rawson
- Charity, membership body, pressure group – has ATT got the balance right? – Will Silsby

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Our events in the series in October:

How is tax technology transforming internal tax functions *Thursday, 14 October 2021 | 14:00 – 14:30*

Alfredo Espada, Head of Tax Technology, Astrazeneca
Alexander Kobakhidze, Tax Technology Specialist, Fonoa

The tax system and Blockchain (the technology behind Bitcoin) *Thursday, 28 October 2021 | 17:30 – 18:00*

Paul Aplin OBE, CIOT Council member, ICAEW Tax Faculty Board (ICAEW Past President 2018/19)
Tyler Welmans, Senior Manager - Blockchain Lead, Deloitte (UK)

For more details about each event in the series and how to register visit

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Any questions?
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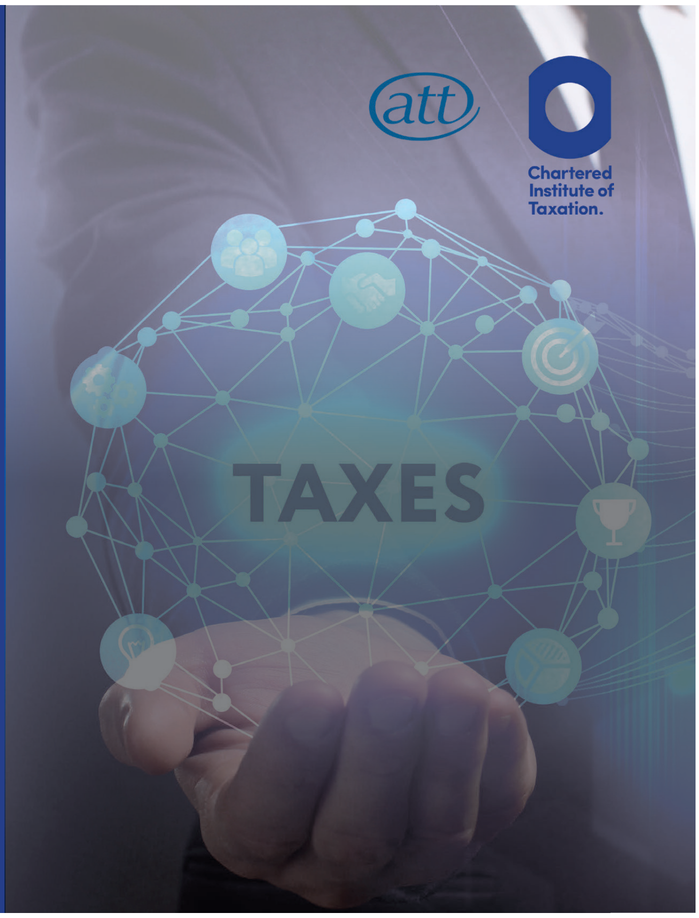


Word games

KEY POINTS

- **What is the issue?**
Complicated VAT phrases need to be understood so that you don't give confusing advice to clients. The same VAT meaning can sometimes be described in two different ways; e.g. 'economic activity' and 'business activity' basically mean the same thing.
- **What does it mean for me?**
It is important that written advice to clients uses the simplest possible phrase to avoid confusion and, in areas of doubt, should be supported by a practical example or simple analysis. For example, many clients might think that a 'taxable sale' is one that is only subject to 20% VAT.
- **What can I take away?**
An understanding of VAT phrases and their meaning might help to save tax for clients. For example, a business can register in some cases and claim input tax, even if it does not have taxable UK sales with the principle of 'outside the scope with recovery'.

Neil Warren considers ten common phrases that are used in the VAT legislation and HMRC's public notices, and seeks to simplify them with practical examples about what they actually mean

I enjoyed the comment of the judge in the recent Court of Appeal decision in the VAT case of *Royal Opera House Covent Garden Foundation v HMRC* [2021] EWCA Civ 910):

> 'The principles of VAT law can appear more obscure than they need, partly because some of the most important terms are unfamiliar to all but the specialists.'

I agree with what he says and have always tried to use simple words and phrases where possible, not easy in the complex world of the nation's favourite tax. So, in this article, I will quote ten commonly used VAT phrases and try to simplify them with practical examples. Wish me luck!

1. Place of supply

The phrase 'place of supply' means the country where VAT is payable. If the place of supply is the UK, it is subject to UK VAT rules; if it is outside the UK, it is not. In the latter case, it is outside the scope of UK VAT. So, for example, the sale of goods that start in China and go directly to America is outside the scope of UK VAT.

Some advisers wrongly think that the 'place of supply' for services is always the country where work is being carried out. But this is not correct: for 99% of B2B services, the place of supply is where the customer is based. So, for example, if a computer consultant in Manchester is sitting at his desk and doing work for a business in France, the place of supply is France. It is irrelevant where the work is being performed. This is known as the general B2B rule for services.

For B2C services, the default position is that the place of supply is where the supplier is based (see VAT Notice 741A paras 6.2 and 6.3). This leads to another important phrase...

2. General rule exceptions

The place of supply rules quoted above do not always apply and we have 'general rule exceptions'. Here are three common examples:

- **Land services:** The key issue is where the land or building is located. If a UK builder fits a new bathroom suite in a property that I own in Spain, the place of supply is Spain. The work is only liable to Spanish VAT.
- **Performance services B2C:** It is where the service is performed that counts (see VAT Notice 741A s 9 for a list of qualifying services). So, for example, a UK based opera singer performing in Berlin at a private birthday party will need to charge German VAT, either by registering for VAT in Germany or, since 1 July 2021, registering for the One Stop Shop (OSS) scheme in an EU country of her choice.
- **Professional services:** The place of supply for many B2C professional services (e.g. accountancy fees) depends on where the customer is based rather than the supplier (see VAT Notice 741A s 12).

3. Outside the scope with recovery

The computer consultant mentioned above has earned fees from his French business customer which are outside the scope of UK VAT; the place of supply is France. However, he can still claim input tax on any UK expenses he incurs, assuming he is registered for VAT, because the service he has supplied (computer consultancy) would be subject to VAT if invoiced to a UK customer; i.e. subject to either 0%, 5% or 20% VAT.

If all of his work is for overseas business customers, with no output tax charged, then his VAT returns will always be net repayments; i.e. input tax exceeds output tax. This is known as 'outside the scope with recovery'.

Here is a question for the Christmas tax quiz at your office party: is it possible to register for VAT if you don't make any UK taxable supplies? The answer is 'yes' due to the outside the scope with recovery rules. The registration will be voluntary and can be backdated up to four years.

4. Taxable supply

There was a well-publicised situation some years ago when an HMRC officer misled a business owner about whether he needed to register for VAT. The business partly sold goods in the UK and exported others to America. The total sales figure exceeded the annual VAT registration threshold but the UK sales alone did not. The question was whether the business had to register for VAT. The officer's answer was allegedly: 'No, the registration threshold only includes taxable sales. You can ignore exports because they're zero-rated.'

A 'taxable sale' is one that is subject to 0%, 5% or 20% VAT under UK law. If the sale is exempt from VAT, or outside the scope of UK VAT, then it is ignored for registration purposes and is not a taxable sale. So, for example, if the business had sold consultancy services to American business customers (outside the scope), rather than goods (zero-rated), the income would have been excluded from the registration test.

5. Taxable person

True or false? A taxable person is a business or entity that is registered for VAT. The answer is 'false' – it is a business or entity that is either registered for VAT or ***should*** be registered. A business earning annual taxable sales of, say, £100,000, but which has failed to register for VAT on time, is still a taxable person from the date it should have registered.

Don't forget that it is a 'person' who is registered for VAT and not a business. The VAT system works on legal entities. So, for example, a sole trader hairdresser who is registered for VAT and earns extra income renting out a property she owns on Airbnb must account for VAT on both sources of income. But if she owned the property in joint names, say with her husband or civil partner, this would be a partnership for VAT purposes, a separate legal entity to her hairdressing business.

PROFILE

Name: **Neil Warren**
Position: Independent VAT consultant
Company: Warren Tax Services Ltd
Profile: Neil Warren is an independent VAT author and consultant, and is a past winner of the Taxation Awards Tax Writer of the Year. Neil worked at HMRC for 13 years until 1997.

6. Economic activity

The phrase 'economic activity' is an EU phrase. UK law refers to 'business activity'. An entity can only register for VAT if it is making or intending to make taxable sales 'in the course or furtherance of any business carried on by him' (see Value Added Tax Act 1994 s 4). There have been many disputes over the years about what is classed as a business. Here are three tips:

- An activity does not need to make a profit to be classed as 'business'.
- A one-off sale can still be business. For example, if I buy a plot of land with the purpose of building a house to sell at a profit, this is clearly a business venture, even though I will only make a single sale.
- It is still good practice to consider the six business tests of the landmark VAT case *Lord Fisher* [1981] STC 238, which have stood the test of time. (See HMRC's VAT manual VBNB22000.)

7. Elect to waive exemption

This phrase relates to land and property, and the decision of a landlord or tenant with an interest in a building to charge VAT on future income. I think it is much easier to say 'opt to tax' rather than 'elect to waive exemption'. Consider the following two sentences:

- John purchased a commercial property and made an election with HMRC to waive exemption on supplies connected to the building.
- John purchased a commercial property and opted to tax it with HMRC so he will charge VAT on the future income earned from the building.

The two sentences are saying the same thing but the first is confirming that income earned from the building will 'not be exempt'; whereas the second is saying that it 'will be standard rated'.

8. Multiple supply

I prefer the phrase 'mixed supply' – in other words, a business is making a supply of goods or services for a single price that contains two or more elements and which have different VAT rates.

Think of a gift item that consists of a standard rated pen and a zero-rated book, being sold for a single price of £19.99. How much output tax must the seller declare? The main challenge is to consider whether one of the supplies is 'incidental' and can be ignored – the VAT liability in such cases is wholly based on the main supply. If there is more than one supply, output tax must be apportioned in a fair and reasonable manner.

9. Reverse charge

The 'reverse charge' procedure means that the customer makes VAT return entries that would normally be made by the supplier. On 1 March 2021, the reverse charge principle was extended to many construction industry supplies, an anti-fraud measure to prevent a builder from charging 20% VAT to another builder on a sales invoice and disappearing with the VAT money. The builder receiving the services is no longer charged VAT by his supplier, doing the reverse charge on his VAT return instead.

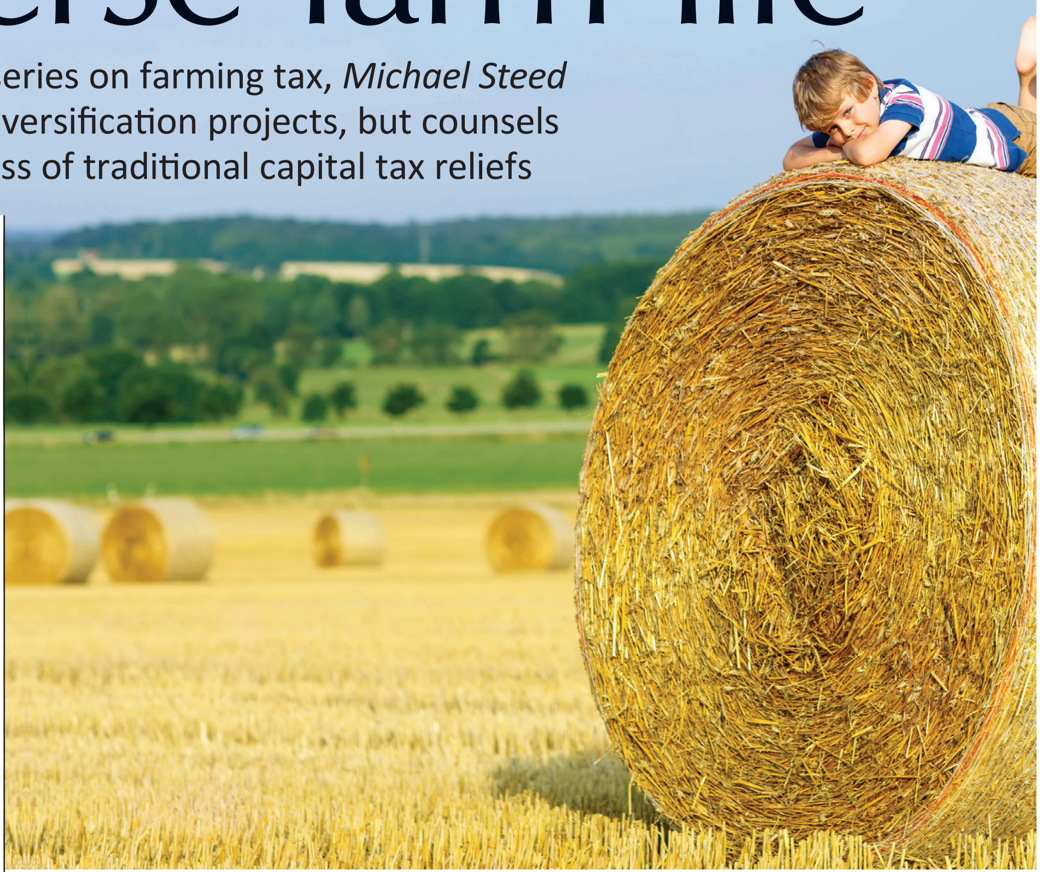
The reverse charge extends to the purchase of services from abroad – note the word 'abroad' and not 'EU'. So, for example, a UK accountancy firm paying £10,000 to a bookkeeping business in India will account for output tax of £2,000 in Box 1 of its VAT return, claiming the same amount as input tax in Box 4. The net value of the payment will be included in the inputs and outputs boxes of the same return; i.e. £10,000 in Boxes 6 and 7.

10. Partial exemption

Last but not least – partial exemption, which was the key issue in the *Royal Opera* case I mentioned at the beginning of this article. Most advisers are aware of the principles of partial exemption and its input tax challenges, so I won't repeat them here. But to finish with a word scenario, input tax on expenses that relate to both taxable and exempt supplies (mixed costs and general overheads) can have three different descriptions, depending on your reference point: residual input tax; non-attributable input tax; or 'the pot'. As someone who likes simple words, I prefer the last phrase!

A diverse farm life

In the second part of his series on farming tax, *Michael Steed* looks at some common diversification projects, but counsels caution on the possible loss of traditional capital tax reliefs



KEY POINTS

- **What is the issue?**
Diversification for farming clients can be very attractive, but it may have tax downsides.
- **What does it mean to me?**
A diversification project needs careful analysis – is it trading or is it investment? What long term capital tax implications does that hold?
- **What can I take away?**
We need to carefully check that we have examined all of the possible tax consequences of a diversification project.

Many farms in the UK have diversified into other commercial on-farm ventures, or are considering doing so. Using the farm's property assets for different purposes is an easy starting point and then there are the more esoteric projects, such as llama walking and rewilding.

What I want to do in the second of my Back to Basics articles on farming is to look at some of these and ask some basic questions about the tax consequences of such projects. I'm going to stick to on-farm diversification, as opposed to, say, running a different trade from the farm, such as agricultural contracting.

The letting of property

An obvious diversification from traditional farming is letting spare farm property. This could be as simple as letting a spare barn to third parties. But this instantly raises questions about whether such activities constitute an investment business, rather than farming, and what effects it could have in the future.

I'll come back to this point in respect of agricultural property relief (APR) and business property relief (BPR), but suffice to say that short term letting of buildings will not adversely affect farming status. However, medium and longer term property letting is clearly not farming and this pushes the activity into the investment parish.

The immediate direct tax consequence is that this will be income from land and not a separate trade; and that the VAT consequences will also need to be considered – this is an exempt supply for the farmer and will result in the farmer being partially exempt, so regular VAT calculations will be required. The farmer could opt to tax any let commercial buildings to increase VAT recovery on directly related input tax.

If the property is residential, this is also income from land and also an exempt supply for VAT. It is not possible to opt to tax residential property.

Furnished holiday lets

One of the more common diversification projects is the creation of furnished holiday lets accommodation on farms. This is a good plan following Covid-19, as overseas holidays are more difficult to achieve at the moment, but the tax consequences need to be looked at.

Good outcomes include the furnished holiday let business being treated as a trade for income tax purposes, so capital allowances are available on residential qualifying items and profits are relevant earnings for pensions purposes.

They also accrue good capital gains tax outcomes too: business asset disposal relief, roll-over relief and gifts relief apply.

Furnished holiday lets are standard rated for VAT.

The bad news is inheritance tax. HMRC will stoutly maintain that furnished holiday lets are investment properties under Inheritance Tax Act 1984 s 105 (citing the case of *HMRC v Pawson* [2013] UKUT 50), so the trade-off is the long-term loss of inheritance tax efficiency. We will look at mixed businesses further below.

The only glimmer of hope is the case of *Graham v HMRC* [2018] UKFTT 306, where the provision of extra services gained the approval of the tribunal, but this was a rare taxpayer win.

Glamping and camping

Glamping and more traditional camping are perennially popular, and the outlay costs for camping are relatively modest. The first question is whether this is a trade (it's clearly not farming) or whether it is income from land.

There is no simple answer as it will depend on the facts.

It is possible that glamping might be a B&B trade; or it might be a furnished holiday let business. On the other hand, it may be simply income from land and not a trade at all.

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PROFILE

Name: **Michael Steed**
Position: Head of Tax
Company: BPP Professional Development
Tel: 020 3122 0103
Email: MichaelSteed@BPP.com
Profile: Michael is Head of Tax at BPP Professional Development. He is a Past President and Co-Chair of the ATT's Technical Steering Group.

And then there is the capital allowances position. Are tents apparatus that is used in a trade? Or if not, will they qualify for the structures and buildings allowance? There is no obvious authority on the capital allowances on this.

It is interesting to note that holiday caravans do qualify for capital allowances, so a shepherd's hut would probably be OK (see Capital Allowances Manual CA22100), but fixed pods would probably not.

And then there's the VAT: the provision of camping is standard rated for VAT, so VAT must be charged, but at least it helps a possible partial exemption problem.

Livery

Let's now look at another fairly common diversification project – livery and stabling for third-party horses. Is this part of the farming operation or a separate trade?

There are a number of possible permutations. It could be as simple as renting a stable and field, with the owner doing all of the work. Or it could be that the farmer is offering livery services with the associated sale of hay and straw for bedding.

How does this work for tax? Is this still farming? I think that's unlikely unless it's a short term grazing licence, where the owner is effectively responsible for the grass crop. If not, then it is likely that this will be income from land. It will again depend on the facts and the effect on long-term agricultural property relief and business property relief will need to be considered (see below).

Another area to look at here is VAT. What is the VAT treatment of this activity?

At its simplest, the renting of a stable and land is an exempt supply of an interest in land, but this will make the farmer partially exempt and VAT calculations will be required. The farmer could opt to tax the land and avoid the partial exemption issue, but this would increase the VAT loading on the horse owner.

In the alternate example (and depending on the facts), the farmer could be offering the use of facilities, which is standard-rated.

The feed issue needs to be considered too. Animal feed is zero-rated but not when supplied in conjunction with other supplies, which could constitute a single standard rated supply of livery services.

Are there long-term tax risks?

Basically, yes! A key message in this article is long-term risk recognition for capital taxes. The two key inheritance tax reliefs – agricultural property relief and business property relief – need to be kept firmly in mind, as diversification could materially affect these much admired and used reliefs.

This is not an in-depth review, so suffice to remind ourselves that they are inheritance tax only and therefore not capital gains tax (which would need to be considered for lifetime disposals). For farms, they often work together, with agricultural property relief covering the basic farm and with business property relief as a top-up for the non-agricultural property relief assets, such as livestock and deadstock.

The significance of this is that agricultural property relief is only available for 'agricultural property' in Inheritance Tax Act 1984 s 115. This section and the associated HMRC manuals merit close attention for any farming tax adviser.
It covers the land and buildings, including the farmhouse (but only of a character appropriate to the land); and very significantly, it is only available to a person characterised as a 'farmer'.

This means that the person must be in occupation of the land; and critically, the purpose of the occupation must be mainly for 'husbandry'. This needs to be taken into account for long-range tax planning, as diversification may easily mean that the person is no longer in occupation for the purposes of husbandry.

This principle was tested in the case of *Gill v HMRC* [2019] UKFTT 0650, where HMRC denied agricultural property relief on the farmhouse, as the Commissioners contended that Mr Gill was not an active farmer. HMRC also denied agricultural property relief on the farm buildings because it did not consider them to be occupied for agricultural purposes. In the event, the tribunal found for Mr Gill's executors, but it does remind us of the need to audit diversification projects.

