June 2023

Chartered Institute of Taxation.

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Voluntary disclosures

Is it time to lay your cards on the table and bring your tax affairs up to date in order to avoid a full HMRC investigation?

Americans in the UK

The US's citizenship basis for taxation can result in unexpected charges

The flat rate scheme

Does the limited cost trader category mean the end for VAT savings?

Incentive options

The traps of offering share schemes in an employee ownership trust

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HELEN WHITEMAN JANE ASHTON

Welcome
Being responsive!

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Since our last welcome page, the government held its Tax Administration and Maintenance Day (TAMD) when it announced a package of proposals intended to support its stated ambition 'to simplify and modernise the tax system, tackle non-compliance, make the tax system fairer for taxpayers and to make the customs system work better for traders'.

The proposals were predominately in the form of consultations, calls for evidence and discussion documents ranging from the taxation of decentralised finance involving the lending and staking of cryptoassets to tougher consequences for promoters of tax avoidance (see bit.ly/3Of3nTE). ATT, CIOT and LITRG will all be responding to these proposals, with our comments informed and directed by the discussions, feedback and views that our technical officers receive from you. Your practical understanding of the impact of policy proposals on day-to-day activities helps to ensure that our responses are both targeted and relevant and aid clarity and certainty for taxpayers and agents alike, so please do keep an eye out for ways in which you can get involved in providing your comments and helping to shape our responses.

Elsewhere, we are continuing to raise concerns with HMRC about their service standards and the restrictions on the Agent Dedicated Line, which should hopefully have been lifted by the time you read this article. The Issues Overview Group, on which both ATT and CIOT are represented, and which keeps an eye on concerns raised via the Agent Forum, also met with HMRC at the end of May to discuss delays issuing repayments and how we can work together to reduce the amount of time agents have to spend chasing repayments for taxpayers.

'Being Responsive' is just one of the seven standards contained within the HMRC Charter and we strive to ensure that there is ownership and accountability within HMRC for each of these standards. If you have examples of where HMRC are not attaining their standards, we would love to hear from you. Please send your comments to atttechnical@att.org.uk or technical@ciot.org.uk.

Please do keep an eye out for ways in which you can help to shape our responses.

We would encourage you to attend the ATT Annual Conference being held this month. You can attend in person on 29 June as a full day event in London or join it as two morning half day online sessions on 19 and 21 June. It's an excellent way of learning about the latest developments in tax and keeping up to date with your CPD requirements. Our speakers this year will be Rebecca Benneyworth, providing a general update on Budget 2023, Finance Act 2023 and Finance (No 2) Bill 2022-23, supported by the ATT Technical Officers Emma Rawson on Basis Period Reform, Helen Thornley with a Capital Taxes Update and Steven Pinhey providing a session on the HMRC Enquiry Lifecycle.

There is also time to register for the CTA Address (hybrid) on 8 June at RSA House or online from 6.30pm with the keynote address from Pascal Saint-Amans and panelists Heather Self and Tove Ryding.

Finally, we were delighted to meet our new CTA members at Drapers Hall on 10 May. We celebrated with medal winners, 50 year members and Fellows with their families, friends and colleagues. Our congratulations again to you all!

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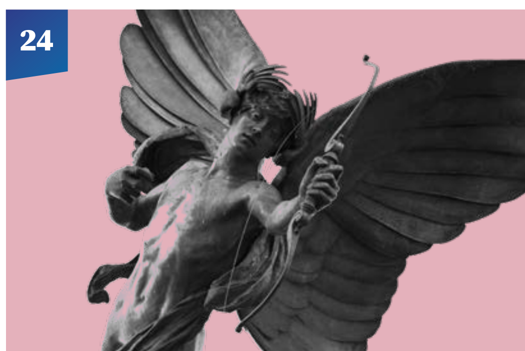
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GARY ASHFORD
PRESIDENT

A world beating tax system

> I am absolutely convinced that many of the challenges we are facing can be addressed by science and technology.

This is my first contribution to *Tax Adviser* as President. I am so humbled by the honour. But as you can imagine this is also a moment of reflection; I am also thankful to colleagues, ex colleagues, the CIOT family and of course – and most importantly of all – my family who have sacrificed hugely over the years to allow me to develop my career.

