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Together we are beautiful

Let me start off by saying that I am immensely proud of the great work performed by the Chartered Institute of Taxation in these difficult and surreal times. Special mention must go to the Low Incomes Tax Reform Group (LITRG). In the eight month period up to August 2020, LITRG's website had a staggering 3 million or so visitors (up 17% from the same period in 2019) and some 4.8 million page views. It was great to see LITRG's valuable support and assistance to those in all walks of life – a vital part of our charitable remit – receiving well-deserved recognition at this year's Tax Awards.

I have been very pleased to witness first-hand how adaptable and responsive our Institute has been in the face of the many Covid-19 challenges, including the speedy development of our online exams and webinars, as well as our successful online debates. At times, we have had to be brave and work outside our normal comfort zones. In many ways, the Covid-19 disruption has engendered a much closer working relationship between the presidential team and the CIOT executive and senior management. I am truly glad to be part of this indefatigable, wonderful and caring team.

As tax advisers, we are used to the frequent changes in our fiscal world. This also extends to our governance and best business practice. It is our job to make sure that our Institute benefits from the richness and innovation that comes with diversity and inclusion.

As part of the presidential team, it has been an enormous pleasure to attend a number of our admission ceremonies – I should perhaps add pre-Covid-19! These functions clearly demonstrated to me that our profession attracts an incredibly diverse and inclusive range of talent, including a significant proportion of new BAME members. However, when we look at the 'make up' of our 'volunteer' branch network and committees, this does not always currently reflect the wide diversity of our membership base. A similar opinion would also be reached when we examine the composition of the CIOT council. Perhaps this will change as more 'newly qualifieds' come through – but we cannot safely assume that this will happen of its own accord, which is one of the main reasons for establishing our new Nominations Committee.

Over the coming months, the Presidential team and council will be taking a closer look at the progression of our new member intake during their career paths. This would look not only at the 'diversity and inclusivity' of our volunteer base but will ask wider questions about the engagement of members in the CIOT's work and activities.

Little did I know when I first qualified that my journey in tax had only just begun! On a personal level, getting involved with the CIOT has provided me with numerous friendships, valuable skills, interesting experiences, professional benefits and enhanced my tax career. If you have been thinking about getting involved with our Institute, there has probably never been a better time. Everyone is welcome!

As we have seen, our Institute has proved that it is adept and can adapt to the considerable challenges faced by Covid-19. Similarly, I am sure that, like many other professional organisations, we will embrace the current challenges of diversity and inclusion. We accept that this cannot all happen overnight but we all have a big responsibility to ensure that it does. I personally look forward to the time where our governance structure and our strong army of volunteers fully reflect our widely drawn membership base. Together we are beautiful…

Peter Rayney
Deputy President, CIOT

"It is our job to make sure that our Institute benefits from the richness and innovation that comes with diversity and inclusion.

ATT welcome

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Richard Todd

Lessons from history

This year will go down in history for many reasons, both good and bad. There is Brexit, the current coronavirus pandemic, the forthcoming Presidential election in America, the recent events in Lebanon and the UK becoming more diversity aware. Some of these were within our control and others outside; where we can influence change for the better, we have a responsibility for future generations to play our part.

I am a former Chair of ATT/CIOT Northern Ireland Branch and currently work in tax practice in Belfast. The turning point in our history in Northern Ireland may be considered the peace agreement negotiated in 1998 after nearly 30 years of disturbances and unrest. Before then, we usually featured in the national and international headlines for all the wrong reasons; after 1998 we featured for more good reasons than bad.

I acknowledge it is difficult to change overnight. Our problems may be traced back to the 12th century with the Anglo-Norman invasion of Ireland, or more recently with the Plantation of Ulster in 1605 when the North of the island of Ireland was settled to provide a degree a security for England. The island of Ireland was considered an easy backdoor for France and Spain, both predominantly Catholic countries, to mount an attack on England.

Since 1998, we have tried to a become a more inclusive and welcoming place:

- The Union Jack can only be flown from public buildings for a limited number of designated days (previously it was in place for the whole year).
- Displays of the Union Jack has been removed from courts – the Crown Prosecution Service has been renamed the Public Prosecution Service.
- The police service, the Royal Ulster Constabulary (formed in 1922 following the partition of Ireland), has been renamed the Police Service of Northern Ireland.
- To encourage more applicants from the Catholic population, 50% of recruits must come from that religious background; the remaining 50% will be from all other religious backgrounds.
- The 1998 peace agreement also established the Equality Commission, an independent public body which oversees equality and discrimination law.
- In my local hospital there is a 'Welcome to the Hospital' board. During my last visit several years ago, I counted some 20 or more different languages.

But we do not live in Utopia.

There is a desire to introduce an Irish Language Act to put the Irish language on the same footing as English, just in the way the Welsh language appears, for example, on HMRC correspondence; in the interests of equality, part of the population believe that Ulster-Scots should be given equal status, too. Also, there are regular reminders of atrocities and injustices that occurred after 1969 – not to learn from our mistakes, but to keep the wounds fresh. Often, we learn our history from close relatives. It is only in the past few years that there has been any acknowledgement of the sacrifices made by Irish soldiers in the British Army during the First World War, even though those soldiers of the 16th (Irish) Division and 36th (Ulster) Division fought side by side against a common foe.

We have started our journey to end discrimination in Northern Ireland but there is a long way to go. It is so important to ensure that our children and grandchildren do recall our history but only to learn from our mistakes.

But we are not all bad. My previous employer was Catholic and held a British passport, and I would still have the greatest respect for him.

If you see any injustice at work, do not fight it – change it by peaceful means.

May I wish you all the very best.

Richard Todd
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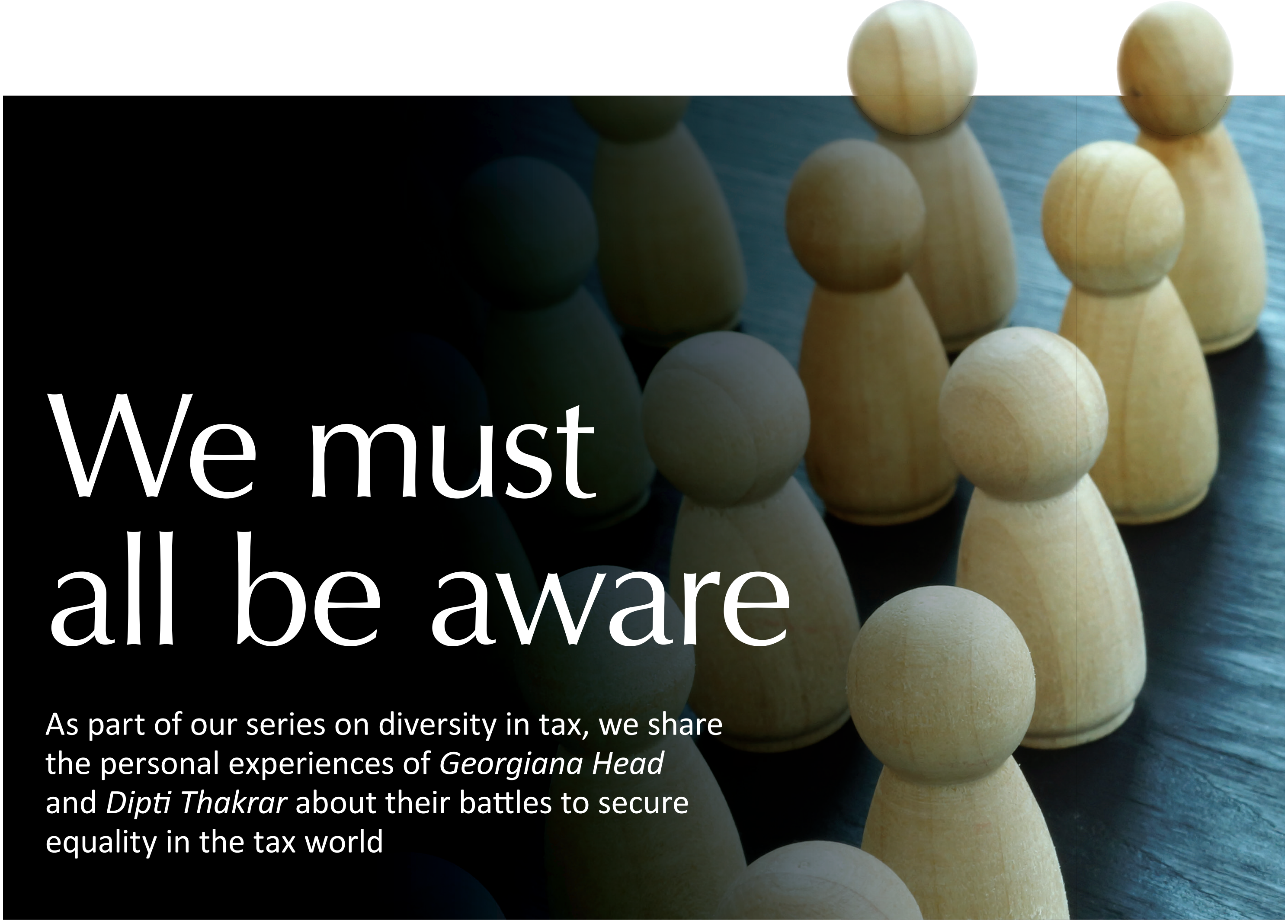
> **It is so important to ensure that our children and grandchildren do recall our history but only to learn from our mistakes.**



We must all be aware

As part of our series on diversity in tax, we share the personal experiences of *Georgiana Head* and *Dipti Thakrar* about their battles to secure equality in the tax world

Diversity and unconscious bias

Georgiana Head reports that we must all be aware that unconscious racism – and other discrimination – is still taking place in recruitment

I don't think that I have ever been as proud of being ATT qualified as when I read the joint welcome message from our ATT President Jeremy Coker and CIOT President Glyn Fullelove in the July issue of *Tax Adviser*, explaining that the Association and the Institute are committed to welcoming and valuing all their members and students regardless of their background and identity. In the midst of this torrid time of Covid-19 and racial unrest, there is in this message an oasis of calm and good sense.

I have found most of the news in the mainstream media unsettling because my own 13 year old son is mixed race, with light brown skin, green eyes and a fabulous towering afro. Generally, I never think anything of his racial mix: he is just Alexander, the fastest on the Xbox, the tallest in his class and the kindest of chaps, who is brilliant at tricky social situations and currently totally obsessed by coffee. I remember when Barack Obama became president of the US thinking that things were changing for the better.

Then came the news that Huugo Boateng, another 13 year old mixed race boy, was injured by police when they attempted to arrest him and his father during a charity bike ride along a river path. He was totally innocent but was knocked off his bike and handcuffed and threatened with a Taser. Huugo looks very like my son. This happened in Tottenham in North London. I realised then that we did have to take Alexander's race into consideration at times, as we worry that when he is old enough to drive he will be pulled over by the police.

It made me think of one of my oldest friends, a successful marketing director and businessman who loves flash cars and spends his spare time rallying and fixing cars and motor bikes. On average, he gets pulled over by the police 10 times a year. He purposely drives carefully within the speed limit because he knows as a black man he is likely to be pulled over. I'm a blonde haired white woman, and I have only been pulled over once in my life and that was for driving too slowly.

Institutional racism exists in Britain; we may think it doesn't but it does. We may think we are different from the US, more liberal and more understanding but we still have unconscious bias. If you don't think this is true, have a look at the accountancy firm, law firm or company that you work in. Think about the most senior tier of people in your company. How many of them are male? How many are over six feet tall? How many are white British?

We unconsciously see tall white men as leaders. I'm not devaluing these partners or saying they don't deserve their roles; I'm saying that they had a competitive advantage purely from their height, and that is even before their race or sex. A good book to read about unconscious bias and how we make decisions is 'Blink: the power of thinking without thinking' by Malcolm Gladwell.

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Generally, I think the tax profession is a great place to work. It is modern and progressive, encouraging of women and has traditionally been a place for social mobility with partners coming through from both the state school system and from HMRC. Today, firms are actively trying to get a more diverse population. Apprenticeships and A-level trainees are some of the ways that they are trying to break down class and social barriers. The larger accountancy firms have great LGBT support groups, and accountancy firms get good placings in the *Sunday Times* 100 Best Employer lists.

However, having worked in recruitment for the last 23 years, I have seen things that in hindsight I wish I had made a more active stand against. It started with friends from Asian families, who changed their names by deed poll to ensure that their graduate applications would be given the same consideration as their white British counterparts. In the late 1990s, working as a junior recruiter, I had a client who was a partner in a law firm who used to say to me: 'They have an Indian sounding name – are they fully anglicised?' The candidate in question went to Eton and was at the time working for the Queen's own law firm. The same client asked me if a woman in her 50s was overweight and would be able to manage their stairs; and if a woman in her 30s was married as he thought she would be trying for children. In both cases, I politely explained why he couldn't ask these things and that I had put forward people who I thought were genuinely brilliant at their jobs. I was hugely relieved when I moved to Yorkshire and no longer had to deal with him.

Institutional racism exists in Britain; we may think it doesn't but it does. Think about the most senior tier of people in your company. How many of them are male, over six feet tall and white British?

After that, I sometimes sent out CVs with the names of the candidates blanked out. While some candidates asked me to do this for reasons of confidentiality, I started doing it when I thought it might prevent a candidate from being at a disadvantage; for example, where a candidate had a traditionally Nigerian sounding name. It is an unpalatable truth that a candidate with an African sounding name – no matter how good their experience and qualifications – is less likely to get an interview than a candidate with name that sounds British. People don't do it intentionally, but they literally read the CV differently.

So what do I think? I think things have got better in Britain in 2020. We now have laws that mean we don't disclose birthdates on CVs or anything that might overtly point to someone's sexuality. Employers can't ask candidates or recruiters if someone is married or might be planning a family. Our employers are publishing their gender pay gap figures and more recently statistics about their racial mix. But remember that under the 2011 UK census for England and Wales in 2011, 86% of the UK population is counted as white, 7.5% Asian, 3.3% Black ethnic, 2.2% mixed ethnic groups and 1.0% other ethnic groups. Consider whether your company is representative of this mix. In the tax profession, we are educated and privileged, analysing information and legislation as part of those roles. We need to use those same skills to look inwardly.

Georgiana Head is director of Georgiana Head Tax Recruitment.

Many forms of discrimination

Dipti Thakrar reminds us that colour prejudices are not the only discrimination that we face

From a young age, I was told that the biggest challenge to be faced in my career would be racism. I was told that my colour would impact my career, and I would face obstacles at every step of the way. This was not true for me. I worked in temporary jobs in small companies in Leicester all the way from 18 to 22, when I got my graduate position with KPMG, and I never experienced outward racism. I was treated with respect, worked hard, took instructions well and delivered. I was judged on my work ethics, so I relaxed – my colour did not impact my career then or now. Once I am invited to a worktable, I am judged on my craft not my colour, and I thank all the companies I have worked at for this.

At school, I was guided by two white teachers who formed the foundations of my ambitions. Both encouraged me to continue studying. One teacher came home to meet my father, who did not see the point of college and thought that as a woman, it should be enough for me to work in his shop. Without teachers such as these, people from non-professional backgrounds do not know how to navigate into the professional world.

The challenges that I have faced at work have arisen when colleagues have not taken care to understand my culture. Racism is very subliminal in the professional world. An individual should feel comfortable about their culture and be able to talk about it to their colleagues. I am not asking for businesses to issue an encyclopaedia on cultural differences, rather that people should increase their own awareness to understand their colleagues.

My biggest career challenge came after my pregnancies and maternity leaves. When I saw the blue line on the pregnancy test (the first of four children), it was the happiest day of my life. But I was also quite sad and told my husband that now I would never be a tax director for a large company or a partner in a big four firm. I had no role models of women in senior tax roles to look up to. Fifteen years later, I wish I'd had more faith in my own capabilities.

Before my first child, I was aiming for a leadership career in tax with the full support of the senior team. At my next appraisal 18 months later, I was told that was no longer possible as there were no places for career advancement at that time. I started to think about the key attributes of a tax director and partner position, and had hundreds of conversations with people at all levels in the tax world. I realised I wanted to:

- be a good leader;
- have a connected and valuable network;
- be a creative team player;
- be hugely collaborative in the workforce;
- understand my business and give excellent commercial tax advice;
- have an excellent salary; AND
- have the title of tax director or partner.

I had no role models of women in senior tax roles to look up to. Fifteen years later, I wish I'd had more faith in my own abilities.

I achieved all the above but did not get the title. I had to re-evaluate my career. Having children meant that I was not able to be a traditional leader, so I became something different. I have the freedom to work my hours, attend events and add value in and out of work. I get requests for my opinions on job roles, candidate searches, technical papers and senior interview preps, among other things.

Many recruiters stopped calling me after I mentioned I wanted a part time, flexible senior role. The feedback was that CFOs believed tax cannot be delivered by someone working flexibly and from home. My reply was always the same: please give my CV to the CFO and I will sell myself when I get to the interview. Two CFOs have offered me a job within 20 minutes of my interview, convinced that I could work from home and will not let them down.

Early in my career, a very senior manager gave me some great tips. He said that being a woman and coloured will not impact you. However, what you do with the knowledge you learn and how you use it will. Find something you are good at and make it work for you. Know your strengths. Then ask yourself: am I good at this and does it make me happy?

If you choose to have children in your career, keeping an open dialogue with work and your partner is particularly important. It will allow you to plan your return to work after your children. Talk to other people who have taken career breaks. I found the return to work after my first two children very hard. Looking back, I feel I took on too much as I wanted both my senior tax role and to be the primary career for my children. When I was forced to decide, I chose my children.

Take opportunities to talk about yourself if you are asked to introduce yourself in the meeting. Say something personal about yourself and perhaps about your culture. If you feel safe, find a way to communicate your boundaries, especially those you are unable to move. It is not your organisation's responsibility to research your culture but it is your responsibility to tell your organisation what is non-negotiable. Do not allow anyone to disrespect you, whether it's a small joke or a little comment made in a meeting. If it makes you uncomfortable, call it out and be confident to say why you feel this is an inappropriate comment.

Organisations should ensure that a diverse selection of CVs are always presented for review and Group HR departments should call managers up when this is not happening. Perhaps approaching smaller, more bespoke recruitment firms can help expand the diversity of the CVs coming in.

Organisations wishing for diversity at all levels should network and sell their business in diverse communities and cultures, encouraging talent to flow from communities who would not originally apply to them. If we want to see diversity at senior levels, then we MUST support the education and growth of diverse talent from early years. For example, could organisations offer more scholarships or paid placements to people in poorer communities who do not receive the same quality of education as others?

Finally, organisation should have safe places allowing people to raise their fears and anxieties. These should be clearly signposted so people know where to go if there are issues and problems with understanding cultural, gender and other diversity concerns. This will help employees and their stakeholders to create diversity and create more role models for the next generation.

Dipti Thakrar is an experienced Head of Group Tax with a demonstrated history of working in industry. She actively runs the London Transfer Pricing in industry group, is on the London Women In Tax committee and co-chairs/runs the East Midlands WIT Branch.

The tax system of the future

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Bill Dodwell examines the ten-year Tax Administration Strategy set out by the Treasury and HMRC

PROFILE

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

On 21 July, the Treasury and HMRC published a ten-year Tax Administration Strategy (see bit.ly/31b47QI), introduced by the Financial Secretary to the Treasury.

The document 'sets the government's vision for the future of tax administration in the United Kingdom, designed to improve its resilience, effectiveness and support for taxpayers'. Inevitably, there is mention of how well HMRC has responded in making the various Covid-19 payments, but it has been a struggle to get data from older systems. Ministers have been clear that systems limitations – rather than policy limitations – have meant that they could not provide support to everyone who has lost significant income due to the pandemic.

Importantly, the introduction notes that: 'This is a ten-year strategy. The government's ambition over the next few years is to make substantive progress, but also to lay the foundations for further reforms in the period to 2030.' This is clearly correct for a vision of this scale – and it flags the need for HMRC to receive the necessary capital investment in hardware and software to deliver the strategy.

Finally, the document sets out a roadmap for the extension of Making Tax Digital and opens up a wider conversation on longer term reforms to the tax administration system.

Key recommendations

The UK tax system of the future will be focused on real-time information, rather than the substantially delayed reporting of the past. This should allow the government to assess changes to the real economy of businesses and individuals, at small or large scale, as those changes are happening. The UK version of real-time information seems to be summarised information, rather than the invoice-level data that systems in Russia, Brazil and Spain seek. This sounds far more effective and achievable than the gigantic data warehouses now expanding in those three countries. It's thus inevitable that Making Tax Digital will be a part of this – although the document emphasises that no decisions have been taken on corporation tax.

One important section formed the key recommendation of a report from the Office of Tax Simplification last October. Our Reporting and Paying Tax scoping report (see bit.ly/3j1dOHB) focused on the need to substantially improve the functionality of the Personal Tax Account – and merge it with the Business Tax Account. As the proud holder of both accounts, I can confirm that they don't talk to each other, which means that taxpayers receiving two or more forms of income (employment, self-employment and rental) will find it hard to understand their overall tax position.

This report now states: 'Taxpayers should be able to view their tax position and tell HMRC anything it needs to know through a single online account.' Clearly, this will take some time to achieve, not least because the Business Tax Account sits on different (and older) HMRC systems than the Personal Tax Account, but it has to be the right way to go.

Having a unified single account opens up the way for HMRC to get additional third-party data. There's some evidence that many higher rate taxpayers do not claim the higher rate relief due on pension contributions and on Gift Aid payments. If, for example, pension providers and charities gave HMRC the relevant information every month, tagged with the individual's National Insurance number, the system could give the tax relief due automatically.

There's another reference to a concept covered in several OTS reports: timely payment of tax. We have found that many lower and middle income self-employed people want to pay their tax much more frequently than twice a year. The strategy talks about 'exploring appropriate timing and frequency for the payment of different taxes, and the technology infrastructure needed to support that'.

Call for Evidence

The final area covered in the strategy document covers the need to reform the tax administration framework – both the law and its operation. HMRC will launch a Call for Evidence later in the year to help identify the range of potential reforms. This is likely to cover:

- how taxpayers are identified and registered by HMRC;
- how tax liabilities are identified, amended and assessed;
- the obligations on HMRC and taxpayers;
- penalties and sanctions for failing to comply with obligations; and
- taxpayers' rights and safeguards, including appeals and dispute-handling.

Most importantly, the strategy document acknowledges that we all have a part to play in delivering the vision.

'HMRC will involve taxpayers, agents and software providers in taking forward this vision, and work closely with representative bodies, including the Office of Tax Simplification, in developing the elements. This open and consultative approach will also recognise public concerns for the need for proper constraints and safeguards over HMRC powers. It supports and extends HMRC's vision to be a trusted, modern tax and customs department, and ultimately, it has the potential to yield huge benefits for us all, both individually and collectively.'

We should all take up the invitation to work collectively and collaboratively to deliver the tax system and tax authority of the future.

Are you selling a business?

Neil Warren considers some practical issues with the transfer of a going concern rules that can often produce difficult challenges for advisers

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KEY POINTS

- **What is the issue?**
Many factors need to be considered to decide if a deal relates to the sale of a business. Important conditions must be met by buyers and sellers for a TOGC to apply for VAT purposes. There are extra requirements if property is involved in the deal.
- **What does it mean to me?**
Buyers need to ensure they are not incorrectly charged VAT by a seller. Input tax cannot be claimed on incorrectly charged VAT. This could leave the buyer with a large irrecoverable VAT bill and problems with HMRC.
- **What can I take away?**
A buyer must also obtain information from the seller about any outstanding capital goods scheme adjustments. The buyer will be responsible for carrying out the remaining annual adjustments after the deal has taken place.

There are probably few subjects in the world of VAT that cause as many headaches as the transfer of a going concern (TOGC) rules. Is a business being sold or just individual assets? And if a business is being sold, do the buyers and sellers both meet the necessary conditions to avoid a VAT charge; i.e. is the supply outside the scope of VAT as a supply of neither goods nor services?

In this article, I will share some practical quirks of the TOGC rules and highlight various pitfalls that it is important to consider.

Business or assets?

The starting point with any business sale is that there must be a flow of income or expected income that is being transferred from the seller to a buyer. Think about a long-established restaurant, which has built up a strong reputation for serving high quality food. The deal to sell the business will usually mean that the buyer will purchase all stock and fixed assets, and retain existing employees, making an extra payment for goodwill.

To qualify as a TOGC, with no VAT charged on the proceeds, there are important conditions that must be met. See **Box 1: What are the key conditions for a TOGC to apply?**

I am often asked whether a charge for goodwill is an essential feature of a TOGC. The answer is 'no': a goodwill payment is an indicator of a business sale but not conclusive. For example, a loss-making business is still a business but there will probably be no value or payment for goodwill.

VAT registration

Imagine the following situation: a business sale is imminent but the buyer's VAT registration number has not been issued by HMRC. Does this mean that the TOGC will fail and VAT must be charged on the deal? This is where the phrase 'registered or required to be registered' becomes important.

A quirk with the VAT registration rules is that the buyer must treat the previous 12 month's taxable turnover of the seller as if it were his own (Value Added Tax Act 1994 s 49(1)). This usually means that the buyer must register for VAT from the day he takes over the business if the seller's taxable turnover exceeded the annual £85,000 registration threshold. The buyer is therefore liable to register for VAT and has passed the TOGC condition, despite the absence of a VAT number at the time of the deal. However, if the seller's annual taxable turnover is less than £85,000, there is a problem (see HMRC Notice 700/9 para 2.2.4).