Business property relief

The partner in crime to agricultural property relief is business property relief. It must also be considered for diversification projects. Long-term residential letting can create long-term inheritance tax issues.

The famous inheritance tax cases of *Farmer* [1999] STC (SCD) 321 and *Balfour* [2010] UKUT 300 examined mixed estates and whether such estates could qualify for business property relief. The courts in both cases held that they could qualify if the mixed business was still farming 'in the round'.

In the more recent case of *Vigne* [2017] UKFTT 632, the First-tier Tribunal granted business property relief on a 30 acre livery business that offered significantly more than a simple right to occupy land. The livery business also offered valuable services for the benefit of horse owners, such as providing the horses with feed and worming products as well as a daily check.

Conclusion

As ever in tax, good peripheral vision and the ability to look over the hill are key attributes for advisers and the balance of the short-term advantage against long-term disadvantage will need to be carefully weighed.

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Protecting the family future

Sofia Thomas and *Sharon Dosanjh* consider the role that family investment companies can play in passing down generational wealth in a tax efficient manner

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KEY POINTS

- **What is the issue?**
A family investment company is essentially a private company to which the shareholders are various generations of a family with the primary aim to preserve family wealth. It allows the parent to retain control over the assets while growing their wealth in a tax efficient manner.
- **What does it mean to me?**
Family investment companies are becoming increasingly popular. It is important that the advisers are equipped with the knowledge to be able to guide on their implementation when considering future success planning vehicles.
- **What can I take away?**
The structure of a family investment company can be relatively simple or complex, depending on the needs of the shareholders. Tailored advice and guidance is needed when making decisions about their implementation.

Family investment companies (FICs) are becoming increasingly popular in today's age. It was announced in August that the specialist unit formed by HMRC to investigate family investment companies has been disbanded, having found no evidence to support the claim that the vehicle was being abused as a means of avoiding tax. HMRC found no correlation between the individuals who had set up family investment companies and tax avoidance.

Of course, this doesn't mean that HMRC cannot open an investigation into this vehicle again in the future. However, the findings of the investigation are reassuring, showing that the family investment company is a useful and legitimate tool for passing down generational wealth in a tax efficient manner.

What is a family investment company?

A family investment company is essentially a private company to which the shareholders are various generations of a family, established with the primary aim of preserving family wealth. It allows the parents (or founding members) to retain control over the assets while growing their wealth in a tax efficient manner. It is also seen as an alternative to a trust, allowing family members to hold various different economic interests of the family wealth by way of shares, rather than distributing fractional interests within assets to the next generation.

A family investment company will follow the same regulations as are required for the management of a private company. It must be registered at Companies House and will appoint directors, provide articles of association, a memorandum of association and a shareholders' agreement, file annual accounts and disclose details of persons with significant control. It must send a company tax return to HMRC and pay corporation tax.

It is imperative that many different factors are taken into account when setting up a family investment company. The primary question, of course, is to identify the future recipients but there are a number of other issues to be considered, such as those relating to grandchildren, divorce and death.

These factors can be taken into consideration when preparing the bespoke articles of association and the shareholders' agreement. These documents form a fundamental part of setting up the family investment company, as they reflect the rights and controls of the shareholders and can be drafted to suit the family's needs. They will include the share structure to allow the economic interest to be passed to the children individually in line with their individual needs, while the parents or founding members retain control (in the form of directorships) of the assets, investments and dividends.

Provisions can be placed to restrict the transfer of shares, or prevent the amendment of the rights to income and/or capital of the various share classes. They can also include restrictions for events which would trigger a compulsory share transfer, such as in the event of a divorce or death. The articles of association can include drag on provisions (enabling a majority shareholder to force a minority shareholder to join in the sale of the company) and deadlock provisions to safeguard the family wealth further.

When would you use a family investment company?

A family investment company should certainly be considered as an option when seeking advice regarding future success planning. Many would be aware of the use of trusts to pass down generational wealth; however, a family investment company can also be an excellent vehicle to do so.

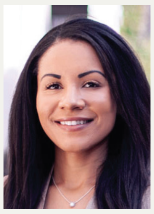
This model is also likely to appeal to individuals who come from a corporate or

WHAT ARE ALPHABET SHARES?

Alphabet shares allow the company to issue shareholders with shares in different classes, which are identifiable by a specific letter (hence the term 'alphabet shares'). For example, this could mean that the company has categories of shares such as '**A** Ordinary shares', '**B** Ordinary Shares' and so on.

The use of alphabet shares could help a business to pay shareholders different amounts of dividends depending on what class of share they own. Alternatively, alphabet shares are used in companies owned by families or in joint ventures so as to give certain shareholders power to make important decisions (for example, to appoint a director).

PROFILE



Name: **Sofia Thomas**
Position: Director
Firm: Thomas Consulting
Email: sofia@thomas-consulting.co.uk
Tel: 020 8914 7837
Profile: Sofia Thomas is a Chartered Tax Advisor and Founder of Thomas Consulting, a tax practice which focuses on partnering with family solicitors to provide tax advice to their clients on family breakdown. She is co-author of *Tax Implication on Family Breakdown* by Bloomsbury Professional. Sofia has been awarded the 'Rising Star' Award at the Tolley's Taxation Awards 2021.

Name: **Sharon K Dosanjh**
Position: Senior Tax Manager
Employer: Thomas Consulting
Email: sharon@thomas-consulting.co.uk
Tel: 020 8914 7837
Profile: Sharon is a Senior Tax Manager and currently studying towards becoming a Chartered Tax Advisor. She provides personal tax advice to high-net-worth individuals and entrepreneurs in a wide variety of sectors. Her focus is on advising individuals on how to achieve the optimum structure in regards to their personal wealth. She also provides tax advice to individuals in the event of a family breakdown.

entrepreneurial background. For instance, many business owners may feel more comfortable with a family investment company as they already hold much of the knowledge of dealing with a company from the legal and administrative side.

Parents would inject cash or assets into the family investment company and then gift the non-voting shares to their children, thus making them the shareholders of the family investment company. The shares will usually be alphabet shares (see the box above), which allow the company to effectively issue different classes of shares to the stakeholders. This allows family investment companies to pay dividends to shareholders with one class of shares without being required to pay the same dividend to each shareholder.

It is very important to get the alphabet shares right in the first instance, taking all considerations of possible scenarios into account. By gifting the non-voting shares, the economic interest would be passed down to the children, while the parents retain control (in the form of voting shares and directorships) of the assets, investment policy and dividends. This would provide complete flexibility with regards to distributing surplus profits within the family investment company among the family.

Non-voting shares may be set up to carry the rights to the capital and income in a family investment company. The alphabet shares can also be engineered in a way that they pass responsibility to children in stages as the children grow older.

How is it taxed?

Normally, most gifts carry an inheritance tax charge; if assets are placed in a discretionary trust, they would carry an immediate inheritance tax charge of 20% (over the £325,000 nil rate band). However, with a family investment company, this is not the case. Cash placed in a family investment company does not carry any upfront inheritance tax charge or any immediate tax consequences. Transferring the shares would be treated as a potentially exempt transfer for inheritance tax purposes, taxable only if the donor did not survive for seven years. It would also be a capital gains disposal for the parents but if the shares are given away before there is any growth in investment value, there should be no gain in practice.

Disposals within the family investment company, such as property or shares, could carry corporation tax on chargeable gains and acquisitions could have stamp taxes implications.

Due to the family investment company being a limited company, it would take advantage of a lower tax charge – the corporation tax at 19%. This rate increases to 25% from 1 April 2023. This would be chargeable to all the income and capital gains, although dividends are normally exempt from corporation tax.

On the other hand, there can be a 'double tax charge' when using a family investment company. This essentially means that the family investment company would pay corporation tax on its income, profits and gains; however, at the point of distribution to shareholders, the shareholder would also have to pay income tax at the relevant dividend rate. As the children or grandchildren would usually be the only ones who hold the economic interest, they would pay tax via Self Assessment on any income received from the family investment company.

The founder may at some point wish to extract funds from the family investment company. As long as the funds had been injected into the family investment company by way of a loan, the extraction will be tax free (as it would be treated as a repayment of loan).

It is also worth noting that while a family investment company is considered to be a success planning tool, it does not attract any specific inheritance tax reliefs and it is not eligible for business property relief (as an investment company, rather than a trading company). The inheritance planning would take place in the form of giving away all appreciation to the capital within the family wealth at the point of creating the family investment company. However, the voting shares held by the parents in our example carry value and would form part of the donor's taxable estate.

A family investment company can be very similar to a trust. If you wish to read further about the similarities and differences, see 'Old school or new school', Tom Klouda and Daniela Andreca (*Tax Adviser*, April 2020).

Anti-avoidance

A family investment company is by no means a tax avoidance vehicle. There are anti-avoidance rules in place which must be considered when setting up a family investment company to avoid falling into any tax traps. These include (but are not limited to) the 'settlements' anti-avoidance rules (Income Tax (Trading and Other Income) Act s 624(1)); 'gift with reservation' (Finance Act 1986 s 102(2); inheritance tax anti-avoidance provision; and the general anti-abuse rule (GAAR); and disclosure of tax avoidance schemes (DOTAS) provisions.

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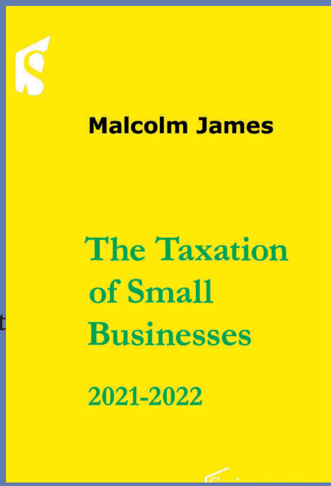

The Taxation of Small Businesses 2021-22 is a practical guide to all aspects of direct taxation of small businesses in one volume. It is ideal for sole practitioners and small partnerships, but will be a handy reference guide for all tax advisers. The book aims to give a clear explanation of the relevant legislation and practical advice on ways of minimising clients' tax liabilities and warning against common pitfalls. The fourteenth edition has been updated to incorporate changes as a result of the Finance Act 2021. It includes emergency COVID-19 pandemic measures.

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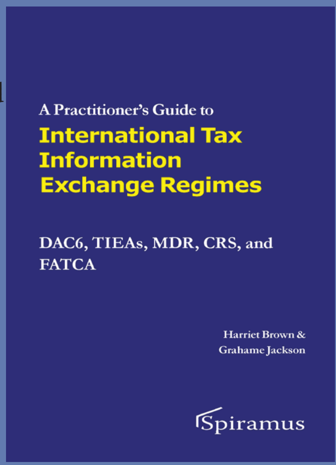

The recent introduction of the Directive on Administrative Cooperation in the field of taxation 6 (DAC6) and mandatory disclosure regimes by many jurisdictions have led to a large number of professionals potentially being required to disclose information in relation to their clients' arrangements. The authors analyse the operation of the various automatic exchange of information regimes which have been introduced in the last five years including the OECD common reporting standards DAC6 and MDR. They set them in their historical context as well as giving a technical analysis of the regimes. They focus on the guidance offered by the Irish and UK tax authorities with reference to other guidance in Europe and beyond, where appropriate.

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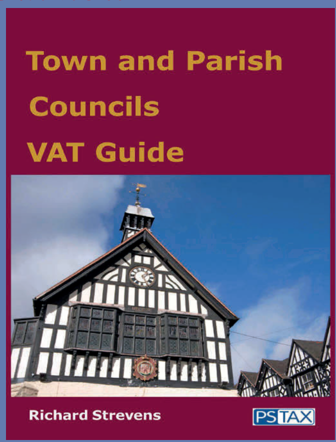

This is an easy reference guide for those engaged in administering the financial affairs of town and parish councils in England and community councils in Wales. It focuses on the typical range of activities that these local authorities will have. It will be of use to town and parish clerks or treasurers and those responsible for the book-keeping of these organisations, as well as those responsible for auditing such bodies. The authors give the reader the basic concepts of the tax and a degree of familiarity with the common technical terms used by H M Revenue and Customs (HMRC) in its own guidance. The most common terms are set out in the glossary.

Price: £35.00	80 pages	paperback	ISBN 9781910151136
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Counting houses

Simon Howley examines the complexities of the 3% surcharge to stamp duty land tax, and what constitutes an 'only or main residence'

KEY POINTS

- **What is the issue?**
The 3% stamp duty land tax surcharge applies if the purchase of the new property means that the purchaser owns more than one residential property. The property must be the 'only or main residence' to be exempt.
- **What does it mean for me?**
If taxpayers purchase two adjoining properties intending to combine them into a single residential property, HMRC has already successfully argued that there would actually be no replacement of a main residence in such a case, so the surcharge will apply.
- **What can I take away?**
Taxpayers should carefully consider the order in which dwellings are sold and purchased, as this may affect whether or not the surcharge is applicable.

A client came to see me recently explaining that he and his wife were in the process of buying an old Victorian terraced house in West London, as a replacement of their main residence, informing me that the 3% surcharge should not be applicable. He was bubbling over with excitement and explained that the property in question was currently split into three self-contained apartments, and that he and his wife intended to combine these into one fantastic residential property.

'Sorry to burst your bubble,' I said. I then started to explain to him that when a purchaser acquires multiple dwellings, intending the new main residence to be the single dwelling resulting from those dwellings being merged, HMRC has already successfully argued that there would actually be no replacement of a main residence in such a case.

When does the 3% surcharge apply?

The 3% stamp duty land tax surcharge applies if the purchase of the new property means that the purchaser owns more than one residential property. It can only apply to the acquisition of a 'dwelling'. Bizarrely, the surcharge legislation has its own definition of dwelling, which is based on the general definition of residential property for stamp duty land tax. This is in addition to the separate definitions for multiple dwellings relief and the definition for the purposes of the 15% flat rate.

Essentially a building or part of a building counts as a dwelling for the purpose of the surcharge if, at the effective date:

- it is used, or suitable for use, as a single dwelling; or
- it is in the process of being constructed or adapted for such use.

Thus, the purchase of a mere site for the construction of a dwelling is not caught; nor is the purchase of an existing building for conversion into a dwelling so long as it is not suitable for use as a dwelling at the effective date, and adaptation work has not yet begun.

The main exception to the surcharge rule is the purchase of a replacement property that is to be the purchaser's only or main residence; if he has disposed or does dispose of a previous main residence within a set period, the surcharge does not apply. This is so regardless of how many other dwellings the purchaser owns.

The ordinary rule is that the effective date of the disposal by the purchaser of his previous main residence must be the same as the effective date of his purchase. If the purchaser has not sold his previous main residence on the day the new purchase is completed, he will be liable for the 3% surcharge. (Note that the purchaser can apply for a refund if he sells his previous main home within three years.)

Example 1

Derek sells the house which was his old main residence and, within the time limit, buys a house to be his new main residence for £1,750,000. He has a portfolio of residential rental properties. He is entitled to the replacement relief and his stamp duty land tax is £123,750.

What counts as a main residence?

The stamp duty land tax legislation does not define what 'only or main residence' means, so it is a matter of looking at the ordinary meaning of the words. For over 50 years, the capital gains tax legislation has had an exemption for a disposal of the taxpayer's only or main residence, and there is a good deal of case law on that. The Stamp Duty Land Tax Manual includes a very useful list of what it considers the main factors to be at SDLTM09812 (see bit.ly/3BRFVIO), and these should be considered by any adviser of a purchase that maybe borderline.

However, matters can become more complex where any purchase is a joint one, as we will see by expanding on our example of Derek above.

Example 2

Derek now sells his house, which was his main residence, and still retains his residential property portfolio. He and his girlfriend Lisa, within the set time limit, jointly buy a house to be their main residence for £1,750,000. Lisa had been living with her parents, but owns a flat that she rents out.

Derek and Lisa must pay the 3% surcharge. Although Derek qualifies for the exception, Lisa does not, because of the flat, and she is not replacing a main residence of hers.

They could have avoided the surcharge if Lisa had sold her flat before the completion on the new house. Alternatively, Derek could have sold or gifted a share in his old house to Lisa – it need only be a fractional share – before he sold it and it had also become her main residence.

Note that where the purchaser is married, that spouse is also treated as a purchaser for the purposes of the 3% stamp duty land tax surcharge. If either spouse triggers the surcharge it would apply to the whole transaction.

Example 3

Fiona and her husband Tim have never owned a main residence, but Tim owns six houses which he rents out. Fiona decides to purchase a house costing £1.1 million, in her own name, for them both to live in.

The joint purchaser rule must be applied and Tim is a joint purchaser of the property for the purpose of deciding whether the surcharge applies. Tim is not responsible for the tax; nor is he the purchaser for other purposes.

Example 4

Simon and Fiona are married and jointly own a holiday home. Simon owns their own main residence. When they jointly buy a replacement property, he sells his previous property within the time limit.

They do not have to pay the surcharge, because they are married. If they had not been married, they would have had to pay the surcharge because Fiona did not sell a major interest in an old dwelling, although she lived in their previous residence, and that is one of the requirements.

As you can see, the rules can have fortunate and unfortunate effects, if transactions are not carried out in the correct order. Advice must always be taken. Anyway, back to my now thoroughly depressed client, as I explained to him the recent tax case and the impact this could have on his proposed purchase.

PROFILE

Name **Simon Howley**
Job title Managing Partner
Employer Bell Howley Perrotton
Email simon@bhptax.law
Tel +44 20 7129 1432
Profile Simon Howley is the co-founder of Bell Howley Perrotton LLP with offices in London and Dublin and oversees the firm's tax team. He is a member of the Stamp Taxes Practitioners Group and sits on the Property Taxes Sub Committee of the CIOT's Technical Policy and Oversight Committee.

The *Moaref* case: the significance of an 'only or main residence'

The case in question is *Moaref and another v HMRC* [2020] UKFTT 396 (TC). The First-tier Tribunal held that for the purposes of the 3% stamp duty land tax surcharge, the buyers did not replace their only or main residence when they bought two new apartments, with the intention of converting them into one new main residence, and then subsequently sold their old main residence.

The taxpayers owned a dwelling in Dubai (the 'old main residence'), which they lived in as their only or main residence up to August 2016. In 2017, they acquired two neighbouring apartments in separate land transactions, from separate vendors in central London, paying the surcharge on each property. The first apartment cost £5.2 million, with stamp duty land tax of £690,000; and the second apartment cost £7.4 million, with £1,023,750 being paid in stamp duty land tax. The case only related to the second apartment.

Following the sale of their old main residence, the purchasers sought to reclaim the surcharge. HMRC repaid the surcharge on the first land transaction, but not the second. HMRC later concluded that the surcharge should not have been repaid on the first land transaction, but it was time-barred from recovering that repayment.

The taxpayers had been living in both apartments since the purchase, using an outside balcony to connect them. The children were sleeping in one apartment and the parents were sleeping in the other. They generally used the kitchen facilities of only one apartment, and the reception area of the other larger apartment for day-to-day living.

The taxpayers did not consider that either of the apartments on their own were suitable residences for them and their family. They also stated that 'they only bought the apartments on the basis that they would carry out works to convert them into one residential property'. Although works had not been commenced to amalgamate the apartments, planning applications were submitted, amended and consent eventually granted. Consent from the Crown Estate, which was required, had not yet been granted.

Whilst it was accepted that the taxpayers had a clear intention to combine the two apartments, it was this very intention that was relevant to HMRC's argument. In Mr Moaref's witness statement, he said:

- 'individually the properties were not suitable for my wife and two children';
- 'the properties were always intended to be one residence'; and
- 'it was my clear intention from the first time I saw the properties to amalgamate them into one'.

These statements all supported HMRC's main argument that *neither* of the apartments was intended to be the taxpayers' 'only or main residence'. If the draftsman had used wording such as 'intend to occupy as' we may have ended up with a different result, but the words 'to be' have a narrow meaning.

Accordingly, the tribunal found that the taxpayers did not intend the second apartment to be their only or main residence. The purchased dwelling must be the same as the dwelling that the buyer intends to be their only or main residence. Rather, the buyers intended the amalgamated dwelling to be their main residence.

While the judgment in this case only concerned the second transaction, this reasoning also applied to the first land transaction and the tribunal stated that the evidence showed that the first apartment was also not intended to be the taxpayers' only or main residence.

As the tribunal highlighted, the wording in Finance Act 2003 Sch 4ZA is prescriptive and detailed, with the result that a black letter approach to interpretation applies rather than a principles-based drafting approach.