As someone who started their career in HMRC, I will always respect the need for compliance. Indeed, the CIOT's charitable aims include the prevention of crime, alongside the advancement and promotion of the study of taxation, and the promotion of sound administration of law for the public benefit. So one can see why compliance is important: all of these aims are critical. The relationship between HMRC and the tax profession is a partnership and we all play a part. A one-sided relationship will not work. So as President, on behalf of CIOT, I will work tirelessly towards that goal of sound administration, in a spirit of constructive cooperation.

On a different note, as someone who works in a law firm with long history and knowledge of the media, entertainment and technology, I am keen to help the UK government and the tax profession to promote UK PLC. From my perspective, this will require our great nation to build a world class tax regime, encouraging entrepreneurship, supported in part with strong tax incentives. Whether it be life science, financial services or indeed the creative industries, 'digitalisation' is at the core of everything. Hopefully, you will all have noted some of the strides already made by the CIOT in this area.

The impact of technology is likely to be at the heart of the CTA Address this month with speaker Pascal Saint Amans focusing on the future of international taxation, including BEPS and the current Pillar 1 and 2 proposals. Technology is forcing us all to 'relearn' our tax knowledge, as the world of intangibles challenges traditional thinking – something I am particularly conscious of as chair of the ATT/CIOT Cryptoassets Working Group.

I will also continue to drive our international relations. I became the CIOT representative on the General Assembly of CFE Tax Advisers Europe in 2012 and later a CFE Board member, alongside my CIOT Council duties. I didn't do this just because I have a very international focus in my general work, or because I work in London. It is almost impossible not to meet international clients or transactions in an island nation close to the edge of Europe, the fifth largest world economy, and one of the top financial centres in the world. My hope for CFE has always been to try to find opportunities for all members wherever they are located.

We are all in the tax world at arguably the most challenging of times. We have conflicts and potential conflicts all around the world. We have just come out of a huge pandemic, and we are facing climate change. Since 2020, we have had our Climate Change Working Group. In my view, there is no doubt that climate change will take on ever increasing prominence in our lives, and I expect to see greater and greater use of taxation to drive climate focused behaviour in the future.

In a way, this takes me back to my reference to a world beating tax system focusing on entrepreneurship. I am absolutely convinced that many of the challenges we are facing can be addressed by science and technology. So, we must all work together to build the tax framework that will allow these great people and minds to flourish.

Finally, in the year ahead, I am most looking forward to travelling around the country to meet members and renew acquaintance with old friends and colleagues. I would like to extend a huge thank you to the CIOT volunteer network, who raise the profile of the CIOT on a daily basis through our Council, Committees and Branch Network, as we celebrate Volunteers' Week (1 to 7 June). I am thankful and delighted to follow Susan Ball, who has been an inspiring President to the CIOT during this last year, and to have the support of Charlotte Barbour and Nichola Ross Martin as Deputy and Vice President respectively. And I look forward to working closely with Helen Whiteman, the Institute's Chief Executive.

I feel deeply honoured to be President, and I thank all of you who have supported me over the years, as without that support this would never have been possible.

Gary Ashford
President
president@ciot.org.uk

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SIMON GROOM
DEPUTY PRESIDENT

A well-deserved success!

> It is great to have the work of the team recognised in such a prestigious setting.

Hello, and welcome to the Deputy President's page for June.

You may recall that in last month's issue of *Tax Adviser,* I mentioned that ATT had been nominated for an award at this year's Tolley's Taxation Awards. The nomination was for the work done by our excellent Technical Team and was in the category Outstanding Contribution to Taxation in 2022-23 by a Not-for-profit Organisation.

I was lucky enough to be among 700 or so guests to have attended the awards ceremony at the Royal Lancaster Hotel Hyde Park and I am delighted to let you know that in a public vote ATT was the winner in the category. Many congratulations to all of the team for this well-deserved success. It is great to have the work of the team recognised in such a prestigious setting. Many thanks to everyone who voted for us.

Talking of events, I attended the Joint Presidents' lunch in Edinburgh, along with fellow Officers from ATT and CIOT. It was an important opportunity to meet and develop relationships with policy makers (officials and parliamentarians), major employers, journalists and other leading figures in the tax profession in Scotland.

The guest speaker was Shona Robison MSP, Deputy First Minister and Cabinet Secretary for Finance. It was particularly pleasing to hear that she is keen to engage with and listen to – even if not always to agree with – those who represent taxpayers in Scotland.