Input tax

What would be the situation if the buyer paid VAT to the seller when it should have been outside the scope of VAT as a TOGC and the buyer has claimed input tax on his VAT return? The answer is that HMRC would disallow the claim because input tax can only be claimed on correctly charged VAT. The buyer must revert to the seller for a VAT credit.

However, what happens if the seller cannot be found because he has left the UK

BOX 1: WHAT ARE THE KEY CONDITIONS FOR A TOGC TO APPLY?

- The same type of business must be carried on by the buyer as the seller when he takes over the business.
- If the seller was VAT registered, the buyer must also be registered or required to be registered at the time of the deal.
- There should be no significant break in trading when the new owner takes over the business.
- There must not be consecutive transfers of the same business.
- In cases where part of a business is being sold, it must be capable of separate operation from the main business.

HMRC Notice 700/9 para 1.4

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EXAMPLE 1: SALE OF FLORIST BUSINESS – PROPERTY QUIRK

Jane is selling her VAT registered florist business to Sue. The deal includes the freehold of her shop that was built two years ago, and also fixtures and fittings, stock and goodwill.

If Sue fails to make an option to tax election on the building, the property part of the deal will fail a TOGC condition and be subject to 20% VAT. This is because the building is still classed as new (less than three years old) and is standard rated by statute. The other elements of the deal can still qualify as a TOGC, subject to the usual rules.

VAT Notice 742A para 11.2

EXAMPLE 2: CAPITAL GOODS SCHEME: NIGHT CLUB TO CASINO

Mike purchased a night club business as a TOGC from Steve in November 2019. The deal included the freehold of a property which Steve bought in January 2016 for £2 million plus VAT.

The building is therefore subject to annual CGS adjustments until 2026 because the purchase price exceeded £250,000 excluding VAT. Mike must continue to make the adjustments after he takes over the business.

This is not a problem if he continues to trade as a fully taxable night club because the annual adjustments will be nil. However, it would be a problem if he changed the use of the building to a business that makes some or all exempt supplies; e.g. a casino. The annual adjustments will now produce an input tax clawback until 2026.

and emigrated to Spain? There is a potential get-out-of-jail card: as long as HMRC is ‘wholly satisfied’ that the seller has declared and paid the output tax, it will exceptionally allow the buyer’s input tax claim under ‘care and management of the Revenue’ (see HMRC VAT Manual VTOGC4150).

Legal entity issues

Imagine the following scenario: Bill and Ben Ltd rents The White Hart pub from a brewery and the company has agreed to buy the freehold for £500,000. However, the brewery will charge 20% VAT because of an option to tax election it made on the building. Is this correct?

The TOGC rules fail here and VAT must be charged: this is because Bill and Ben Ltd will not be carrying on the same type of business as the brewery. The brewery’s income is from ‘rent’ that will cease when Bill and Ben Ltd buys the freehold. However, a potential solution is available which makes commercial sense because it keeps the property asset out of the trading business, as set out below:

- Directors Bill and Ben could buy the pub in a separate legal entity, say a partnership.
- The partnership must register for VAT and also opt to tax the property before it is transferred. This is an extra condition of the TOGC rules: if the seller has opted to tax a property, the buyer must also opt as well before the deal takes place. The buyers must also confirm to the seller that the option to tax election will not be disapplied. (See below for information on anti-avoidance legislation.)
- The partnership will rent the building to Bill and Ben Ltd at a market rate, so it will have the same income flow as the brewery. It therefore meets the ‘same type of business’ condition of a TOGC.
- The TOGC conditions have been fully met, so the sale will be for £500,000 and no VAT. This produces an important saving of stamp duty land tax, which is charged on the VAT inclusive price of a property sale.

New building is sold

There is one other situation when a buyer must make an option to tax election on a property, even if it has not been made by a seller. This is where a TOGC involves a freehold property which is less than three years old; i.e. it is still classed as new for VAT purposes. See **Example 1: Sale of florist business – property quirk.**

Anti-avoidance legislation

The reason that the Bill and Ben Ltd arrangement is acceptable VAT planning is because a pub trades as a fully taxable business with no input tax restriction. However, anti-avoidance legislation (VAT Notice 742A s 13) would prevent this route if three conditions apply:

- The landlord buying the property and tenant renting it are connected to each other (Corporation Tax Act 2010 s 1122).
- The tenant has less than 80% taxable supplies; i.e. where an input tax block would apply.
- The property would come within the capital goods scheme; i.e. the selling price is more than £250,000 excluding VAT.

If the above conditions apply, the buyer’s option to tax election with HMRC is disapplied, so the rental income will still be exempt from VAT; i.e. preventing an input tax claim on the purchase of the building and other costs.

The reason for the anti-avoidance rules is very logical: it prevents an exempt business from buying a property in a connected business and claiming a lot of input tax on the purchase of the building, only drip-feeding output tax to the tenant when rent is charged in the future.

Capital goods scheme

Never underestimate the power of the nation’s favourite tax to produce an unexpected quirk – in footballing terms, the last-minute winning goal against the run of play. A quirk of the TOGC rules, often forgotten, is that the buyer of a business takes over any remaining capital goods scheme (CGS) intervals of the seller. See **Example 2: Capital goods scheme: Night club to casino.**

The quirk with the CGS is that a business might have to repay input tax that it has not claimed in the first place. This is an unusual outcome. However, the commercial reality is that the rules will only be relevant if exempt supplies are involved in the equation.

Final tips

Here are two final tips:

- Buyers should not be tempted to keep the seller’s VAT number. This route, often known as a VAT68 procedure, means that the buyer is liable for any errors made by the seller on their VAT returns for the previous four years.
- When considering whether a TOGC applies, always look at the bigger picture of the deal to decide if a business is being sold rather than individual assets. Most importantly, don’t waste time writing to HMRC for a ruling if you’re unsure. It will refuse the request and instead refer you to its extensive published guidance.

A digital single window

Daisy Ogembo considers the taxation of platform workers and the viability of an EU digital single window for income data

KEY POINTS

- **What is the issue?**
Platform work includes localised gig work, such as taxi and food delivery services provided through platforms like Uber and Deliveroo, as well as web-based platform work such as graphic design and data entry through platforms like Fiverr and Upwork.
- **What does it mean for me?**
Income earned through gig platforms, letting platforms and other digital intermediaries presents new challenges for taxation. There is a real risk that a significant amount of platform work is not fully taxed, and that platform workers are not adequately covered by social security systems.
- **What can I take away?**
This article discusses the challenges connected with the taxation of web-based services and assesses the viability of the national initiatives of Denmark, Estonia and France to obtain data on platform users' earnings directly from platform companies into an EU-level 'digital single window'.

Platform work has been defined by EU-OSHA, the European Agency for Health and Safety at Work, as 'all labour provided through, on, or mediated by platforms, and which features a wide array of standard and non-standard working arrangements/relationships' (see bit.ly/3f66gAZ). The *Cambridge Dictionary* defines 'gig-economy' as 'a way of working that is based on people having temporary jobs or doing separate pieces of work, each paid separately, rather than working for an employer'. Platform work includes localised gig work, such as taxi and food delivery services provided through platforms like Uber and Deliveroo, as well as web-based platform work such as graphic design and data entry through platforms like Fiverr and Upwork.

It is difficult to estimate the size of the platform economy for various reasons, including the fact that it is often a source of secondary income and the income earned is not consistently reported to tax authorities. According to some estimates, the gig economy – comprising crowd funding, asset sharing, transport, on-demand household services and on-demand professional services – in the European Union alone generated €3.6 billion in revenue in 2015, while online outsourcing was projected to grow to $4.8 billion in 2016 (see bit.ly/39Ap0HH).

Taxation and social security protection challenges

There is a real risk that a significant amount of platform work is not fully taxed, and that platform workers are not adequately covered by social security systems, with future adverse consequences both to individuals and public finances. Part of the difficulty in taxing and extending social security coverage to platform workers stems from their employment status. In most, but not all, instances, platform workers are classified as self-employed contractors. (For the purposes of this article, I assume that the vast majority of platform workers are regarded as self-employed under the law. However, this assumption is limited because of the diversity of employment categories in various countries.) The self-employed tend to be significantly less tax compliant than employees whose salaries and wages are subject to an employer withholding scheme, a fact that is well-documented in tax evasion

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literature. Employees are more likely to be liable for a higher level of security costs (with entitlement to higher benefits) than self-employed individuals – although this varies by country.

Non-compliance by the self-employed is often a result of a combination of factors, including high compliance costs and inadvertent underreporting. The self-employed often have little tax knowledge, struggle to navigate complex compliance rules, and may not be able to afford compliance costs such as the cost of a qualified accountant or tax advisor. They also have an increased opportunity for outright evasion because they can more easily under-declare their income, exaggerate their deductible expenses, or operate wholly in the shadow economy.

In addition to these general challenges, tax and social security compliance by platform workers is complicated by the fact that they are often involved in multiple simultaneous engagements, possibly on different terms, and therefore may have different employment statuses even within one country. Platform workers can, moreover, provide their services in multiple jurisdictions, thereby earning income that may be taxable in more than one state, and subject to different rules on deductibility of expenses in those jurisdictions.

A further complication arises when one attempts to apply a progressive income tax to platform income earners, even within a jurisdiction, and more so across borders. Finally, in the EU, these complexities are compounded by the fact that the companies operating the platforms are often based outside the Union.

Thus, the proliferation of platform work and other types of platform income pose significant revenue mobilisation challenges for tax and social contribution agencies and, if improperly managed, could contribute to an increase in the shadow economy. Non-compliance could also result in an unfair competitive advantage for firms utilising platform work and platform-based models of providing accommodation and other services. Moreover, '[i]f a sizeable segment of the population does not pay social contributions or insurance and underpays on tax and pensions, this will eventually negatively impact the ability of national social protection systems to provide public goods and social benefits, while the demand for those benefits will increase' (see bit.ly/3jP6xvr).

Viability of an EU-level reporting system

To address these challenges, some EU member states have embarked on domestic initiatives to obtain data on platform users' earnings directly from the platform companies. For instance, Denmark's Ministry of Taxation (SKAT) is developing an application programming interface (API) through which platforms can report data directly into its systems – a technologically sophisticated mandatory automated income reporting system, the technology of which could be later shared with other member states.

Estonia operates a voluntary semi-automated system whereby platforms share income data with the tax agency (ECTB) digitally via email. Unlike the Danish fully automated system that has only been tested in pilot projects, the Estonian semi-automated system has been operational since 2017. In France, the data reporting system has only just been legislated but the aims of its new legislation appear ambitious and cover taxation as well as social security coverage of platform workers. Other EU member states have also taken steps in this direction; for instance, the Office of Tax Simplification has recommended that government should consider plans in the UK for a potential 'system equivalent to PAYE for self-employed platform workers (without affecting their employment status)' (see bit.ly/3jQgf0H). Its October 2019 report on 'Reporting and paying tax' looked in more detail at the opportunity to help self-employed people through third party reporting (see bit.ly/3fQklxg).

Are there benefits of scaling up existing domestic initiatives such as those in Estonia, Denmark and France, and developing not only common rules, but an EU-wide income reporting system (a 'digital single window')? There are good arguments in favour of doing so. First, collecting income data from foreign platforms without a registered presence or permanent establishment in the country is likely to be a significant hurdle for all the member states. With a digital single window, member states can pool their power and clout to exert pressure on foreign platforms to comply with an EU-wide requirement.

Second, developing a sophisticated automated API-based reporting solution that presents low compliance and maintenance costs is an expensive venture. While the cost and technology may be within the reach of higher income-earning member states like Denmark, it may not be easily affordable or accessible for some other member states. A digital single window would allow member states to pool their financial and technical resources for a more cost-effective system.

Third, some countries are already at advanced stages of designing different income reporting systems and it is likely that other member states will begin similar initiatives. While this approach may not

SUMMARY OF DOMESTIC INITIATIVES BY ESTONIA, DENMARK AND FRANCE

	Estonia	Denmark	France
Motivation for creating reporting system	• Facilitating platform work • Simplifying tax and social contribution compliance • Business friendly environment • Open government	• Facilitating platform work • Simplifying tax compliance • Not disadvantaging Danish platforms • Developing a technologically sophisticated system that can be used by all member states and types of platforms	• Reducing tax evasion • Facilitating entrepreneurship • Ensuring collection of social contributions
Reporting system launched	2017	2020	?
Automated vs semi-automated	Semi-automated	Automated	?
Mandatory vs voluntary	Voluntary	Mandatory	Voluntary for social contributions and mandatory for tax purposes
Scope	All platforms	Letting platforms	All platforms
Legislative limits on data	Require legislative amendment for mandatory collection	Mandatory collection permitted by law. No need for user consent	New legislation introduced for mandatory collection
Data points collected	• Universal personal identification code • Income amount	• Income year • Taxpayer identity • Letting location • Income amount	?
Stakeholders	• Platform owners • Platform users	• Platform owners • Platform users	?
Initial investment	Low: semi-automated, integrating easily with existing systems	40 million Danish kroner, comparable to other tax authority development projects	?
Running cost	Low, but could increase if take-up among platforms increases, since it requires some manual labour	Expected to be low, but depends on quality of data submitted by platforms	?

? denotes insufficient data to make an accurate statement

pose a challenge for platforms that operate only domestically, a digital single window would benefit platforms that operate cross-jurisdictionally by saving them from having to use and comply with 28 different reporting systems. Further, a lower compliance cost could encourage the growth of smaller domestic platforms and nudge them towards expanding to other member states without experiencing higher compliance costs. This growth and expansion would benefit innovation in Europe.

In recent developments, on 3 July 2020, the OECD published a document containing model rules that interested jurisdictions can adopt to 'collect information on transactions and income realised by platform sellers, in order to contain the proliferation of different domestic reporting requirements and to facilitate the automatic exchange agreements between such interested jurisdictions' (see bit.ly/307t7Yn). These model rules seem to be geared towards creating a 'network model' where member states collect data from web-based platforms having a permanent establishment or registered office in their jurisdiction and share that data with other member states whose taxpayers use the platforms but do not have such a permanent establishment or registered office.

A more ambitious approach that would address some of the limitations of a network model could be a 'hub and spoke' style digital single window for income data reporting, so termed because its topology resembles a cartwheel. In this set-up, member states would nominate a central agency (the 'hub') to receive income data from all the platforms with users in the member states and forward it to national tax and social security agencies (the 'spokes'), in whatever form they require. Such a model is currently unprecedented in the EU when it comes to taxation.

However, admittedly, there are significant barriers to achieving such an ambitious system in the EU. The most significant barrier remains the lack of harmonisation of income taxation and social security systems in the Union and the fact that income taxation is not an EU competence. Further, if taxpayers' data are being shared more widely or stored more centrally, there is a risk of more frequent or more serious data breaches.

The most workable avenue for the time being may be for each member state to continue developing its own solutions. In time, some data sharing resembling a network model is likely to develop spontaneously between competent authorities under the auspices of existing data sharing arrangements, such as the mandatory Automatic Exchange of Information scheme. Initiatives such as the new OECD Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy will help to drive this forward.

While a hub-and-spoke digital single window would allow the pooling of resources and clout and could simplify compliance, it would require the creation of a new legal basis in EU law – a more distant prospect. It may also be that the network model would eventually lead to a member state serving as a hub, a scenario that may only require amendments to existing tax co-operation and information sharing arrangements rather than new EU legislation.

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Back to basins!

Keith Gordon looks at the First-tier Tribunal's decision on a series of VAT assessments in a fairly typical back-duty investigation into a bathroom fittings company

KEY POINTS

- **What is the issue?**
The company, a bathroom supplier, maintains a list of trusted traders to whom it sometimes delegates excess work. The dispute turned on the nature of the contractual relationships between the parties in those cases where work was so delegated.
- **What does it mean for me?**
Misunderstandings should, of course, be avoided if at all possible. They can cause HMRC enquiries to become more prolonged than necessary and give rise to credibility issues if a different slant on the facts is put forward at a later stage.
- **What can I take away?**
HMRC hopes that time limits will be overlooked by the taxpayer so it will have the opportunity of recovering more tax than is really collectible. Advisers should check all assessments to ensure that time limits have been complied with.

Subject to the usual caveats about making generalisations, tax disputes can typically be divided into two broad categories: those where the facts are clear but the legal consequences of those facts are not; and those where the case raises little by way of legal principle and where the main role of the tribunal is to decide what the facts are. My articles usually focus on the former type of case but, in the interest of balance, this is an example of the latter.

Indeed, the circumstances of this case would make an ideal case study for anyone wishing to look at tax investigations and how they might be finally resolved at a tribunal.

The facts of the case

The case is that of *Marshalls Bathroom Studio Ltd v HMRC* [2020] UKFTT 269 (TC). The case concerned the company's appeal against VAT assessments made for the quarters from that ending February 2012 to that ending November 2015.

The company is family-owned and designs, manufactures, supplies and installs bathrooms. It has been carrying on the business since the 1970s and has on its payroll a team of fitters, plumbers and tilers. However, there are occasions when there is too much work for the installation work to be carried out in-house. Accordingly, the company maintains a list of trusted traders to whom it sometimes delegates the excess work. These trusted traders are not themselves VAT-registered. When work is delegated in this way, the customers are instructed to make payment direct to the independent trader.

The dispute turned on the nature of the contractual relationships between the parties in those cases where work was so delegated.

The company took the view that, in those cases, the company acted solely as an agent on behalf of the independent trader. Accordingly, the company did not account for any output tax on the fees duly paid to the trader. On the other hand, HMRC took the view that the company remained the principal and was therefore liable to account for the output tax on the full price paid by the customer, irrespective of to whom payment had been made.

The company's stance was reinforced by the fact that, on the rare occasions where a customer made a complaint, the company would turn to the relevant independent trader to rectify matters.

The tribunal's decision

The case came before Judge Richard Chapman QC and Tribunal Member Noel Barrett.

They noted, in particular, that the customers considered themselves to be contracting with the company and not with the independent traders. Indeed, the company director gave evidence making it clear that although the traders might be involved in giving pricing quotes to the company at the initial stages of any particular job, the decision as to whether the fitting would be carried out in-house or not would not be taken until a later stage, based upon the availability of in-house staff (or the lack of it). Even more importantly, that decision would be taken by the company and not the customer (who by then had already entered into the contract with the company).

Furthermore, one of those traders made it clear that when his services were required he would attend the showroom, and be told what to do and how much he would be paid for doing it. There was no evidence of any discussion between the trader and the ultimate customer.

For these reasons, the tribunal concluded that the customers contracted exclusively with the company and therefore no part of the payments made could be excluded from the company's turnover. Accordingly, output tax was payable on the full sums paid by the customers, including those paid over to third parties.

Commentary

Ultimately, the case turned on its own facts and there is absolutely no reason why a different outcome could not be achieved in a different case. However, there are still a number of issues worthy of further discussion arising from the tribunal's decision.

The first is that this was a case where the company's advisers had previously communicated to HMRC (and latterly the tribunal) a set of facts which were not consistent with those advocated by the taxpayer (or, in this case, the taxpayer's director). It is assumed that this was a consequence of a misunderstanding by the advisers.

Such misunderstandings should of course be avoided if at all possible. In many cases, they can cause HMRC enquiries to become more prolonged than necessary and give rise to credibility issues if a different slant on the facts is put forward at a later stage. Of course, the tribunal's role is to interpret the facts from the evidence it sees and hears, and it should not be swayed by the fact that a different account had been put forward earlier on in the dispute.

However, this will all depend on how the tribunal assesses the credibility of the witnesses before it. In the present case, the witness (Mr Marshall) was held to have given his evidence 'in a genuine and honest manner' and what he said, whilst inconsistent with what had been argued for by the company's advisers, was entirely consistent with the corroborative documentation. Unfortunately for the company, however, there are no prizes for honesty and Mr Marshall's clear evidence demonstrated that his company had under-declared its VAT liability.

(To contrast, however, there was a case some years ago (*Rice v HMRC* [2014] UKFTT 133 (TC)), where the taxpayer's argument succeeded only because of the contents of the oral evidence given by the taxpayer, whereas the case would have been lost had the tribunal accepted the facts as previously advanced by his accountants in the course of the prior correspondence. (See my article 'Trading Places' in the April 2014 issue of *Tax Adviser*.)

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Furthermore, HMRC's victory was not outright. The assessments under appeal were made on 1 November 2016, although it seems that the officer had previously made an assessment for the February 2012 quarter in February 2016 (i.e. shortly before the expiry of the four-year time limit imposed by the Value Added Tax Act 1994 s 77(1)(a)), in May 2016 for the May 2012 quarter, and in August 2016 for the August 2012 quarter. The evidence in respect of those earlier assessments is not clear but it seems that the officer seems not to have insisted upon those earlier timely assessments and proceeded on the assumption that they had been superseded by assessments made on 1 November 2016.

HMRC hopes the time limits will be overlooked by the taxpayer so it will have the opportunity of recovering more tax than is really collectible.

As the four-year time limit had been breached and because HMRC offered no evidence to suggest that this was a case for an extended time limit (for example, by suggesting deliberate or knowing default), the tribunal allowed the appeals against the assessments for the first three quarters.

Having considered that the remaining assessments were made within the four-year time limit, the tribunal then proceeded to consider whether the assessments (for the quarters up to August 2014) were made within one year of HMRC having received sufficient information to justify the making of the assessments (as per VATA 1994 s 73(6)(b)). (The remaining assessments were timely in any case because of the two-year rule in s 73(6)(a).)

On the facts, the tribunal concluded that this time limit was just satisfied as the knowledge threshold was crossed in November 2015 (i.e. just under a year earlier) upon receipt of a letter answering a number of HMRC's questions. What concerns me, however, is that HMRC's representative put forward the argument that it would have been impossible for HMRC to assess the taxpayer at any time before March 2016. The reason for that date is not immediately clear. However, the tribunal rejected the argument (although it made no difference in the end), pointing out that HMRC had in fact issued an initial assessment in February 2016.

It worries me that HMRC felt able to put forward an argument that was so clearly contradicted by the facts (or, looking at things the other way around, it felt comfortable issuing an assessment as it was approaching a time limit, even though it felt that it did not have enough information at that stage to justify that course of action).

What to do next

This case typifies something which is all too common (but in my view unforgivable). HMRC will often issue assessments in clear breach of statutory time limits, highlighting the loss of tax which it believes has occurred but failing to point out the additional conditions that it needs to satisfy to justify the late assessment. It appears that, in these cases, HMRC hopes that the time limits will be overlooked by the taxpayer and so it will have the opportunity of recovering more tax than is really collectible. Advisers should therefore check all assessments to ensure that time limits have been complied with. In many cases, HMRC will then offer a reason to justify the late assessment but it is my experience that it will often back down in the face of a continued challenge.

In the meantime, the case is a useful reminder that advisers, when corresponding with HMRC, should ensure that they accurately convey the facts about their clients' circumstances and not make assumptions as to what the facts are (as they might be inaccurate, outdated or at least misleading).

Establishing real commercial use

Julie Butler considers the case of *Pensfold Farm*, in which well-maintained business plans could have enabled the use of mixed-use rate of SDLT

KEY POINTS

- **What is the issue?**
When land and a house are bought together and part of the property is non-residential, the whole property is subject to reduced rate SDLT on purchase. If land is simply part of a property's grounds, the whole transaction is subject to the higher residential rates.
- **What does it mean to me?**
HMRC challenged the non-residential classification on Pensfold Farm. Although the tribunal confirmed previous owners had used the land for grazing every year, HMRC won because the company's paperwork was not capable of scrutiny.
- **What can I take away?**
The need to establish commercial use is very important to reduce the SDLT liability, requiring farm business plans, books and records, and tax returns.

Pensfold, a Cayman Islands company, bought a small farm in 2017 with the intention of developing it into an eco-agritourism business. The stamp duty land tax (SDLT) return was submitted, claiming the property was non-residential and that relief from the higher rate was due (Finance Act 2003 Sch 4A para 5B). HMRC enquired into the return with interesting findings that tie into other tribunal decisions.

The First-tier Tribunal's recent ruling on the case of *D Hyman and another v HMRC* [2019] UKFTT 469 is a useful pointer as to how HMRC scrutinises 'mixed use' rates of stamp duty land tax (SDLT) and differentiates between residential use and mixed use classifications, as well as when a commercial rate SDLT might apply.

Another case of *L Myles-Till v HMRC* [2020] UKFTT 127 has provided some further useful guidance. Mrs Myles-Till purchased a residential property with an adjoining grass paddock and assessed the SDLT at the lower rate for mixed use. HMRC argued before the First-tier Tribunal that the paddock was part of the grounds of the residence and that the residential rate of SDLT should apply.

Using the mixed SDLT rate effectively

Historically, farms have survived difficult times by selling off cottages and small parcels of land next to cottages. The mixed rate of SDLT can present an advantage when the land and a house are sold together: where part of a property is non-residential, the whole of the property is subject to a reduced rate of SDLT on sale. If land is simply part of a property's grounds, the whole transaction is subject to the higher residential rates.


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Mrs Myles-Till had filed her SDLT return on the basis that a paddock attached to the property was non-residential, so the reduced rate applied. HMRC challenged this, arguing that the paddock was part of the grounds. Historically, the paddock had been part of a neighbouring farm and was used for agriculture, so there was potential for the more advantageous rate to be used.

The FTT found for HMRC, based on the technical definition of 'grounds', which is not defined in the legislation. The judge commented that it was not enough for the land to be sold with the building, but that its use or 'function' must be considered. The paddock did not have a 'self-standing function' at the time of sale, but was an appendage and so was therefore considered to be part of the grounds. Action could have been taken to ensure that the paddock was used commercially.