With this in mind, taxpayers should carefully consider the order in which dwellings are sold and purchased, as this may affect whether or not the surcharge is applicable.

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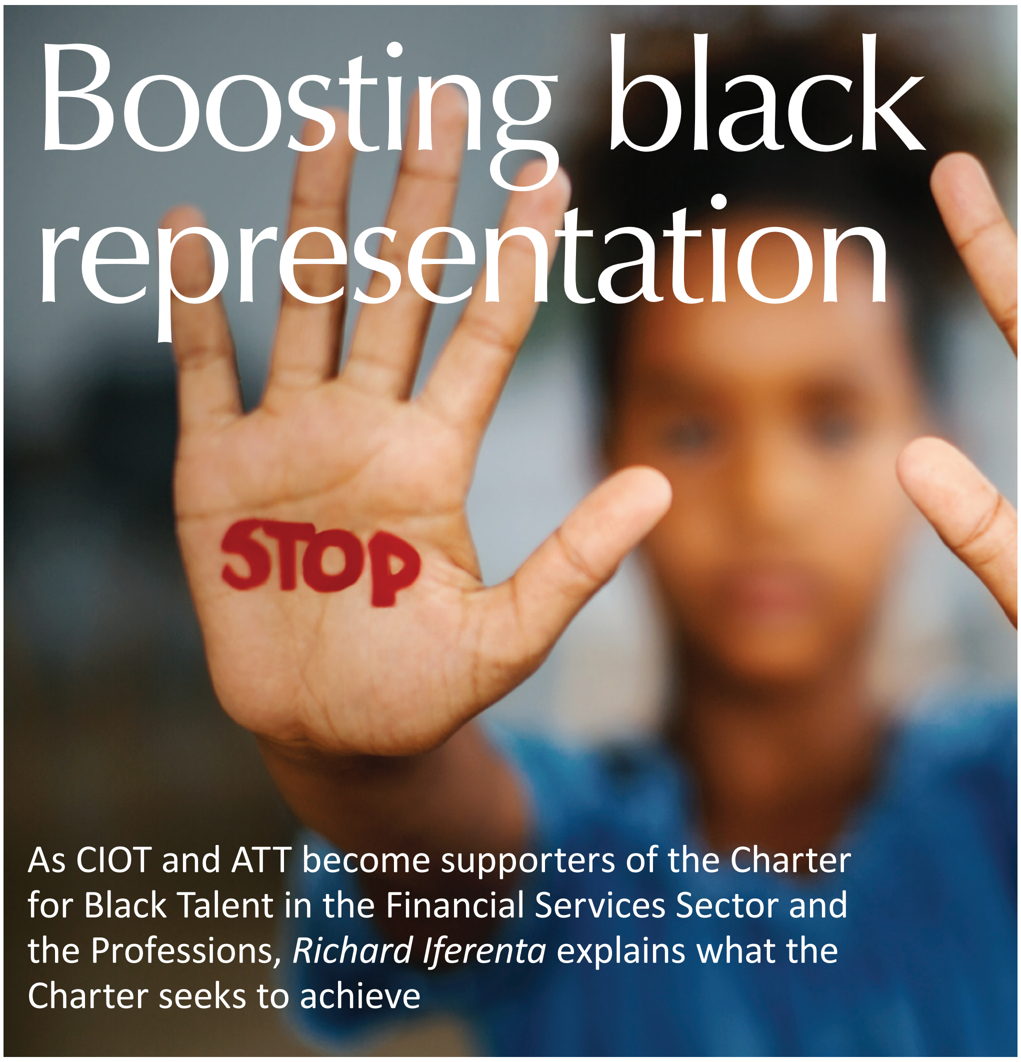

Boosting black representation

As CIOT and ATT become supporters of the Charter for Black Talent in the Financial Services Sector and the Professions, *Richard Iferenta* explains what the Charter seeks to achieve

Over the last few years, the outcry for more diversity and inclusion has grown noticeably louder – and rightly so. With the tragic murder of George Floyd, we saw a sharpening of the focus on the challenges black people face, not just in America but also here in the United Kingdom. One of the effects we have seen as a result is that the concern has spilled over into the business world with numerous businesses identifying that there is a paucity of black people in senior management and leadership positions. A substantial and increasing body of evidence and data shows that black people are the most under-represented ethnic group in business, who face the greatest hurdles, negative stereotypes and challenges in recruitment and promotion to senior positions.

Many businesses have made commitments to address this issue by breaking the glass ceiling and improving their recruitment processes by removing barriers to entry and progression.

The winds of change led to the birth of the Charter for Black Talent in the Financial Services Sector and the Professions. The Charter models itself on the Women in Finance Charter, which is backed by HM Treasury and signatory firms to work together to build a more balanced and fair financial services industry. The objectives of the Charter are laudable: in summary, creating more opportunities for the recruitment and career progression of black people in the relevant sectors; and, importantly, measuring progress with data to ensure transparency and accountability.

The tax profession has historically not been the most welcoming to ethnic minorities. Indeed, I recall all those decades ago when I started my career in tax and it was a rarity to meet black colleagues. The few black people were mainly in junior roles with little hope of progressing beyond manager. Decades later, we now see more than a sprinkling of black people in the tax profession, but there are still very few black tax partners, directors or senior managers.

THE CHARTER FOR BLACK REPRESENTATION IN THE FINANCIAL SERVICES SECTOR AND THE PROFESSIONS

The Charter's objectives include:

- creating a fair and inclusive environment for black talent to develop careers and to compete without disadvantage for positions at the top of their UK businesses;
- establishing baseline data regarding black employees in their UK businesses;
- developing an action plan with challenging five-year targets to increase the number of black employees in senior grades in their UK business, allowing flexibility for firms to set targets which, whilst ambitious, realistically reflect their particular size, status, maturity, business model and approach to career development and progression;
- publishing annual reports on the corporate website showing the steps taken to achieve the Charter objectives and progress against the baseline data and action plan;
- requiring external service providers to demonstrate their own commitment to promoting black representation in their businesses;
- appointing a member of the senior executive management team (not the HR or D&I function) to be accountable for black representation and inclusion; and
- ensuring that performance appraisals of the responsible senior executive specifically include an assessment of progress on delivery against targets.

A few months ago, Helen Whiteman (CIOT CEO) and I spoke at a very engaging and interactive Women in Tax event, which triggered a series of discussions around diversity and inclusion across the board, including how the CIOT and ATT are well placed to drive change in a profession that seems absolutely ready for it! Some of the challenges that Helen and the broader EDI Committee committed to address include:

a) How do we attract black talent to the profession?
b) How do we make those who join feel welcome in the profession?
c) How do we ensure they are given equal opportunities to get the same quality of work as their peer group and the same sort of client exposure as others?
d) How do we ensure that black colleagues who join the profession are not held back because they do not have the right support or indeed sponsorship?

It is recognised that the CIOT can only set the framework and then encourage the professional firms who provide taxation services to live up to the commitments

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made to the Charter. I am very excited about the CIOT and ATT supporting the Charter and I'm keen to see what differences this will make in practice. Clearly, over the next couple of years I am hoping to see greater diversity not just in the CIOT and ATT staff and leadership, but in the profession at large. A quick win in trying to drive change would be for the CIOT and ATT to start to embed diversity and inclusion values into their ethics training and standards. These standards should include the commitments made to the Charter but also broader commitments in relation to gender identity, sexual orientation, disability, socio-economic background and religion.

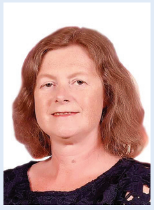
The FCA recently made a bold statement requiring listed companies to have diverse boards or explain why they do not. We have seen the Discussion Paper 21/2 issued in July from the Bank of England, FCA and the PRA (see bit.ly/39l4YBB), setting the agenda and being clear on the need for financial institutions to take diversity seriously. They have made it clear that this will be a priority for them in the coming years.

PROFILE

Name **Richard Iferenta**
Position Head of Financial Services Indirect Tax Practice
Employer KPMG
Email richard.iferenta@kpmg.co.uk
Profile Richard leads KPMG UK's financial services indirect tax practice and previously headed up KPMG's Challenger Banking practice. His work spans across VAT and IPT impacting financial institutions, including day to day advisory work, supporting clients with the use of technology and dealing with disputes with HMRC.

Now is absolutely the right time for the CIOT and ATT to drive change. Often, people ask 'What does good look like?' To me, good would be seeing the profession stand up and make commitments to specifically target recruits from the black community. But it's not just about recruitment; it's also about making sure appropriate processes are in place for those recruits to ensure that they feel welcome in what can be a pretty daunting environment for the uninitiated!

CIOT AND ATT: BECOMING SUPPORTERS



Helen Whiteman and Jane Ashton share how CIOT and ATT will work to support the Charter.

Our Joint Equality, Diversity and Inclusion committee welcomed Richard Iferenta to its meeting on 22 June. As Vice Chair and Partner at KPMG, Richard is also closely involved with the Charter for Black Talent in Finance and the Professions and invited both organisations to become supporters. Richard explained the work of the Charter to the committee and how we could work together with other supporters, including ICAS and the ICAEW, to demonstrate leadership and to act as allies and drivers for change. The EDI committee made a recommendation to both the ATT and CIOT Councils for both charities to become supporters and this was approved at their respective July meetings.

Becoming supporters means that as well as being general advocates and allies, we both specifically commit to advocate for the Fundamental Objective of the Charter.

The fundamental objective of the Charter is to bring about long overdue and meaningful change through action led from the top of each firm by senior executives who are fully accountable for the delivery of progress measured against clear action plans and ambitious targets.

In this way, firms will be able to strengthen their workplace cultures, challenge ingrained thinking and address the risk of stereotyping and unconscious bias. They will also be able to 'level up' and create an environment in which black professionals can:

- at last begin to feel confident, not just about prospects for recruitment into the financial and professional services, but about progressing their careers and aspiring to lead and to be represented at the highest levels of top organisations; and
- do so without fear of being deprived of proper opportunities to develop their talents, to realise their ambitions and to make a full contribution to their firms and to the wider economy.

Richard talks in his feature about the challenges we face and we recognise that change will only happen if we commit to starting the conversation and working with other professional bodies and firms to understand the issues and challenge ourselves and others. In 2020, 54.4% of our staff were female and 37.5% from diverse backgrounds. The EDI Committee is revisiting its Action Plan to ensure that the Fundamental Objective is clearly incorporated with appropriate accountability and measurability. One action already underway is for us to undertake a member survey to capture experiences relating to career progression and entry, returning to work after a career break and social mobility indicators.

We continue to develop our governance and operations to demonstrate inclusivity. Both charities introduced a new nominations process for members to become trustees of our respective Councils. We have a new speaker programme which ensures we can deliver a rich and diverse pipeline of talent for the future and we are always looking for new role models like those featured in this article who will inspire those studying for our qualifications.

We also recognise that we have more to do in encouraging those who have yet to decide on a career in tax that this is a profession that is accessible and open. We can only do that with your support.

It's time to change the narrative

Ashley Makoni shares her experiences on what it is like to be black in the world of taxation

What is Black History Month and why do we need it? Why have the CIOT and ATT become supporters of the Charter for Black Talent in Finance and the Professions? Although I don't feel at all qualified to provide answers to these crucial questions, for me personally, the answer is synonymous with the answer to the question that so many people think about: 'What is it like to be black?'

In my personal experience, being black has been a long journey of not knowing. Not knowing where I would be today if I had received the start in life that my peers did. It's not knowing basic information about how to access certain opportunities that my colleagues take for granted. It's not knowing if everyone understands the amount of pressure and the struggles I have to overcome just to be heard or to get my foot through the door – even today.

Each time an opportunity does present itself and I do not make it, I have to wonder if it is because I was truly not good enough or because I was not the right colour, did not have the right name, the right background, or the right accent. Even when I do succeed, I have to consider if I was given the opportunity because I truly deserved it or if it was simply to tick a box or fill a quota.

In a world where answers are not always available, being black for me will always be about making the most of every opportunity to change the narrative. For most of my career, I have been the only black person in a lot of rooms and have craved role models and mentors that looked like me and understood my struggles. Writing this article is a truly humbling experience for me as I realise that I may now be that role model that young people coming up in tax will look up to.

I acknowledge that some of the issues I have mentioned above are not unique to black people, but black people in my experience have had more than their fair share of struggles. Using Black History Month and the Charter to focus on the struggles of black people to my mind is a missed opportunity. Despite all I've been through in life, I can honestly say that being black is the one thing about me that I am most proud of.

I am proud to come from a continent that has some of world's most vibrant and amazing cultures and some of the most unique and intellectual people I know. The perspectives black people bring to the table, especially when it comes to resilience and enduring hardships are valuable skills to any organisation, especially considering the pandemic we're battling with.

The only reason why I am a Tax Director today is because there were a few people along the way who ignored the strange looking name on my CV, disregarded the fact that they were unfamiliar with any of the schools listed in the education section of my CV, and gave me the opportunity to join their teams.

Black History Month for me, besides obviously celebrating being black, is also about celebrating all those people around the country who are extending opportunities to people who would have otherwise been overlooked. Please continue this important work and remember that if what we are looking for is black people to join boards and other senior level positions in tax, then our success is going to be limited as there are only a few black people who will fit the criteria for these positions at present.

Our time might be better invested in reaching students before they decide on a career path and educate them about how rewarding a career in tax can be. I recently had the opportunity to mentor a Finance degree student at Greenwich University with ReachOut and was not surprised to find out that she did not know anything about tax advisers or the institute. I similarly studied Accounting and Finance and had no idea you could actually specialise in tax until after I had graduated.

Educating our young people, not only about tax but also about the benefits of diversity, will make tax education a much easier task for us in the future; the more diverse our members are, the easier it will be to bring tax education to all members of the public.

The only reason why I am a Trustee of the CIOT today is because I responded to Jeremy Coker's invitation for more black people to volunteer and get involved in the October 2020 Tax Adviser which also included a few issues for Black History month. I would therefore like to extend my own invitation to black people in the profession. No one else can tell your story or understand what needs to change in our system like you can. Get involved and help be the change you want to see.

To every member of the institute, my message is we all have a part to play. May the Charter and Black History Month remind us of what we are working for – a world where black people will know that their voices matter, that their opinions are valued and that they are playing their match on a level playing field. Happy Black History Month!

Ashley Makoni started her career in tax working in international law firms and is now a Tax Director at Kroll, is a trustee of the CIOT and has recently joined the Professional Standards Committee.

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THE ONLY PERSON OF COLOUR IN THE ROOM

***Toyin Oyeneyin** is a Tax Product Specialist at Octopus Investments.*

My parents are part of the first generation Nigerian diaspora who moved to Edinburgh. As you can imagine, my name stood out growing up in Edinburgh! As did I, regularly being the only person of colour in the room. Now living in London, a city known for its diversity, I find that surprisingly, I am still often the only person of colour in the room in a professional environment. However, the landscape is changing for the better, as many businesses realise the qualitative and quantitative benefits of having a diverse workforce. Simply put, if you have different perspectives in a workforce, a business does better.

My mother is a medical doctor and my father is a professor of engineering. Having both worked professionally in the UK, they instilled into my siblings and me a notion that we would need to work twice as hard as our peers to progress. My parents arrived in the UK a long time ago and times have changed since then. However, their advice and counsel are very similar to that which many African diaspora parents still provide to their children to this day.

I have held onto those words of wisdom from my parents and applied them throughout my professional career, always giving 200% plus for the companies I work for. This working mindset has helped me consistently progress in my career but what was also key have been those who supported me. Those who did not let my colour affect how they engaged with me, those who made room for me, those who were integral to significant turning points in my career, and those who encouraged instead of discouraged me. To those people, thank you.

BEING BLACK IN TAX

***Delriene Smith** is a Tax Consultant at Boss Money Moves*

When I was asked to write about my experiences of issues that black people are facing within the profession, I had to take some time to think about it. The thing is that I have been doing this for some time; well over 30 years. Never, I hear you say, you don't look old enough (laughing). Well yes, I have, and the reality is that you somehow become desensitised to some of the challenges.

I started my career with the Inland Revenue (as it was called then) and I believe that at the time there was genuine opportunity to grow, learn and progress. But back then I did not see many people that looked like me in very senior roles. Whilst going through my training both at the Inland Revenue and when I did my tax exams, I remember thinking that I would like to do this so that as younger people start coming through, they would look at me and say, 'yeah, I can do this'.

For many years as I worked in tax, I hardly ever saw people that looked like me at all, and so it became the norm – so much so that I didn't even notice it any more. I remember inviting someone to join me at a work social event and it was only when they commented that there were no other black people that I actually noticed it, despite the fact that I had worked at that firm for several years. My reality was that there were not many black individuals in management roles or at partner level. I don't believe for one minute that there were no highly qualified, ambitious individuals that looked like me, and I guess one could only conclude that it's because people that looked like me were just not given the opportunity.

Historically, the accountancy profession has been predominantly white, male, middle class. Yeah, I said it. I recently had a conversation with a close friend (who is white) who runs his own accountancy practice. He recalled that on joining a new firm, one of the partners said to him how nice it was to have another double-barrelled in the firm.

I have had experiences with clients referring to my race as 'your lot' and 'darkies' in meetings, completely oblivious to how this might be received. I have had experiences of developing relationships by speaking to clients over the phone for many years, and when we arranged our first face to face meeting, you can see them visibly double take because they didn't expect to see a black person.

The thing about working in the profession, especially when you are the minority, is that there is an unwritten expectation that you have to perform at a higher level than your counterparts. You don't always have the luxury of just being yourself; like it or not, you are a representation. In very many cases, I was the first black person that a lot of my white counterparts came into close day to day contact with. You could tell this by the types of questions they asked about my hair and my skin. One colleague heard me speaking about holidays and sun lotion and asked, 'Do black people use sun lotion?' I explained that skin is skin and black people can get skin cancer too. They were genuinely amazed.

The thing about 'being black in practice' is that you will have situations where you question whether or not your unfair treatment is as a result of your race. I had a situation where my request for CPD was denied but it was offered to my white counterpart. Coincidence? Or not.

Anyway, we are now in 2021 and I am pleased to know that the ATT and CIOT have made the decision to raise awareness and explore the range of views and experiences that we face as black tax professionals. I have developed many relationships at senior levels within the ATT and CIOT, mainly as a result of my volunteering work. My experiences have always been refreshing and interacting with people like Ray McCann, Peter Rayney, Robert Jamieson, Andrew McKenzie-Smart and Emma Barklamb to name a few (oh boy, you should never name names in case you miss people) have made me feel like I count, and that I matter. They have interacted with me; Delriene.

We all know that the death of George Floyd has opened the way for many much needed conversations to be had that would otherwise never have taken place. We have had organisations look at their working practices to identify areas where they need to work on equality. Admittedly some organisations have done this as part of a tick box exercise but there are organisations like the ATT and CIOT that have been doing this for some time – and this is reflected in the membership and active volunteer profile. This is not a one-time exercise but is something that should be evolving all the time. One way to achieve this is to have open honest conversations with people that look like me.

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Playing the new game

Damien Bailey and *Lee Stott* consider how to tax the virtual world of e-sports

For the uninitiated, e-sports are a form of competition involving video games. Going to your friend's house after school to see who was the best at FIFA or playing Call of Duty online with friends has evolved into a global spectator event with the overall industry set to be worth $1.9 billion by 2022, according to the British Esports Association (see tinyurl.com/8y8vy6vu) and set to grow further.

While probably not household names, Faker, Xyp9x and MATUMBAMAN are considered by the industry's younger audience to be amongst the most popular 'e-athletes', who also cultivate a huge social media and streamer following that other businesses are keen to tap into.

The prize pools for some of the most popular games are coming close to figures seen in elite sports. In 2019, the prize pool for the annual Fortnite World Cup was $30 million (see tinyurl.com/vak9du8e). For comparison, the prize pool for the 2019 Wimbledon Championships was £38 million (approximately $50 million).

E-sports teams, such as Cloud9, are valued at several hundred million dollars – amounts similar to some of the top football clubs in Europe. Some of the top football clubs have created their own e-sport divisions or have partnered with one of the elite e-sport teams, seeking to capitalise on the growth and popularity in e-sports.

Tax in the e-sports world is similar to that of traditional sports, but still presents its own unique challenges that businesses or individuals looking to enter into e-sports should be aware of.

Individuals

Those who are UK tax resident in a UK tax year under the statutory residence test will be taxed on their worldwide income as it arises.