In the similar *Hyman* case, Dr Hyman had paid the higher residential rate of SDLT on the property purchase of a farmhouse and 3.5 acres, but subsequently claimed that the property should have been classified as mixed use and that SDLT was therefore due at the lower commercial property rate. As well as a farmhouse, the property purchased consisted of two gardens, a duck pond, barn and meadow with a public bridleway running through it and had been advertised by the estate agent as a residential property with grounds. Therefore the tribunal found that the higher residential rate was due. This case has now been referred to the Upper Tribunal.

Pensfold: the intention of use

In the case of *Pensfold v HMRC* [2020] UKFTT 116, the First-tier Tribunal found that Pensfold had acquired the farm with the intention of setting up a qualifying trade of an eco-agritourism venture. For companies, the highest rate of SDLT (15%) is payable in respect of a residential property costing over £500,000, compared to 5% for a commercial property; however, the normal residential rate is payable if the property cannot be proved to be used for a trade or intended to be used for the trade. Therefore, the trading intention was important and the plans showed that the farm would be available to the public 'on at least 28 days in any calendar year'.

The issues before the *Pensfold* tribunal were:

a) whether relief for non-residential use was due under Finance Act 2003 Sch 4A para 5B;
b) whether the transaction was residential or mixed use (some of the land had been used for grazing for many years); and
c) whether Pensfold had taken reasonable care so as to avoid an inaccuracy penalty.

Pensfold: commercial or non-residential classification

The purchase by Pensfold included a residential property and 27 acres of land. Pensfold's SDLT liability totalled £130,750 on the basis that the purchase was non-residential as it was a farm. HMRC challenged the non-residential classification and sought an additional £206,750 towards the company's SDLT bill. Pensfold claimed non-residential status as the previous owners had a grazing agreement with a neighbouring farm. Statements were given to the tribunal which confirmed that the previous owners had used the land for grazing from April to October every year.

HMRC won at the First-tier Tribunal because the company's paperwork was not robust and capable of scrutiny. Pensfold argued that the grazing agreement was not in place at the time of the purchase, as this would have conflicted with the previous owner's intention of developing rare breeds on the land. Farm business plans are important.

'Reasonable commercial' plans from date of acquisition

On HMRC's assertion that plans must be available on the day of purchase, the tribunal said this did not require 'detailed' plans. The tribunal stated that it would be 'wholly unrealistic' for these to be available so early. The legislation required only 'reasonable commercial' plans to be in place and it seemed to the tribunal that 'clear statements' from Penfold showed this was the case. In tax planning and commercial terms, sadly a large number of farms are purchased without full business plans, let alone 'reasonable commercial' plans as was required to claim the lower relief here.

As to the delay in setting up the business, which HMRC argued was too long, the judge said this was justified by the commercial considerations presented. There was nothing in the legislation that required the project to have begun for it to then qualify for relief. It was important for there to be reasonable plans for its implementation, not that it had been implemented.

The delay to study the land and to draw up detailed plans was not unreasonable. The more substantial delay caused by the enquiry was also reasonable. It could have resulted in much higher tax and penalties so the delay was justified by commercial considerations.

The impact on the rate of SDLT: the brochure

The tribunal concluded that Pensfold met the conditions in para 5B(2) and that the 15% residential rate of SDLT did not apply to the acquisition. The tribunal noted it was not asked to consider whether the relief should be clawed back under para 5H but said this would seem to be the course of action anticipated by the legislation for projects that did not take place.

The tribunal then considered whether the property was mixed use or residential. Pensfold claimed it was mixed use because the land had been subject to a grazing agreement. However, the tribunal found the sales brochure made no mention of the land being used for grazing and, at the time of purchase, it was not being grazed. Therefore, it was wholly residential – on this the Pensfold appeal failed.

Property is determined as mixed use where it does not consist entirely of residential property. Residential property includes 'land that is or forms part of the garden or grounds of a residential building'. HMRC had argued that for SDLT purposes the meadow was available to be used as part of the owner's enjoyment of the house itself and was therefore included as part of the residential property.

Once again, lack of evidence and the brochure are used by HMRC in mixed SDLT cases to defeat the taxpayer. The evidence to support the claim was not available.

Those who prepared the brochure should have thought about tax planning and SDLT. Some might say that is beyond their brief but tax planning eligibility would have been achieved had the simple fact of the historic grazing been mentioned.

No penalty: advice of reputable firm of solicitors

The tribunal said that no penalty was due because the buyer had taken reasonable care to avoid inaccuracy by using a reputable firm of solicitors to complete the return. Pensfold's appeal was won in part, as it did not have to pay penalties. The role of the 'reputable firm of solicitors' to protect clients could be the subject of a whole separate article.

SDLT only applies in England and Northern Ireland. The land transaction tax (LTT) and land and buildings transaction tax (LBTT) apply in Wales and Scotland respectively. The rules for LTT and LBTT are different to those for SDLT.

Some inexperienced professionals fail to ask the correct questions on purchase, which can jeopardise both future risks and stamp duty land tax.

Real commercial use

In the *Pensfold* case, the judgment found in favour of HMRC and stated: 'Land would not constitute grounds to the extent that it is used for a separate, e.g. commercial, purpose. It would not then be occupied with the residence but would be the premises on which a business is conducted.' Even so, 27 acres is a surprising amount of land to count as the grounds of a residence. This is much larger acreage than *Hyman* and *Myles-Till*.

The need to establish commercial use is very important to reduce the SDLT liability and support the claim. The owner requires farm business plans, books and records, tax returns and a genuine desire with evidence to carry on a business. No one is in any doubt that HMRC will continue to study all mixed rate SDLT claims closely and it is important to take proper advice to avoid harsh denial of relief and possible penalties.

For the tax/SDLT adviser helping their client to buy a smallholding or house with land where some SDLT relief is due, it is essential to have **evidence** of the historic non-residential use and the future non-business use through outline business plans for intention. The ultimate safety protection is evidence of commercial use from an early stage. Buying agricultural land is more complicated than simple residential, e.g. water supply, boundaries, etc. Some inexperienced professionals fail to ask the correct questions on purchase which can jeopardise both future risks and, as shown in *Pensfold,* SDLT.

As mentioned, farms have traditionally survived in tough times by selling small parcels of land, especially if they can improve the marriage value of a cottage or house. The owners of some smallholdings that once provided strong income to help with the costs have slipped into non-recording of income as they consider it to be too small. The result of this is the incorrect tax return and no historic evidence for the SDLT. The capital gains tax position on the 27 acres also has to be considered. Although for SDLT it was considered to be part of the grounds, it is very difficult to prove that more than half a hectare qualifies for main residence relief. Such action could disadvantage the purchaser.

It is, however, worth noting that as the residential property threshold has been increased from £125,000 to £500,000 in the Summer Statement until March 2021, there is a 'quirky window of opportunity' for some property with paddocks. Where the choice of the application of residential or mixed use SDLT is marginal for properties of around a certain value, e.g. £1 million, the SDLT bill can be reduced using the residential rate as opposed to the mixed use rate. That might seem impossible but test the calculations – it's true. Even more reason for advisers to check the exact function of the paddocks when submitting SDLT returns!

Many observers have found it amusing that under the SEISS (the self-employed income support scheme), those who have not recorded and declared self-employed income are not eligible for the grant. It can be argued there is a similar observation here, where those with land attached to a house have not declared the income of, say, a grazing licence and so could jeopardise the mixed rate claim. Outline business plans must be prepared from the date of purchase. Non-compliance with tax and grants or subsidies by elderly smallholders could be negative.

Note: The *Pensfold* case has been referred to the Upper Tribunal.

reliable

/rɪˈlʌɪəb(ə)l/

adjective

1. consistently good in quality or performance.

IR35 SHIELD

THE IR35 COMPLIANCE STANDARD

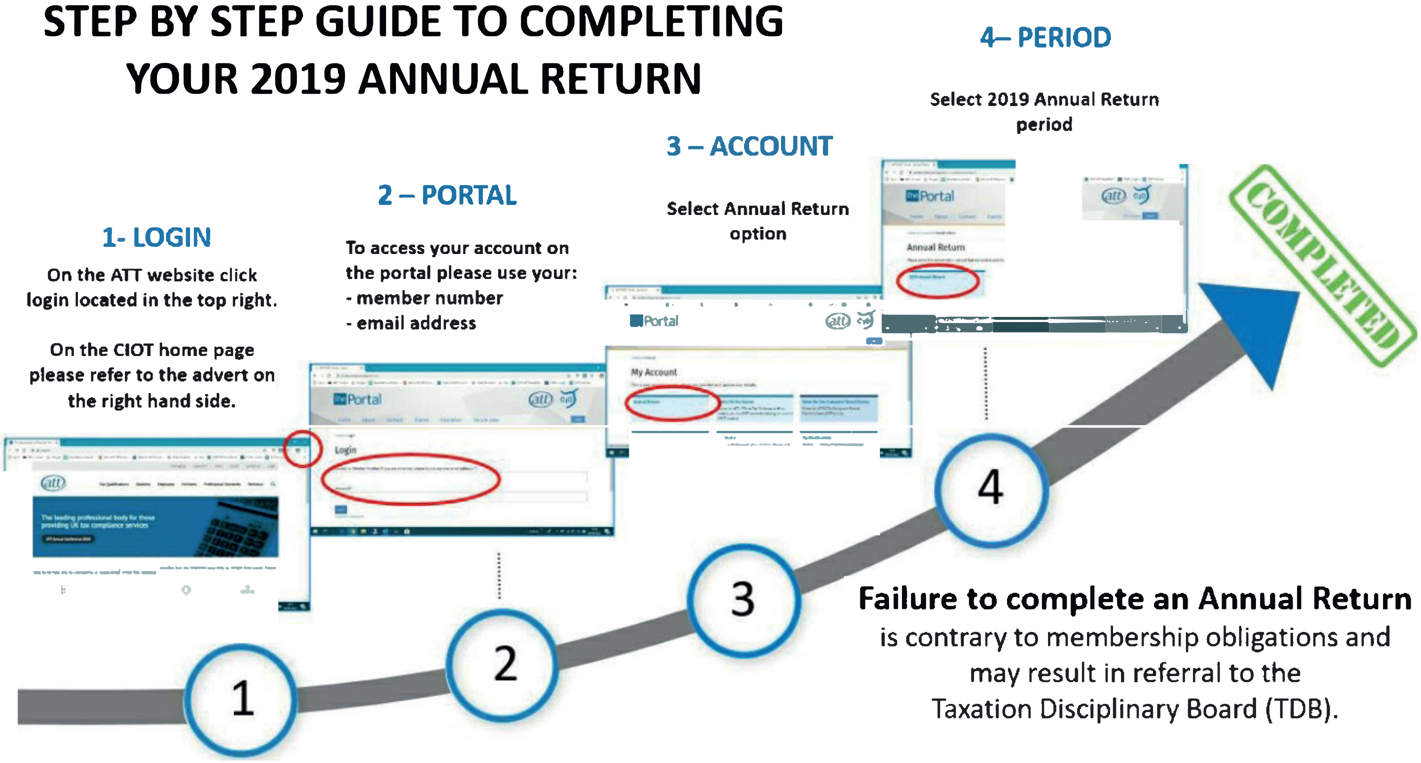
URGENT CHECK YOU HAVE COMPLETED YOUR 2019 ANNUAL RETURN

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.

STEP BY STEP GUIDE TO COMPLETING YOUR 2019 ANNUAL RETURN



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

A knotty problem

Tom Blessington reviews the issues surrounding anti-hybrid legislation and how commercial arrangements may fall within them even without a tax avoidance motive

KEY POINTS

- **What is the issue?**
The breadth and strength of anti-hybrid rules are causing legitimate concern among auditors regarding tax risk and certainty, in particular for US parented groups.
- **What does it mean for me?**
While it is unlikely that normal commercial arrangements will carry significant tax risk, it is important for tax advisers to be able to quantify this risk in internal tax documentation or as part of the statutory audit process.
- **What can I take away?**
Tax advisors who advise UK subsidiaries of US groups should ensure that they are familiar with these rules to ensure that they can recognise and provide advice on potential hybrid transactions that their clients are party to.

Back in July 2017, *Tax Adviser* published an article on the UK's forthcoming anti-hybrid rules. Now the rules have been in force for a few years, it is worth revisiting what a hybrid is and how commercially unremarkable arrangements, without a tax avoidance motivation, may fall within the UK's anti-hybrid legislation. These rules are legislated within Part 6A of the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010).

The breadth and strength of these anti-hybrid rules are causing legitimate concern among auditors regarding tax risk and certainty, in particular for US parented groups. While it is unlikely that normal commercial arrangements will carry significant tax risk, it is important for tax advisers to be able to quantify this risk in internal tax documentation or as part of the statutory audit process.

While the most common tax adjustment arising from the anti-hybrid rules is likely to be the ringfencing of losses, an understanding of how the rules operate in respect of normal commercial arrangements will ensure that both internal and third party auditors are adequately supported.

What is a hybrid?

A tax hybrid is an entity that is governed by the tax legislation of two jurisdictions, which is tax transparent under the tax laws of one jurisdiction and tax opaque under the tax laws of the other. Hybrid entities have, in the past, played an important role in international tax planning, with hybrid entities often being created for the express purpose of exploiting tax arbitrage opportunities.

OECD members raised concerns over tax planning arrangements involving the use of hybrid entities over a decade, culminating in the recommendations in OECD Base Erosion and Profit Shifting (BEPS) Action 2.

In response to BEPS Action 2, the UK repealed its rules regarding tax arbitrage (the old Part 6 of TIOPA 2010) and introduced rules specifically dealing with hybrid entities. These new anti-hybrid rules introduced by the UK are slightly broader than the OECD's recommended measures.

Why are there special rules?

Due to the inconsistency in how hybrid entities are taxed between jurisdictions, it may be possible to create arrangements whereby deductions can be taken for the same expenses in both jurisdictions, or income is subject to little or no tax in either jurisdiction.

Over the years, the exploitation of these inconsistencies has taken a number of forms, including the insertion of hybrid entities into international groups, having hybrids as party to intra-group financial instruments or share lending arrangements involving hybrids.

This systematic exploitation of hybrids has served to reduce international groups' tax bases, much to the displeasure of tax authorities.

Hybrids and situations in which rules can be triggered

There are a number of ways in which a hybrid can be created, with a very common occurrence of hybrids being where either a UK LLP or UK limited company is part of a US group.

Under the US 'default classification' rules, an LLP is automatically deemed to be a tax opaque corporate entity for US purposes due to its members having limited liability. This means that unless a US member of a UK LLP makes an appropriate election, a UK LLP will be a hybrid entity by default (noting that a UK LLP is only tax transparent if it is trading, per ITTOIA 2005 s 863).

The US tax classification of a foreign member of a US group can be changed through the making of an entity classification election on IRS Form 8832. This is commonly known as a 'check the box' election and is typically used to make the taxation of UK entities (e.g. limited companies) consistent with their US equivalent (for UK limited companies this is often LLCs).

At a high level, the effect of the 'check the box' election being made in respect of a UK subsidiary of a US parent is for the UK company to be 'disregarded' (tax transparent) for US purposes. As a result of this, a normal UK company, which is tax opaque under UK law, becomes tax transparent under US law and therefore a hybrid entity.

Most business costs incurred by a trading company will qualify as a tax deduction under both UK and US tax legislation, meaning that the expenses of a UK company subject to a check the box election will be deductible under both UK and US tax law.

This means that this election – perhaps made for administrative simplicity – can lead to a 'double-deduction' that is squarely within the UK's anti-hybrid rules, potentially subject to counteraction.

US statutory auditors are therefore becoming increasingly interested in how UK entities are affected by these rules, and are requesting tax notes that support the UK tax position in respect of the anti-hybrid legislation.

While UK LLPs that have not made elections for US purposes – classified as 'reverse hybrids' by the IRS – can theoretically generate hybrid non-inclusion income, this is significantly less common than UK companies that have made an election to be disregarded entities. For this reason, reverse hybrids have not been considered here.

Legislation and guidance

The rules in TIOPA 2010 Part 6A seek to counteract deduction/non-inclusion mismatches and double deduction mismatches arising from arrangements involving hybrids.

Chapters 3 through Chapters 11 of TIOPA 2010 Part 6A contain rules that counteract the advantages produced by various hybrid mismatch scenarios, with the rules regarding double deduction being found in TIOPA 2010 Part 6A Chapter 9.

HMRC's guidance on the application of the double deduction rules can be found at INTM557000.

It should be borne in mind that the anti-hybrid rules operate alongside other cross border anti-avoidance rules, such as the transfer pricing rules within TIOPA 10 Part 4 and the reporting obligations contained within The International Tax Enforcement (Disclosable Arrangements) Regulations 2020, commonly known as DAC6.

This means that any transaction between an investor and a hybrid will be taxed as if it had taken place on an arm's length basis, and any cross border planning may need to be disclosed before even considering the application of the anti-hybrid rules. This 'triple whammy' of anti-avoidance means that HMRC is likely to enforce the hybrid legislation vigorously, leading to audit concerns over hybrid entities. It may, however, be that there is no material impact of the anti-hybrid rules where hybrids do not give rise to a tax advantage.

The operation of the double deduction rules

The rules in TIOPA 2010 Part 6A Chapter 9 apply when the following three conditions are met:

A. **An amount could be taken as a deduction both against the income of an entity and against the income of an investor in that entity.**
   For a UK company that is disregarded for US tax purposes, any expenditure is relieved at both the UK company level (for UK purposes) and the US parent level (for US purpose). This means that UK companies subject to a check the box election meet this condition.
B. **Either the hybrid entity or an investor in the hybrid entity is within the charge to UK tax.**
   A UK incorporated company is automatically tax resident in the UK. This means that – subject to treaty residence issues – the UK company subject to a check the box election would meet this condition.
C. **The hybrid entity and the investor are related or there is a structured arrangement designed to exploit the hybrid mismatch.**
   In this instance 'related' is defined as being under common control: one party to a transaction owning at least 25% of the other; or both parties to a transaction being at least 25% owned by a third party. While a check the box election does not require a minimum ownership to be made, in practice most US investors in unlisted UK companies are likely to hold at least a 25% interest. However, if an investor does not hold 25% they will be outside of the anti-hybrid rules.

Why the rules often don't apply in practice

When a hybrid meets all three conditions, the UK party (be that the investor or the hybrid entity itself) is subject to the rules that require any double deduction to only be deducted from double included income. Where there is insufficient income to cover the double deduction amount, any excess double deduction is carried forward for relief against future double included income.

For UK companies making taxable profits, the income being generated in any given year is exceeding the deductions (for UK tax purposes at least). The question of whether a double deduction is taking place must therefore be considered at the parent level.

Where the hybrid and the investor do not trade with each other, the double included income is easy to identify: if the profits of the UK company are consolidated into the investor's results, and taxed, then it has been double included.

Where the hybrid and the investor do trade with each other, the question of double inclusion is slightly more complicated because the intercompany revenue 'disappears' on consolidation. In this scenario, the deduction also disappears on consolidation, meaning that no double deduction is occurring in the investor's tax computation.

The position for loss making (or historically loss making) companies is slightly different. As the legislation specifies that 'double deduction' expenses can only be used against double included income, it is not possible for UK based loss making hybrids to actually generate losses; the amount that would be a loss for a non-hybrid is instead ringfenced for use against future double-included income.

The practical effect of this is that a loss making hybrid is not able to get relief for losses in the year through group relief surrenders or carryback. It should be noted, however, that the surrender of losses for group relief may carry penalties for the investor under its domestic tax laws.

Conclusion

While many UK corporate entities that are part of US groups will be hybrids for the purpose of the anti-hybrid legislation, it is likely that they will be subject to limited counteraction. It may therefore be possible to forecast low levels of tax risk inherent in commercial arrangements involving UK members of US groups for the purpose of supporting the group tax position in an audit context.

PROFILE

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AUTUMN VIRTUAL CONFERENCE 2020

Wednesday 9 and Thursday 10 September 2020

Chartered Institute of Taxation
Excellence in Taxation

The Autumn Virtual Conference will offer a range of topical lectures presented by leading tax speakers from the comfort of your own home or the office

Set over two half days the virtual conference will include:
- Conference materials provided in advance
- Opportunities for live delegate questions with all sessions
- Recordings of the sessions will be made available to all delegates afterwards enabling you to enjoy flexible access to all content when it is convenient to you

Wednesday

- Off-payroll working and IR35
  Susan Ball, RSM UK Tax and Accounting Limited
- Principal private residence update and UK residential property capital gains tax compliance
  Meg Saksida, Meganomics
- Panel session: COVID-19 tax measures
  Chaired by Jeremy Coker, ATT President
  Heather Self, Blick Rothenberg
  Helen Thornley, Association of Taxation Technicians
  Sharron West, Low Incomes Tax Reform Group
  HMRC panellist TBC

Thursday

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

Social event

Wednesday 18.30 - 19.15
Quiz night to raise money for Bridge the Gap

We cannot hold our Autumn conference in person this year, but we wanted to offer you a conference social event and raise money for Bridge the Gap, the joint fundraising initiative for Tax Aid and Tax Help for Older People. A £10 minimum donation is required to take part.

Book online at: www.tax.org.uk/avc2020quiz

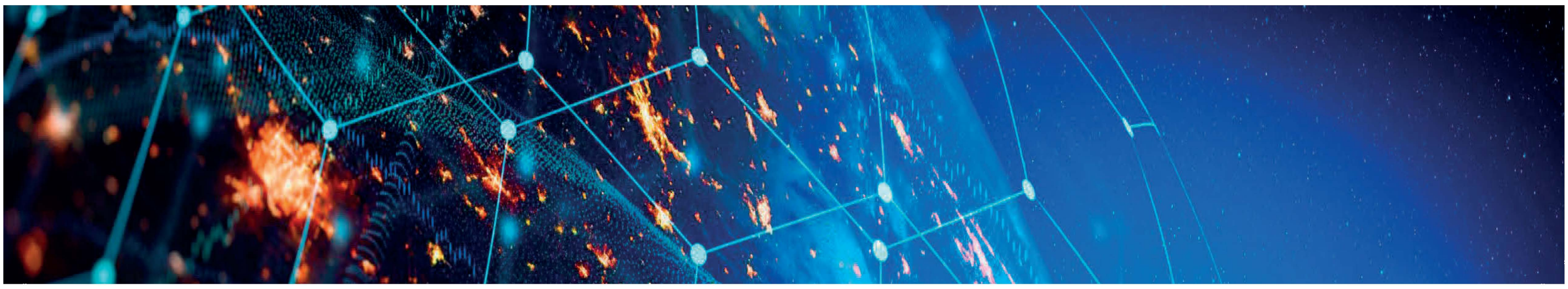
Conference pricing

Full conference (Wednesday and Thursday)
- CIOT/ATT members and students: £195
- Non Members: £265

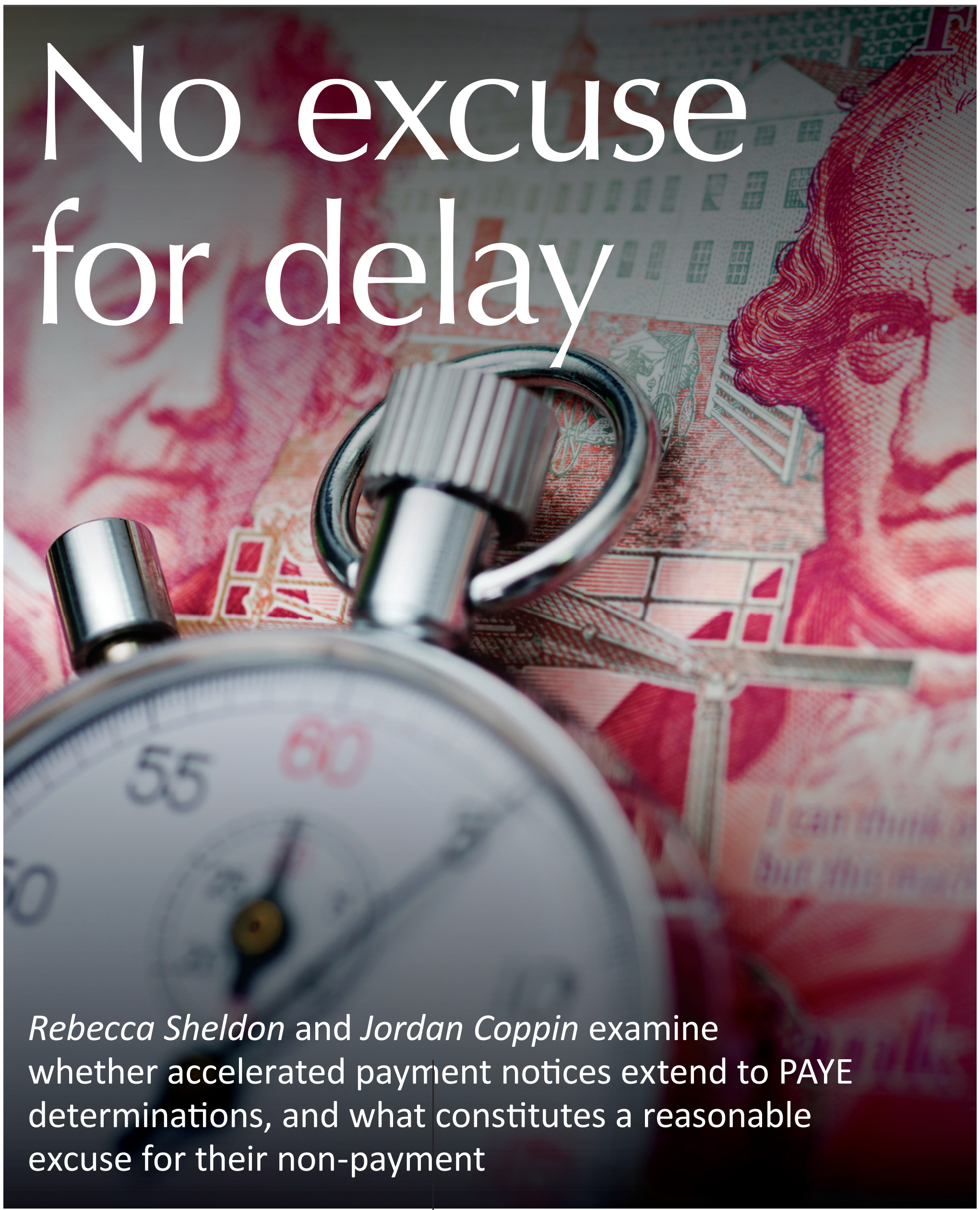
Half day conference (either Wednesday or Thursday)
- CIOT/ATT members and students: £110
- Non Members: £180

If three of more delegates are attending the full conference from the same firm and booking together, there is a £20 discount

Book online at: www.tax.org.uk/avc2020 #CIOTAVC2020



No excuse for delay



Rebecca Sheldon and *Jordan Coppin* examine whether accelerated payment notices extend to PAYE determinations, and what constitutes a reasonable excuse for their non-payment

KEY POINTS

- **What is the issue?**
Sheiling Properties asks whether an accelerated payment notice (APN) can be issued in respect of tax arising from a PAYE determination; and both the interpretation and application of the 'reasonable excuse' defence.
- **What does it mean to me?**
The Upper Tribunal concluded that there was nothing to suggest that a PAYE determination should fall outside the APN regime.
- **What can I take away?**
Rather than challenging validity and refusing to pay, the best course of action in such circumstances may well be to pay the APN and argue the case at a judicial review hearing (although advice should always be taken).

In the case of *Sheiling Properties Ltd v HMRC* [2020] UKUT 175, the Upper Tribunal dismissed an appeal against penalties imposed by HMRC in respect of the non-payment of accelerated payment notices (APNs), finding that a PAYE determination is within the scope of an APN charge.

The tribunal also considered both the interpretation and application of the 'reasonable excuse' defence. It found that although a taxpayer can hold a reasonable excuse for not paying an APN where they have objectively reasonable belief that an APN is procedurally invalid, this was not a reasonable excuse for the failure to pay in this appeal and the FTT's conclusion was not overturned.

The facts of *Sheiling*

In the tax year ending 5 April 2012, Sheiling Properties Ltd made arrangements under which it made payments to two of its directors, in return for which the directors were obliged to subscribe to partly paid shares in the company. These arrangements were notified to HMRC under the Disclosure of Tax Avoidance Scheme regime contained within Finance Act 2004.

On 17 February 2016, HMRC issued a determination that Sheiling owed tax in respect of the payments to the directors. HMRC stated that income tax was owed under Regulation 80 of the Income Tax (PAYE) Regulations 2003, and that NICs were owed under the Social Security Contributions (Transfer of Functions, etc.) Act 1999 s 8. A week later, Sheiling appealed against the determination, and HMRC postponed payment of the tax due.

On 19 July 2016, HMRC issued APNs to the company under Finance Act 2014 s 219, requiring advance payment of the taxes. The first APN required advance payment of PAYE income tax of £118,000; and the second required payment of primary and secondary NICs of £67,452.

On 19 September 2016, Sheiling argued that the conditions in Finance Act 2014 had not been met and refused to pay. HMRC disagreed and demanded the payments due by 9 November 2016. The company did not pay by this date, and had not paid by the FTT hearing in March 2018.

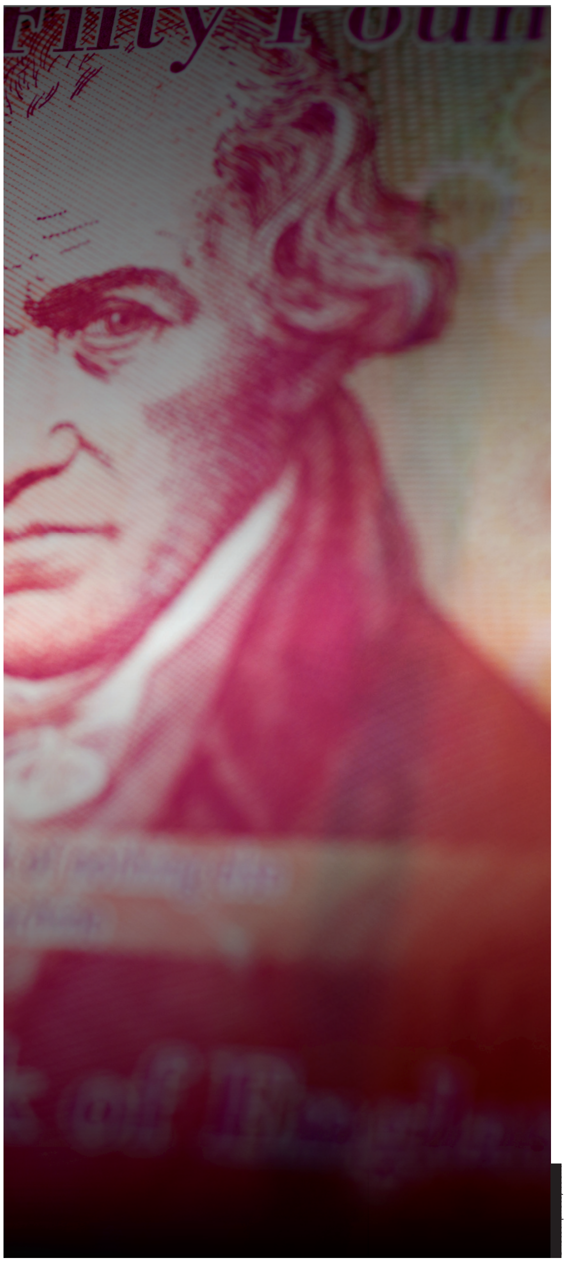
In November 2016, the company and a number of other taxpayers who received similar APNs issued a claim for judicial review challenging the validity of these APNs, on the basis that the statutory conditions for their issue had not been satisfied. (The claim was stayed pending determination of similar proceedings in *Rowe and others v HMRC* [2015] EWHC 223.)

On 22 December 2016, HMRC issued Sheiling with two penalty notices under Finance Act s 226 for non-payment of the APNs. Sheiling appealed these on the grounds that it was involved in the judicial review. However, HMRC upheld its decision on the basis that that Sheiling did not have a reasonable excuse for its failure to pay the contested tax on time, and that no 'special reduction' of the penalty was appropriate. Following non-payment of the tax, on 30 May 2017 HMRC issued Sheiling with two further late payment penalties in relation to the two APNs.

The FTT decision

Sheiling appealed against the penalty notices to the First-tier Tribunal ([2018] UKFTT 247), arguing that:

- it had a 'reasonable excuse' in believing that the APNs were invalid;



PROFILE

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Profile: Rebecca was called in 2017 and practises in all areas of tax law, including matters involving non-residence and domicile, the taxation of trusts, SDLT, VAT, CGT, inheritance tax, corporation tax and the taxation of employees.

- the specific drafting of the term 'disputed tax' meant that the PAYE APN did not result in the tax becoming 'unpostponed', and therefore no penalty could be charged; and
- as a 'penalty date' for the purposes of PAYE due under the respective APN had not yet been set, there could not be a penalty for failure to pay.

The FTT acknowledged that Sheiling genuinely believed it had a good prospect of establishing that the APNs were invalid. However, it did not find that this belief was to a 'sufficiently high degree of certainty' to justify a 'reasonable excuse' for non-payment.

The company's predominant reason for non-payment of the APNs was insufficiency of funds; however, this was not attributable to events outside its control and therefore could not be a reasonable excuse.

Finally, the FTT determined that the penalty remained unpaid 30 days after it was due under TMA 1970 s 55. The FTT dismissed Sheiling's appeal, holding that the taxpayer was liable for the penalties unless the APNs were determined to be unlawful in the related judicial review proceedings.

Upper Tier decision

Sheiling duly appealed to the Upper Tribunal on the grounds that:

- tax arising from a determination under Regulation 80 of the PAYE Regulations could not be 'disputed tax', for the purposes of Finance Act 2014 s 221; and
- the FTT had erred in its interpretation of the 'reasonable excuse' defence in the penalty legislation.

PAYE as a disputed tax

Where HMRC has agreed that tax may be postponed, TMA 1970 s 55(8C) has the effect that when an APN is issued, any postponement ceases in relation to the 'disputed tax' specified in the s 221 notice. Sheiling's case was that tax arising from a determination under Regulation 80 of the PAYE Regulations can never be 'disputed tax' (see para 28). As a result, the tax remains postponed, no penalty date arises, and no penalty can be imposed.

That determination is confined to the 'disputed tax'; and in *Sheiling* is the 'tax arising in consequence of the assessment to tax appealed against'. Sheiling argued that a Regulation 80 determination is not an 'assessment', and that nothing in the APN code extends the definition of disputed tax to cover such determinations, so the disputed tax in relation to the PAYE APN is nil.

In contrast, HMRC submitted that the relevant condition for the issue of an APN is that Sheiling has made a 'tax appeal' in relation to a 'relevant tax', but that appeal has not yet been determined. A 'tax appeal' includes an appeal under TMA 1970 s 31 by virtue of the PAYE Regulations, which include Regulation 80(5).

Reasoning of the Upper Tribunal

The Upper Tribunal agreed with HMRC's analysis, stating: 'We have no hesitation in preferring HMRC's construction of the provisions.'

It stated that the relevant question in relation to s 221(3) is broader than that posited by the taxpayer: 'It is whether income tax sought by a Regulation 80 determination and appealed by the recipient is a "charge to tax arising in consequence of [an] assessment to tax appealed against".'

The Upper Tribunal concluded that PAYE is not a tax, but rather a mechanism for the collection of income tax, collecting tax from the employer which would otherwise fall due to the employee.

Income tax is a relevant tax for the purposes of the APN code, pursuant to Finance Act 2014 ss 200 and 219(2).

Tax sought under a Regulation 80 determination is therefore 'tax' within the meaning of s 221(3). An employer's appeal against a Regulation 80 determination is a 'tax appeal' for APN purposes, and the amount appealed against is 'tax appealed against' within the meaning of s 221(3).

Regulation 80(5) treated the determination as an assessment and met the statutory test within s 221(3). The UT concluded that there was nothing to suggest that a PAYE determination should fall outside the APN regime. Indeed, it stated that in terms of policy it would be surprising if tax charged through a PAYE determination could not be the subject of an APN.

The 'reasonable excuse' defence

Sheiling submitted that the FTT erred in holding that there was no reasonable excuse for non-payment in these circumstances. It held that the FTT erred in its application of *R (Vital Nut) v HMRC* [2017] EWCA Civ 2105 in holding that Sheiling did not have an objectively strong case that the APNs were invalid. Finally, Sheiling held that that the FTT erred in identifying an insufficiency of funds as the 'predominant reason' why it did not pay the APNs, and in holding that Sheiling accordingly did not have a reasonable excuse for non-payment.

The Upper Tribunal held [para 69] that 'invalidity' can arise in two situations: 'substantive invalidity', where the taxpayer believes the APN is not owed by him; and 'procedural invalidity', where the APN has not been issued in compliance with the statutory conditions imposed by Finance Act 2014. The distinction was material to this decision, as substantive invalidity of the APN cannot be a reasonable excuse, following the Court of Appeal in *Beadle v HMRC* [2020] EWCA Civ 652.

In considering whether a belief that an APN is procedurally invalid can be capable of being a reasonable excuse, the Upper Tribunal considered the Parliamentary intent expressed in the APN legislation. It also considered whether the FTT is the correct forum to consider the alleged procedural invalidity of an APN.

The Upper Tribunal concluded that the policy considerations in *Beadle* and other cases to substantive invalidity 'cannot simply be assumed to apply in undiluted form'. It upheld the FTT's decision that it was not impossible for a belief in the likely success of the judicial review proceedings to amount to a reasonable excuse, but did 'not favour some separate test of objective reasonableness', instead following the guidance in *Christine Perrin v HMRC* [2018] UKUT 156 and the guidance it sets out, including whether the APN is 'obviously procedurally invalid, or merely that it is arguable (however strongly) that it is.'

The tribunal should identify precisely what the taxpayer believes and take into account the reason for the alleged procedural invalidity.

Analysis

Sheiling has re-emphasised the importance of taking a purposive approach when interpreting statutory provisions.
The lack of an express reference within Regulation 80(5) to FA 2014 (and vice versa) does not mean that the draftsman sought to exclude their interaction.
The fact that Regulation 80(5) expressly applies to relevant parts of the TMA 1970 is sufficient in drafting terms to bring the tax under a PAYE determination within the APN regime.

This is also an important case in that it further clarifies the meaning of 'reasonable excuse' in this context. Where a tribunal will assess a 'reasonable excuse' regarding an APN's procedural invalidity and objective reasonableness, *Sheiling* confirms that *Perrin* should be followed and that all surrounding facts and circumstances should be taken into account – including the foundation of the taxpayer's belief and any professional advice he has sought.

The tribunal should identify precisely what the taxpayer believes and take into account the reason for the alleged procedural invalidity. Crucially, where the alleged error that has led to the procedural invalidity is not by definition 'gross or obvious', the FTT should not be drawn into a 'mini-trial' requiring detailed submissions by the parties on legal argument – where this is so, it is unlikely that the 'reasonable belief' held by the taxpayer will be 'objectively reasonable'.

The decision has outlined that the best course of action in such circumstances may well be to pay the APN and argue the case at a judicial review hearing. This will avoid a multiplicity of litigation and may also ultimately save the taxpayer expense.

Rebecca Sheldon would like to thank Jordan Coppin for his assistance with this article. Jordan has completed a BSc, an accelerated LLB and recently the BPTC, intending to practice at the Tax Bar.

CHARTERED INSTITUTE OF TAXATION

Chartered Institute of Taxation

Results and prizes — **May 2020 (held in June/July)**

The Chartered Institute of Taxation, the principal body in the United Kingdom concerned solely with taxation, announced on 19 August 2020 the results for the Application and Professional Skills (APS) examination for which the six different options were held between 29 June and 7 July. All other examinations scheduled for May 2020 sadly had to be cancelled due to the COVID-19 pandemic. The Institute accelerated its plan to introduce online exams to enable candidates who had been preparing to sit APS to still do so, using a remotely invigilated system for the first time.

APS was taken by 291 candidates.

The Institute President, Glyn Fullelove, commenting on the results said: "I would like to offer my congratulations to all the candidates who have made progress towards becoming a Chartered Tax Adviser as a result of passing the Application and Professional Skills exam especially in this extraordinary time in both their professional and personal lives.

"64 candidates have now successfully completed all of the CTA examinations and we very much look forward to welcoming them as members of the Institute in the near future. Included in this figure are two candidates who were on the ACA CTA Joint Programme and 16 candidates who have now fully completed the ATT CTA Tax Pathway by passing the CTA element. We will resume holding Admission Ceremonies when guidelines covering such large scale events permit.

"The technology used was new to CIOT and we know it brought its own challenges to some candidates. My thanks go to all candidates who sat the APS exam, including those who were unsuccessful, as you have all helped us develop a new way of taking our examinations. All of those who were unsuccessful at this sitting will be offered a free entry for APS for the November 2020 or May 2021 examinations."

CTA prizes and awards

The Avery Jones Medal for the candidate with the best performance in the Application and Professional Skills Paper.

The medal has been awarded to Jessica Allan of Brentwood who is employed by RSM in London.

The Medals, Prizes and Distinctions are awarded for each examination paper subject to the discretion of Council and the attainment of a satisfactory standard, regardless of whether the examination requirements for membership have been met.

CTA distinctions

Application and Professional Skills: Taxation of Individuals

Andrew Fleming (RSM UK, Guildford)
William Holden (Blick Rothenberg, London)
Shelby Hughes (Smith & Williamson, Southampton)
Kamla Mistry (Mercer & Hole, London)

Application and Professional Skills: Human Capital Taxes

Islam Aliyev (Deloitte LLP, London)
Jessica Allan (RSM UK, London)
Kerry Barker (RSM UK, Reading)
Adam Hedley (Deloitte LLP, London)
Matt Hodgetts (Deloitte LLP, London)
Arun Singh Kundi (Deloitte LLP, London)
Joanna Lord (Deloitte LLP, Birmingham)
Jordan Onraet Wells (Deloitte LLP, London)
Jonathan William Smith (EY, London)
Nicholas Peter Hibgame Wilde (Deloitte LLP, London)

Application and Professional Skills: Taxation of Owner-Managed Businesses

Andrew Cornett (Gildernew & Co, Armagh)

Distinctions are awarded to candidates whose answers reflect an exceptional level in the Application and Professional Skills Paper.

CTA results

In addition to success in the required papers and Computer Based Examinations, the criteria of experience must be satisfied to be eligible for membership of the Institute. The following candidates have met the examination requirements for membership by passing their final written paper in the May 2020 session (sat in June/July).

A
Adamus M (London)
Allan J (Brentwood)
Allen M B (Walsall)
Amico J (Guildford)

B
Baldwin S (Haslemere)
Bell S (Livingston)
Berry R (Salisbury)
Bower S (London)
Bridgwater L (Egham)
Briggs S (Bedford)
Brown D (Melton Mowbray)

C
Clarkson D (Swanley)
Collins A (Bristol)

D
Davoren S (London)
Debiaune T (Bristol)
Doughty I (London)
Drummond J (Holsworthy)
Dyer J E J (Caldicot)

E
Elsden S J (Croydon)

F
Fleming A (Maidenhead)
Ford N (Stockport)

G
Glover B (Holmfirth)
Goddard B (Aldershot)
Golding R (London)
Goss C (Crowborough)

H
Harding J (Houghton Le Spring)
Harrell C L (Birmingham)
Harvey C L (Camberley)

Hawkins M (Edinburgh)
Holden W (London)
Hoskins N A (Bromley)
Hutchison S (Paisley)

J
Jackson F (London)
James C (Stourport-on-Severn)
Jewitt E D (Leeds)

K
Kelland S (Harrow)
Korny J (Hyde)

L
Laidlaw H (Dumfries)
Larvin A (Gateshead)

M
Mccartan A (Newry)
Mcintosh V (Norwich)
Mcivor J (Manchester)
Mills J (London)
Mounielou F (London)
Muhumuza S S (Norwich)

N
Neidle A (London)

O
Oberlaender G (Solihull)
Odah J (Gerrards Cross)
Omole A (London)
Onraet Wells J (Wokingham)

P
Parker J (Cardiff)
Potharatnam A (London)
Potter H (Bournemouth)
Pratley S (Maidenhead)
Puzniak A (Harrow)

R
Rainford A (Exeter)
Riley O (Halifax)
Rodger D (Braintree)
Rome D (Musselburgh)
Rucinska J (Warsaw, Poland)

S
Schwarz A L (Bristol)
Scott L (Banff)
Shabir N (Birmingham)
Smith J W (London)
Smith M (Aberdeen)
Stewart F J (Glasgow)
Stewart J (Salisbury)
Swift J (Shrewsbury)
Swindlehurst J (Manchester)

T
Trewin R (Aberdeen)
Turley J (Belfast)

W
Walker R (Manchester)
Walshe S (London)
Warren H (Bristol)
Webb J (Braintree)
Webber L (Wokingham)
West S (Bristol)
Wheeler J L (Purton)
White E (Nelson)

Z
Zelouf P (London)

The following candidates have met the ACA CTA Joint Programme examination requirements for the Chartered Institute of Taxation and The Institute of Chartered Accountants in England and Wales as a result of the May 2020 (sat in June/July) examination session and are eligible to apply for membership of both bodies subject to meeting the experience requirements.

B
Barnes D (Guildford)

K
King M (Worthing)

Since the last pass list was published in January 2020 the following candidates have completed the ICAEW element of the ACA CTA Joint Programme and are now eligible to apply for membership subject to meeting the experience requirements.

B
Benjamin J (Wembley)
Bird D (London)
Bode P (London)
Braithwaite T (Wakefield)
Brown P (St. Albans)
Burge E I B (London)

C
Cajka S (Bristol)
Cameron J (Tunbridge Wells)
Carpenter J (London)
Chiam Q H (Singapore)

D
Dickenson M (Longney)

G
Gowrisunkur A (London)

H
Hailstone G (North Berwick)

J
Jamnik E (Birmingham)

K
Kemp E (Oxford)
Kneafsey G A (London)

L
Lemon H (Banbury)

N
Nakarja S S (Pinner)

P
Parascandolo T (Nottingham)
Parsons S (Reading)

R
Redhead E (Wirral)
Roper L S (Reading)

T
Trent O B M (London)
Tulley A (London)

Y
York R (Reading)

ASSOCIATION OF TAXATION TECHNICIANS

www.att.org.uk

Results and prizes

May 2020 (held in July)

The Association of Taxation Technicians, the oldest and largest body concerned solely with tax compliance, announced on 19 August 2020 the results for the Paper 4 – Corporate Taxation examination taken by 184 candidates on 3 July 2020. All other examinations scheduled for May 2020 sadly had to be cancelled due to the COVID-19 pandemic. The Association accelerated its plan to introduce online exams so that at least some of the candidates who had been preparing for their exams could still do so in July. The paper was sat via a remotely invigilated system. It was pleasing to see that a high standard of performance was achieved by many candidates.

The Association President, Jeremy Coker, commenting upon the results said: "I am delighted to congratulate all the successful candidates from the summer sitting of Corporate Taxation, especially in this extraordinary time in both their professional and personal lives. 184 candidates sat, 150 passes were achieved with 10 distinctions awarded for outstanding performance. It was the first time that the technology was used and we appreciate that it brought its own particular challenges to some candidates. We thank them, their employers and also our ATT team for being so accommodating.

"I look forward to meeting as many new members as possible at one of our admission ceremonies when it becomes safe to hold these again."

ATT prizes and awards

The Stary Medal

The Stary Medal has been awarded to David John Hunt of Faversham who is employed by Burgess Hodgson LLP in Canterbury. The Stary Medal is awarded to the candidate with the highest mark in Paper 4 – Corporate Taxation.

Prizes and Medals are only awarded provided the papers are of a sufficiently high standard.

Passes with distinction for this Certificate paper are listed at the end of this document.

Distinctions are only awarded to candidates whose answers reflect an exceptional level in a paper.

ATT results

In addition to success in the required Certificate papers and Computer Based Examinations the criteria of experience must be satisfied to be eligible for membership of the Association.

The following candidates have met the examination requirements for membership, either by passing their final Certificate paper(s) in the May 2020 session (sat in July) or by passing their final Computer Based Examination(s), having previously passed the three required Certificate papers (denoted by an *) from 1 January – 31 July 2020.