Alongside prize money, e-sports athletes can typically supplement their income in a number of ways:

- income direct from streaming platforms (Twitch, YouTube, etc.), which is typically based on a share of advertising income that the platform earns from their streams;
- subscription income from platforms such as Patreon or Twitch, where viewers can subscribe for a monthly set fee;
- direct payments from supporters, commonly referred to as 'donations' or 'tips'; and
- sponsorship or endorsement income from other businesses.

KEY POINTS

- **What is the issue?**
Tax in the e-sports world is similar to that of traditional sports, but still presents its own unique challenges that businesses or individuals looking to enter into e-sports should be aware of.
- **What does it mean to me?**
As e-sports become more mainstream, organisation levels within e-sport teams are at or edging closer to that of other professional sports teams, where the team acts as a business, seeking profit through various sources such as prize money, sponsorships, advertising and merchandising.
- **What can I take away?**
If you have clients who are looking to engage with individuals or teams within the e-sports industry, whether directly or through an intermediary, you may find that there are tax challenges that they have not considered and will require specialist support.

E-sports athletes are not alone in earning income from such sources. The title 'streamer' is given to an individual who may not necessarily be skilled enough to compete in competitions but is able to entertain whilst playing video games. Whether or not this income is subject to tax or NIC will depend on the age-old question of whether it is profit derived from a trade, profession or vocation and taxed via self-assessment as self-employed income.

The profits of a trade are given a wide definition under Income Tax Act 2007 s 989. However, following the case of *Ransom v Higgs* [1974] STC 539 this is more commonly considered to mean 'operations of a commercial character by which the trader provides to customers for reward some kind of goods or services'.

The country where the platforms are resident should also be noted (for services such as YouTube and Twitch, this would be the US). Countries may enforce their own withholding regime, which may either require the individual to complete forms to restrict such tax rates to a rate enforced under treaty (i.e. a W8-BEN for payments from the US) or file a tax return to claim relief under treaty.

Where a treaty exemption does not exist or the treaty instead enforces a lower tax rate, a foreign tax credit would likely be available for the individual to offset against UK tax on the same income.

Non-resident

Individuals who are non-UK tax resident but perform a relevant activity in the UK as a sportsperson or entertainer (performer), under Income Tax (Trading and Other Income) Act 2005 s 13 are deemed to be performing a trade for tax purposes; and profits arising from these performances are subject to income tax.

The definition of performer is vague, as it covers any individual who is performing in their name or character and their performance will be viewed by any section of the public.

Relevant activity is also given a broad definition in that it covers activity by an entertainer or sportsperson in the UK on film, videos, radio or television. 'Film' in this case can cover any sequence of one or more visual images, either moving or still. As e-sports performances are mainly broadcast online via services such as Twitch or YouTube, such broadcasts (whether live or not) could be said to be within the definition of 'relevant activity'.

An obligation to withhold tax may arise under legislation aimed at 'entertainers and sportspersons' in cases where:

- a non-UK resident individual is awarded prize money in a UK based gaming competition; or
- a UK business is sponsoring or paying an e-sports star who is non-UK tax resident to endorse their product or service.

PROFILE

Name: **Damien Bailey ATT CTA**
Position: Tax Manager
Employer: Grant Thornton UK LLP
Tel: 0161 214 3660
Email: damien.c.bailey@uk.gt.com
Profile: Damien is a tax manager in the Employer Solutions team at Grant Thornton. Alongside global mobility and employment taxes, he has also worked with various sports and entertainment persons along with businesses involved in the video game industry advising on their employment and FEU concerns.

Name: **Lee Stott**
Position: Tax Associate Director
Employer: Grant Thornton UK LLP
Tel: 0161 953 6496
Email: lee.a.stott@uk.gt.com
Profile: Lee works in the Employer Solutions team at Grant Thornton. Alongside global mobility and employment taxes, he also specialises in taxation within the sporting industry and has worked closely with various Premier League football and F1 racing teams, along with other various high-profile sportspersons and entertainers.

The regulations for the withholding regime can be found in SI 1987/530 and this is commonly known as Foreign Entertainers Unit (FEU) withholding (named after the specialist team at HMRC that is responsible for its administration).

Foreign Entertainers Unit regime

Under the FEU regime, payments for 'relevant activities' to non-UK tax resident performers, as outlined above, are subject to withholding at the basic rate of tax. The FEU regime also covers expense payments and non-cash payments on a grossed-up basis.

The intention of the legislation is to ensure that foreign entertainers or sportspersons, likely including e-sports performers, are subject to UK tax arising on income derived from their UK performances. This may also cover payments for endorsements or sponsorships if there is a connection (either direct or indirect) with their UK performances.

This was highlighted in *Agassi v Robinson* (Inspector of Taxes) [2006] UKHL 23. Andre Agassi (a former professional tennis player) argued that as neither he nor the payers involved (Nike and Head) were UK based, endorsement payments from Nike and Head were exempt from UK tax. The House of Lords disagreed and confirmed that there is no territorial limit to the legislation. They found that foreign entertainers who earn income from sponsorship or endorsement activities through their professional activities that include the UK are subject to tax under this legislation.

While in this case and at the time it was not expected that Nike or Head would operate FEU withholding, UK businesses and individuals should be aware of their potential reporting and withholding obligations in similar circumstances.

An e-sports performer may also receive income from other sources, such as streaming, Patreon, donations, etc. Whilst this has not yet been tested at tribunal or court given the infancy of the industry, given the facts of the *Agassi* case, such income may also be deemed to fall under the FEU regime where it can be linked to UK e-sports relevant activities.

There are a few exceptions to the regime, such as where all payments to an individual are below the personal allowance (even where the individual may not be entitled to the allowance) or payments to anyone on the middleman scheme. It should also be noted that if a payment falls within Income Tax (Earnings and Pensions) Act 2003 as earnings from employment, then it will be subject to PAYE and not FEU withholding.

However, an understanding of the statutory residence test is not expected by the fee payer; i.e. where there is doubt, then HMRC would expect FEU withholding to be operated.

Overall FEU legislation is relatively wide with regards to which payments and which performers may fall within the regime. HMRC has not updated its guidance to specifically mention e-sports, but there are clear parallels with traditional sports and entertainment, and therefore it is likely that HMRC would view e-sports to fall under FEU.

Double tax treaties, should they follow the OECD model treaty, will typically have an 'Entertainers and

Sportspersons' article (article 17 under the OECD model treaty) that will override other articles for income that arises in respect of their activities as a sportsperson or entertainer. This ensures that the contracting state other than the state of residence has the right to tax such income where it can be linked to performances in that contracting state; e.g. HMRC having the right to tax income of an e-sports star tax resident in the US but performing e-sports relevant activities in the UK.

One e-sport aspect that does differ from traditional sports is that of relevant activity. Even if the individual is part of a team, their performance can be done remotely with participants in a UK based competition potentially never setting foot in the UK. Due to this, a key question under Article 17 is where income arising from such activity is deemed to be sourced; i.e. whether this should be:

- in the country where the competition takes place;
- where the individual performs their activity;
- where the servers hosting the competition are located; or
- where the game publisher is resident.

Logic (although not yet tested in the courts) would state that the source remains in the state the activity is physically performed. However, opinions may change in the future and tax legislation in various territories along with double tax treaties may adapt to the online and evolving remote working world.

Employment status and tax

As e-sports become more mainstream, organisation levels within e-sport teams are edging closer to other professional sports teams, where the team acts as a business, seeking profit through various sources such as prize money, sponsorships, advertising and merchandising.

How a team collaborates to receive their income streams will likely differ according to how they would receive income as an individual:

- They could work together as a partnership and would then need to consider how profits are shared amongst members. There may be a mismatch in how partnerships or other entities are taxed in other countries (transparent vs opaque) if team members are spread out internationally.
- If the team incorporates, profits for the company would be subject to corporation tax instead of income tax and any foreign taxes paid on income paid to the company would likely only be available as a foreign tax credit to the company and not the individual.
- Corporate residence or permanent establishment of the entity may need to be considered where team members perform their duties outside the UK.

Teams may then look to engage other e-sports performers to join their team. In traditional sports, the athletes are typically either individual figures (i.e. golf, tennis or boxing) or part of a team who compete together (i.e. football, cricket or rugby). Generally speaking, if individuals are providing their services to a team then for tax purposes they are likely to be considered employed by their team as opposed to self-employed.

Whether or not an individual is employed or self-employed will of course depend on the facts of the engagement. However, where individuals are considered to be employees of a UK team or business, their remuneration will be classed as earnings and subject to PAYE and Class 1 NIC.

As e-sports become more mainstream, organisation levels within e-sport teams are edging closer to other professional sports teams, where the team acts as a business.

It is not just professional e-sports teams that need to consider how they engage with e-athletes. Other organisations may want to use such stars to endorse their products or services or provide sponsorship and they will also need to consider employment status and potentially operate PAYE and Class 1 NIC on payments, even where the engagement is not directly with the individual (i.e. IR35 or agencies legislation).

International

Given that the barrier to entry in e-sports is a console, gaming PC or mobile phone and an internet connection, it may be the case that a number of professional e-sport teams have no presence in the UK beyond UK resident team members. An obligation to operate a payroll and withhold PAYE and Class 1 NIC may still arise if the team is considered to have a 'taxable presence' in the UK.

HMRC generalises this as having an address in the UK in which it can enforce compliance. If a team was to inadvertently create a permanent establishment in the UK as a result of their UK resident employees' activity, then this would more than likely create an obligation (amongst other implications that arises with the creation of a PE) to register as an employer and withhold PAYE and Class 1 NIC.

Similarly, UK businesses engaging with e-sports stars internationally may need to consider their potential risks and obligations in the country the individual resides and performs their services in.

A further consideration arises if a professional e-sports team is based in the EU, as Annex SSC-14 of the EU-UK Trade and Cooperation Agreement states that employers will have a presence for social security contribution purposes in the UK or EU member state that their team member is subject to social security (typically where they perform their duties). In such a case, while no obligation may arise for PAYE for a non-UK business, a payroll would need to be operated on behalf of the employee to withhold Primary Class 1 NIC and pay Secondary Class 1 NIC.

Going forward

Once the industry begins to mature, how to manage image rights in a tax efficient manner may become a point to consider for individuals and engagers alike. Recently, it has been reported that Hashtag United has been offered a fee for one of their professional FIFA players (tinyurl.com/xz2kch9a). This is believed to be the first of its kind and a demonstration that organisations are looking for opportunities to tap into the social media brands of high profile e-sport stars. A football club making a star signing is likely to be looking not only at the player's skills on the pitch, but also for the opportunity to exploit the huge brand the player has developed over their playing career.

Summary

If you have clients who are looking to engage with individuals or teams within the e-sports industry, whether directly or through an intermediary, you may find that there are tax challenges that they have not considered and will require specialist support.

Those with a strong knowledge of taxation for sportspersons or entertainers will have a good grounding in the growing e-sports industry. For others, there are many areas that will be new to them and over the next few years as the industry grows, legislation and case law may shape it further so that e-sports becomes its own niche area of taxation.

The evolution of the UK REIT regime

Jo Cox revisits the basic UK REIT rules and reflects on what the proposed changes to the regime will mean

KEY POINTS

- **What is the issue?**
A real estate investment trust (REIT) is exempt from corporation tax on qualifying rental income and gains on sales of investment properties (and shares in property investment companies) used in its UK property rental business.
- **What does it mean to me?**
To encourage continued investment into the UK property sector using REITs, the latest set of proposed relaxations to the UK REIT rules were published in the draft 2021-22 Finance Bill this summer. This article revisits the basic UK REIT rules and reflects on what the proposed changes mean.
- **What can I take away?**
With the recent and future changes to UK property taxation, and the further announced relaxations demonstrating the government's continued commitment, the UK REIT regime is expected to go from strength to strength.

After launching in 1960 in the US, more than 45 countries now have their own real estate investment trust (REIT) regime, or an equivalent. Across the globe, the level of adoption varies significantly but REITs seem to be more popular where local rules have evolved in keeping with the ever-changing economic environment. In the UK, there are now more than 90 REITs.

In 2019 and 2020, the UK saw some of the most significant changes to the taxation of UK commercial property in decades, with the widening of scope of non-resident capital gains tax to include commercial property, and the migration of corporate non-resident landlords to the more stringent corporation tax regime, including the corporate interest restriction and anti-hybrid rules.

Right now, emerging from the unexpectedly long and societally transformative Covid lockdowns and the UK's withdrawal from the EU at the beginning of the year, the economic environment has certainly changed. In addition to those changes, the 6% increase to the corporation tax rate from April 2023 looms and many property investors are looking at their forecast internal rates of return afresh.

Since the REIT regime came into effect on 1 January 2007, there have already been a number of significant and helpful changes designed to make it more attractive and accessible. These include:

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- the removal of the 2% conversion charge;
- the exemption from tax of gains on indirect property disposals;
- the inclusion of a list of institutional investors who are able to hold large stakes in a REIT (without it falling foul of the non-close condition);
- the recognition of further exchanges for listing; and
- a three year initial relaxation to the non-close company requirement.

For non-UK investors, where there is a double tax treaty with the UK, the effective tax on net rental income and relevant gains is limited to the applicable treaty dividend rate; however, special rules apply where the holding is 10% or more.

To encourage further international capital inflows, and continued local investment into the UK property sector using REITs, the latest set of proposed relaxations to the UK REIT rules were published in the draft 2021-22 Finance Bill this summer.

This article revisits the basic UK REIT rules and reflects on what the proposed changes mean.

Policy objectives

When the government first officially consulted on the topic, the aim was to create a new regime which would raise productivity in the UK economy by stimulating the commercial property market: a key element in any successful economy.

The desire was to promote greater liquidity and more efficient investment decisions and to provide wider access to quality property investment opportunities for smaller investors, which were previously unavailable without significant capital outlays or tax inefficiency.

In addition, it was hoped that UK REITs could play their part in addressing the national housing crisis by providing a route into which newly developed rented accommodation could be sold, thereby increasing the willingness of house builders to increase supply (i.e. today's high growth 'Build to Rent' sector).

However, the government's main aim for a UK REIT was to ensure that the returns from different forms of indirect or direct UK property investment were taxed in broadly the same way by putting investors in a position where, from a tax perspective, it was as if they held the property directly.

Tax status of a REIT

A REIT is exempt from corporation tax on qualifying rental income and gains on sales of investment properties (and shares in property investment companies) used in its UK property rental business.

On entry into the REIT regime and when REITs acquire companies owning property investments, the assets are rebased to market value. This means that REITs do not need to seek a discount for any latent capital gain inherent in the target company.

Furthermore, when a REIT sells a company owning investment property, there is once again a market value rebasing of the property asset that the new owner benefits from (although this rebasing is subject to a requirement that the property-owning company retains the asset for a period of two years).

Tax is effectively levied at investor level, according to their individual tax status, on their share of rental income which is distributed to them by the REIT as a property income distribution. Distributions of exempt gains are treated in the same way as property income distributions.

Profits on activities of the REIT other than the property rental business, such as interest income or management services (the 'residual business'), will be subject to corporation tax in the normal way. Profits from property trading activity are also subject to tax in the normal way, as are gains from direct or indirect disposals of property where there has been significant development activity (more than 30% of the value of a property) and the asset is then sold within three years of completion of the development.

Distribution requirement

To ensure that the benefit of the REIT election is passed on to investors, 90% of profits from a REIT's exempt property rental business must be distributed within 12 months of the end of the accounting period. There is no requirement to distribute exempt gains.

In general, the mechanism of tax collection for certain UK, and all non-UK shareholders, is by the levying of a 20% withholding tax imposed on property income distributions (distributions of exempt income and gains). Payments can be made gross to UK companies, UK pension funds and UK charities.

Distributions out of other income or gains are treated as ordinary dividends which are not subject to any withholding and are not taxed as property income in the hands of the recipient. Special rules apply to determine out of which profits distributions are made. REITs can pay stock dividends (i.e. with the option to issue new shares to shareholders) in lieu of cash dividends, and these are treated as qualifying distributions.

Where a REIT invests in another REIT, 100% of the property income distribution dividends received by the investing REIT must be distributed within 12 months of the end of the accounting period.

Tax status of investors

UK shareholders are treated as receiving property income which is subject to corporation tax or income tax at the investor's marginal tax rate.

Non-UK investors may benefit from a favourable treaty rate (often 15% and in certain cases zero) under their respective double tax treaty, as for tax treaty purposes the property income distribution is treated as a dividend. This compares well against the announced 25% rate of corporation tax which will apply to non-REITs from April 2023.

Sovereign investors who are exempt from UK tax can reclaim the 20% withholding tax to put them into a position equivalent to investing directly in UK real estate.

Other REIT conditions

The key conditions to obtain and maintain REIT status are summarised below:

Property rental business

The REIT must have a property rental business. Certain types of property business do not qualify, such as lettings to group members.

The property rental business must involve at least three properties. Properties are defined by reference to whether they can be let under a separate lease. A single building which can be multi-tenanted, such as a shopping centre, will generally count as more than one property for the purpose of this test.

No single property can exceed 40% of the total value of all properties involved in the property rental business.

Balance of business

The profits arising from the exempt property rental business during the accounting period must represent at least 75% of the company or group's total profits. The value of the assets involved in the exempt property

PROFILE

Name: **Jo Cox**
Position: Real Estate Tax Director
Employer: PwC
Tel: +44 (0) 7980 636971
Email: jo.cox@pwc.com
Profile: Jo Cox is a Tax Director at PwC specialising in the real estate sector. Prior to joining PwC in 2018, she spent 13 years in a range of positions at British Land where latterly she was responsible for tax structuring and managing the tax aspects of corporate and property transactions.

rental business at the beginning of the accounting period must make up at least 75% of the total value of assets held by the company/group.

These tests are carried out by reference to international accounting standards rather than tax legislation which can, on occasion, lead to unintuitive results. REITs are required to prepare and submit three sets of financial statements in relation to the group's activities for each accounting period. These financial statements are fundamental in determining compliance with the balance of business tests, as well as the financing cost ratio test discussed below.

Company requirements

A REIT can be either a single company REIT or a group REIT. The principal company of a group REIT or a single company REIT must be a UK resident company and not dual resident. In principle, non-UK incorporated companies can qualify so long as they are resident in the UK and not elsewhere. A group REIT consists of a parent company and its 75% subsidiaries, regardless of their tax residence, where the ultimate parent has an economic benefit of more than 50% in each subsidiary.

Listing requirement

Currently, REITs must be admitted to trading on a recognised stock exchange and either listed on the London Stock Exchange (or foreign equivalent main market exchange which includes The International Stock Exchange in the Channel Islands) or traded on a recognised stock exchange (including AIM and IPSX).

For new REITs, there is a grace period of three accounting periods (up to three years) in relation to the listed or traded requirements; however, in practice this relaxation is fairly limited in its application.

A proposed relaxation to the listing requirement has been published in the draft Finance Bill this summer and is discussed below.

Non-close requirement

One of the most fundamental principles of a REIT is that its shares are widely held. The REIT must not therefore be a 'close company'; that is, a company which is under the control of five or fewer 'participators'. The term 'participators' covers shareholders, directors or other parties (together with related parties) who can exercise control over the majority of the shares, voting rights, income or assets.

Lenders who are not lending in the ordinary course of business (known as loan creditors) are included when determining who is exercising control.

Investment partnerships which qualify as collective investment schemes can be 'looked through' to the individual partners for the purpose of this test.

Shares held by various institutional investors count towards those shares treated as widely held. Institutional investors include pension funds, charities, registered housing providers, sovereign wealth funds, certain insurance companies, managers of UK authorised funds, and other REITs (including both UK and foreign equivalents to a UK REIT).

A REIT is not a close company if at least 35% of its shares are held by members of the public subject to certain further conditions.

If a REIT becomes close, then it loses its REIT status unless it takes corrective action. There is a three-year grace period on being close for new REITs, allowing a new REIT to be set up with cornerstone investors.

Financing requirements

REITs cannot be excessively geared by debt. The REIT must have a profit financing ratio where the profits are at least 1.25x the finance costs. A tax charge is levied on the REIT where there is excess financing (subject to relief under hardship provisions).

The corporate interest restriction rules do apply to REITs, with some special provisions dealing with the fact that REITs can have both an exempt and residual business. As with a non-REIT, they act to limit interest deductions to a percentage of taxable EBITDA (30% or the group ratio), subject to any potential exemption. The rules apply to interest on both related party debt and third party debt and apply in addition to other anti-avoidance rules on interest deductions such as transfer pricing and 'unallowable purpose'.