A

Ackerley B (Selby)*
Adekanmbi T (Croydon)*
Adesina E (Bristol)*
Akbar A (Borehamwood)*
Akhter A (Romford)*
Alatise T (London)
Alexander J (Bedford)*
Armstrong C G (Romford)
Ashraf A (Glasgow)*
Aviles Lopez U (Brighton)*
Azad Z (Chesham)*

B

Badat A (Bolton)*
Bagworth A D (Aberdeen)*
Bain V (Inverness)*
Baldock A (Kingston)*
Baldwin S (Haslemere)*
Baleswaran D (Ilford)*
Bancroft S J (Burton-On-Trent)*
Beale N E (Herne Bay)*
Bhogun-Scott U D (Erith)*
Blackman H (London)*
Bong J (Birmingham)*
Brennan C (Northampton)*
Brindley D (Selby)*
Brown E (Brighton)*
Brown W (Stratford Upon Avon)*
Bukalak A A (Truro)*
Burnside M (Inverness)*

C

Cabrera A (Reading)*
Campbell (Glasgow)*
Carter L (Bishops Stortford)*
Chandler Z (Melksham)*
Chohan D (Rickmansworth)*
Collcutt V (East Grinstead)*
Corcoran A (Bury)*
Cormican K (Milton Keynes)*
Cornelius R (London)*
Coulson L (Bristol)*
Coxhead M E (Warminster)
Crawford R (London)*
Cummings J M (Newcastle Upon Tyne)*

D

D R S K (Bangalore, India)*
Day J M (Bury St. Edmunds)*
Dickson T (Glasgow)*
Ditton J (London)*
Dong C (London)*
Dowling N (Maidenhead)*
Draper J (London)*
Dubey V (Bangalore, India)*
Dudden K (London)*
Dugan C (Morecambe)*

E

Edgar J (Stourbridge)*
Emerson H (Brighton)*
Evans J (Reading)*

F

Fallon Z (London)*
Farrant M (Bury St. Edmunds)*
Fearon D (Manchester)*
Fellows H (Cheltenham)*
Fletcher J (South Croydon)*

G

Gaspani M L (London)*
Grant R (Lannepax, France)*
Gupta S (London)*

H

Habbijam L (Hemel Hempstead)*
Hadfield M (Manchester)*
Hall (Reading)*
Hampson I R (Southampton)*
Hay R (Edinburgh)*
Hedley A (London)*
Hedley D (Bedlington)*
Henry (Manchester)*
Holyoake T (Peterborough)*
Howie C (Edinburgh)*
Hutton M (Douglas, Isle of Man)*

I

Inniss-Grant D (London)*
Isaac J (London)*

J

Jamadar S (Mudhol, India)*
James C (Stourport on Severn)*

K
K S D (Bangalore, India)*
Kearsley J (Swindon)*
Kedzior D N (Southampton)*
Kemp G (South Croydon)*
Kernaghan M L (Belfast)*
Kettle S (London)*
Khanom K (London)*
Khanum J (London)*
King G (Reading)*
Kisel A (West Byfleet)*

L
Lancett A E (Leicester)*
Lee C (Manchester)*
Liddiard S (Coventry)*
Lodge L (Gateshead)*
London-Hill S (London)*
Longney D L (Tewkesbury)*

M
Macdonald J (London)*
Malik F (Bradford)
Marriott D (Chesterfield)*
Matterface H (Westerham)*
Maxwell C (Glasgow)*
Mccallum F P G (Edinburgh)*
Mcclellan E (Manchester)*
Mcclelland A (Norwich)*
Mccolgan S (Craigavon)*
Mccready A P (London)*
Mcdonnell T J (Corby)*
Mckee P (Belfast)*
Mcmurran C S (Belfast)*
Mcnulty D (Kelso)*
Measures L (Chelmsford)*
Mehta P (Bradford)*
Middleton J (Hull)*
Minor S T (Stoke on Trent)*
Mitchell S (Nailsea)*
Moore (London)*
Morgan R (Worcester)*
Moyle L (Truro)*
Mulligan S L (Manchester)*
Mulure L (Preston)*

N
N S (Bangalore, India)*
Neal J (Rochester)*
Neild A R (Chorley)*
Ng Amk (Brighton)*
Norman C (Nottingham)*
Nurjandoa S (Edgware)*

O
Omole A (London)*

P
Palha J (London)*
Parkyn S (Sidmouth)*
Parmar M (Leicester)*
Patel P (Northolt)*
Patel T (London)*
Perkins G (Kettering)
Philip Sagayam Rajaratnam P (Harrow)*
Postlethwaite-Hall R B (Prescot)*
Pourou R (Amersham)*
Pringle P J (Craigavon)*

R
Raju S (Bengaluru, India)*
Ramuz T (Purley)*
Randall S (Reading)*
Ranow B (Beaconsfield)*
Ray P (Lincoln)
Ringland K (Belfast)*
Rodwell T (Walsall)
Royce A (Bristol)*

S
Salih T (London)*
Sappal G (London)*
Seddon A (Liverpool)*
Selleck-Emery A (Chatham)*
Senejko J (Aldershot)*
Shackleton J (York)
Sharkey D A (Southampton)*
Sharpe D (Manchester)*
Sheppard G W (Maidstone)
Skirrow L A (Birmingham)*
Slinn D J (Northampton)*
Smyth E (Harrogate)*
Snape R (Ossett)*
Solovyeva O (Greenthithe)*
Speir T (Leeds)*
Spencer S (Heywood)*
Sritharan S (Sittingbourne)*
Steele H (Watford)*
Stones C (Leigh)*
Sweeney O (Southampton)*
Swords A (Falkirk)*

T
Tigg J (London)*
Torrens J (Belfast)*
Town A (Liverpool)*
Trzasko K (Nottingham)*

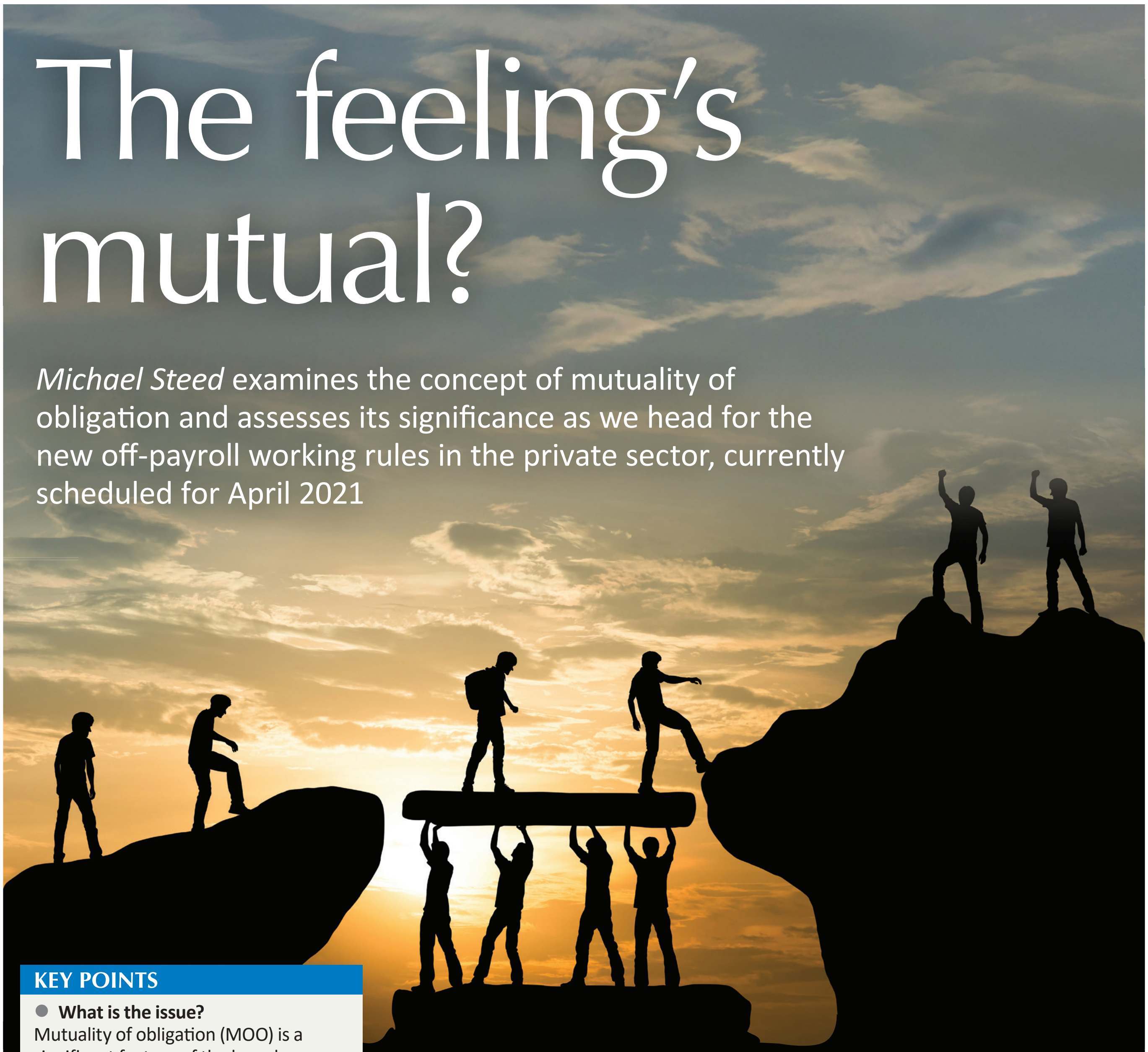
V
Velasquez De Malawo D F (London)*
Verberckmoes K (London)*

W
Walmsley A (Preston)*
Wang L (Guildford)*
Ward H G (Lowestoft)*
Warrington Z I (Rotherham)*
Watts E (Folkestone)
Waude J (Birmingham)*
Webb J (Braintree)*
Weiler M R (London)*
Welsh (Uckfield)*
Whyatt J (Newport Pagnell)*
Wilkinson L G (Whitley Bay)*
Williams R (High Wycombe)*
Wojnowski D (Dalkeith)*
Wong Y T (Brighton)*

Z
Zaman A (Sheffield)*
Zhang H (London)*
Zharova Y (London)*

ATT distinctions

ATT Paper 4 – Corporate Taxation
Arora H (New Delhi, India)
Barraclough B (Newcastle Upon Tyne)
Bramley C (Rugby)
Dalgleish A (London)
Hay A (Wilmslow)
Hunt D (Canterbury)
Rasberry M L (King's Lynn)
Thomas C P (Birmingham)
Turner T (Cambridge)
Watts E (Folkestone)



The feeling's mutual?

Michael Steed examines the concept of mutuality of obligation and assesses its significance as we head for the new off-payroll working rules in the private sector, currently scheduled for April 2021

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KEY POINTS

- **What is the issue?**
Mutuality of obligation (MOO) is a significant feature of the broad 'employed vs self-employed' landscape (including IR35). Case law continues to develop in this area and criticism of HMRC's CEST tool keeps this in the public eye.
- **What does it mean for me?**
MOO is present in both tax and employment law cases and HMRC has a very different emphasis on its significance compared to the tribunals and higher courts.
- **What can I take away?**
HMRC continues to defend a monocular construction of MOO that does not lie comfortably with leading case law. With off-payroll working rules currently scheduled in the private sector from April 2021, we need to be clear about the significance of MOO in future determinations of employment status.

It was the decision in *Professional Game Match Officials Limited (PGMOL)* [2020] UKUT 147 (TCC) on employment vs self-employment for football referees that once again brought the issue of mutuality of obligation (MOO) to the forefront. The phrase mutuality of obligation has been in use for years; but what does it mean and how (if at all) has its significance changed over the years?

I am not going to use this article to discuss employment law issues, except to the extent that they help us understand the tax issues. Rather it will address MOO as a concept, just as relevant in employment law cases as it is in tax cases (see for example *Clark v Oxfordshire Health Authority* [1998] IRLR 125).

The concept of mutuality of obligation

At its simplest, MOO is about the legal obligations that make up a contract. Both parties in a contract will have some obligations towards each other; and in a work-related contract, this will be the work/pay bargain.

Without some minimum degree of mutual obligation, you cannot have a contract. I will refer to this as 'general MOO'.

However, it also has a more specific meaning. In tax cases (and employment law cases), it means a core component that must be present in order to create a contract of service (employment), as opposed to a contract for services (self-employment). I shall refer to this as 'specific MOO'.

The position is complicated by HMRC using MOO as only relevant in determining whether a contract is in existence at all. This is set out in the box on the right, 'Guide to determining status: mutuality of obligation'.

This is significant, as it appears to limit HMRC's vision in respect of understanding MOO. This arguably becomes apparent when we look at the Check Employment Status for Tax (CEST) tool below.

In my view, it's absolutely clear that MOO has a dual meaning and is used in two different but linked ways. In *PGMOL*, the Upper Tribunal said (para 100):

> 'Mutuality of obligation is not only relevant to determining whether there was a contract at all, but is a critical element in delineating a contract of service from a contract for services.'

Just to be clear, this is just as much an issue in employment law cases too (see *James v Greenwich London Borough Council* [2008] EWCA Civ 35).

PROFILE

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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.

GUIDE TO DETERMINING STATUS: MUTUALITY OF OBLIGATION

The significance of mutuality of obligation is that it determines whether there is a contract in existence at all. Without mutuality of obligation there can be no contract of any kind.

Only when the basic requirements for mutuality of obligation have been identified is it possible to then consider whether the contract is a contract of employment or a contract for services (self-employment).

The basic requirements as to the mutual obligations necessary to determine whether there is a contract in existence at all are:

- that the engager must be obliged to pay a wage or other remuneration; and
- that the worker must be obliged to provide his or her own work or skill.

These basic requirements could be present in either a contract of service or a contract for services; however, on their own, they will not determine the nature of a contract.

HMRC's Employment Status Manual, ESM0543

The MacKenna tests

Having said that MOO has both a general and a specific element, the core MacKenna tests in *Ready Mixed Concrete (South East) Ltd* [1968] QB 497 (*RMC*) are widely quoted in tribunals and higher cases as being a metric for employment (i.e. specific MOO). This states that a contract of service (i.e. employment) exists if three conditions are fulfilled:

1. The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master.
2. He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master.
3. The other provisions of the contract are consistent with its being a contract of service.

The Upper Tribunal (following common practice in tribunals) in the *PGMOL* case, referred to the first element as the 'mutuality of obligation' requirement and the second element as the 'control' requirement. (As a personal comment, I'm always struck by the old-fashioned language employed by Judge MacKenna, even though this was written in 1968.)

I take the 'own work and skill' requirement in point 1 as covering the 'substitution' issue as well (not dealt with here in the interest of space). I am not going to deal with the 'control' issue either, for the same reason.

The significance of the PGMOL decision

In my view, this decision is important because it highlights the difference in approach to MOO taken by the Upper Tribunal to that taken by HMRC. This is especially so, in respect of the criticism of the CEST tool, by contractors and others, and the comments on the tool by the House of Lords (see below).

PGMOL was an HMRC appeal to the Upper Tribunal from a First-tier Tribunal decision that a group of freelance football referees were self-employed and not employed by PGMOL. In this case, there was an overarching contract between the two parties and specific contracts for each game.

The Upper Tribunal found for PGMOL again and held that it had no reason to disturb the First-tier Tribunal's decision either on misdirections in law grounds, or a perverse finding of fact on the underlying principal of *Edwards v Bairstow* [1956] AC 14. It's hard not to conclude that HMRC was pretty comprehensively drubbed in the Upper Tribunal, with few of HMRC's arguments finding favour with the judges.

This is, however, clearly a very sensitive issue with HMRC, as it has subsequently appealed the decision.

To my eye, the key point about the *PGMOL* case is the repeat of HMRC's contention that MOO is relevant only to the questions of whether there is a contract at all; and, if there is a contract, whether it contains an obligation to provide services personally and obligations which are in some way 'work related'. HMRC said that MOO is not relevant to the question of whether such contract is one of employment or a contract for services.

It is significant that the Upper Tribunal in *PGMOL* rejected this narrow construction of MOO (para 100):

> 'As we have already concluded, however, mutuality of obligation is not only relevant to determining whether there was a contract at all, but is a critical element in delineating a contract of service from a contract for services.'

The impact of CEST

The CEST tool has been around for a while now and is in about its fourth incarnation; its development has been messy. Do you remember the IR35 'Business Entity Tests' tools that were introduced by HMRC in 2012 and quietly dropped in 2015 as they just added to the confusion?

What CEST is supposed to do – and arguably does in about 80% of contractor cases, according to the House of Lords Report (see below) – is to give certainty about a contractor's tax status. A taxpayer should be able to depend on the output, provided that the questions have been answered accurately.

However, that means that up to 20% of contractors will not get a result from the tool. In a population of around 230,000 contractors in the UK, a significant number will not get an answer and will have to determine their status by other methods.

There has been a significant groundswell of criticism of CEST, most noticeably and predictably from contractor representative bodies and websites. Probably the most consistent criticism is that the tool does not properly address the MOO issue.

In December 2019, HMRC, clearly stung by the adverse comment on MOO and its apparent lack of appearance in the CEST tool, published its response through the IR35 Forum, saying:

> 'CEST does not explicitly look at MOO, it is designed to determine whether an existing or future contract will be one of employment or self-employment. It is assumed that a person using CEST will have already established MOO, *which is necessary for a contract to exist, otherwise there would be no need to be using CEST to determine the status of the existing or hypothetical contract*.
>
> 'We will consider a range of factors to establish whether a contract is an employment contract or a contract for services. *This is distinct from consideration of mutuality of obligation, which will already have been established*. For the avoidance of doubt the CEST online tool assumes that a contract exists or is being considered. We do not anticipate the tool being used outside of these circumstances.' (italics mine)

It's hard not to conclude that HMRC's monocular vision on MOO is being reinforced here and is out of step with the Upper Tribunal and higher courts.

The House of Lords' response

The House of Lords Economic Affairs, Finance Bill Sub-Committee published a report in April 2020 called 'Off-payroll working – treating people fairly'. Its remit was to examine the off-payroll working rules and to determine, among other things, whether it was fit for purpose in the private sector from April 2021. The House of Lords committee concluded that IR35 is a flawed system (para 30):

> 'They separate employment status for tax purposes from employment status under employment law. This distinction is unacceptable, not least because it fails to acknowledge that contractors bear all the risk for providing the workforce flexibility from which both parties benefit.'

The committee also concluded that extending the off-payroll working rules to the private sector without a proper evaluation of the effect of these rules in the public sector was wrong. It had reservations about the CEST tool too – and took evidence from many witnesses that CEST did not, in its view, fully reflect the case law. This is notwithstanding that the Financial Secretary to the Treasury wrote that CEST had been 'rigorously tested against established case law and settled cases' to ensure that it gave accurate results (para 73).

The other main criticism of CEST from the witnesses was that CEST did not address MOO or if it did, it did so no more than obliquely, perhaps in the business on own account (financial risks) questions (see also *Market Investigations Ltd v Minister for Social Security* [1969] 2 QB 173 and *Hall (HM Inspector of Taxes) v Lorimer* [1993] BTC 473). HMRC argued before the committee that CEST did address MOO but acknowledged that others disagreed.

Conclusion

So, where are we now? We ostensibly have a flawed system (IR35) and a tool in CEST that falls short of what is required. Yet unless the situation changes due to Covid-19, we are heading for off-payroll working in the private sector in April 2021.

What we actually need is certainty and easily understood rules that properly accord with case law. A bridge too far?

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Back to normal?

Karen Eckstein considers how examining the processes and prospects of your business can help you to prepare for the 'new normal' ways of working

KEY POINTS

- **What is the issue?**
Well prepared businesses can use the changes resulting from Covid-19 to be more effective, more profitable, and secure and keep the best staff and clients.
- **What does it mean for me?**
This is the right time to review your business processes, including IT systems, cash flow and business continuity. Some, such as meetings, travel and insurance, may have been significantly impacted by recent events.
- **What can I take away?**
Prepare for the return to more normal working patterns by examining your prospects. Don't just focus on marketing to future clients at the expense of your current and past client base, and make sure that your supply chains are in order.

In the July issue of *Tax Adviser*, I wrote about how firms preparing for the changes brought about by the Covid-19 crisis can make the most of the resulting opportunities. They need to think about four key areas: in the previous article we examined issues relating to property and people; and here we turn our thoughts to processes and prospects. I hope you will have plenty of food for thought to help you to prepare for a profitable and successful return to the new normal.

Processes

A number of processes need to be considered in the return to the new normal.

IT systems: Start with the basics: how do employees access your systems remotely? Remember that homeworkers may well need to be supplied with additional equipment, and need a different level of IT support from staff working in the office. Do you have sufficient spare laptops, monitors and bandwidth? Make sure that you also have sufficient licences, as it is too easy to let them lapse – or to forget that remote working may need new or additional licences. Is your IT support strong enough to cope with these changes or do you need additional staff in different roles? How do you help an employee whose business laptop gives up whilst at home?

IT security: Now is the time to review the robustness of your systems and any potential weaknesses, so that you have a contingency plan if anything goes wrong. What backup do you have? Who is your IP supplier? Is the document management system coping well with remote access? Finally, cyber-attacks are getting increasingly sophisticated and you need an enhanced security system to withstand them. This may be a good time to consider your data security policies and training, and whether they are sufficiently secure. Remote working can bring additional security risks, including over physical assets and paper records.

Billings and finances: Staff need to record their time promptly, accurately and fully, so that you can invoice your clients the appropriate fee, especially those who are billed on an hourly basis. Things may take longer when your staff are working remotely, at least initially. You need to consider carefully whether the time recorded by your staff can be recovered in full from your clients. Clients may challenge bills more than they may have done before. You need an audit trail to support and justify any costs, and to assuage any concerns that your clients might have as to the level of fees. You also need to review your cash flow. Bear in mind that your clients may be suffering from cash flow difficulties as well. Is this time to get your own financial advisors and accountants on board to assist?

Administrative issues: Review your policies for ordering your essential supplies, including where they will be delivered to and how you distribute them to your staff; for example, printers, printer ink, paper and repairs of equipment. Consider whether you need new processes for client identification, or for signing documents? How will you handle large documents when they arrive at the office, and do you have someone to scan them in if necessary?

Meetings: Many firms have policies about meetings to protect themselves and their staff. These include security issues, such as where meetings can take place, and policies for controlling and managing expenses. Meetings policies should now include social distancing requirements, including when a physical meeting is considered necessary, and whether an audit trail is needed to confirm that these rules have been met. Some may have been predicting the end of meetings, but for many people seeing each other in person is likely to remain a better way of doing business.

Travel policies: Many firms have travel policies relating to costs, overnight stays and when these costs can be charged on to the client. Policies now need to include safety issues, such as when meetings should take place digitally rather than in person, and whether essential travel should be by car or public transport. While previously many staff were encouraged to use public transport, Covid-19 has changed this. This might impact on costings and may affect your service level agreements with your clients. The firm's travel policies probably need to be reconsidered, given the changes, and then closely monitored.

Clients and contracts: You will need some basic procedures for identifying and verifying your clients. You must also determine how you will deal with client meetings and carry out reviews of your clients' issues. You may need to review all your existing engagement letters and service level agreements to ensure that you have met all existing terms during the crisis. When setting up new arrangements, will

'cancellable contracts' be applicable more frequently than before? This may be a good time to review your terms of business.
Insurance: Do you need to change your insurance policies in the light of the changes in your way of work? Do you need to inform your insurers of the substantial changes that have taken place? A wholesale review of your insurance policies may be necessary. I recommend that you speak to your broker soon, rather than wait until your renewal is due. You may need to prepare for some of the tricky questions that insurers are now asking, including whether you have breached your terms.
Audits: Do you need to audit your files to ascertain whether there are any errors or circumstances that must be notified? Are there mistakes that can be put right if you identify them now? If it is time to do an impromptu audit of your files, consider whether that should be done internally or by an external consultant.

Business continuity plans

Your business continuity plan has certainly been put to the test during the Covid-19 crisis! Did it work? What weaknesses did you identify? Firms need to consider the robustness of these plans. If there is a second wave of the virus, or another crisis, in the near future, will you survive? Many firms have only survived due to government bailouts and because there has been a degree of 'forgiveness' by clients and banks. But we can't rely on that going forward.

Insurers are asking increasingly testing questions about the robustness of firms' business continuity plans. While some of these should be resisted with the assistance of a good broker, this is certainly an area demanding significant attention. The firm's risk manager should be reviewing your plans with the partners at this stage.

Service level agreements

You obviously have service level agreements that you need to comply with, resulting in a number of issues to consider.

Staffing issues: Your staff may require more flexible working patterns, for example to cope with childcare, leading them to restrict their working hours or request a shorter working week. While this might reduce your staffing costs, staff may not be available for overtime work when there is an urgent deadline. You must factor that into your contracts and your agreements with staff. You also need to consider the fact that working from home can sometimes take longer, so recoverable hours may be slightly lower.
Existing service level agreements: If your staff are on flexible hours, can you comply with your existing service level agreements? Do you need your staff to work core hours, or to work in the office on specific days? This may not be something you have had to previously consider, but staff working patterns may be crucial if you have service level agreements to meet.
Audits: Do you need to put in place more frequent audits and what should those audits cover? Remember that you only see what's on the files, not what's missing.
Case management system: If you are aware of areas in your case management system where things go wrong, this may be the time to consider whether you need a new system. A common problem I often see is where emails have not been logged automatically to the file. Do you need automated reminders on cases that go teamwide? Do you need to put escalation processes in place, or increase the ones you currently employ?
Emails: Consider your email policy, and whether it needs changing in the light of increased remote working. What supervision do you have in relation to emails? How do you ensure that emails are sent in an appropriate manner and at appropriate times? You may already approve the emails of junior staff before they are sent, but this is increasingly important in the light of increased homeworking, the lack of supervision, and the lack of holistic training in an office environment.

Prospects

The final area to consider when preparing for the return to more normal working patterns is prospects, in the form of clients and the supply chain. Many firms focus on marketing to future clients at the expense of the current and past client base.

Your existing client base: First consider whether all terms have been met in relation to service level agreements or engagement letters during the crisis. What more can be done? Have there been any breaches? Do the service level agreements or engagement letters need reviewing? Consider your clients' financial position to determine when you will get paid and, if your clients are in financial difficulties, whether you should require payment upfront. You must also ensure that you have the necessary resources to service your existing clients.
Your future client base: Identify your target market, and whether new markets have opened up as a result of recent developments. Review your marketing strategy. Digital communications don't replace the relationship building that happens when you meet face to face, so how will you build a rapport with new clients? How can you use digital marketing and intermediaries to get referrals and meet potential clients? Identify how you can help new clients and how you will set yourself apart from your competitors.
Past clients: First, check that you have archived your documentation and properly returned the necessary papers to past clients. This may be an obvious point, but sadly I find it is often overlooked. Can you reach out to your past clients? It's worth checking your engagements with them to identify whether you're allowed to contact them – perhaps they could become clients again. It is, after all, easier to market to people with whom you have an existing relationship. People often ignore their database of past clients, but now may be a good time to approach them.
Supply chains: It is important to think about all your supply chains: your outbound supply chain (the people that you supply services to); your inbound supply chain (the people who supply goods and services to you); and your internal supply chain (your staff and your internal team). Have you thought through the following questions?

- How reliable and secure are your supply chains?
- Have you factored any potential requests for a discount or deferral of fees into your cash flow modelling?
- How reliant are you on your supply chains, and do you have alternatives and back-ups in place?
- Can you help your supply chains in any way (as you need them to survive)?

There's an awful lot to consider but specialists are available to help you if needed. These issues will hopefully enable you to identify risks and opportunities relevant to your business and prepare for them. This should help you to stand out in the marketplace, be ahead of your competitors, and be a more competitive, secure and profitable business in the future.

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Welcome to the September Technical Newsdesk

21 July was what many people refer to as 'L-Day'. This is the day on which the government published draft legislation for the next Finance Bill, along with explanatory notes, tax information and impact notes, responses to consultations, etc.