Holders of excessive rights

In the event that a corporate shareholder were to hold 10% or more of the REIT, they may be entitled to claim beneficial treaty rates that would undermine the REIT regime by negating HMRC's ability to collect tax through the withholding tax mechanism. Therefore, the regime has been designed to discourage the REIT from allowing its shareholders to hold 10% or more through a single corporate vehicle. Such a shareholder would be regarded as a holder of excessive rights.

Where the REIT pays a dividend to a holder of excessive rights, a penalty tax charge can arise on the REIT.

Therefore, UK REITs usually have restrictions in their articles of association that seek to prevent distributions from being made to individual corporate shareholders who hold 10% or more of share capital or voting rights and allow a UK REIT to force shareholders to sell stock if they are in danger of breaching the 10% limit.

Joint ventures

Where the REIT owns at least 40% of a corporate joint venture which is not a member of the REIT group, the REIT can make a joint venture election to treat an appropriate share of the joint venture's property business as being part of the REIT group.

Proposed changes to the rules from April 2022

Listing requirement

The listing requirement was put in place to protect relatively unsophisticated retail investors, by ensuring that REITs are established and overseen by a competent authority.

Since 2012, there are now many REITs owned solely by institutional investors and in that scenario the listing requirement seems to serve little or no purpose. Although the rules are only in draft, the current proposal is that where 99% of a REIT's shares are held by institutional shareholders, the shares will no longer need to be listed.

Balance of business test

If a REIT's group accounts for a period show that property rental business profits and assets comprise at least 80% of group totals, it will not have to prepare the additional statements which would be required to meet the full test.

In addition, non-rental profits arising because a REIT has to comply with certain planning obligations will be disregarded for the purposes of the test. This deals with situations where planning consent is conditional on providing affordable housing stock and there is no intention to retain that affordable housing following completion.

Overseas REITs

It is proposed that the definition of an overseas equivalent of a UK REIT within the list of institutional investors is amended so that the specific overseas entity itself, rather than the overseas regime to which it is subject, needs to meet the equivalence test to be considered an institutional investor.

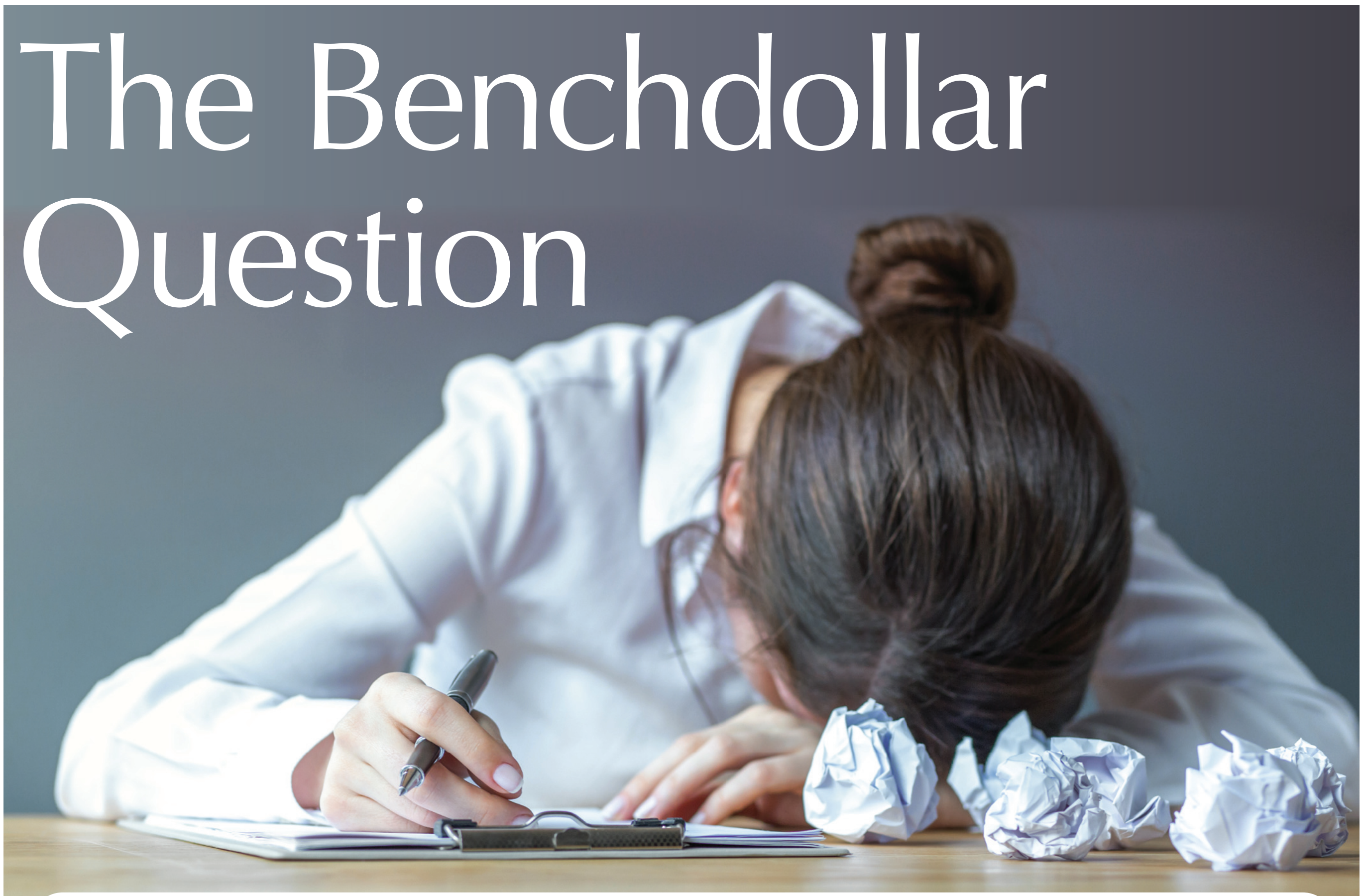
Holders of excessive rights

The 'holders of excessive rights' charge will be removed where property income distributions are paid to investors entitled to gross payment. This means that UK companies and certain charities will no longer have to fragment their holdings to less than 10% to avoid the penalty tax charge.

Key message

With the recent and future changes to UK property taxation, and the further announced relaxations to certain requirements demonstrating the government's continued commitment, the UK REIT regime is expected to go from strength to strength.

The Benchdollar Question



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Keith Gordon considers the Supreme Court's decision in a case where a taxpayer's notice of enquiry was sent to the wrong address

KEY POINTS

- **What is the issue?**
Mr Tinkler sought to argue that a copy notice sent to his advisers did not amount to a notice of enquiry being sent correctly. HMRC questioned whether it was fair for Mr Tinkler to argue the point at all when HMRC and his agents had previously acted in the shared mistaken belief that the enquiry had been validly opened.
- **What does it mean for me?**
The Supreme Court outlined the principles to be applied when considering whether an estoppel by convention applies. It noted that the Taxes Management Act 1970 was permissive, inasmuch as taxpayers and HMRC can agree to statutory notices being given in ways other than as specified in the Act.
- **What can I take away?**
Ultimately, this is a further reminder of the need for tax advisers to ensure that statutory enquiries are properly opened before they (or their clients) start to supply HMRC with information to which they are not entitled.

In the June 2018 issue of *Tax Adviser*, my article 'The 64-8 question' considered what was then a recent decision of the Upper Tribunal. It concerned the case of a Mr Tinkler who, in the course of an appeal against a closure notice, argued that the underlying enquiry was invalid because the notice of enquiry had been sent to Mr Tinkler's old address and, therefore, Mr Tinkler had not received notice of the enquiry within the statutory period. The Upper Tribunal had concluded that, under the law of agency, the copy notice sent to Mr Tinkler's advisers amounted to notice being given to Mr Tinkler and, therefore, the notice of enquiry had in fact been correctly served.

In my article, I expressed my discomfort with the Upper Tribunal's decision and I must admit to having been somewhat relieved when, a year or so later, the Court of Appeal allowed Mr Tinkler's appeal. However, HMRC chose to appeal against that decision, albeit on a different point: being whether it was fair for Mr Tinkler to argue the point at all when HMRC and his agents had previously acted in the shared mistaken belief that the enquiry had been validly opened.

The facts of the case

At the beginning of 2005, Mr Tinkler's files at HMRC showed his residential address as being in Cheshire.

Mr Tinkler's 2004 tax return was submitted by the due date of 31 January 2005. At roughly the same time, Mr Tinkler completed a form 64-8 appointing BDO Stoy Hayward (BDO) as his agents. Both the tax return and the 64-8 showed Mr Tinkler's address as one in Cumbria. HMRC's computer records were duly updated to show the address in Cumbria.

However, on 1 July 2005, HMRC's records were revised so as to show Mr Tinkler's residential address as back in Cheshire. On the same day, a notice of enquiry was sent to that address, with a copy being sent to BDO.

As part of its initial response, BDO advised HMRC that it wished to make an amendment to Mr Tinkler's return, so as to claim losses from a 'gilt strip scheme' entered into by him. In accordance with the Taxes Management Act (TMA) 1970 s 9B, that amendment would not be given effect until the end of the enquiry.

BDO also responded to HMRC's questions arising from the enquiry but then ceased doing so, leading to a series of reminders from HMRC. The last of those reminders triggered a series of telephone calls, in the course of which it transpired that HMRC had sent a cheque to Mr Tinkler at his Cheshire address. As Mr Tinkler had not received the cheque, it was cancelled; and HMRC once again updated its records to show the Cumbria address. In November 2005, BDO answered HMRC's outstanding questions.

In due course, HMRC considered that the gilt strip scheme was ineffective and, when issuing a closure notice in 2012, refused to give effect to Mr Tinkler's amendment. Mr Tinkler appealed against that refusal and the case proceeded to the tribunal. However, a couple of months before the First-tier Tribunal hearing, Mr Tinkler raised, as a preliminary issue, the question as to the validity of the enquiry itself. (If the enquiry had not been validly opened, then HMRC could not have deferred giving effect to the amendment of Mr Tinkler's return. Any challenge to that amendment should have been by way of *valid* enquiry within the statutory timeframe, in that case by 31 July 2006.) HMRC countered by saying that the doctrine of 'estoppel by convention' precluded Mr Tinkler from challenging the validity of the enquiry after it was too late for HMRC to rectify its error.

The First-tier Tribunal duly considered the questions as to whether the enquiry was validly opened; and, if not, whether Mr Tinkler was 'estopped' from denying the validity of the enquiry.

In the First-tier Tribunal, HMRC won on both grounds. On Mr Tinkler's appeal, the Upper Tribunal would have found for Mr Tinkler on the estoppel point, stating that 'the principle of estoppel by convention does not operate to preclude a taxpayer from relying on the protection of the notice and limitation period provisions in section 9A'. However, this was of little benefit to Mr Tinkler because the Upper Tribunal had concluded that the enquiry had in fact been validly opened.

Mr Tinkler appealed again to the Court of Appeal, which allowed his appeal, holding that the enquiry had not been validly opened and agreeing that the doctrine of estoppel by convention was not applicable in the present case.

HMRC then appealed against the decision to the Supreme Court, but only on the estoppel point.

PROFILE

Name: **Keith Gordon**
Position: Barrister, chartered accountant and tax adviser
Company: Temple Tax Chambers
Tel: 020 7353 7884
Email: clerks@templetax.com
Profile: Keith M Gordon MA (Oxon), FCA CTA (Fellow) is a barrister, chartered accountant and tax adviser and was the winner in the Chartered Tax Adviser of the Year category at the 2009 Tolley Taxation awards. He was also awarded Tax Writer of the Year at the 2013 awards, and Tolley's Outstanding Contribution to Taxation at the 2019 awards. From September 2021, he is offering a new series of monthly lectures on recent tax cases via Zoom with a Q&A session following. Email admin@keithtaxlectures.com for further information.

The Supreme Court's decision

The case came before Lord Hodge, Lord Briggs, Lady Arden, Lord Burrows and Lady Rose. Their decision is reported as *HMRC v Tinkler* [2021] UKSC 39.

The court outlined the principles to be applied when considering whether an estoppel by convention applies. These had been summarised by Mr Justice Briggs (as he then was) in another case involving HMRC, *HMRC v Benchdollar Ltd* [2009] EWHC 1310 (Ch), albeit subject to one qualification arising in the non-tax case of *Blindley Heath Investments Ltd v Bass* [2015] EWCA Civ 1023. (*Benchdollar* did not concern the tax code as such but the Limitation Act 1980, which requires HMRC to commence enforcement proceedings for National Insurance liabilities within six years.)

The *Benchdollar* summary (as subsequently qualified in *Blindley Heath*) confirmed that in the context of non-contractual dealings between X and Y, X may assert an estoppel by convention against Y if and only under the following conditions:

1. There is a common (albeit incorrect) assumption that is expressly shared between X and Y, either by conduct or by words.
2. Y's expression of that common assumption must be such that Y may properly be said to have assumed some element of responsibility for it, in the sense of conveying to X an understanding that Y expected X to rely upon it.
3. X must have relied upon the common assumption, to a sufficient extent, rather than merely upon X's own independent view of the matter.
4. That reliance must have occurred in connection with some subsequent mutual dealing between X and Y.
5. Some detriment must thereby have been suffered by X, or benefit thereby have been conferred upon Y, sufficient to make it unjust or unconscionable for the latter to assert the true legal (or factual) position.

The Court of Appeal had considered it to be highly relevant that the original error had been HMRC's when considering the extent to which Mr Tinkler's insistence upon the statutory position was unconscionable. However, the Supreme Court considered that on the facts of the case that factor had been given too much weight by the Court of Appeal. The Supreme Court, further disagreeing with the Court of Appeal, also concluded that the fact that BDO gave answers to HMRC in response to HMRC's 1 July 2005 letter was an acknowledgement of the fact that it too considered a valid enquiry to have been opened. Perhaps more importantly, BDO unilaterally asserted that the proposed amendment to the return could not be effected immediately, because there was by now an open enquiry into the return.

On this basis, the Supreme Court considered that the first four conditions for estoppel by convention were met. And the consequence that HMRC was thereby deprived of an opportunity to challenge the proposed amendment to Mr Tinkler's return satisfied part of the fifth. However, as the Supreme Court itself asked, 'What about unconscionability?' The court would not remove the test altogether (citing, as examples, fraud or duress on the part of the estoppel raiser), but said that in most other cases 'unconscionability is unlikely to add anything once the other elements of estoppel by convention have been established'. Accordingly, the fact that HMRC was the party whose error started off the problem did not prevent the fifth condition from being met.

This left just one major question, being whether the statutory scheme overrode the estoppel by convention doctrine. Distinguishing earlier (non-tax) case law on the subject, the Supreme Court noted that TMA 1970 was permissive, inasmuch as taxpayers and HMRC can agree to statutory notices being given in ways other than as specified in the Act (including by notice to Mr Tinkler's advisers). Accordingly, the statutory scheme was not undermined by HMRC asserting an estoppel by convention in this case.

For these reasons, HMRC's appeal was allowed.

Commentary

By limiting its ground of appeal to the estoppel point, HMRC has implicitly accepted that the notice of enquiry was not validly served, thereby confirming that the First-tier and Upper Tribunals had reached the wrong answer on that point. The concerns I expressed in my previous article can therefore be laid to rest.

What I found particularly remarkable in this case was how the court addressed the unconscionability test. Even in its formulation of the fifth condition, that the detriment suffered by X or the benefit gained by Y makes it 'unjust or unconscionable for the latter to assert the true … position', the court appears to be endorsing the view that X (here, HMRC) must positively show that it would be unjust or unconscionable for the other party to rely on the true legal or factual position. However, in its application of this principle to the facts of this case, the Supreme Court has effectively flipped this condition on its head as if this part of the condition now read 'justice and conscionability do not require the true position to be adhered to'. It will be interesting to see how the textbooks and future cases respond to this apparent change of approach.

Similarly, the court's decision that TMA 1970 is permissive could give rise to a number of interesting debates going forward. No doubt, the court was influenced by the use of the word 'may' in TMA 1970 s 115. However, given the vintage of the statute, the use of the word 'may' is quite likely to have been a reflection of a former drafting style, rather than an example of a truly permissive regime.

However, the term 'permissive' in the context of TMA 1970 is not new; indeed, some tribunal judges have gone so far as to say that HMRC need not adhere to s 115 at all. The Supreme Court's decision does not endorse quite such a far-reaching approach and instead suggests that non-statutory methods of service are acceptable only if mutually agreed. However, even that approach does then lead to the question as to what extent taxpayers and HMRC can contract out of TMA 1970 altogether. It will be recalled that the case of *Al Fayed v IRC* [2006] BTC 478 previously suggested that entering into a 'forward tax agreement' (by which the tax return process as outlined in TMA 1970 is sidestepped and a fixed sum is paid instead) is definitely going too far.

Furthermore, this case makes interesting reading when read side-by-side with the court's recent decision in the case of *Tooth* [2021] UKSC 17 (see my article 'Tooth and Consequences' in the July 2021 issue). Two of the court's judges sat in both cases. In *Tooth*, the court concluded that exceptional delays by HMRC between discovering an under-assessment of tax and HMRC actually remedying this with an assessment were not matters that could be raised in the course of a taxpayer's appeal in the tribunals. In other words, the court concluded that staleness of a discovery was not a concept within TMA 1970; and, therefore, a taxpayer's only remedy in such cases would be to challenge the assessment by way of judicial review.

On the other hand, the court has now concluded that TMA 1970 is not a comprehensive code at all but can be overridden by equitable doctrines such as estoppel; furthermore, there is nothing precluding the tribunals from addressing such questions. The two different stances can in my view be reconciled (just about). However, any review of TMA 1970 would be well advised to look at this area to ensure a more coherent way forward. At the very least, principles of fairness would dictate that it should not be only HMRC that can raise non-TMA based arguments in the tribunals.

Finally, one of the factual mysteries within this case is why did HMRC unilaterally revise the address on Mr Tinkler's records and then promptly issue a notice of enquiry to what was by then an out-of-date address? Had the notice of enquiry been issued to the address on HMRC's records, the whole sorry saga could have been avoided. Accordingly, it is not difficult to discern an element of criticism directed towards the officer who seemingly took it upon himself to 'correct' HMRC's records, without any apparent justification for his actions.

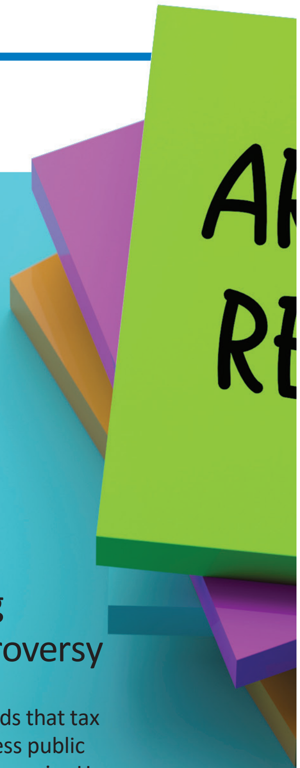
However, in a point that appears to have been overlooked, it is in fact worth noting that the Cumbria address shown on Mr Tinkler's tax return and the 64-8 was in fact a business address and not a residential address. It is therefore possible that the officer spotted that and revised HMRC's records so that it continued to show a residential address for Mr Tinkler and, therefore, his last known place of residence.

Indeed, HMRC originally ran the argument that Cheshire *was* Mr Tinkler's 'last known place of residence' and, therefore, the notice of enquiry was sent in accordance with the statutory scheme, as TMA 1970 s 115 refers to statutory notices being sent to taxpayers at their 'usual or last known place of residence, or [their] place of business or employment'. However, a finding of the First-tier Tribunal held that HMRC should have been put on notice that Mr Tinkler no longer lived in Cheshire and that statutory notices should be served at different addresses instead. As a result, HMRC had to rely on different arguments.

What to do next

Ultimately, this is a further reminder of the need for tax advisers to ensure that statutory enquiries are properly opened before they (or their clients) start to supply HMRC with information to which they are not entitled. Even if TMA 1970 is not an exclusive code, the Supreme Court has made it clear that departures from it must be mutually agreed. Where no such agreement has been reached, taxpayers and their advisers are fully entitled to insist upon the strict protections conferred by the statute. Just assuming that HMRC has got it right can lead to problems further down the line.

Tax controversy: are you ready?