For me, the most important document published on that day was entitled 'Building a trusted, modern tax administration system' (https://tinyurl.com/yye9hb2q). This is an ambitious and aspirational document, which aspires to:

- A trusted, modern tax administration system, where HMRC are central to our UK national resilience and crisis response, as well as discharging their traditional role as a tax authority, and where there is trust and consent both of taxpayers and of the wider public.
- An effective and modern tax system, with real-time information and timely payment of tax, facilitated by a modern digital structure to enable ease of use, transparency and adaptability. It aspires to HMRC having software and hardware technologies fit for the 21st century, eliminating the frustration from the current fragmented systems, and where third party software providers are able to align their systems more closely with those of HMRC, so that taxpayers are proactively offered new and innovative services – allowing better data analysis of company performance and greater opportunities to improve productivity and profitability.
- Systems focused on helping people to get their tax right first time, making rule bending and breaking harder, with real-time risk assessment by HMRC leading to earlier interventions to prevent revenue loss, making it much harder for people to avoid paying the tax they owe.
- A consultative process, where HMRC involve taxpayers, agents and software providers, work closely with representative bodies, and recognise the need for proper constraints and safeguards over HMRC powers.
- A single digital account for all taxpayers that is easily accessible and secure, and brings together data across different taxes and different data sources in order to provide personalised services for taxpayers, whilst also improving parallel services for their agents or representatives.
- A system where agents can see and do what their clients can, and agent access is designed in from the outset.
- An updated tax administration legislative framework, recognising the development of new digital systems and the importance of how taxpayers experience the system.

HMRC will be discussing these plans and proposals with stakeholders over the summer months, but three key elements have already been outlined:

1. Making Tax Digital (MTD): From April 2022, MTD will apply to all VAT-registered businesses for their VAT obligations; and from April 2023, businesses and landlords with business income over £10,000 per annum which are liable for income tax will need to keep digital records and use software to update HMRC quarterly through MTD. The government will be consulting later this year on the design of what MTD should look like for corporation tax.
2. Timely tax payment: In order to open up a wider conversation on the appropriate timings and frequency for the payment of different taxes, the government intends to publish a call for evidence, including ideas on how to make it easier for those who wish to pay their tax bill more regularly to do so on a voluntary basis.

3. Reform of the tax administration framework: In order to facilitate a 21st century tax system, the current patchwork of rules needs an overhaul and updating. The government intends to publish a call for evidence later in the year to help identify the range of reforms that could be required.

Also on 21 July, the chancellor launched the 2020 Comprehensive Spending Review (https://tinyurl.com/y4bjjtxu). HMRC will surely require significant funding to be able to deliver all this, and we sincerely hope that is forthcoming, so that these ambitions may become a reality.

By the time you read this some of the discussions may have commenced, and we will report back when we can in future editions of Technical Newsdesk.

Office of Tax Simplification capital gains tax review: call for evidence

PERSONAL TAX OMB

The Office of Tax Simplification has launched a wide-ranging review of capital gains tax and the views and experiences of members would be very welcome.

On 14 July, the Office of Tax Simplification (OTS) launched its *Capital gains tax review: call for evidence* (the review) following a formal invitation from the chancellor to review capital gains tax (CGT) and aspects of the taxation of chargeable gains in relation to individuals and smaller businesses. In keeping with the focus on smaller businesses and individuals, the review does not include issues specific to corporate groups. In a wide-ranging review, the OTS are looking for simplifications of both technical and administrative issues of CGT.

The review is being carried out in two stages. The first stage, which closed on 10 August, focused on high-level aspects including allowances, exemptions and reliefs, losses and the interaction of gains with other types of income. The responses to this first part are intended to help to shape the focus of the second (major) part of the review, which will cover both the technical detail and practical aspects of CGT. The deadline for submissions to the second part of the review is 12 October.

The ATT, CIOT and LITRG will be responding to both stages of the review. The CIOT has formed a working group to co-ordinate responses to the call for evidence and has met the OTS to discuss the themes of first part of the review. A second meeting will be held to set out views on the technical review.

The ATT has a group of volunteers who will be contributing to its responses to the different stages. The ATT's written comments for the first stage of the review were based on meetings with volunteers in August, and ATT volunteers will be meeting with the OTS for the more detailed comments on the second stage in September.

As part of the review, the OTS is also running a survey which members may wish to bring to the attention of clients who have reported CGT. Agents are welcome to complete the survey but should bear in mind that it is aimed more at taxpayers than agents.

Feedback and comments from members would be very welcome on this wide-ranging review. Please send comments to atttechnical@att.org.uk or technical@ciot.org.uk or directly to us on the email addresses below.

Full details of the review and the survey are available at: https://tinyurl.com/ybcncfat.

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HMRC letters and 'certificates of tax position' to individuals with overseas assets, income or gains

MANAGEMENT OF TAXES

The guidance on the CIOT website has been updated to take account of some recent changes to the wording of HMRC's letters and certificates of tax position which are being sent to individuals with offshore assets, income or gains. The update provides information about the letters, together with some guidance to help members decide the most appropriate way to respond if a client receives one of the letters from HMRC. It also provides some background information about HMRC's campaign.

Since we first published the guidance in June 2019, HMRC have changed the wording in the letters and in the accompanying certificates of tax position. Our latest update is based on the wording used by HMRC in the letters and certificates they started to send out to taxpayers in the last week of July 2020. PDF copies of the standard wording for the letter to represented taxpayers, the letter to their agents and the letter to unrepresented taxpayers are available on our website alongside the update (see www.tax.org.uk/HMRCcertificateoftax).

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

MANAGEMENT OF TAXES EMPLOYMENT TAX

HMRC have issued guidance on how taxpayers should notify and repay Self-Employment Income Support Scheme and Coronavirus Job Retention Scheme grants which they overclaimed or were not entitled to received, and the possible penalty consequences if overpayments are not notified to HMRC.

The legislation giving HMRC the powers to recover payments that recipients were not entitled to receive, and to charge a penalty in cases of deliberate non-compliance in respect of both the Self-Employment Income Support Scheme (SEISS) and Coronavirus Job Retention Scheme (CJRS) (and other government support schemes), is in FA 2020 Sch 16, which received Royal Assent on 22 July 2020. The legislation refers to these collectively as Coronavirus Support Payments (CSPs).

The legislation introduces an income tax charge on a person who was not entitled to a CSP at the time the payment was received – equal to 100% of the amount overclaimed – unless it has already been repaid to HMRC. It also gives HMRC the power to raise assessments to collect overpayments. There is an obligation on recipients to notify overpayments of CSPs within a prescribed period. These are set out below.

For the SEISS, the notification period ends on the later of:

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

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

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

A deliberate and concealed failure to notify penalty will apply where the person knew that they were not entitled to receive the payment at the time they received it. This means a penalty of up to 100% of the overpaid amount, and that the person will not be entitled to rely on the defence of reasonable excuse. HMRC also have the power to charge penalties for non-compliance with the SEISS and CJRS rules under the existing failure to notify rules in FA 2008 Sch 41, meaning that penalties may be chargeable even where there has not been any deliberate behaviour.

A non-deliberate failure to notify penalty will not be charged if the overclaimed CSP has been repaid by 31 January 2022. There is also the likelihood that error penalties under FA 2007 Sch 24 could apply in cases where CSPs are not reported correctly on tax returns.

Consequently, it will be important that taxpayers and their advisers are aware of the requirement to notify overclaims and overpayments within the times specified, even where these are a result of inadvertent errors, perhaps caused by not understanding the rules of the schemes correctly, rather than due to a deliberate intention to abuse the schemes. It may therefore be advisable to check claims already made to ensure that any errors can be identified and notified to HMRC accordingly.

HMRC have recently published factsheets which explain what to do and what will happen if you have been paid an SEISS grant (https://tinyurl.com/y46cqz95) or CJRS grant (https://tinyurl.com/y5jf5dup) which you were not entitled to and have not repaid it, and the possible penalty consequences.

The factsheets themselves do not specify how overpayments should be notified to HMRC. However, HMRC have provided an online form for notifying overpayments of SEISS grants which is available on GOV.UK (https://tinyurl.com/y2ttckh3). In the main, SEISS overpayments will be those claimed in error where a person was not eligible for the grant, for example because they had ceased trading as a self-employed person during 2019/20, or because their business was not in fact 'adversely affected' by coronavirus when they made their claim. The online form can also be used to make a voluntary repayment of all or part of the grant. HMRC will provide bank details to enable the grant to be repaid once the online form has been completed. A telephone option is available but only for those people who cannot use the online form.

If an error has been made in a CJRS claim which means too much has been claimed, the overpayment should be included on the next online claim, thereby reducing the new claim. If a business is not planning to submit any further claims, it should contact HMRC to pay the money back. More guidance on how to report a CJRS error is available on GOV.UK (see https://tinyurl.com/y67skpqw).

Where a person or business cannot afford to repay a CSP they claimed but were not entitled to, they should contact HMRC to discuss their options, which might include agreeing a time to pay arrangement. It is not clear at this stage when HMRC will issue assessments either to collect overpayments that have been notified to them but not repaid, or to collect overpayments they identify through their compliance activity. Where an assessment is issued, payment will be due within 30 days, and interest will be charged on late payments. Late payment penalties may also be chargeable if the amount remains unpaid 31 days after the due date.

The guidance also explains when overclaimed CSPs will need to be reported on tax returns, and when they will not need to be reported. For individuals, this will be the 2020/21 self-assessment tax return and for companies the appropriate corporation tax return. Further guidance will be provided in the tax return guidance notes and help sheets.

Both HMRC factsheets (see above) explain that HMRC's priority is to support their customers whilst addressing serious fraud and criminal attacks; and that they will use their powers to assess overpayments and issue penalties which support these priorities. They say they will not actively be seeking out innocent errors and small mistakes in their compliance approach. However, they also say that they will be commencing compliance action to identify and address incorrect claims, meaning that as soon as taxpayers become aware that they have been overpaid under either scheme they should notify HMRC, preferably within the timescales outlined above, and repay the overpaid amount.

Ongoing work

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

All the latest information can be found on the ATT and CIOT websites. The CIOT pages covering the SEISS (www.tax.org.uk/COVID19SEISS) and the CJRS (www.tax.org.uk/COVID19JRS) are frequently updated as we receive more information, as are the ATT detailed guidance notes on the SEISS (www.att.org.uk/COVID19SEISS) and accompanying FAQs (www.att.org.uk/COVID19SEISSFAQ) and the guidance notes on the CJRS (for employers, see www.att.org.uk/COVID19JRSemployers; and for employees, see www.att.org.uk/COVID19JRSemployees).

The ATT and CIOT also held a second webinar on the SEISS on 7 July 2020. A recording of this webinar and the slides used can be found on the ATT (www.att.org.uk/COVID19SEISSJUL) and CIOT (www.tax.org.uk/COVID19SEISSJUL) websites. We are planning to hold a third webinar on the SEISS at the beginning of October. Please look out for announcements shortly.

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

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COVID-19: VAT update

INDIRECT TAX

Since our last update we have a new temporary reduced rate of VAT, more clarity on the VAT implications of the Eat Out to Help Out scheme and guidance on e-publications.

Temporary reduced rate for certain supplies of hospitality and tourism

On 8 July, the chancellor announced a temporary reduced rate of 5% applicable to certain supplies of hospitality and tourism (https://tinyurl.com/y2cel8pu).

This reduction in the VAT rate will take effect for supplies made between 15 July 2020 to 12 January 2021.The supplies covered include:

- food and non-alcoholic beverages sold for on-premises consumption, for example, in restaurants, cafes and pubs;
- hot takeaway food and hot takeaway non-alcoholic beverages;
- sleeping accommodation in hotels or similar establishments, holiday accommodation, pitch fees for caravans and tents, and associated facilities; and
- admission to attractions that are not eligible for the cultural VAT exemption, including theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities.

HMRC have issued a new Revenue and Customs Brief 10 (2020) (https://tinyurl.com/y2fwmnwz) covering the temporary reduced rates, and updated the existing notices which cover the affected supplies.

The ATT and CIOT have submitted a number of questions and comments to HMRC on the scope and operation of the temporary reduced rates. Keep an eye on the ATT (www.att.org.uk/tempVATreduction) and CIOT (www.tax.org.uk/COVID19ITX) websites for further updates.

Eat Out to Help Out

The Eat Out to Help Out scheme gives diners a 50% discount (up to a maximum of £10 per head) on purchases of food and non-alcoholic drinks from registered businesses from Monday to Wednesday between 3 and 31 August 2020, which the business can then reclaim from the government.

HMRC have confirmed the following regarding the VAT treatment of this scheme:

- VAT should be accounted for on the final discounted bill, after taking into account any scheme discount. The rates are 5% on meals and non-alcoholic drinks, and 20% for alcoholic drinks.
- VAT equivalent to the 5% temporary reduced rate (1/21 VAT fraction) must be declared on income received from the government under the scheme.

More information can be found on GOV.UK at: https://tinyurl.com/yyexckhg.

VAT on e-publications

The government announced on 30 April that the intended zero rating for specified supplies of electronic publications, due to take effect from 1 December 2020, would be brought forward to 1 May 2020. This was to assist people confined to their homes as a result of workplaces and schools being closed due to lockdown measures.

HMRC have since added a new section 9 to its VAT notice 701/10 'Zero rating books and printed matter' (https://tinyurl.com/yyc2odsw), plus 20 pages of e-publications guidance (https://tinyurl.com/y4eejr3v) to their VAT manuals. This includes commentary on the *News Corp* case, the treatment of supplies spanning 1 May 2020, e-publications with no equivalent printed form and the VAT liability of music.

If you have any comments or questions on any of the above issues, please send these to technical@tax.org.uk or atttechnical@att.org.uk.

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Brexit: indirect tax post transition period

INDIRECT TAX

The government and HMRC have started publishing new guidance for indirect tax issues post the EU transition period from 1 January 2021. In this article, we round up the main publications so far and highlight points of interest for indirect tax.

The Border Operating Model

An important policy paper that sets out what post-transition period importing and exporting will look like is the 206 page: 'The border with the European Union – importing and exporting goods' (https://tinyurl.com/y37c7k7o). Northern Ireland Protocol matters are covered by separate guidance, highlighted below. It is important to note that for the post-transition period, when the guidance mentions Great Britain, it is referring to England, Scotland and Wales only; and it is only where it mentions the United Kingdom that Northern Ireland is also included. As the UK's two letter country abbreviation for cross border transactions is 'GB', this could be an easy misunderstanding to make. Points of note include (where subjects are also published on GOV.UK, links are shown):

a. The processes for moving goods between GB and the EU (https://tinyurl.com/y362lfcl) and vice-versa (https://tinyurl.com/y4c7m2bm);
b. Important dates for importers: January, April and July 2020;
c. The six month customs declaration deferral scheme (https://tinyurl.com/yxhk7aj7);
d. The 'controlled goods' list that must have full import declarations from 1 January 2021 (https://tinyurl.com/y6yy336s);
e. Technical information about various cross-border supply chains; and
f. Intrastat: reporting obligations for arrivals will continue in 2021; it is silent on the position for dispatches.

Supplementary guidance to the Border Operating Model has subsequently been published. Some of the topics this guidance covers are set out below.

Postponed VAT accounting guidance for imports

The guidance sets out the postponed VAT accounting rules for imports into the UK from EU and non-EU countries (some NI transactions are excluded), setting out changes to the VAT return and the circumstances where this does and does not apply. Taxpayers do not need to apply for the scheme.

1. **Completing the VAT return to account for import VAT** (https://tinyurl.com/yx9hp6ov)

This introduces the new online monthly statement and where you add postponed accounting data to the boxes in the VAT return. You will also need to consider if changes are needed to the format of accounting software to capture this data in the VAT records after the transition period:
Box 1: VAT due in this period on imports accounted for through postponed VAT accounting.
Box 4: VAT reclaimed in this period on imports accounted for through postponed VAT accounting.
Box 7: Total value of all imports of goods included on the online monthly statement, excluding VAT.

2. **Check when you can account for import VAT on your VAT return** (https://tinyurl.com/y5xgdyqj)

This sets out the circumstances when you can and cannot account for import VAT on the VAT return, and when taxpayers must do so. It also touches on agents and low value consignments.

Low value imports of goods not exceeding £135

This guidance (https://tinyurl.com/yxvm9ew4) gives additional details on the responsibilities of online market places and overseas sellers, the change in VAT reporting timing from import to point of sale, how the £135 value is calculated, B2B transactions not exceeding £135, and the customs duty position.

Northern Ireland Protocol

The policy paper 'Moving goods under the Northern Ireland Protocol' (https://tinyurl.com/yy82lzka) sets out the different indirect tax administrative positions and processes (some anticipated due to ongoing negotiations) for different types of UK and cross-border transactions of goods. These include:

- **Section 1: moving goods from Northern Ireland to Great Britain**
  Though these transactions should benefit from 'unfettered access' status and hence no difference to the current procedures, there is guidance on extremely limited exceptions, and the availability of the Trader Support Service.
- **Section 2: moving goods from Great Britain to Northern Ireland**
  This introduces the new digital declarations required by GB taxpayers, the new Trader Support Service, processes for sanitary and phytosanitary goods (measures to protect from diseases/pests/contaminants), manufactured goods, and highly specialised goods.
- **Section 3: moving goods from Northern Ireland to the European Union**
  This provides more information on how NI businesses have unfettered access to the GB market whilst also having free circulation for EU markets.
- **Section 4: moving goods from Northern Ireland to the rest of the world**
  The rules for importing to and exporting from NI will continue broadly as they do today, though the Trader Support Service can be accessed.

Supplies of services are not impacted by the above rules, which cover goods only.

The Northern Ireland Affairs Committee published its report, 'Unfettered Access: Northern Ireland and customs arrangements after Brexit' (https://tinyurl.com/y45g8cw3) and the submissions from stakeholders with their concerns. The report's key recommendations are that the government must:

1. clarify the process and criteria by which Northern Ireland goods will be given qualifying status and so benefit from unfettered access;
2. ensure that Northern Ireland businesses do not face new upfront or ongoing costs in order to move goods from Northern Ireland to Great Britain;
3. set out, in a timely fashion, how it will facilitate unfettered access if it does not secure a waiver from export declarations and exit summary declarations in the Joint Committee;
4. commit to covering the costs to businesses of complying with the Protocol; and
5. publish terms of reference for the forum, so that its purpose can be properly understood, and it must clarify how it will engage small businesses and trade unions.

The government's response is due by mid-September. The term 'unfettered access' was set out in 'The UK's Approach to the Northern Ireland Protocol' (https://tinyurl.com/yy7czxzo) and refers to customs arrangements that do not impede UK businesses moving goods in both directions between NI and GB after transition.

The CIOT continues to work with HMRC's Joint Customs Consultative Committee sub-groups (Northern Ireland Protocol/ EU Transmission), and have engaged with HMRC on specific NI protocol issues.

Proposals for NI from the European Commission (EC)

The EC published its proposal to amend EU VAT rules (https://tinyurl.com/y3cz2qor) for NI businesses after the transition period, which includes a special identification number so that supplies from NI to the EU (and vice versa) will be reported in the same as cross-border supplies of goods within the EU. Supplies of services are not affected and will be subject to UK VAT rules. Proposals for updates to excise rules for NI businesses are also anticipated (not available at the time of writing).

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HMRC Taxpayer Charter: CIOT response to the government consultation

GENERAL FEATURE

Our response to the government review of the HMRC Charter focuses on the lack of negative consequences for HMRC if they fail to meet their Charter obligations and suggests consideration should be given to penalising HMRC for their failure to adhere to their own Charter obligations, including requiring them to financially compensate taxpayers where delays, inconvenience or additional costs have resulted, so as to make the Charter effective.

The CIOT has submitted a wide-ranging response to the government review of the HMRC Charter. The Charter sets out the standards of behaviour and values that HMRC aspires to when interacting with taxpayers and vice versa. HMRC's Charter reflects a legal requirement under FA 2009. The legislation states that the Charter 'must include standards of behaviour and values to which HMRC will aspire when dealing with people in the exercise of their functions'.

HMRC began work to review the Charter in September 2019. Its ambition is for the revised Charter to set out more clearly the experience that it wants to deliver to its customers. This supports the recommendation made by the Loan Charge Review in December 2019 that HMRC's Charter be reviewed 'to set higher expectations of performance during interactions with members of the public and ensure that staff are offered training on how to deliver it'.

This Charter review also supports recommendations from the House of Lords Economic Affairs Committee report 'The powers of HMRC: treating taxpayers fairly' in December 2018. This report recommended that 'the Charter is amended to clarify HMRC's responsibilities towards unrepresented taxpayers including that issues are clearly set out, legislation is explained and rights to review and appeals are made accessible'.

Our response commented on the few, if any, negative consequences for HMRC if they fail to meet their Charter obligations, and their performance targets. We said that it is hard to see how these aspirations can be effective without sanctions, noting that this is well understood as regards taxpayers: there can be significant negative consequences, including interest and penalty charges, if taxpayers fail to meet their general obligations to file tax returns and pay tax on time. We suggested that if there is to be a true partnership between HMRC and their customers, as envisaged in the proposed Charter, both should accept that they may be appropriately penalised for their failures. In the case of HMRC, we said that this should include being required to financially compensate their customers where delays, inconvenience or additional costs result. Without this, the impression that there is one rule for HMRC and another for taxpayers creates a sense of unfairness and is damaging to willing and effective compliance.

The CIOT's submission states that the Institute does not support the proposed new Charter as currently drafted. This is because while the wording of the proposed updated Charter might be considered more 'user-friendly', it lacks the clarity and hence the authority of the existing Charter. Not only does the proposed wording appear to 'lower the bar' in terms of HMRC's obligations, it excludes a number of key elements which are present within the existing Charter, such as commitments by HMRC to keep any costs to the taxpayer at a minimum, and make sure that the taxpayer is dealt with by people who have the right level of expertise.

The CIOT believes that the existing Charter, with a few modest updates, would provide a sound basis for the future and would set out adequately the values and principles of HMRC, and customers' rights and obligations when dealing with HMRC. In particular, the

CIOT favours the 'two-way' approach, setting out separately both HMRC's obligations and those of its 'customers' (taxpayers).

The CIOT also said that there should be greater efforts to promote the Charter within both HMRC and the wider public. We said that there needs to be greater awareness of the Charter. Some of the conduct we have seen suggests that some HMRC officers are not aware of, or are not implementing, the Charter behaviours. We said that this needs to be addressed. Awareness among taxpayers also needs reinforcing, particularly among individuals and small businesses.

The CIOT suggests that awareness of the Charter and its implementation could be gauged within HMRC's Civil Service People Survey and their annual Individuals, Small Business and Agents Customer Surveys. Our response argues that HMRC's performance measures should focus also on delivery of their Charter obligations, and could be measured through a variety of means such as Webchat feedback, GOV.UK customer feedback ratings and 'cold' reviews of a sample of interactions between HMRC and its customers; and that the NAO could monitor and report on HMRC's performance against its Charter as part of its audit of HMRC's annual report and accounts.

Our full response can be viewed at: www.tax.org.uk/ref648.

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Scottish Taxes Update: Scottish Parliament's pre-Budget scrutiny 2021-22

GENERAL FEATURE

CIOT and LITRG made submissions in response to the call for views published by the Finance and Constitution Committee of the Scottish Parliament in relation to its pre-Budget scrutiny 2021-22.

The Scottish Parliament agreed a new process for Budget scrutiny in 2018, based on the recommendations of the Budget Process Review Group. The Finance and Constitution Committee carries out pre-Budget scrutiny as part of its aim to meet the core objectives of the Budget process, which are:

- to have a greater influence on the formulation of the Budget;
- to improve transparency and raise public understanding and awareness of the Budget;
- to respond effectively to new fiscal and wider policy challenges; and
- to lead to better outputs and outcomes as measured against benchmarks and stated objectives.

As part of the pre-Budget scrutiny 2021-22, the Committee issued a call for views seeking input on the impact of COVID-19 on the Scottish government's Budget 2021-22. The call for views covered a range of areas. The CIOT and LITRG submissions focused on the questions concerning transparency and ministerial accountability and the implications for taxation policy.

Both CIOT and LITRG noted that over the past year or so, the Scottish government has been exploring possible changes to the tax policy-making process, alternative legislative processes for tax and how to raise public awareness about tax in Scotland. In particular, there was a consultation in 2019 on 'Devolved taxes: a policy framework', to which CIOT and LITRG submitted a joint response. The CIOT has been involved in the work of the Devolved Taxes Legislation Working Group, which was set up by the Scottish government together with the Scottish Parliament to consider alternative legislative processes for devolved tax powers.

The CIOT also pointed to the two polls of the Scottish public that it has undertaken in 2018 and 2019, which show a decline in understanding and awareness of the devolved tax regime. The CIOT and LITRG both encouraged the Scottish government to build on the work that it had started to undertake prior to the pandemic to improve its communications with the general public and awareness of Scottish income tax in particular. It is our view that the pandemic has highlighted the importance of expediting these pieces of work. This should help to ensure that Scotland continues to have a tax system, policy framework and process for making tax policy and legislation that has integrity, credibility and is fit for purpose. It should also mean that Scotland is positioned as well as it can be, in the aftermath of COVID-19, in terms of making best use of its devolved tax powers. All three strands of work will complement each other in ensuring transparency and ministerial accountability.

Both CIOT and LITRG pointed out that the biggest potential for raising revenue is arguably offered by Scottish income tax powers, although these powers in themselves are limited. CIOT said that if changes are made to Scottish income tax, it is imperative that consideration is given to interactions with the reserved aspects of income tax. LITRG added that interactions with reserved and devolved social security powers should also be borne in mind.

The CIOT submission is available at: www.tax.org.uk/ref685.

The LITRG submission is available at: www.litrg.org.uk/ref383.