Binka Layton and *Tim Millson* ask how preparing thoroughly for tax audits can help to avoid controversy

KEY POINTS

- **What is the issue?**
Businesses must simultaneously look at meeting the demands of tax authorities, whilst ensuring they have means to mitigate the financial and reputational costs of a tax audit.
- **What does it mean for me?**
There are practical ways for a global business to prepare and meet these challenges, including tax audit preparedness, a tax and business controls framework, consistency of data and a forward looking controversy strategy.
- **What can I take away?**
Businesses must simultaneously look at meeting the demands of tax authorities, whilst ensuring that they have ways and means to mitigate the financial and reputational costs of a tax audit.

Tax risks and audit enforcement are increasingly topical following the global pandemic. Businesses are facing an ever-changing tax landscape with countries introducing increased corporation tax rates, new digital capabilities to interrogate taxpayer data, and tough enforcement practices and penalties. Some global megatrends are emerging as a result.

Digital capability has seen proliferation amongst tax authorities, with over 60 countries looking to increasing this capability over the next five years. The objective is to issue tax audit assessments based on data provided ahead of the actual tax return filings. E-filing of tax return data is the start, which is then matched to accounting and other source data such as bank statements and invoices. Latin America is the most advanced in these digital capabilities but developing countries such as South Africa and India are also moving to real time systems.

Another trend is the enforcement regimes, whereby new and evolving tax laws seek to apply criminal and civil penalties for issues such as the omission of data and the failure to disclose a permanent establishment in another country (including the UK, Germany and Mexico, amongst others). Corporate officers are increasingly accountable for tax filings that can be interrogated by a foreign tax authority.

This article looks at tax audit preparedness in this changing landscape and the practical ways in which a global business can prepare ahead to meet these challenges.

Tax audit preparedness

Tax audit preparedness should be a core part of the tax return compliance process. Businesses typically view tax audits as one-off events, committing resources and time to address questions when they are raised by a tax authority. A more proactive management of tax data and controversy could better address these stress factors and time commitments, including:

- a tax and business controls framework linking process, people and technology; and
- a forward looking tax controversy strategy that looks at advanced agreements with tax authorities and compliance assurance programmes to get more certainty on tax filings.

A comprehensive tax and business controls framework, linking processes, people and technology, is the foundation for identifying and monitoring tax risks, and reporting them as they arise. For example, is transactional data in a VAT return being contemporaneously documented? What are the protocols being followed to ensure that they are real-time and cross-functional?

If businesses maintain a comprehensive tax risk register and ensure the triangulation of identified risks to wider commercial data, that should help to mitigate controversy risk. In practice, however, this is not easy to execute. Businesses need to be vigilant about the different methods that tax authorities can use to access public information, including Companies House, the Chamber of Commerce, LinkedIn and even Ebay, enabling them to monitor company activities, such as senior management activity and location, and to identify controversy areas.

The interconnectivity of tax items in a return should also not be overlooked. Tax authorities will routinely review transfer pricing documentation in relation to transfer pricing form information, and values disclosed in a corporate income tax return. Similarly, they will review the country by country reporting and company accounting information to review the implementation of transfer pricing policy. This is likely to have significant impact in regions such as Africa, where tax authorities will seek group information to take tax assessment positions. Businesses need to be vigilant to check that the different data sources are aligned and that these checks and balances are routinely identified through the tax risk framework and as part of the return completion process.

Consistency of data

The role of people in the tax function will be critical, as they will operationalise the workings of the tax and business controls framework. During the compliance process, the tax department should routinely seek to understand the material tax positions being disclosed to a tax authority so that consistent positions are taken. They should also review the underlying documentation and data to consider whether they are sufficient to support a tax filing position or whether additional processes are needed.

In practice, this can be as simple as new control checks on sales receipts as they are being presented in a VAT return, and monthly checks on input VAT amounts and corporation tax expense deductions. It may also involve more complicated

PROFILE

Name: Binka Layton
Job title: Global Compliance and Reporting Director for UK & Ireland
Employer: EY
Email: blayton@uk.ey.com
Tel: 020 7951 6226
Profile: Binka specialises in helping clients with finance and tax transformation projects. She has worked as the engagement lead for tax outsourcing engagements, including being the on-site project lead for a tax integration project undertaken by a FTSE 100 company. In addition, she brings insights and technology innovation to clients, from identification of opportunities to implementation.

PROFILE

Name: Tim Millson
Job title: Associate Partner, Global Compliance and Reporting team
Employer: EY
Profile: Tim is an Associate Partner in EY's Global Compliance and Reporting team. He specialises in leadership of multi-country tax outsourcing contracts, with management of tax risk and adaption to new digital requirements and opportunities being a key part of that role.

documentation in the form of legal opinions on tax restructuring matters. Tax departments should also prepare defence files for material transactions so as to be tax audit ready when questions are raised. Once returns are filed, a systemic process of cold reviews should be undertaken to pre-empt voluntary disclosures.

As tax data is sourced from the finance department, a data-centric approach to tax return filing should be adopted. Ensuring the quality of data feeding into the tax returns is the most basic way in which tax audit preparedness can be bolstered.

This is easier said than done, as data flows and quality will be traced to enterprise resource planning (ERP) systems and proactive recommendations on improvements could be considered. For example, if there are routine amendments to VAT returns due to manual adjustments in general ledger coding, a deeper dive into tax classification matters would be in point.

Technology tools will further enhance the reporting of tax risks and ensure that visibility is high on the tax agenda of any business. Applications can be wide ranging, including from the tracking and monitoring of ongoing tax audits; using data analytics to monitor trends and themes; and pre-packaging tax data in formats which tax authorities are known to use.

A forward looking strategy

If a business avails itself of the various pre-agreed assurance programmes run by tax authorities, this should mitigate controversy risk as part of a forward looking tax controversy strategy. The objective would be to get a business standard policy in place: what risks are best resolved ahead with a tax authority as opposed to entering into a dispute and litigation.

Businesses should consider compliance assurance programmes that exist to provide assurance ratings on compliance. Businesses will need to invest time and resources, as these programmes are not always easy to participate in. However, the benefits are considerable and can help companies be proactive in their engagment with the tax authorities. Some programmes that are worth considering are set out below.

Advanced pricing arrangements

Advance pricing arrangements (APA) procedures should provide certainty on future pricing arrangements with tax authorities. As part of entering into these discussions, businesses will need to consider the robustness of their current transfer pricing policy and documentation.

Depending on the complexity of the transactions, businesses should consider whether an APA is possible and what the most appropriate type would be – whether a unilateral, bilateral or multilateral arrangement. There has been a reduction in the number of APAs agreed in the UK in recent years, primarily because HMRC has moved away from entering into unilateral APAs. Instead, HMRC is now focusing its resources on bilateral or multilateral APAs in complex cases where the relative benefit of reaching an upfront agreement on pricing is considered to represent the best use of the available resource.

International compliance assurance

The international compliance assurance programme (ICAP) is a voluntary programme for large multinational enterprise groups to manage international tax risks relating to transfer pricing and permanent establishments. It is forward looking and will provide assurance to roll forward periods, usually two subsequent filing periods, provided the facts and circumstances in the original application are not materially superseded. In starting these discussions, a business will need to have a group tax strategy documented at board level, and internal structures to set and manage tax policies, as well as an effective tax control framework to monitor risks at a global level.

Country specific business rating

Depending on the material locations, a business should actively consider business risk ratings as there are clear links to the assurance a tax authority obtains from these applications to the incidence of controversy. For example, the UK has a business risk rating review process which has 'justified trust' principles, allowing the tax authority to draw conclusions on a business's tax control framework and effectiveness. The Netherlands has a horizontal monitoring framework that allows the taxpayer to engage in a transparent discussion with the tax authority on management of tax risks.

In certain European countries, joint tax audits are predicted to increase. Whilst the decision to undertake a joint audit is for the tax authorities to make, in certain situations businesses may want to consider proactively pursuing a joint audit. Germany has led the way for most joint tax audits, with a specific centre in Bavaria to deal with the logistics of joint audits, such as the translation of documents originally in another language. This is the case as Germany does not have a country compliance assurance programme.

Technical Team

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To contact the technical team about these pages,
please email:
Sacha Dalton,
Technical Newsdesk editor
sdalton@ciot.org.uk

Welcome to the October Technical Newsdesk

Regular readers of my introductions will know we have been focusing some of our recent efforts on HMRC's service levels. You may have seen that we have historically tracked HMRC's performance against their customer service targets on the CIOT website (see tinyurl.com/5af98ryw).

Until recently, the latest published performance data was for March 2021. HMRC's performance update for the first quarter of 2021/22 was published on 26 August (see tinyurl.com/3wmp238j). Monthly figures were also published on that date, and shortly after that the performance update for July 2021 was released (see tinyurl.com/38znaeap). I had been expecting to do a like-for-like comparison with earlier years and update our tracker accordingly, but that's not immediately possible. This is because some of the previous performance metrics (phone answer times, i-form and post turnaround, etc.) have been combined or replaced with new ones. Let me explain.

A fact that had escaped me (and no doubt many others) was that in July HMRC published their 'Outcome Delivery Plan' for 2021/22 (see tinyurl.com/hba9ftjp). This sets out HMRC's five strategic objectives as follows:

1. Collect the right tax and pay out the right financial support.
2. Make it easy to get tax right and hard to bend or break the rules.
3. Maintain taxpayers' consent through fair treatment and protect society from harm.
4. Make HMRC a great place to work.
5. Support wider government economic aims through a resilient, agile tax administration system.

The first three objectives are HMRC's priority outcomes, and the delivery plan sets out how HMRC will achieve them. I might return to other aspects of these in subsequent introductions, but for present purposes let me retain the focus on customer service measures, which mainly apply to the second and third objectives. HMRC's performance metrics for these two objectives are:

- Net Easy – phone, webchat and digital – is a new measure which asks: 'How easy was it to deal with us today?' The score represents the total of positive responses minus the total of negative responses, so can range from 100 (entirely positive) to -100 (entirely negative).
- Telephony adviser attempts handled (%): The percentage of callers that got through to an adviser after hearing the automated messages and chose the option to speak to an adviser.
- Webchat adviser attempts handled (%): The percentage of customers taking up a webchat offer that successfully got through to a webchat adviser.
- Customer correspondence responded to within 15 working days of receipt (%): The percentage of 'targeted' post (i.e. that which has a financial impact to benefits or repayments, requires a customer change of circumstance or is a data request) cleared within 15 working days. This measure now includes i-forms.
- Customer satisfaction (%) – phone, webchat and digital: This measures the percentage of HMRC customers that responded that they were either 'satisfied' or 'very satisfied' with the service (which for 2021/22 now includes phone services).

Performance against these metrics can be found in the quarterly update referenced above in the spreadsheet tab 'Outcome Delivery Plan progress'. For example, in Q1 2021/22, 35.5% of correspondence was dealt with within 15 working days of receipt, and a satisfaction rate of 83.3% was achieved in relation to phone, webchat and digital services.

If you make your way through the other tabs on the spreadsheet, you will find much more granular data. 'A Journey through HMRC' reports some familiar statistics (for example, average speed of answering a call), as well as figures around tax collection, debts, compliance activity, etc. 'Customer service data 2021-22' provides a detailed breakdown of telephone and correspondence activity.

But it struck me that these performance metrics lack any targets. I gather from HMRC that the reason for this is the uncertainty around the operating environment due to COVID. But how can observers gauge how well HMRC is operating if there is no benchmark or aspiration, particularly if the performance metrics are new? I do worry that not publishing performance targets – especially for an organisation which is central to the delivery of COVID support, working hard to build trust in the tax system, and keen to embed the HMRC Charter into its DNA – risks giving the wrong perception.

HMRC has done some excellent work in the delivery of COVID support schemes, and in some areas is operating extremely well. But that's certainly not the case across the board, including in some of its mainstream operations. I believe that HMRC works hard to improve its customer service, but I worry that its current approach gives a different impression.

Basis period reform: CIOT, LITRG and ATT responses

OMB MANAGEMENT OF TAXES

The CIOT, LITRG and ATT are concerned that the pace of change required to implement HMRC's proposed basis period reforms ahead of the extension of Making Tax Digital (MTD) to income tax will place enormous pressure on businesses at a time when they are recovering from the pandemic. While the new rules may be a simplification for many, they also have the potential of introducing new complexities and burdens for businesses with a non-tax year end accounting period.

The CIOT, LITRG and ATT have responded to the proposal to change the rules under which profits of an unincorporated trading business are taxed, from a 'current year' basis (introduced with Self-Assessment in 1997) to a 'tax year' basis. In our responses, we raised concerns regarding:

- the proposed timetable for the change, recommending deferring it to allow time for greater consideration of the implications of the change, and potential complexities arising from the transitional year; and
- ongoing issues with the need for some individuals to estimate profits or losses and then amend their Income Tax Self-Assessment (ITSA) return.

The proposal

The proposal would set the tax year as the basis of assessment. Thus, businesses that already draw up their accounts to 5 April (or 31 March) would be unaffected by the change. Other businesses, with a non-tax year end accounting period, will have to apportion their profit or loss from two accounting periods to the specific tax year. For example, if accounts are drawn up to 31 December each year then for the 2024/25 tax year, the following would be assessed:

- 9/12th of the profit or loss for the accounting period ended 31 December 2024; and
- 3/12th of the profit or loss from the accounting period ended 31 December 2025.

One 'simplification' arising from this change would be that the current 'opening years', 'closing years' and 'overlap profits/relief' rules would no longer be required.

Interaction of basis period reforms and Making Tax Digital for Income Tax Self-Assessment

In addition to our individual responses to HMRC's consultation, the CIOT, LITRG and ATT, along with other professional bodies, jointly wrote to the Financial Secretary to the Treasury, Rt Hon Jesse Norman MP, on 16 August. We expressed concerns that the timetable proposed for the introduction of the basis period change and the extension of MTD to Income Tax Self-Assessment would place enormous pressure on businesses and their advisers, as well as on HMRC.

We stated that these reforms are being implemented too quickly and will put the integrity of the tax system at risk. Further, the proposed changes to basis periods would come on top of the upcoming changes required by MTD for ITSA and the bringing of more small businesses into MTD for VAT (noting also that separate filings are required for VAT and ITSA), as well as changing penalty regimes, and other standalone digital process changes (e.g. CGT 30-day reporting).

We also said that while the basis period reform could bring simplification for some businesses, it would add complexity for others, particularly those with international connections who cannot change their accounting year end to 31 March/5 April. The change would also result in earlier payment of tax by many businesses when, in the post-COVID environment, many individuals are still finding their business incomes are fragile.

We therefore urged the government to reconsider urgently the timetable for the basis period and MTD ITSA proposals.

The joint professional bodies' letter to the Financial Secretary to the Treasury can be found at www.tax.org.uk/fstbasisperiod.

Basis period consultation: CIOT response

As above, the CIOT's main concern with the basis period proposal is the timing of the change, including:

- the additional financial and administrative burdens for affected businesses, at a time when we are emerging from a pandemic that has imposed huge pressures on businesses, their agents and HMRC;
- the extremely short timescales for consultation and implementation, which are likely to result in mistakes and unforeseen outcomes; and
- the wider tax administration environment that is already bringing, or proposing, significant further changes.

If the basis period change is implemented, then we considered that it would bring several downsides, including:

- For those businesses unable, or for which it would be inconvenient or undesirable, to adopt a tax year accounting period end, this would replace the complexities of the existing regime with different (and potentially greater) complexities of apportioning profits, and (for some) making estimates in ITSA returns.
- The need to make amendments to submitted returns will have the knock-on effect of extending the enquiry window for those returns and will increase the length of time before an affected taxpayer can have certainty over their tax affairs for the year.
- Where an affected business does not change its accounting period end to align with the tax year, its ITSA return will include time-apportioned figures from two accounting periods. It is unclear what impact this might have on HMRC's ability to enquire into the tax return because, unlike currently, the return will not include figures from accounts for just one period.
- There will be likely bunching of work for businesses, agents and HMRC, as even more businesses will adopt a tax year (or equivalent) accounting period end, and MTD for ITSA quarterly reports will all be made based on calendar quarters. We suggested extended deadlines to help address these pressures.

- The impact of excess profits in the year of transition, and spreading over five years on an individual's total income, will have cash-flow implications for some affected businesses. There will also be the knock-on effects from the loss of personal allowance, the High-Income Child Benefit Charge (HICBC), pension contributions, etc.
- There is the potential for excess profits from the transitional year to be taxed at much higher income tax rates than would be normal, even if the excess profit is spread over five years.
- The proposal to allow overlap relief brought forward to be deducted in full in the transitional year also raises some issues, including:
  i. In some cases, a business may not know the amount of its overlap profits as the information may have been 'lost' due to the passage of time since they arose. The business will need to rely on HMRC to provide it with the figure.
  ii. Since overlap is not index-linked and in many cases will have arisen many years ago, the value of it is likely to be very low compared to the (more than 12 months) profits arising in the transitional year, meaning that for some affected businesses the excess profits in the year of transition will be significant.

In our response, we also outlined specific issues with the proposals that require further consideration, including capital allowances, loss claims, payments on account, double taxation relief, NICs, student loan repayments, tax credits and pension contributions.

The CIOT response can be found at www.tax.org.uk/ref823.

Basis period consultation: LITRG response

We supported the general principle of these new proposals, as they mean complicated rules around basis periods become obsolete; and tax for the self-employed (including partners) will be based on profits in the tax year, which we think would be easier for unrepresented taxpayers to understand. We also noted that one of the main impacts of this change is likely to be to encourage new businesses to choose either 31 March or 5 April as their accounting date, which we support as we believe this would also help those who are newly self-employed to have a better overall understanding of their tax affairs.

We strongly recommended that the basis period change should be given time to be fully and properly implemented before MTD for ITSA begins, and therefore that serious consideration must be given to delaying the start date for MTD for ITSA.

We had two main concerns with the transitional provisions:

- We are concerned about the level of understanding there will be among unrepresented taxpayers of what overlap relief is, and also how a business will find out what its overlap profits are if it doesn't have a record of them.
- The option to spread additional profits over a maximum period of five years inevitably introduces complexity, which we are concerned will leave some unrepresented businesses at a disadvantage as they may be unable to do the necessary calculations to enable them to make an informed decision about whether to spread the profits, especially when factoring in interactions with other entitlements that are based on taxable income.

We urged the government to ensure enough time is devoted to fully understanding the interactions between basis period reform and other areas of the tax system, as well as other areas of financial support such as tax credits, universal credit and student finance, so that unexpected and unintended consequences do not emerge at a later date. We recommended that steps are taken to mitigate any unintended consequences as a result of interactions and that, where any impacts remain, comprehensive guidance is made available to people and efforts made to raise awareness of these impacts.

The LITRG response can be found at www.litrg.org.uk/ref2545.

Basis period consultation: ATT response

While we believe that the proposed change presents an opportunity for simplification, we are also concerned about the timetable and pace of change, especially with many businesses still struggling with the impacts of the COVID pandemic, and the future outlook remaining uncertain.

We therefore strongly recommended that the implementation of these changes be pushed back to allow for more consultation and suggested that the basis period reform should not proceed until tax year 2023/24 at the earliest, with MTD for ITSA also delayed to at least April 2024 to allow time for that reform to bed in first.

We thought that, while not without its potential issues, the proposed tax year basis is the best option for simplifying the basis period rules, as it appears to deliver the best balance between simplicity and limiting adverse impacts for taxpayers.

We noted that the consultation also proposed two alternative options:

- mandating a 31 March or 5 April accounting date; and
- a corporation tax like approach with payment and return dates linked to the accounting period of the business.

We did not believe that either of these options are viable.

In our response, we also outlined specific issues which we think will affect averaging calculations for farmers and the creative industries, as well as concerns our members have raised regarding doctors' (specifically GPs') pensions.

The ATT response can be found at www.att.org.uk/ref382.

Matthew Brown *mbrown@ciot.org.uk*
Sharron West *swest@litrg.org.uk*
Emma Rawson *erawson@att.org.uk*

End of HMRC COVID support schemes

GENERAL FEATURE

Whilst the claims window for key COVID support grants close, our engagement with HMRC and HM Treasury continues.

Coronavirus Job Retention Scheme

The Coronavirus Job Retention Scheme (CJRS) ended on 30 September 2021. Claims for September must be submitted by 14 October 2021, and any amendments must be made by 28 October 2021. HMRC has limited discretion to accept late claims, and this is set out on GOV.UK (tinyurl.com/55ejkzpc).