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Pensions dashboards: call for input on data standards

GENERAL FEATURE PERSONAL TAX

The Low Incomes Tax Reform Group are watching the government's progress on developing pensions dashboards – a means by which individuals in future should be able to view all of their pension savings in one place.

The Pensions Dashboards Programme is working on how the UK can join some other countries in offering individuals the opportunity to see all of their pension savings in a single place. The government body, the Money and Pensions Service, will provide one such dashboard, but other organisations (such as pension providers) will be able to develop their own dashboard.

Initially, the plan is to enable people to view their pension savings in the hope that this will allow them to see how much income they might have in retirement and encourage them to plan better for it. Longer term, dashboards might become transactional – for example, allowing users to notify all their pension providers simultaneously of a change of address.

The principle behind pensions dashboards is similar to open banking, which allows people to view accounts held with one bank in an online banking platform of another. However, for pensions, the data requirements are more difficult to determine than for online banking. For instance, it would seem fairly straightforward for a banking app to display the current balance for an account held with another bank, and recent deposits or payments. But for pensions, what data is required? If the dashboard requests a valuation for a certain pension pot, what will be displayed – the value at the last annual statement date or the current value? What would be shown for defined benefit schemes, which do not have such a readily identifiable capital value as defined contribution (money purchase) schemes? If an estimated retirement income is to be shown, how will the dashboard user be able to get a clear picture if such estimates are calculated on different bases by each pension provider?

These are the kinds of issues that the Pensions Dashboard Programme is currently grappling with and they have recently consulted on proposed data standards (https://tinyurl.com/yytwh8oy). LITRG are responding, highlighting the following:

- The data displayed on dashboards must clearly show that the pension savings shown are gross and that tax must be taken into account in understanding future net income.
- When launched, dashboard data must be as complete as possible – showing users incomplete pensions data risks adding to confusion and increases the possibility of poor decisions being taken.
- It might be possible to launch dashboards for the self-employed, who are likely to have primarily personal pensions, using a narrower set of data. A joined-up government strategy might enable HMRC to communicate with the self-employed to promote the availability of pension dashboards, given that there are already regular touch points between the self-employed and the tax system.
- It is essential for dashboard data to include the state pension from the outset, as for many this will be the single largest source of pension income in retirement.

The full response will be available on the LITRG website: www.litrg.org.uk/latest-news/submissions.

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Pensions tax relief administration: call for evidence

GENERAL FEATURE PERSONAL TAX

The Low Incomes Tax Reform Group welcomes publication of a call for evidence on the administration of pensions tax relief, hoping that it will result in redressing the balance for low income workers who currently do not get tax relief on pension contributions where their employer chooses a pension scheme operated on a net pay basis.

Tax relief on individual pension contributions can be given in two ways:

1. Relief at source (RAS): with a contribution net of basic rate tax being made by the individual and the pension scheme claiming a basic rate top-up direct from HMRC; or
2. Net pay arrangement (NPA): where the employer deducts the employee's pension contribution from gross pay before income tax.

Those earning around or below the personal allowance who contribute to an employer's NPA scheme will pay 25% more for their pension contribution than an equivalent employee in a RAS scheme. This is because the NPA contributor gets no tax relief as a result of their contribution being deducted from gross pay, whereas the RAS contributor pays the net amount and the tax relief reclaimed by the scheme is not clawed back – despite them not being a taxpayer.

So for non-taxpayers, £100 of pension savings would cost:

- £80 under RAS; and
- £100 under NPA.

LITRG have been working with various other individuals and bodies across the pensions industry to look at ways in which this imbalance could be redressed. The combined efforts of this 'net pay action group' succeeded in securing a 2019 Conservative Party manifesto commitment to review the issue. Delivering on this promise, HM Treasury published a call for evidence on 21 July 2020 (https://tinyurl.com/y55frnw5).

As explained in our 2020 Budget submission ('LITRG Budget representations', March 2020), our proposed solution is for HMRC to identify those who have 'missed out' on tax relief due to being enrolled in an employer's NPA scheme. They could then provide an equivalent savings incentive – a kind of 'notional tax relief' to level things up. While our proposed solution is included as a suggested approach in the call for evidence, it is disappointing to note that the initial view is that government is not minded to proceed with it.

Other proposals are:

- **To raise a standalone tax charge in respect of RAS contributors who are not strictly entitled to 'tax relief' because they are non-taxpayers**
  This would amount to a levelling down and the call for evidence notes that the government is also not minded to proceed with it.
- **Employers to operate multiple schemes**
  Essentially, this means employers would put non-taxpaying employees into RAS schemes and other employees into NPA schemes. While this might be an option for larger employers who could potentially absorb the administrative burden, it would not be practicable for smaller employers. Similarly, it poses problems where the employee has another source of income, such as working elsewhere for a different employer. Someone could appear to the employer to be a non-taxpayer based on a single source of employment income, but could be a taxpayer when combining it with other sources.
- **Mandating the use of RAS for all defined contribution schemes**
  This might result in tax relief being given to many of those who are currently missing out under NPA, but not all, given that it would not include defined benefit schemes. In addition, it would mean that those entitled to tax relief above the basic rate would have to claim it back from HMRC, whereas relief at the correct rate is given automatically under NPA.

LITRG look forward to working with HM Treasury in responding to the call for evidence, continuing to make the case for HMRC to make a balancing payment to affected individuals.

The full response will be available after the response deadline of 13 October at: www.litrg.org.uk/latest-news/submissions.

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CIOT	Date sent
HMRC Charter www.tax.org.uk/ref648	30/07/2020
Pre-Budget scrutiny 2021-22: call for views www.tax.org.uk/ref685	03/08/2020
LITRG	
Pre-Budget scrutiny 2021-22: call for views www.litrg.org.uk/ref383	04/08/2020

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ATT

ATT President's AGM Speech

AGM

Jeremy Coker presented his ATT President AGM Speech on Thursday 9 July 2020.

A little over a year ago, the 4 July to be precise, I was appointed President of this great Association, the Association of Taxation Technicians. It was a date that coincided with the date of American independence. This meant I could pretend that the worldwide celebrations on that day were for me. Little did I, or anybody else, suspect how events in America in the next year would impact upon the world that we live in today. Events that, coupled with the effects of the worldwide coronavirus pandemic, mean that today's Annual General Meeting is different from most.

I was humbled by the appointment and voiced my immense pride at being provided with the opportunity to serve the Association in this capacity, knowledgeable of the calibre of those who had gone before me and on whose shoulders I stand.

Whilst I embraced the mix of challenges that faced us as an Association, nothing could have prepared us for the year that we have had. Where, traditionally, I would at this moment be giving a brief report of my tenure, I have been further humbled by being given a mandate to lead this Association for one more year. I am, however, well pleased that all my colleagues on Council will be staying on to help guide this ship through what might be quite choppy waters.

I have been lucky to be a member of Council for a few years now and if the last three months have taught us anything, they have shown that we, as an Association, have benefited from exemplary leadership over the years. Strategic decisions taken over that period mean that we were more prepared for the disruption that was caused by Covid-19 than many other charities.

Last year, I emphasised three of our charitable objects – how we advance public education; enforce standards of professional conduct; and enforce Anti Money Laundering regulations. I will comment briefly on some of what we have done in relation to these items when I talk about how we have had to adapt our strategy, but there is a lot more detail in our annual report.

Today, I would like to concentrate on matters arising from the new world we find ourselves in, and how we, as an Association, have taken a hard look at our strengths in order to identify the opportunities that present themselves, so that we can continue to be the foremost body for tax compliance professionals in the UK.

I will break this down into three main areas:

- Strategy;
- Equality, diversity and inclusion; and
- The tax marketplace of the future.

Strategy

We held a Strategy Day in October, where plans were made for the medium and long-term future. These Strategy Days continue to be of immense value, but recent circumstances have meant that we have had to implement a number of our plans more quickly.

One of our previous strategic decisions was to appoint a Chief Executive. Jane Ashton has now been in place for four years. We have benefited from her leadership and experience over the years; but this was really brought into sharp focus earlier this year.

At the onset of the Covid-19 pandemic, Jane (together with Helen Whiteman, the Chief Executive of our sister


Jeremy Coker

charity, the Chartered Institute of Taxation) showed insight, decisiveness and quick thinking in responding to the specific challenges that were posed. The immediate concern was for the safety of staff, and this meant that individuals were very quickly set up for remote working, and the offices were shut long before the government announced a lockdown. This has enabled us to continue to deliver as seamless a service as possible.

The Association has since been responding to members, volunteers, staff and public interest needs. Our members have been assisting their clients in helping them to access support through the various government coronavirus support schemes. Our technical officers and volunteers (especially the technical and branch committees), have worked tirelessly to deliver feedback, ideas and guidance to HMRC, as well as their local tax communities. The Covid-19 hub page, on our website, has proved an invaluable resource and I would be surprised if there is anyone listening that would not find some helpful information on it.

Another strategic decision was to move all of our events online. This means that I have been unable to visit as many branches as I hoped to. I must, however, give my thanks to those branches that I did manage to visit for their hospitality. The branch network remains our most valuable asset and it is good to see it continue to grow.

Our online conferences came into their own. Our regular presenter, past President Michael Steed, in conjunction with our technical officers, delivered over six hours of content using a mixture of live streaming and recordings so that delegates could both participate online in the discussion and also watch other subjects at a time of their choosing. We will continue to offer these online next year.

I was delighted to host the Admission Ceremony at the House of Lords in October. The event remains a great opportunity to welcome members from far and wide into the ATT family. I hope that we will be able to resume these in the coming year, so successful candidates can have their day out to celebrate their qualification.

We have also accelerated the delivery of online exams. One paper, Corporate Taxation, was sat last month by nearly 200 candidates. It is hoped that by November all our exams will be capable of online delivery.

As alluded to earlier, strategic decisions made in the past mean that while the economic impacts of the pandemic will be felt for some time, we believe that we are well placed to weather this storm. We are, however, continually looking at our processes and seeking economies where we can find them. We would ask that you please continue to support the Association. We now have over 9,300 members and Fellows, and aim to continue to grow each year.

Equality, diversity and inclusion

The second area I wish to mention is equality, diversity and inclusion.

In conjunction with the CIOT, we understand the importance of being part of a team where equality, diversity and inclusion are valued by all. We must promote an environment that welcomes and values diverse backgrounds, thinking, skills and experience; and which allows members and staff to thrive and fulfil their potential.

In recognition of this, last year, we set up a Joint Equality, Diversity and Inclusion Committee. This small step was an acknowledgement that we should always be conscious of providing equal opportunities to members, volunteers and staff, as well as doing everything within our power to protect them from being discriminated against.

We understand that we need to try harder, to recognise, respect and value the differences in people, and increase consciousness among ourselves that this is not always immediately apparent. We want to continuously improve our policies so that members, volunteers and staff feel valued both within their workplaces and in the wider society at large. As mentioned earlier, recent events in America followed by the worldwide 'Black Lives Matter' protests make us even more confident that this was the right decision.

Implementation, though, will come with challenges. The BLM movement is having a moment and we need to ensure that it does not simply remain a moment. We all need to educate ourselves to understand and appreciate intersectionality. We need to ensure that our inherent advantages do not keep us from seeing the disadvantages that others face.

I am proud of the ATT and the CIOT. We have over the years had Presidents across a diverse spectrum – male, female, from the LGBTQ community, etc. I am proud to be the first black President of the ATT. We are aware that we have a really diverse membership base. We want to encourage its continued growth, and strive to ensure that any real or perceived barriers are broken. This is so that we can embrace and benefit from the richness and diversity of your opinions, contributions and experiences that we anticipate will dominate our new global world.

The tax marketplace of the future

This 'new global world' brings me to my third and final comment for today: the tax marketplace of the future.

Last year, I mentioned the commitment of members of the ATT to the highest standards of professional conduct, as stipulated in our guidance – Professional Conduct in Relation to Taxation. I also mentioned how the introduction of OPBAS was impacting on our duties as a supervisor for the Anti Money Laundering Regulations, with the possibility of even more regulation to come; and asked that the government should involve us in any such discussions.

Just as the pandemic broke (19 March 2020), HMRC published a consultation calling for evidence on 'Raising standards in the tax advice market'. HMRC have, in this document, proposed a number of options that seem to indicate that regulation, of some sort, is no longer a matter of 'if' but 'when'.

Only last month, Stephen Mayson published his long-awaited report into the Independent Review of Legal Services Regulation. If his recommendations are implemented, there is no doubt that they will impact upon the tax profession. Although he remains open-minded on the timing of any reform, he is increasingly convinced that some change is needed, and sooner rather than later.

We note that HMRC's focus is very much on avoidance schemes, and what would generally be regarded as very unprofessional behaviour. The vexatious matter of agents that are not members of any professional body continues to raise its head. We will be responding to the consultation but it would be very helpful if we could obtain your feedback, so that we can be sure that we are adequately representing your views. Such views should enable us to remain in the room where it happens.

Closing remarks

So, what does the future hold for the ATT? After the year that we've had, I doubt that anyone will be willing to make any predictions.

Since the last AGM, we have had:

- an election that resulted in a landslide victory for the Conservatives;
- Brexit: Britain left the EU on 31 January 2020; and
- a Coronavirus pandemic, the like of which has not been seen for over a century (Spanish Flu, 1918).

I would, however, like to finish on an optimistic note. And give thanks where I think it is due.

It would be remiss of me not to mention the efforts of the teams at HMRC, and other related government bodies, that have worked so hard to deliver the various individual and business support schemes to assist in alleviating some of the hardship arising from the impact of coronavirus on the economy. They have shown how quickly they are able to respond to challenges and deserve every commendation.

These remain exciting times in tax. I am confident that with the help of Deputy President Richard Todd and Vice President David Bradshaw, my fellow members of council (especially our past Presidents), our Chief Executive Jane Ashton and the versatile members of staff at Head Office, we are well placed to face the challenges of the next 12 months.

Special thanks also go to Glyn Fullelove, the President of the CIOT, who has supported me throughout the year and who has provided a great sounding board on matters that affect both organisations and the profession.

Finally, I want to say another thank you for the honour of serving as your President. I have learned so much from you and believe you have made me a better person. I thank all of you for your continued support and for the confidence reposed in me once more.

In closing, may I encourage us all to stay safe and stay strong – both for those we love and the communities we serve.

Thank you,
Jeremy Coker

CIOT & ATT

Five free personal branding auditing tools

TRAINING

Joanne Herman's blog series continues…

Personal branding has recently become an important business activity for everyone. Investing a little bit of time and effort will help you to differentiate yourself. And that's a fact. Why? Well, nowadays we have all sorts of clever tech solutions to help us. Some of these come at a premium cost and others are free if you know what to look for.

To help you on your way to creating a bigger and better personal brand, I will be uncovering my top five personal brand building audit tools you can use for free. That's right, free. And here's a fact to consider… Did you know that building a personal brand – specifically in the area of expertise you want to be recognised – can take up to two to three years of dedicated and consistent effort before you see it take off? So, what are we waiting for? Let's take a look!

1. Brand Yourself.com
It does what it says on the tin. Developed by young entrepreneur Patrick Ambron, it does what it says on the tin. This site will help you to:
- improve your online reputation; and
- protect your online privacy.

In 60 seconds, you can check if your data is exposed. It's safe, secure and no credit card is required. Yes, it really is that simple. The free version covers ways in which you can:
- protect your privacy;
- clean up your social media;
- improve your Google results; and
- build your personal brand.

To improve your brand in each respective area, you're presented with a choice to either:
- **DIY – do it yourself:** With this method you'll benefit from handy checklists and guidance on what do, including recommendations on how long it should take. They even recommend the amount of time it will take to improve your brand.
- **Managed service:** Their fully managed personal brand service helps individuals improve their Google score (an estimate of the quality of your ads, keywords and landing pages). They also specialise in unwanted Google Results, including complaints, images and videos, blogs and news. With their managed services individuals can benefit from speaking engagements, TV appearances, consulting jobs, promotions and paid sponsorship.

Try it out at:
https://brandyourself.com/

2. Resume Worded
Another site I've found is Resume Worded, a platform that helps people improve their personal profile to help them get more interviews. Founded by another young entrepreneur, Rohan Mahtani, this website has a free AI-powered tool which claims to give you personalised feedback on your LinkedIn profile in just 10 seconds.

Launched in 2019, it is made up of three core elements:
- score my resume;
- resume samples; and
- LinkedIn review.

All you need to do is upload your public LinkedIn profile in a PDF (in LinkedIn just go to 'More' in your profile and in the drop down you will see the option to save it as a PDF) and there you have it. An instant profile analysis in seconds thanks to their AI.

This site also offers a free, comprehensive list of actionable steps to help you write your most successful resume. These include formatting, structure, education, experience, keywords and much more.

Try it out at:
https://resumeworded.com/index.php

3. Jobscan
A similar platform is Jobscan, created by entrepreneur James Hu in 2013. As James explains: 'The Jobscan idea sparked when I was unemployed in 2013.

'I wanted to build a tool for myself that could help me land a job. As it turned out, many people also saw results using Jobscan. It has since become my mission to help others find jobs. It's incredibly fulfilling to see the tools our talented team make a real-world difference.'

Rather than uploading your LinkedIn profile, as we saw in Resume Worded, with Jobscan you cut and paste your CV, job description and job title. Once your scan is completed, you can make it available to recruiters.

Your overall match rate, which is an overall percentage, is made up of:
- Resume findings, including the applicant tracking systems (ATS) check. 'From an ATS perspective, the most important information in your work history is the job titles and relevant skills that match the job description. Many ATS will also extract your education, location and contact information';
- hard skills;
- soft skills; and
- other keywords.

The free version offers:
- Free Forever Scans;
- five Match Rate Calculations on Signup;
- two Match Rate Calculations per month;
- two Keyword Comparisons per month;
- Limited Scan History (20);
- Resume Manager; and
- Jobscan Learning Centre.

Try it out at:
https://www.jobscan.co/

4. LinkedIn Sales Navigator – SSI
LinkedIn also offers its very own SSI or Social Selling Index. It measures how effective you are in the following areas and awards a maximum of 25 points for:
- establishing your professional brand;
- finding the right people;
- engaging with insights; and
- building relationships.

Updated daily, thereby giving you full control and the opportunity to improve your overall brand presence, this useful metric gives you a score between 0 and 100 (100 being the highest score you can achieve).

This used to be accessible for those who subscribed to the LinkedIn Sales Navigator tool but it is now available to the public free of charge.

You may ask if LinkedIn's SSI score is just a vanity metric but think of it like Klout for LinkedIn. In terms of auditing your personal brand, I think this is a great tool. It's free and widely available, so why not? However, according to social selling trainer Dave Howe, he deems the score as: 'The ultimate vanity metric of the social selling world.' He continues: 'People proudly wear their SSI score like a badge of honour – reaching a score above 80 is truly thought of as a rite of passage.'

However, LinkedIn claim that those who achieve an SSI score of 70 or higher see 45% more opportunities and are 51% more likely to hit sales targets. It certainly is a great tool for those working on social selling programmes because it enables sales enablement teams to map the SSI score to revenue generated per salesperson and show a return on investment from social selling.

Are you curious to discover how your LinkedIn profile measures up against your connections and other people in your industry?

Try it out at: **https://www.linkedin.com/sales/ssi**

5. The Big Five Personality Test

As well as using free auditing tools for your current online presence, it's also important to perform an audit on yourself in terms of your personality. Doing this will help you to understand yourself and stand out in the crowd.

Who doesn't enjoy taking a personality test? However, this is slightly different. According to Wikipedia: 'The Big Five personality traits, also known as the five-factor model (FFM) and the OCEAN model, is a suggested taxonomy, or grouping, for personality traits developed from the 1980s.' The theory identifies five factors:

- **openness to experience** (inventive/curious vs consistent/cautious);
- **conscientiousness** (efficient/organised vs extravagant/careless);
- **extraversion** (outgoing/energetic vs solitary/reserved);
- **agreeableness** (friendly/compassionate vs challenging/callous); and
- **neuroticism** (sensitive/nervous vs resilient/confident).

Each of these traits is rated on a scale, and where you fall on the scale defines your unique personality. Once you have your key traits, you can start to craft and create your own personal brand mission statement.

Do you need more insights on what your brand is? Then why not ask for some feedback from your own friends and family? Start by asking them to give you three adjectives they'd use to describe you.

Try it out at: **www.outofservice.com/bigfive/**

KEY TAKEAWAY

- I recommend performing the 8 step personal brand audit before using these free tools to gauge a better understanding of how you appear (www.tax.org.uk/your-personal-brand-audit-8-easy-steps).
- Don't have time? Try them out now and see which one works best for you.

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

Disciplinary reports

Findings and orders of the Disciplinary Tribunal

TAXATION DISCIPLINARY BOARD

Mr Christopher Bugden

NOTIFICATION

At its hearing on 12 June 2020, the Disciplinary Tribunal of the Taxation Disciplinary Board considered a complaint made by CIOT about Mr Christopher Bugden of Albourne, a member of The Chartered Institute of Taxation.

The tribunal found the following charges against Mr Bugden to be proved:

Charge 1

In breach of rule 2.10.1, Mr Bugden did not inform the CIOT promptly or at all of any or all of the following instances of disciplinary action begun against him:

(a) On 11 October 2013, a tribunal of the Disciplinary Tribunal of the Institute of Chartered Accountants in England and Wales (ICAEW) found proved both heads of a complaint against Mr Bugden. The tribunal imposed a severe reprimand on Mr Bugden and ordered him to pay a fine of £20,000 and costs of £28,000.

(b) On 15 August 2018, a tribunal of the Disciplinary Tribunal of the ICAEW found proved parts 1b and 3 of a complaint against Mr Bugden. The tribunal imposed a reprimand on Mr Bugden, and ordered him to pay a fine of £3,000 and costs of £10,000.

Charge 2

By virtue of the fact and circumstances of the disciplinary action outlined at paragraph 1.1(b) above, Mr Bugden:

(a) failed to avoid any action that discredits the profession, contrary to rule 2.1; and/or

(b) brought the CIOT into disrepute, contrary to rule 1.7.

Charge 3

At a hearing of a TDB Interim Order Panel on 6 December 2019, Mr Bugden made an inaccurate statement in that he informed the panel that he had paid the fines imposed by the ICAEW and that 'all [his] financial obligations with ICAEW' had been 'cleared', when, as of 6 December 2019, of the £3,000 fine and costs of £10,000 imposed by the Disciplinary Tribunal on 15 August 2018, only £2,170 had been repaid. This statement was made dishonestly, in breach of rule 2.1 and 2.2.1, in that Mr Bugden knew at the time of making it that it was inaccurate.

The tribunal determined that Mr Bugden be suspended from membership of CIOT for a period of 12 months, and that he pay costs in the sum of £3,349.92.

A copy of the decision of the tribunal can be found at www.tax-board.org.uk.

CIOT

Tax in the 2010s


David Gauke


Chris Leslie

DEBATE

Report by Hamant Verma

The CIOT and Institute for Fiscal Studies hosted an online debate in June on 'Tax in the 2010s: Successes and Failures'. The panellists reflected on the corporate taxes roadmap, increases in the income tax personal allowance, the cut in the additional rate of income tax and changes to VAT and NICs.

Glyn Fullelove, President of the CIOT, chaired the event. He reminded those watching that the year 2010 was a time when the gig economy was in its infancy, when the main concern regarding the UK's tax system for multinational companies (MNCs) was that it was too tight and uncompetitive, and when social media was still seen just as a way for friends to communicate rather than a way for politicians to win elections.

Stuart Adam, Senior Research Economist at the IFS, was the first speaker, providing an overview of the main tax developments and trends during the decade. Adam said that tax revenue was surprisingly stable over the decade, with tax take about a third of national income. The biggest tax rises in the 2010s were in VAT and national insurance, plus a big reduction in the amount you can save into pensions and streams of anti-avoidance measures. The three big headline tax cuts throughout the decade were the raising of the income tax personal allowance, a reduction in corporation tax rates and a freeze in fuel duties. The result was higher taxes for the richest and poorest, he concluded.

Adam observed that challenges that were rising in the 2010s are simply more urgent now. These include council tax valuations now approaching 30 years old; motoring taxation and how low-emission driving should be taxed; a lack of systematic action on climate change with 'wildly inconsistent' carbon prices; inconsistent taxation of different legal forms of employment becoming increasingly problematic; and reliance on a small number of taxpayers for much of the revenue.

Adam pointed out that rising complexity in tax is one result of the changes made in the 2010s, with lots of new taxes, more differentiated rates and allowances in existing taxes and more variation across the UK. There were also changes to the tax policy making process, such as setting up the OBR and OTS, somewhat better consultation, better documentation and transparency, the corporate roadmap in 2010, a move to a single fiscal event per year (in principle, at least) and tax devolution.

Adam was followed by **David Gauke**, former Treasury minister, Work and Pensions Secretary and Lord Chancellor (now at Macfarlanes LLP). There was a need for taxpayers to contribute to bringing the deficit down in the 2010s, said Gauke, and while spending took most of the strain there were also some tax increases. Public support was crucial. As a minister he wanted to use the tax system to ensure there was strong growth in the economy and, when the coalition began in 2010, there was a view in government that the UK was losing MNCs from the country because the tax system was no longer competitive.

On personal taxation, Gauke said he looks back at the 2010s as a progressive period in personal tax. The growth in the personal allowance, partly as a result of Lib Dem pressure in the coalition, was broadly progressive. In 2012, there was controversy about the cut in the 50 pence additional rate of income tax; the cut did not cost very much money and at the top end higher earners were making bigger contributions in other ways, he argued. He added that a lesson he had learnt at the Treasury was how difficult it is to get simplicity in the tax system when every change has winners and losers, and the losers are always more vocal.