As you would imagine, CIOT, ATT and LITRG have sought to work closely with HMRC and HMT in relation to the scheme. You do not need us to tell you that the scheme itself, and the supporting guidance, has changed many times over the last 18 months, and it has often been difficult to keep pace.

To focus engagement on CJRS in one place, HMRC recently established the CJRS External Stakeholder Forum, on which CIOT, ATT and LITRG are represented (along with other professional and representative bodies and professional firms). As the scheme is closing, we are currently concentrating our efforts on compliance aspects.

Recently, we have been debating the definition of a 'claim' for the purposes of the CJRS, which has implications for correcting errors seeing as there is a short deadline in which to correct under-claims, but a much later deadline to correct over-claims. We have also been discussing HMRC's compliance approach, welcoming the assurances that they will not be actively looking for innocent errors, but seeking clarity over what is considered an error, and how to correct it. We, along with other professional bodies, have written to HMRC and HMT setting out our views on these areas, and we look forward to further discussing this with them. We have also reviewed the CT600 guidance in relation to the COVID support boxes and how this could be made clearer.

Self-Employment Income Support Scheme

The deadline for claims for the fifth Self-Employment Income Support Scheme (SEISS) grant was 30 September 2021. That was a 'hard' deadline, and HMRC do not have any discretion to accept late claims, or amendments to existing claims.

Over the last 18 months CIOT, ATT and LITRG have worked closely with HMRC (and, to a lesser extent, HMT) regarding the scheme. While this has not always led to the outcomes we desired, it really demonstrated the benefits that this sort of engagement can bring. We will be winding down our engagement with the SEISS team, but monitoring the subsequent compliance activity HMRC undertakes in relation to these claims.

Other aspects

We continue to encourage HMRC to broaden their guidance around the COVID grants. For example, we have received queries regarding the tax treatment of some grants received from abroad, such as the US 'stimulus' payments and the Northern Ireland Newly Self Employed schemes. While there is a GOV.UK page providing some guidance around the tax treatment of COVID grants (see tinyurl.com/yv7v7tdh), it doesn't include some of the devolved/less mainstream grants. Keep an eye on the COVID pages of the CIOT, ATT and LITRG websites which seek to cover some of these aspects.

Richard Wild
rwild@ciot.org.uk

Business rates three-yearly valuations

GENERAL FEATURE | OMB | LARGE CORPORATE TAX

The CIOT responded to the recent consultation by the Ministry of Housing, Communities and Local Government focusing on the case for more frequent revaluations for business rates.

A final report from HM Treasury to the Fundamental Review of Business Rates is expected in Autumn 2021. However, in July the Ministry of Housing, Communities and Local Government issued a standalone consultation on more frequent valuations, an area identified as a priority by respondents to the wider review.

Revaluations currently take place on a five-yearly basis. The next revaluation will take effect in 2023. This consultation set out proposals for achieving a three-yearly revaluation cycle and the administrative changes needed to support a shorter cycle including:

- a duty to notify the Valuation Office Agency (VOA) of changes to the occupier and property characteristics; and
- the mandatory provision of rent and lease information, as well as trade and cost information for valuation.

These changes would be supported by a new compliance framework.

In addition, the consultation proposes the reform and streamlining of the current appeals system to deliver a three-year cycle, including a three-month window for challenges to be submitted.

The CIOT noted that the stated aim of a three-yearly revaluation cycle is to deliver a fairer and more responsive system. However, the consultation does not address the interaction of the proposed three-yearly cycle with the transitional adjustment scheme. The objective of the transitional arrangements is to provide relief for ratepayers facing large increases in bills because of the revaluation, funded by ratepayers who have reduced rates bills as a result of the revaluation. There is a tension between the continued existence of transitional relief that seeks to smooth out the revaluation gains/losses with the desire to allow changes in economic conditions to feed through more rapidly into businesses' liabilities.

We said that the new requirements to notify the VOA and the mandatory provision of rent/lease information is a significant step-change away from the informal basis of rates that has existed for years where there has never been any duty on the ratepayer to notify the billing authority of changes that affect liability. It should be borne in mind that rights over commercial property and its physical state change frequently, often in complex ways, and much of the background information is not digitised.

Similarly, reforming the appeals system so that challenges must be made within three months of a rates bill is a major cultural change.

It will be important that as far as possible information provided through existing reporting requirements (for example, trade and accounts information provided via corporation tax returns or lease details in stamp duty land tax transaction returns) is not duplicated and not required to be submitted again.

We firmly supported the proposal for 'soft launches' of the new requirements and a staged introduction of compliance measures. We think it would be helpful to set out the different stages in the form of a roadmap to build awareness and ensure that agents and ratepayers can see the timing well in advance and plan accordingly.

A theme of the current consultation is the government's objective of bringing business rates more in line with other taxes and the wider tax system. In our view, a smooth move to a three-year cycle involves building trust in the new regime and the related compliance regime – achieving a balance between powers and appropriate safeguards. With this in mind, the CIOT has developed ten principles against which HMRC's use of its current powers and safeguards and any new measures can be evaluated. These principles are relevant to the design of a new compliance system for business rates and would support alignment with the wider tax system and help to instil trust in the new regime.

The full response can be read at www.tax.org.uk/ref819.

Kate Willis
kwillis@ciot.org.uk

Jet Zero – a strategy for net zero aviation: CIOT response

GENERAL FEATURE

Over summer, the Department for Transport ran its consultation on 'Jet Zero – a strategy for net zero aviation', which sets out its ambitions around decarbonising aviation whilst preserving the benefits of air travel, as well as maximising opportunities around decarbonisation. Although the consultation was not directly tax focused, the CIOT's Climate Change Working Group submitted a response to reflect our view that tax measures form part of the overall strategy and encouraging joined up thinking with other departments.

The government has set out its objectives for the aviation sector in point 6 (Jet Zero and Green Ships) of its net zero strategy, 'The Ten Point Plan for a Green Industrial Revolution' (see tinyurl.com/yfrjc3zn). The Department of Transport's consultation (see tinyurl.com/8ccp6nxh) forms part of the delivery of the government's strategy and the consultation document set out the proposed net zero approach and principles in the aviation sector, aiming to:

- improve the efficiency of the UK's aviation system;
- accelerate the development and deployment of sustainable aviation fuels;
- support the development of zero emission flights;
- ensure markets are used to drive down emissions in the most cost-effective way; and
- influence the behaviour of consumers.

CIOT response

In the CIOT's response (see www.tax.org.uk/ref821), we stated that we would like the government to produce a climate change tax policy roadmap that ensures that tax policies align with achieving the net zero targets in its ten point plan. For environmental tax policies, these need to complement and reinforce the broad climate change strategy, and for tax policies that are not directly related to climate change, then at the very least, they should be neutral in their environmental impacts.

International policy

Our response noted that constraints on carbon pricing and taxation generally in the air transport sector are determined by several international aviation agreements (see tinyurl.com/pe9jfjr3), and we would like the UK to take a lead in driving policy change that aids the achievement of net zero globally in the sector. We note that the consultation considers influence via the International Civil Aviation Organization and the UK's COP26 presidency. Further, our response highlighted that changes made in the net zero policy for the UK aviation sector should not be responsible for carbon displacement, thereby increasing carbon emissions in other countries.

Influencing customers

The consultation highlights that the strategy aims to preserve the ability for people to fly, whilst supporting consumers to make sustainable travel choices. Our response highlights that as well as a decarbonisation focus, this should also raise awareness of the environmental effects of aviation emissions and feasible choices that could be adopted. The Civil Aviation Authority will consult on environmental information provisions later this year.

Joanne Walker
jwalker@ciot.org.uk

Trust Registration Service Update

PERSONAL TAX

Following the opening of the Trust Registration Service to accept registrations of non-taxable trusts on 1 September 2021, we are expecting further updates to the relevant legislation shortly to extend deadlines and some of the exclusions.

On 1 September 2021, HMRC confirmed that the Trust Registration Service (TRS) is now able to accept the registration of non-taxable, express UK trusts. This represents a significant extension to the TRS regime and means that all UK non-taxable trusts (except those covered by the exclusions in Schedule 3A of The Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 (see tinyurl.com/da4zvyuv)) must now be registered. Trustees and their agents have a year to comply before penalties are imposed.

The extension of the TRS from taxable to non-taxable trusts follows the UK's adoption of the EU's 5th Money Laundering Directive (5MLD). The changes relating to the TRS were implemented by the regulations cited above on 6 October 2020, but it has taken some time to upgrade the TRS to accommodate the new requirements. Accordingly, HMRC will shortly be making some further changes to the regulations to allow practitioners more time to comply with the new rules – and also to change all the previously proposed 30-day deadlines to a more manageable 90 days. At the time of writing, we have not seen the proposed regulations but we understand the changes outlined below are to be expected.

Non-taxable trusts

Firstly, the registration deadline for non-taxable trusts will be extended from the current deadline of 10 March 2022 to 1 September 2022 to reflect the delay in upgrading the TRS.

HMRC's published correspondence explains that this deadline will apply to trusts in existence on 6 October 2020 and any created before 1 September 2022 and that new, non-taxable trusts created after 1 September 2022 will need to register within 90 days of creation. We have confirmed with HMRC that, so that trusts created in the run up to the change in deadline are not disadvantaged, the 90-day rule will actually apply to registrable trusts created from 2 June 2022.

In the original regulations, after March 2022 trustees were required to register a new, non-taxable trust within 30 days of creation. Thankfully, HMRC have taken on board concerns raised by several professional bodies including the ATT and CIOT and we are pleased to see the more manageable timescale of 90 days is being adopted from the new September deadline.

HMRC's current position (as stated on the Agent Forum) is that trusts which were in existence on 6 October 2020 when the rules took effect, but which closed before the TRS was opened to non-taxable trusts on 1 September 2021, still need to be added to the register – and then immediately reported as ceased. We have asked HMRC if they will reconsider this position as this will be no doubt be an unwelcome requirement where a trust was wound up before it was practically possible to register it.

HMRC have also informed us that that the proposed regulations will expand the Schedule 3A list of non-taxable trusts which are excluded from the registration requirements as follows:

- Healthcare policies: all healthcare policies which are held in trust, including those that are not part of a wider life policy, will be excluded from registration.
- Child bank accounts: any trusts required in order to open a bank account for a child will be excluded from registration.

Judging from member queries, the later exclusion will be particularly welcome.

Taxable trusts

In line with the requirements for non-taxable trusts, other deadlines will similarly be moved to 1 September 2022. Existing taxable trusts have been able to update their registrations in line with 5MLD requirements to add in details, including the residency and nationality of their beneficial owners, since May 2021, but the deadline to complete this will also be extended to 1 September 2022.

Similarly, from 2 June 2022 the deadlines for registering new taxable trusts will be extended from 30 days to 90 days.

Third party data requests

The date from which legitimate interest and third country access requests may be made will likewise be moved from March 2022 to 1 September 2022.

HMRC manual

HMRC is developing a manual (see tinyurl.com/TRSmanual) to provide support and guidance for those affected by these new rules. We are meeting HMRC regularly to discuss the various iterations as they occur and any feedback from members would be welcome to the usual ATT/CIOT addresses or direct to us below.

Helen Thornley
hthornley@att.org.uk

John Stockdale
jstockdale@ciot.org.uk

Introductory agencies and 'self-employed' live-in carers

EMPLOYMENT TAX

Despite HMRC's clear guidance (in ESM4015) and the recent *Chatfield-Roberts v Phillips* & *Universal Aunts* case, we are aware that some introductory agencies still purport to provide 'self-employed' live-in carers to elderly or disabled clients, even though many live-in carers are unlikely to be self-employed under the status tests.

Introductory agencies typically match live-in carers to clients for a one-off fee. Training and background checks are provided, but the client then takes responsibility for the provision of their own care either using government funding or their own money.

Introductory agencies are not regulated by the Care Quality Commission (England's regulator of health and social care services). We understand that they do fall under the remit of the Employment Agency Standards Inspectorate and the Conduct Regulations (as an 'employment agency', that is, a business that finds permanent roles where the work-seeker is employed by the hirer) but many are probably not aware of this.

A rudimentary search on the internet returns a huge number of introductory agency options – an indicator that there is great demand for their services, but also, perhaps, that that there are few barriers to entry into the marketplace.

Nearly all the marketing material we have seen refers to introductory agencies providing families with a 'self-employed' carer, saying things like '(we) provide families seeking care with the opportunity to select their own independent, self-employed carer', 'our professional carers are self-employed for tax purposes', and 'you won't have to liaise with the tax office or worry about holiday pay and sick pay'. However, many live-in carers are probably not self-employed under the status tests (for example, because they must perform specific tasks/ cannot turn up and leave when they want/cannot send a substitute, etc).

In our experience, there is often a misunderstanding in the care sector (and indeed in other sectors) that status is a matter of choice. (In addition, some carers often want to be self-employed because of the perceived benefits that it brings.) It is not clear whether these introductory agencies are operating under this same misunderstanding.

Although there is probably no obligation on the introductory agency to tell the client that they may become the employer of the carer they are matched with, clearly the way that they are introducing the carer to the client could be misleading and leave both the hirer and the carer with tax problems.

We think it is vital that introductory agencies do more in this space and hope to persuade the relevant authorities to produce some joined up guidance for introductory agencies to inform and educate them on the law around status. The authorities will also need to consider how they will deal with the historic non-compliance that there is likely to be. There is, of course, a bigger question about how this situation fits with wider social and health care strategies.

In the meantime, we wanted to produce this quick summary of the problem as background for advisers, as there will be clients and carers who need professional advice and assistance to guide them in the right direction, help them manage their ongoing tax positions and potentially deal with historic problems.

Meredith McCammond
mmccammond@litrg.org.uk

Scottish Taxes Update

GENERAL FEATURES

A summary of three consultations to which CIOT and LITRG have responded and meetings they have attended.

Scottish Parliament consultation: What matters to you?

The CIOT responded to a Scottish Parliament consultation seeking views on what the priorities for Scotland should be in the parliamentary term from 2021 to 2026 (see www.tax.org.uk/ ref818). We made three recommendations with a view to delivering a devolved tax system that is sustainable and fit for purpose. Drawing on the joint CIOT and ICAS paper 'Building a better tax system' (see www.tax.org.uk/210407holyrood), we discussed the need to strengthen tax decision making, to take a more strategic approach to the process of tax policy making, and to improve public understanding of the Scottish Parliament's tax powers.

Carer's Allowance Supplement (Scotland) Bill: call for views

LITRG responded to a call for views issued by the Social Justice and Social Security Committee of the Scottish Parliament (see www.litrg.org.uk/ref2522).

Once enacted, the Carer's Allowance Supplement (Scotland) Bill would double the December 2021 payment of Carer's Allowance Supplement, covering the period 1 October 2021 to 31 March 2022.

Carer's Allowance Supplement is paid twice a year by Social Security Scotland, to people in Scotland who are in receipt of Carer's Allowance on a specified date. The Carer's Allowance Supplement serves the purpose of increasing the level of Carer's Allowance to the level of Jobseeker's Allowance, and is a temporary measure until the Scottish government implements Carer's Assistance.

The Bill would also give the Scottish government the ability to increase the amount of Carer's Allowance Supplement by regulations in the future, whereas currently it must use primary legislation.

LITRG welcomed the proposed measures and highlighted the importance of providing good communications to recipients of Carer's Allowance Supplement. In particular, they need to know that the payment is taxable but that it is not taken into account when determining entitlement to tax credits or other welfare benefits.

Scotland's public finances in 2022/23 and the impact of COVID-19: call for views

The CIOT and LITRG responded to the call for views published by the Finance and Public Administration Committee of the Scottish Parliament (see www.litrg.org.uk/ref2527).

The Committee wished to receive views on how the Scottish government should use its next budget to ensure a fair and equal recovery, as well as how it could address the effect of the coronavirus pandemic on different social groups.

We used the joint response to stress the importance of giving detailed consideration to interactions between Scottish devolved tax policy decisions and reserved taxes, as well as interactions with social security policies, both devolved and reserved.

We also noted that it might be helpful if a detailed analysis of impacts were published when tax policy was being developed and consulted on. This could help to improve consideration of fairness and equality issues earlier in the process of developing tax policy. There should also be a programme to review whether assumptions made in evaluating impacts prove to be correct and whether a measure has resulted in unintended consequences.

Meeting with Tom Arthur MSP, Minister for Public Finance, Planning and Community Wealth

Representatives of CIOT, LITRG and ICAS met with Tom Arthur MSP, to provide the new minister with an introduction to the professional bodies and to explain the areas of devolved tax policy that we will be taking a keen interest in over the next few months. The minister thanked CIOT and ICAS for all the work we have done so far in relation to taxation in Scotland, and indicated that he would welcome regular meetings with us going forward.

Meeting with Scottish government: new tax policy framework

Representatives of CIOT, ATT, LITRG, ICAS and the Law Society of Scotland met with the Scottish government to discuss their upcoming paper on enhancing their approach to tax policy making. The paper was launched at the end of August, for public consultation (see tinyurl.com/5saf4ch4). The intention is that the tax policy framework will be a strategic document, and therefore something that should last beyond the parliamentary term.

Discussion covered the principles for the Scottish approach to taxation, the proposed policy cycle, the legal status of the framework document and the fiscal framework review, which is due to take place during 2021.

Scottish Towns Partnership: A New Future for Scotland's Towns

In July 2020, the Cabinet Secretary for Communities and Local Government launched the Town Centre Action Plan Review Group. This published a report 'A New Future for Scotland's Towns' (see tinyurl.com/4ttfkbha) in early 2021.

CIOT was represented at a roundtable arranged by Scottish Towns Partnership on behalf of the Scottish government. This was one of a series of roundtables to follow up the report, and was focused on private sector/fiscal policy. There were representatives of the Scottish government in attendance, and they were keen to hear how participants thought fiscal policy might support them in following up recommendations in the report.

The plan is for the Scottish government to consider the contributions from the roundtables and also input from their own internal discussions on the report recommendations, before publishing an Action Plan by the end of 2021. This should include both short and long-term measures.

Discussions covered non-domestic rates, VAT and more appropriate use of incentives. In particular, it was felt that some incentives and reliefs are currently targeted at the 'wrong' kinds of activity, but that rather than measures to discourage activities, reliefs should be better directed.

Scottish income tax policy evaluation: focus group

The CIOT participated in a focus group of tax and payroll professionals, as part of the Scottish government's policy evaluation in respect of the Scottish income tax.

The focus group sought to generate feedback about various issues including:

- the impact, financially and administratively, on businesses and payroll software providers according to the following themes:
  - the 'S' code prefix;
  - the move to a five band structure for the Scottish income tax;
  - administration and cost; and
  - timing; and
- whether the changes have made the system more complicated, and if so, why and for who:
  - taxpayers;
  - communication;
  - divergence; and
  - technology.

CIOT's view was the key takeaway from the discussions related to communications, and whether there is enough active communication with Scottish taxpayers about the implications for them in relation to Scottish income tax.

Joanne Walker
jwalker@litrg.org.uk

CIOT	Date sent
Simplifying the VAT Land Exemption www.tax.org.uk/ref807	05/08/2021
Scotland's public finances in 2022-23 and the impact of Covid www.tax.org.uk/ref817	12/08/2021
Interaction of basis period reforms and Making Tax Digital for Income Tax Self-Assessment: Letter to FST www.tax.org.uk/fstbasisperiod	19/08/2021
HM Treasury fundamental review of business rates www.tax.org.uk/ref819	23/08/2021
Basis period reform www.tax.org.uk/ref823	31/08/2021
Achieving net zero aviation by 2050 www.tax.org.uk/ref821	02/09/2021
ATT	
Restoring trust in audit and corporate governance www.att.org.uk/ref383	19/07/2021
Basis period reform www.att.org.uk/ref382	26/08/2021
LITRG	
Scotland's public finances in 2022-23 and the impact of COVID-19: Finance and Public Administration Committee call for views www.litrg.org.uk/ref2527	16/08/2021
Basis Period Reform www.litrg.org.uk/ref2545	02/09/2021

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

30 Monck Street, London SW1P 2AP.
tel: 020 7340 0550
The CIOT is a registered charity – No. 1037771; The ATT is a registered charity – No. 803480

EDITORIAL
Editor-in-chief Bill Dodwell
Publisher Jonathan Scriven
Editor Angela Partington
angela.partington@lexisnexis.co.uk
tel: 020 8401 1810
Web editor Jonathan Chan
jchan@tax.org.uk

ADVERTISING & MARKETING
Advertising Sales Jimmy Jobson
advertisingsales@lexisnexis.co.uk

Commercial Marketing Director
Sanjeeta Patel

PRODUCTION
Production Assistant Nigel Hope
Design & Technology Manager
Elliott Tompkins
Senior Designer Jack Witherden

Offices LexisNexis, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS.
tel: 020 8686 9141
UK print subscription rate 2021: £116.00 for 12 months
UK print subscription rate 2021: £206.00 for 24 months

For *Tax Adviser* magazine subscription queries contact 0330 161 1234. or email
customerservice@lexisnexis.co.uk

For any queries regarding late deliveries/non-receipt please direct to Derek Waters,
Magazine Distribution Administrator
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Reprints: Any article or issue may be purchased. Details available from customerservice@lexisnexis.co.uk

Printed by William Gibbons & Sons Ltd. West Midlands

ISSN NO: 1472-4502

CIOT & ATT

Building your personal brand: the power of podcasting

PERSONAL DEVELOPMENT

Joanne Herman talks to tax expert podcaster Jack Bonehill about how he's built his personal brand and developed his career.