The corporate roadmap brought stability, he said, adding that by 2014 we could see the benefits of a consistent policy on corporation tax, at least until Brexit. He talked about some companies 'taking a free ride' with their tax responsibilities during the first half of the decade. He also mentioned the introduction of the GAAR and the BEPS project where the UK 'led the way'. Attitudes did change over the decade towards the tax behaviour of MNCs, he insisted. He also pointed to his pressing of Making Tax Digital (MTD) and PAYE Real Time Information (RTI) while in office, saying the current furlough scheme would not be possible without RTI.

Chris Leslie, a former minister in the Blair governments, and a Shadow Treasury Minister from 2011 to 2015, said you cannot detach the politics from tax policy. The post-financial crisis setting had set the tone for government policy in the 2010s and parliamentary debate was often about symbolism rather than detail. He reminisced about the political energy expended debating the complicated details of the bank levy and reflected that perhaps the rate was too high.

Most of the burden in the decade was on spending and hence the tax take was relatively stable, Leslie observed. The government occasionally tried to tweak the scope of VAT (such as with the 'pasty tax') which burned political capital. On corporation tax, his verdict was that we have hit the baseline of that and now see a reversal.

Property tax and capital taxes rose considerably, partly because of the influence of Lib Dems in the coalition government, said Leslie. He suggested lobbying pressure from interest groups was partly to blame for the constant changes to business rates. The apprenticeship levy was difficult for an Opposition to oppose, as it was hypothecated directly to a social good. An intensely political Chancellor, George Osborne was good at pushing policies that the Opposition found hard to oppose. There were 'cock ups' made by government, such as with the rollout of universal credit. The fiscal rules never managed to sustain themselves over the ten year period, he noted.

Jane McCormick, Global Head of Tax at KPMG, said there was good engagement between the tax profession and the government in the 2010s, when contentious issues were talked about in real-time. KPMG could see the positive result of the corporate tax roadmap on businesses in the UK. Ten years ago, nobody would believe we would have seen the end of bank secrecy, she remarked.

DOTAS and the GAAR have been effective in cutting the demand for aggressive tax avoidance, judged McCormick. Asking businesses to publish their tax strategy has taken tax into the boardroom, she added. The OTS acts as the conscience of the legislators, but they have a job she likened to trying to empty a sink of water using a fork.

Despite some of the progressive tax policies, McCormick said that cliff edges and anomalies make British people think the tax system is unfair. For example, a perception has grown among Brits that tax policies aimed at increasing investment are 'sops to the rich'. She bemoaned the narrative that HMRC are not competent against tax dodgers. There is a difficult relationship between taxpayers and HMRC, owing in part to the slow pace of administration, she concluded.

The chair opened questions by asking what the lessons are that can be learned from policy coming out of an economic crash in the early 2010s as we exit the Covid-19 epidemic? Gauke said tax policy is more challenging. You are faced with the same objectives – fix public finances and provide public services – but tax is going to have to do more of the heavy lifting, he suggested. It will help the government if they can create a new corporate tax roadmap, he suggested. We must have a view of our tax system in which we agree what are the biggest impediments to growth. Taxing property is better than taxing income, for example.

McCormick said property taxation will come more into the minds of governments across the world. Leslie talked about a possible tax clawback on online companies and companies that continue to pay dividends. There is no appetite for expenditure to carry the burden this time, he said. The apprenticeship levy and plastic bag tax sailed through Parliament because of the hypothecation promise; perhaps this is where NHS and social care costs will go?

On self-employment vs employment in tax, Leslie said it is difficult to get cross-party consensus because there are bigger rewards for risk aversion from opposition parties. He did suggest that a merging of NICs with income tax may occur but this risks perceptions of being a stealth tax. Gauke said the taxation of the self-employed is going to be looked at as a priority because the Treasury is worried about the erosion of the tax base. He was interested in integrating NICs and income tax while he was Tax Minister.

The panel were asked if a non-governmental body should be involved in taxation to ensure there are long-term objectives for the tax regime. Gauke said taxes are part of politics and at the heart of democracy. Leslie said that until you get a PM who is interested in tax policy, we may not see much change but suggested that cross-party consensus may be possible on social care.

The 24 June 2020 event was the first of the popular CIOT-IFS joint debates to be held online, and the event secured almost 900 registrations. More than 1,700 people viewed the event either live or in the week following. The video is still available here: https://tinyurl.com/yy38hz5s.

CIOT

CIOT hosts launch of Treasury Committee Coronavirus inquiry

ENQUIRY

The House of Commons Treasury Committee has begun an inquiry into Tax after Coronavirus. The inquiry was launched at an online event hosted by CIOT on 17 July.

CIOT President Glyn Fullelove chaired the launch, interviewing committee chair Mel Stride and his fellow committee member Angela Eagle in front of an online audience of more than 600 people. (The recording of the event has since been viewed more than 1,000 times.) Glyn praised the work of the Treasury Committee, saying that it matters hugely in terms of influencing both the direction of government policy and how it is administered. He said he was delighted that CIOT had been invited to host the launch.

In his opening remarks, Mel Stride said that it was a very long time since there had been a fundamental review of the tax system. He said tax was central to how the government deals with the economic impact of Covid-19. It was also timely, he said, to look at how the tax system affects young people. The inquiry will cover what level of tax is appropriate, the future pressure on the tax base, the global corporate tax scene and employment taxes.

Mr Stride went on to set out the themes of the inquiry, such as the changing terrain across which taxation is applied, the way in which people structure themselves in terms of their own employments, concentration of wealth in the hands of a relatively dwindling number of individuals, and tax reliefs.

Labour MP Angela Eagle commented that tax reform has to think beyond its intellectual foundations to be practical. She is keen to look at fairness and redistributive issues during the inquiry. She wants debate about wealth taxes, green taxes and land taxes – and even a solidarity tax to deal with the Covid-19 deficit.

Ms Eagle compared the tax relief system to 'barnacles on a boat': all those that have been there for ages keep growing, and you can end up with so many reliefs that you cannot stop perverse implications from happening. She wants a simpler, dynamic system of reliefs.

Three outside experts were brought in to provide their thoughts on what the inquiry should look at. Gemma Tetlow, Chief Economist at the Institute for Government, remarked that

Angela Eagle

Mel Stride

successive governments have struggled to grasp the issue of tax reform because there are really deep political economy issues surrounding it (such as winners vs losers). The result is that over the past decade we have not had a big overhaul of the tax system, leaving governments to find sums of money in less known taxes.

Heather Self, Partner at Blick Rothenberg, highlighted how the tax system can create perverse incentives in relation to people's employment status. On windfall taxes, Ms Self warned that however they are imposed they will not apply in the way the Committee thinks they will; there will be perverse implications. She said the real danger is that if you want to use a windfall tax, people fear it will happen again and it can be a real disincentive to investment.

Sam Mitha CBE, former Head of HMRC's Central Tax Policy Group and a volunteer for the Low Incomes Tax Reform Group, said that the biggest problem facing the British economy before Covid-19 was the stagnant productivity in the UK. There is a strong case for revisiting tax reliefs to encourage productivity growth, he believes. He also called for action to tackle anomalies in the tax system that disproportionately affect lower paid people, such as the way the net pay arrangements on pension contributions work.

In a Q&A session, Mr Stride said the committee will look at international comparisons. On Making Tax Digital (MTD), he believes digitalisation of the tax system to be 'inevitable and right', stating that MTD will reduce errors and help to close the 'tax gap'. We need to move to a more technologically driven interface between businesses and the government, and there will be efficiency benefits, he suggested.

Submissions to the enquiry closed on 28 August. Watch a recording of the launch at https://tinyurl.com/y6gvlsse. There is more on the inquiry at https://tinyurl.com/y3fqdm6r.

TAX CHARITIES

A warm approach to tax

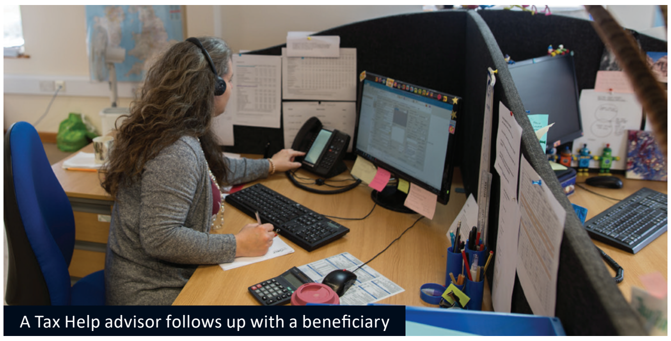
REPORT

Alison Lovejoy explains how the tax charities are putting their beneficiaries at the head of their work during Covid-19.

Tax is a highly technical and complex subject that changes constantly. The consequences of giving the wrong advice are serious and can have life-changing implications. It is vital that TaxAid and Tax Help for Older People can draw on highly trained tax professionals as trustees, staff and volunteers. The tax profession forms the backbone of the charities' support through Bridge the Gap.

When it comes to advising, supporting and mediating for their beneficiaries, they must always be sound and technically credible but also warm, accessible and demystifying. Vulnerable people who cannot afford paid advice are often very distressed when they call the tax charities for help. They may struggle with English as an additional language. They may be bereaved or face mental health issues, including depression and anxiety. They may struggle to understand the situation they are in. They are often frightened, confused and isolated.

This is where a warm approach becomes so important. It is very difficult to explain complex issues in simple language. It is a skill that the tax charities have developed over the years as they have learned to demystify pension, tax returns, penalties and tax debt. They must go beyond clarity and simplification to warmth, encouragement and reassurance; and always place beneficiary needs at the heart of their work and communicate in clear, warm and encouraging language.


A Tax Help advisor follows up with a beneficiary

Valerie Boggs, Chief Executive of TaxAid and Tax Help for Older People commented: 'Our vision is to provide tax advice to all who need it. We do this by placing our beneficiaries at the very centre of our work. We are here to provide them with the first-quality advice they need to manage their tax. We are also here to communicate in a warm, kind and encouraging way so that everyone who approaches us for help knows we are on their side. Our next step will be to ensure that our beneficiaries will help us make sure we are getting our tone and approach right. We will ask for feedback on what we are doing and for ideas on what we can do better to explain and support this difficult and challenging area of life.'

TaxAid and Tax Help for Older People want as many people as possible to benefit from their advice and support. If you are involved in your local community, faith group or civil society organisation, please help to spread the word about this work to vulnerable groups who cannot afford paid advice. If you would like to hear more about ways you can help or would like to make a donation please contact Rose Over on rose.over@taxvol.org.uk.

ATT

2020 ATT Spring Conferences

CONFERENCES

It will come as no surprise that the 2020 ATT conference season took a very different approach to previous years, as we moved the entire season online – the first time any of the content has been presented remotely. In place of the usual seven separate live events around the UK, this year's conferences included a mix of pre-recorded and live-streamed content from the usual ATT team. We held four live-streamed events between May and June, with regular presenter Michael Steed supported by the ATT technical team and the audience submitting questions online.

The credit for achieving this feat of transformation needs to go to our Member Services and Events teams, who both spent significant amounts of time and effort finding suitable technology and contacting all delegates. We are all very grateful. Equally importantly, we were delighted that 360 members joined us over the four live events, submitting questions and – as we can see from the viewing times provided by our streaming provider – staying engaged and focused throughout the two hour sessions.

In the live sessions, Michael (and his technical officer support act) covered the latest on Budget 2020, the various Covid-19 schemes and grants, as well as regular technical content such as the optimum profit extraction in the small company and at what point incorporation becomes beneficial. Attendees submitted typed questions through the Sli.do app and presenters were able to chat online with attendees, as well as answering questions 'on air'.

In addition to the live sessions, a further four hours of pre-recorded material was available online for delegates to access at their convenience. The sessions covered:

- **Property taxes:** including the IHT residence nil rate band, structures and buildings allowance and business property relief on holiday lettings;
- **Capital taxes:** covering the latest changes to private residence relief, 30 day CGT reporting requirements and the latest on the Trust Register;
- **Business taxes:** including corporate loss relief, goodwill and intangibles, R&D relief and capital allowances;
- **Employment taxes:** covering IR35 and employment taxes, case law round up, company cars and homeworking expenses; and
- **VAT, Customs duties and Brexit:** including MTD, EU and Brexit issues and recent VAT cases.

The professional standards team also contributed a pre-recorded session on Professional Standards and the impact of Covid-19 on your practice.

We will be keeping the Spring Conference season online again in 2021. We hope that this format will continue to appeal to our regular attendees and also enable those members who have not previously been able to attend due to travel or work and family constraints to join in. We will be offering a similar mix of live and pre-recorded material next year, so that attendees can continue to benefit from being able to ask questions of our speakers and access the remaining material flexibly and at a time convenient to them.

If they have not done so already, attendees at the 2020 conferences are encouraged to provide feedback so we can take their views into account when planning starts for the 2021 season.

Branch Webinars September 2020

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

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

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

Corporate Tax Essential Update
1 September
12 - 1 PM
Emma Rawson
Sheffield Branch
M £25 | S £22.50 | NM £27.50

Tax Planning in Difficult Economic Times
2 September
2 - 5 PM
Giles Mooney
Northern Ireland Branch
M £75 | S £67.50 | NM £82.50

Employment Taxes
3 September
5 - 7 PM
Alexandra Durrant
Sussex Branch
M £50 | S £45 | NM £55

Finance Act 2020
4 September
2 - 3:30 PM
Reshma Johar
London Branch
M £40 | S £36 | NM £44

Tax Update
8 September
4:15 - 7:15 PM
Mark Morton
Birmingham and West Midlands Branch
M £75 | S £67.50 | NM £82.50

Tax Issues on Exit Planning
11 September
2 - 5 PM
Peter Rayney
North East England Branch
M £75 | S £67.50 | NM £82.50

VAT Update
14 September
6:30 - 8 PM
Les Howard
South London and Surrey Branch
M £40 | S £36 | NM £44

Back to Basics: Sole Traders
15 September
6:30 - 8PM
BDO Team
Merseyside Branch
M £40 | S £36 | NM £44

Capital Taxes - The Hot Topics
18 September
2 - 5 PM
Robert Jamieson
Northern Ireland Branch
M £75 | S £67.50 | NM £82.50

IR35 Mutuality of Obligation ('MoO') - the Taxpayer's Trump Card
21 September
1PM - 2 PM
Derek Francis
Aberdeen Branch
Free to all

International Tax Series - 1 of 4
21 September
6:45 - 8:15 PM
Jonathan Schwarz
Harrow and North London Branch
M £40 | S £36 | NM £44

Tax Valuation
23 September
1 - 2 PM
Ritchie Tout
South Wales Branch
M £25 | S £22.50 | NM £27.50

Inheritance Tax and Trusts - An Advanced Guide
24 September
2 - 5 PM
Robert Jamieson
East Midlands Branch
M £75 | S £67.50 | NM £82.50

Contact us
If you have any questions drop us an email:
branches@tax.org.uk

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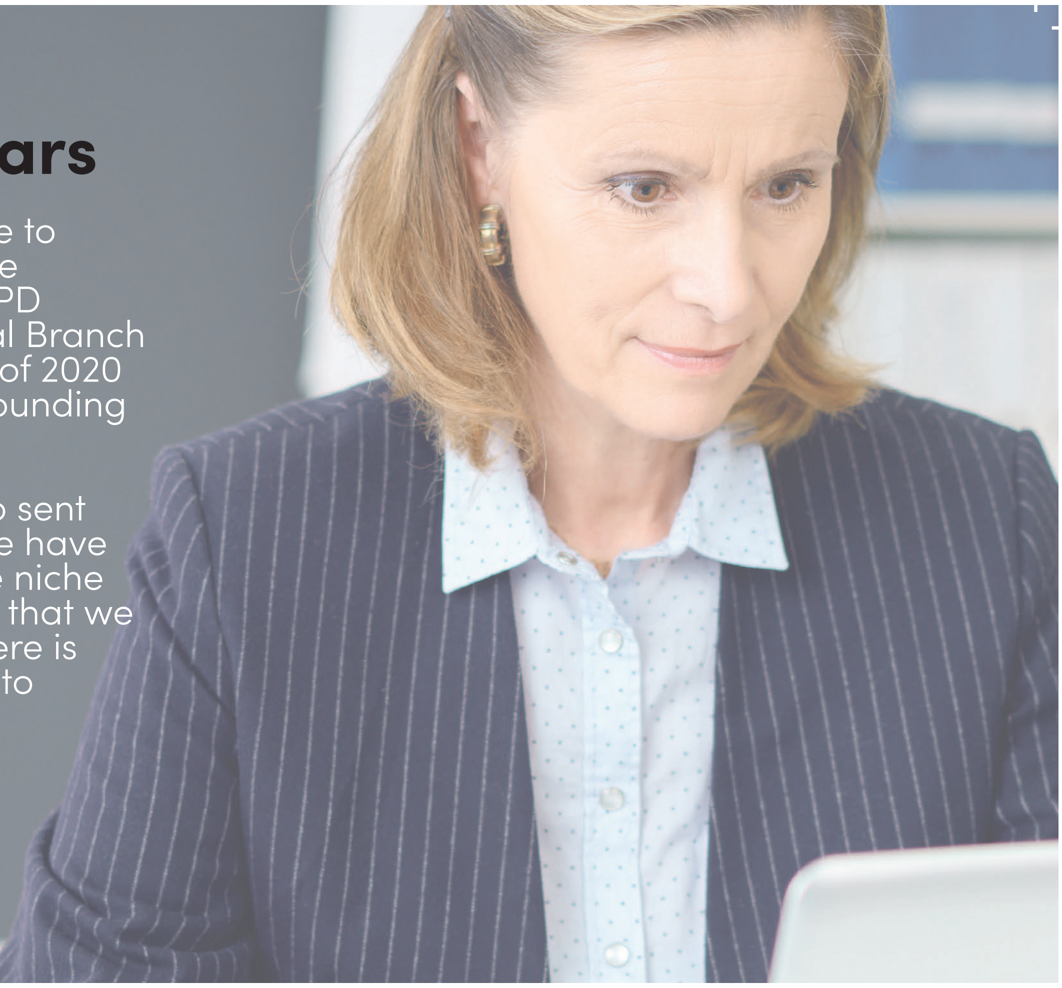
Branch Webinars

We are delighted to be able to continue to deliver an online programme of Technical CPD brought to you by your local Branch Network for the remainder of 2020 due to the uncertainty surrounding face to face events.

Thank you to everyone who sent in suggestions for topics, we have been able to consider quite niche and specialised topics now that we are online and we hope there is something there to appeal to everyone.



The branch committees along with the staff team have aimed at providing a programme that is affordable, accessible and truly excellent.

Thank you all for your support, stay safe and please send us your feedback either to branches@tax.org.uk or in our post webinar surveys which are sent once you have participated.

Are you recieving our emails?
We've been emailing you on Saturday mornings if you belong to a Branch.

If you don't recall having seen any emails since March, please take a moment to check your junk/spam folders for emails from branches@tax.org.uk

Are your details up to date?
Please log in at the portal using your member number/ID and password, visit my profile to edit your email address and branch preferences.

Access the Portal via
https://pilot-portal.tax.org.uk/Account/My-profile

Do you belong to a Branch?
When you access the Portal, take a look at your preferences in your account to see which Local Branch you are connected with. If you don't see a Branch, select one from the options.

Drop us an email at branches@tax.org.uk if you need any help.

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

VAT Manager/Accountant
Bradford – £market rate

An excellent opportunity for an accounting savvy VAT specialist to join an international group. In this role, you will focus on compliance, VAT reporting and accounting systems. Would consider someone accountancy qualified, looking to specialise in VAT, and CTA support is available. You will also review invoices for VAT purposes. Good ERP systems experience an advantage as would be a natural aptitude to systems improvement. Friendly team currently working from home, with a mix of home and office work envisaged for the future. **Call Georgiana Ref 3000**

Tax Consultancy Role
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You will work closely with the tax partner and the wider tax team. You will assist with the delivery of advice across a wide range of issues, including advice on business structures for family owned businesses together with inheritance tax and capital gains tax advice. Managing a portfolio of clients, you will prepare and review tax calculations, discuss with the client their objectives and deliver bespoke tax advice that helps them achieve these, and provide support in the event of HMRC enquiries. **Call Alison Ref: 2617**

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Our client is a boutique law firm which specialises in tax. They seek a UK qualified tax lawyer, ideally with at least 7 years' PQE. This firm acts as the tax department to a range of commercial law firms. It deals with UK and international corporate tax matters as well as SDLT property tax and VAT. Home-working with occasional travel to London – you can be based anywhere in the UK, so it is a real opportunity for work-life balance. The current team is from well known commercial and Magic Circle law firms. Would consider someone part time, and would consider partner level. **Call Georgiana Ref: 2966**

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

Tax Consultancy Partner
Glasgow – £excellent

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

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

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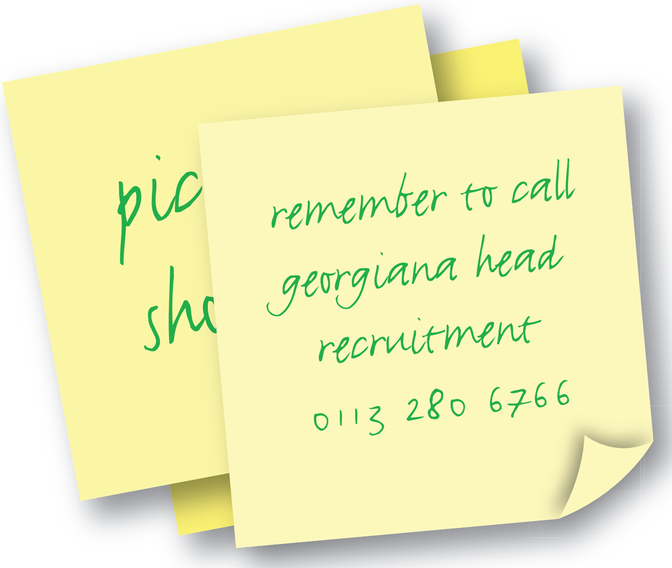
Manchester, Leeds or Birmingham

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



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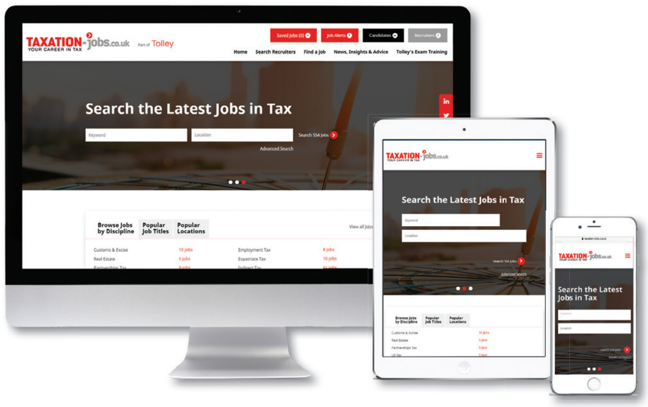

Tax Senior Rochdale £25,000 – £35,000 CCM | Carter Collins & Myer	This Rochdale based job opportunity is to join the practice's personal tax team. You have your own allocation of varied clients. These range across all type of work. The role will be predominantly compliance in nature, however advisory pieces crop up often and you will be able to take your expertise of a particular client and advise them accordingly, i.e. personal income advice. Completing self-assessment tax returns for a number of clients simultaneously will be a significant part of this job. In order to succeed in this role, you must have accountancy practice experience and either be ATT qualified, or be qualified by experience.
Tax Writer - Employment Taxes London £competitive + excellent benefits LexisNexis®	The Tolley team has a vacancy for a full time tax writer on employment taxes. This is an office-based role but with the opportunity to work flexibly from home for part of the week. This is a unique opportunity to join a dynamic tax technical team in a highly successful publishing and solutions business, and be part of the future of market-leading tax information. The company offers an excellent benefits package and flexible working, along with a competitive salary. Ideally, you will be CTA-qualified or equivalent and current experience working in practice is highly desirable. Experience of tax writing or lecturing would be an advantage.
Tax Partner - Private Capital Focused London £negotiable Pure	A leading firm is sourcing for a UK trained tax professional to join its growing Business Tax team with a specific market focus on Private Capital. This role will cover private equity backed companies, PE firms and wealthy Owner Managed businesses and this Tax Partner will effectively build long standing relationship to ensure any tax issue whether Corporate Advisory (UK or International), M&A Tax, Tax Compliance, and all Private Client issues are covered by this growing Tax team.
Vat Specialist London £appropriate for experience BLT	A well-known brand seeks additional VAT resource to join the Indirect Tax team on a four month fixed term contract that could well go on longer. A UK VAT background is essential. Mixture of compliance management/oversight, doing compliance, as well as advisory. The company would like the hire to fully commit to being part of their workforce, so this is on a fixed term employment contract rather than on a day rate basis. The company would like to have appointed by late August/early September. You would need some solidity of VAT technical/legislation knowledge and be around the Assistant Manager or Manager level in terms of experience.
Tax Partner / Partner Designate Lancashire £excellent depending on experience longman tax recruitment	An opportunity has arisen to join one of the region's leading independent firms as a tax partner or partner designate. Our client is willing to consider applicants who want to progress to become a future partner or those who prefer to remain as a highly valued and well rewarded director. The primary objective of the role will be to work closely with the tax partner and enhance the firm's tax advisory capabilities and help the continuing development of the tax practice. You will be expected to play an important role in the firm's marketing and business development activities and will be highly motivated, a great communicator and must be a committed team player.

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