Welcome back to my blog series all about personal branding.

I'd like to introduce you to Jack Bonehill, who hosts The Tax Professionals Podcast, dedicated to helping tax professionals progress, develop and improve their tax career. From tips to passing the ATT or CTA qualification, to developing your business development or sales skills, Jack offers information to increase career potential within the taxation world.

I asked Jack a few quick questions about how he's built his personal brand.

What three things have helped you to increase your personal brand?

- Podcasting and hosting The Tax Professionals Podcast, where I've been able to help other tax professionals.
- Posting regular content on LinkedIn (of a personal and business nature).
- Injecting my personality into the two above things.

What tool has helped your brand?
Not a tool, per say, but a book called 'The 7 Habits of Highly Effective People'. Because of the book, I spent a lot of time thinking about my values, my goals and who I am as a person. This has given me a clarity which I think is great from a personal brand perspective, as it has helped me to share my personality and expertise at the same time.

Why do you think personal branding is important?
So many people have the same skills, qualifications and experiences as you have (at least on paper, anyway). I think having a personal brand helps you to stand out and show how you are different. I would say that showing your personality is key, as people will often choose to work with you based on you as a person, as well as what you can provide.

Imagine you know two people who provide the exact same service for the same price, but you get on better personally with one – who would you choose?

How have you benefited?
I've benefited from many opportunities that I think I may not have otherwise had. For example, the opportunity to write for Tolley's, interest from employers, and the opportunity to meet some great people!

Finally, where can I find out more information about your podcast?
Visit: tax.org.uk/student-support or thetaxprofessionalspodcast.com

Jack has been able to benefit and enhance his own personal branding as a result of the power of podcasting. He has been able to use it as a medium to broadcast and share his expertise and content effectively.

Podcasting seems to have proven immune to the adverse effects of the coronavirus pandemic and Jack has seized the opportunity by using this medium.

According to Forbes, in 2020, an estimated 100 million people listened to a podcast each month and that number is expected to reach 125 million in 2022. That's a 25% increase in just two years. The number of podcast listeners continues to accelerate at a rapid pace.

Why podcasting is perfect for personal branding
- Low cost of creation
- Ease of consumption with your target audience
- Create an intimate connection with the sound of your own voice
- Opportunity to integrate it with other mediums for greater reach

These qualities have made the medium the perfect vehicle for those who are keen to build a powerful personal brand.

It's no wonder that Jack is making a success with his podcast for Tax Professionals, because he understands and empathises with ATT and CTA students. He realises that many of them are busy and under a lot of pressure. Everyone is pressed for time and most of them don't have the luxury of setting aside a couple of hours each day to read blogs and watch videos. According to a 2019 survey published by Edison Research, more than half of all podcast listeners multitask while listening.

If you are interested in being a guest on The Tax Professionals Podcast, all you need to do is get in touch with Jack with a suggested topic for the episode.

KEY TAKEAWAY

How and where do I start?

There are two ways you can leverage the power and pull of podcasts to get your brand in front of the people.
- Start your very own podcast, like Jack has done
- Get yourself featured in the podcast of others.

ATT

ATT Fellows Webinar

WEBINAR

Following the success of the first Fellows Webinar in April, the President and Council of the Association would like to invite all Fellows of the Association to a second Live Webinar at 14:00 on Wednesday 13 October 2021.

This free event will provide a unique opportunity for Fellows to enjoy the company of members of similar standing within the Association and participate in sessions run by our Technical Officers.

Running order:	
Welcome from the President, Richard Todd	14:00
New penalty regimes for late filing and late payment	14:10
Breakout discussion sessions on: • Can we improve HMRC online services for agents? (Helen Thornley) • Goodbye basis periods and interaction with MTD (Emma Rawson) • Charity, membership body, pressure group: has ATT got the balance right? (Will Silsby)	14:40
Round up of key issues coming out of the breakout sessions	15:10
Closing remarks	15:25

To register for the Live Webinar, please visit: www.att.org.uk/fellows-webinar-oct2021

ATT

Feature a Fellow: Karen McCann

PROFILE

I've always liked numbers, so decided to study Accountancy at university, where I was particularly drawn to tax. My first job was as a Personal Tax Assistant with supported study towards ATT. I then moved to Grant Thornton and continued my studies.

After gaining my CIOT qualification, I then moved to KPMG to join their Personal Tax Processing centre in Glasgow. I had exposure to a much wider range of clients as I was preparing personal tax returns for the whole of the UK and gained excellent experience and knowledge. After four years, I decided that I would like to explore other aspects of tax that I had covered during my studies. I found this development in Baker Tilly.

As I progressed in my career, I found an opportunity to expand my abilities by joining Britannic Asset Management as an Investment Tax Specialist. What I particularly loved about this job was that I was learning something completely new, and the challenges it brought.

After 15 years with the company (which was subsequently bought by HSBC Security Services Ltd), I was offered redundancy due to an office relocation. I looked upon this as an opportunity to branch out and gain experience in another area of tax, which I found at Access2Funding Tax Specialists, specialising in R&D tax relief claims.

I also taught Tax to the Law Diploma Students at Strathclyde University. This was a great opportunity for me, and I absolutely loved it.

It was at this point that I decided to apply for Fellowship of ATT. I had been working within tax for 25 years and had specialised in different areas, constantly expanding my knowledge. To me, the Fellowship highlights not only my length of service, but also the broad knowledge which I have gained over the years.

My advice to anyone starting out in their career is to join a company which is willing to provide you with a wealth of experience and study support. You won't be stuck for challenging and rewarding work as tax is so vast. Once

Karen McCann

you have your exams behind you, the world is your oyster! There may be hiccups along the way, such as redundancies, but remember that there will always be something out there for you and, like it did for me, it gives an opportunity to branch out into something new.

Branch Webinars October 2021

Keeping you up to date with your CPD

View and book online:
www.tax.org.uk/branch-webinars
www.att.org.uk/branch-webinars

Upcoming Branch Webinars include:

M = CIOT/ATT Members
S = CIOT/ATT Students

Practical trusts – how to use and tax plan them	Bob Truncheon	11 Oct	2pm - 5pm	M £60 / S £48
Topical tax update	Tim Palmer	12 Oct	2pm - 5pm	M £60 / S £48
Crypto taxation: the other side	Delriene Smith	18 Oct	12pm - 1pm	Free
Capital allowances and tax planning opportunities for the agricultural sector	Stephen Poole and Ronak Shah	18 Oct	5.30pm - 7pm	Free
Applying double tax treaties – key articles in the UK's double tax treaties	Catriona Loughran	19 Oct	5.30pm - 7.30pm	M £50/ S £40
Capital gains tax update	Ros Martin	1 Nov	2pm - 5pm	M £60 / S £48
Tax issues in corporate reconstructions	Kevin Read	2 Nov	2pm - 5.15pm	M £60 / S £48
HMRC clearances, what's the latest?	Gordon Buist	3 Nov	12pm - 1pm	Free
Digital currencies from central banks to bitcoin	Kate Baucherel	8 Nov	12pm - 1pm	Free

In partnership with THOMSON REUTERS ONESOURCE

HM Revenue & Customs

Senior Case Manager

Grade: G7
Locations: Belfast, Birmingham, Cardiff, Glasgow, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne, Nottingham
Number of posts: 10

HM Revenue & Customs (HMRC) is one of the largest Government Departments and one of the country's biggest organisations. We have embarked on a major transformational Programme to redirect more of our people and resources to compliance activities, modernising systems and re-engineering processes to become more customer focused.

Part of Wealthy & Mid-sized Business Compliance (WMBC), Wealthy's job is to ensure wealthy individuals pay the right amount of tax. We are creating a targeted resource to engage with customers who have significant levels of complexity and opportunity in relation to their personal tax affairs.

Our approach is tailored to the risks that are presented by our customers. Our compliance activities extend beyond traditional enquiries as we look to move to a more cooperative compliance model.

As a Senior Case Manager you will develop a deep understanding of the tax affairs of Wealthy customers, utilising your tax professional knowledge to identify risks along with using a range of tools and techniques to promote voluntary compliance and both prevent and respond to non-compliance. We are looking for individuals who can bring their experience and insight to help us identify new and emerging areas of personal tax risk.

The tax affairs of the wealthy are often complex and involve structures and transactions that cut-across multiple jurisdictions. As such, you will need to have a proven understanding across all main areas of Capital Gains Tax and Income Tax, including anti-avoidance provisions. You will regularly be addressing customers verbally and in writing on tax technical matters, continuously putting that knowledge into practice. You will also provide clear leadership, setting the strategy for investigations and provide effective oversight of the work carried out.

Essential Requirements and Qualifications

- Chartered Tax Adviser (CTA) qualification, or
- Chartered Accountant (ICAEW, ICAS, CAI, ACCA) qualification

or

- Successfully completed the HMRC Tax Specialist Programme, or one of its predecessors (TPDP, IDP, ITS2, CPT, FT2) or
- Be a qualified solicitor with post qualification experience in income or capital gains tax

Benefits

- 25 days Annual Leave including an additional day for the Queens birthday
- Working from Home and Flexible Working
- Civil Service Pension
- Maternity/Paternity leave
- Advance of Salary (Season Ticket and Childcare Costs

For more information on our wide range of benefits please search 'Your Little Extras and Big Benefits'.
To apply please visit www.civilservicejobs.service.gov.uk – Job Reference 139696.
Closing date: 23 September 2021

Positive About Disabled People
regulated by Civil Service Commission

CIOT is recruiting

CIOT Technical Officer

Salary circa £64,000

The CIOT wishes to recruit a Technical Officer to develop further its activities in respect of Owner Managed Businesses, and the roll-out of digital services by HMRC such as Making Tax Digital and the Agent Services Account.

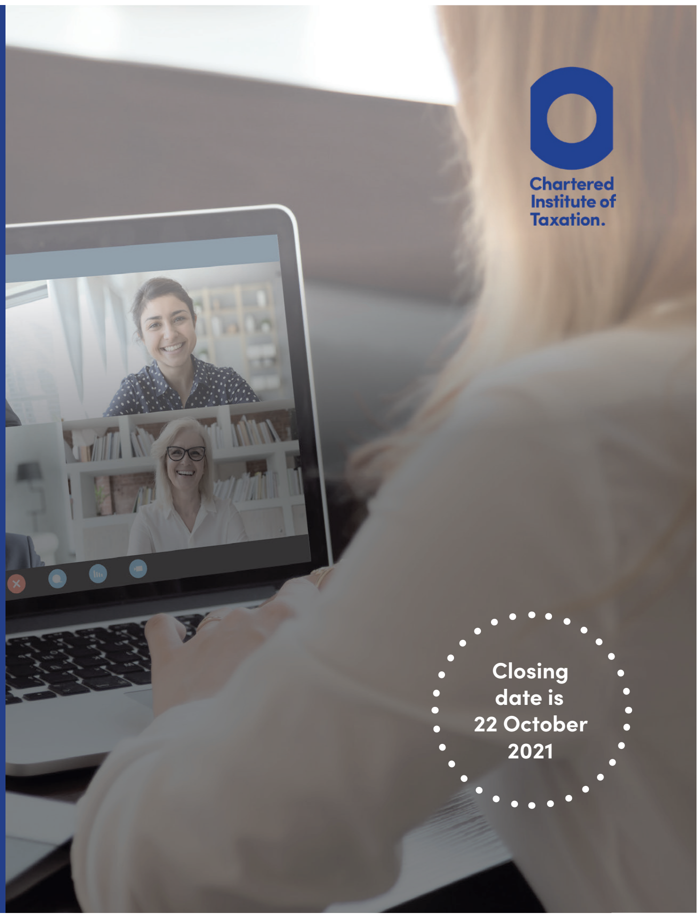
The new position will complement the existing team of Technical Officers by bringing recent, real-life experience of working with Owner Managed Businesses, both in relation to the tax issues facing those businesses and helping them to adapt to more digital ways of working and interacting with HMRC. The applicant will be familiar with digital systems such as the Agent Services Account and obtaining client authorisation via the digital handshake.

Duties will include preparing responses to HMRC and HMT consultations, participation in various technical meetings and discussions, both within CIOT and with HMRC, HMT and other interested parties (often on a confidential basis). The role would suit an experienced tax professional able to work on their own initiative. You can find out more about our Technical work at https://tax.org.uk/improving-tax-policy.

The position is being advertised on a full time basis, but there is flexibility over working hours and applications will be considered for 3-4 days a week. The role will be home-based, as with the other CIOT Technical Officers, but with a requirement to attend various meetings – many of which will be held virtually, but from 2022 onwards are likely to involve some physical meetings, mostly in London.

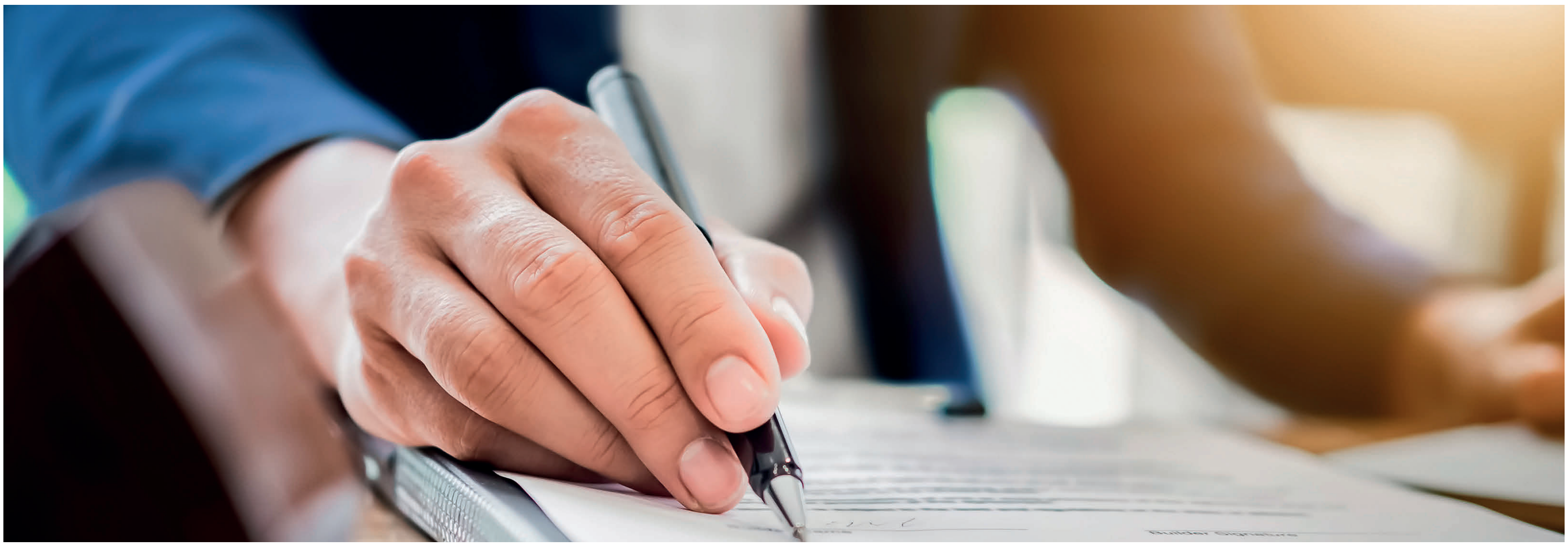
Please email Rakhi Vora for further details at

rvora@ciot.org.uk or visit our careers section of the website at https://www.tax.org.uk/vacancies



OPPORTUNITY TO BE AN EXAMINER FOR THE CIOT

Chartered Institute of Taxation.



We are looking to strengthen our examining teams for the 2023 exam session and future years. If appointed, work on the 2023 papers will start in March 2022. You will be required to attend a training session on the morning of Tuesday 8 March 2022 with all examiners and also an Examiner's day with the other members of your team on your paper which will take place on a day to be agreed with your team. We are seeking specialists in the following areas who would like to join us:

- **Indirect Taxation**
- **Taxation of Owner-Managed Businesses**
- **Taxation of Individuals**
- **Human Capital Taxes**
- **Inheritance Tax, Trust and Estates**
- **Corporation Tax**

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

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

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

The 2022 syllabus and recent exam papers can be found here:

Past exam papers: https://www.tax.org.uk/pastpapers

2022 syllabus: https://www.tax.org.uk/prospectus-and-syllabus

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

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

MEET YOUR ADVISERS

Georgiana Head Recruitment

GEORGIANA HEAD

Director

Tel: 0113 426 6672
Mob: 07957 842 402

georgiana@ghrtax.com

ALISON TAIT

Director

Tel: 0113 426 6671
Mob: 07971627 304

alison@ghrtax.com

Mixed Tax Senior
Leeds – £excellent + benefits

This role is weighted towards personal tax, as you will manage a varied portfolio of circa 300 clients. However, you will also assist the tax manager with the preparation of corporation tax returns and the accompanying computations. In addition to the compliance work, you will get exposure to tax planning projects and will deal with HMRC enquiries, P11Ds and the provision of PAYE advice. Full or part time candidates welcome. **Call Alison Ref: 3100**

Corporate Tax Manager or Senior Manager
Sheffield – £excellent

Reporting to the partner group, you will have a mix of technical, man management and business development responsibilities. You will manage a portfolio of around 200 owner managed businesses, will oversee the tax compliance and work on advisory projects including succession planning, R&D, capital allowances advice and restructuring. Business development activities will include preparing articles and doing presentations. You should be ACA/CTA qualified, with a minimum of 5 years' corporate tax experience. **Call Alison Ref: 3152**

VAT Senior Manager
Leeds – £excellent + benefits

This large independent firm is looking for a VAT specialist to lead their indirect taxes offering. Working alongside the Business Tax Advisory team and partner group, you will lead a number of advisory projects. You must have detailed technical knowledge of a number of key areas including dealing with HMRC disputes. The client base is predominantly owner managed businesses particularly in property and construction, digital and technology and manufacturing. A fantastic opportunity to join a successful team, that comes with progression to partnership. **Call Alison Ref: 3135**

M&A Tax Manager or Senior Manager
Leeds – £excellent + benefits

M&A tax team seeks an ACA/CTA manager or senior manager to assist the M&A Director with projects, managing juniors and winning new work. A lot of the work is advising private equity backed clients from the OMB sector. You will work on deal structuring (MBO and carve out) and due diligence (sell-side, buy-side and IPOs) and will manage these projects and act as the first point of contact. Candidates with an interest in M&A currently doing OMB and/or corporate tax advisory work are encouraged to apply. **Call Alison Ref: 3138**

Shares Schemes Manager or Senior Manager
North or Midlands – £excellent + benefits

This Big 4 Firm is looking for a share schemes specialist to join their team in Manchester, Leeds or Birmingham. You must have a good understanding of the UK tax and legal issues that may arise in relation to long term and equity based incentive arrangements, and also have experience of drafting legal documentation and giving technical advice. You may therefore be an ACA/ICAS/CTA qualified tax advisor or a qualified solicitor looking for a change of working environment. Flexible and homeworking a possibility. **Call Alison Ref: 3008**

Business Tax Manager or Senior Manager
Leeds or York – £excellent

This is a client facing role in a busy team. You must have experience of advising owner managed businesses, and should be able to deal with giving advice on technical areas like share option plans (EMI etc), (S)EIS, company reorganisations and demergers, succession planning and tax reliefs. Experience on property transactions including capital allowances would be advantageous. You will also be responsible for managing junior team members and liaising with other departments to identify any tax saving opportunities for your clients. **Call Alison Ref: 2978**

www.georgianaheadrecruitment.com