This is particularly important given the divergence in tax rates between Scotland and the rest of the UK, a policy that is likely to continue if press reports are to be believed. The Deputy First Minister also touched on the subject of simplification and echoed the CIOT and ATT's concern that the decision to abolish the Office of Tax Simplification had not been reversed in the recent budget – although with five different positive rates of tax on non-savings income in Scotland (two more than in the rest of the UK), there doesn't seem to be any move towards simplification here.

Feedback from events such as these is really valuable as it helps us to make key strategic decisions and shape the future of the Association.

Looking forward to the month ahead, on 15 June my fellow Officers and I will be attending the ATT admission ceremony at the Law Society in Chancery Lane, London, where we will be delighted to welcome those who have recently become members of the Association. This is one of the highlights of the ATT calendar and it is particularly pleasing to be able to share the event not only with our new members who have put in a huge amount of hard work to pass the examinations and develop their careers, but also with their friends and family who will have supported them throughout.

And on the subject of new members (and not forgetting those of you who have been members for a while), the first week in June marks the occasion of Volunteers' Week 2023. All ATT Council and Steering Group members and those on Branch Committees are volunteers and we are always interested to hear from anyone who would like to get involved. We are interested in hearing from people with a range of backgrounds and skills who bring a wealth of different views to ensure that the whole of the ATT's diverse membership is well represented. The fact that you haven't been a member for very long is no barrier, as it's important that the views of our new members are heard as well. It's a great way of expanding your network, gaining new skills, and helping to influence the future of the tax profession.

If you are interested, or simply curious to find out what might be involved, please do get in touch with Jane Ashton at jashton@att.org.uk. You will be sure to receive a warm welcome.

Once again, I would like to remind you about the upcoming ATT Annual conferences. You can either attend the conference in person on 29 June as a full day event or join it as two morning half day online sessions on 21 and 23 June. It is an excellent way of keeping up to date with the latest developments but also helps to fulfil your CPD responsibilities. Our speakers will be Rebecca Benneyworth, and Helen Thornley, Emma Rawson and Stephen Pinhey from our excellent (and award winning!) Technical Team.

Simon Groom
ATT Deputy President
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MARKEL

A road less travelled by The future of vehicle tax

As the government grapples with the long-term options for taxing vehicles, we consider some of the key factors.

by Bill Dodwell

One of the hot topics in taxation is what we should do to replace fuel duty. The Office for Budget Responsibility estimates that fuel duty will raise £24.3 billion in 2023-24, which reflects the two-year cut of 5p per litre implemented for 2022-23 and 2023-24. Total taxes are estimated at £950.5 billion – so fuel duty is just some 2.5% of total taxation. Yet replacing fuel duty with other taxes would mean increasing the basic rate of income tax by at least 4%, taking it to 24%; alternatively, it would mean putting up VAT to 23.5%. (HMRC estimates that 1p on the basic rate would raise about £5.6 billion in 2023-24 and 1% on standard VAT brings in £7.35 billion – see tinyurl.com/22uz6bf7).

The average petrol car covers about 6,800 miles every year, meaning that the fuel duty and VAT amounts to some £685 a year for the average family car. Diesel cars average around 9,400 miles annually, bringing in even more tax revenue. The RAC Foundation estimated in 2021 that a small car's mileage could cost about £525 per year, while a much larger car could cost about £900 in tax – or £1,100 if diesel (see tinyurl.com/5e9k67b8). Commercial vehicles have much higher costs, based on their higher mileage and fuel consumption.

Vehicle excise duty, charged for keeping a vehicle on the road, brings in about £8 billion annually. It is currently not charged on electric cars, although the Chancellor has signalled that it will be introduced at a low level from 2025. The rates are currently based on emissions.

The choices facing government

The tricky question for future governments will revolve around its desired long-term means of taxing vehicle use, as well as managing the significant transition. Even if new petrol/diesel cars are not sold after 2030, existing ones are likely to continue in use for some years. Governments will need to consider incentives to move away from petrol/diesel to greener power, too.

Our current system of vehicle taxation charges tax on the purchase price (VAT) and road use of a new vehicle (vehicle excise duty); and fuel duty and VAT on the mileage. In certain areas, congestion charges apply, as well as charges for higher emission vehicles. Tolls are levied for using specific routes (typically bridges and tunnels, although there are road tolls as well).

The choice facing governments is whether to keep this system, or whether instead to raise greater amounts of money in general taxation. The transition may well require raising general taxation, if it is considered that incentives to purchase electric vehicles are still needed.

If we assume that the long term state is that some tax at least should be raised from road users, the question is whether to change the structure of the taxes levied.

I would suggest that congestion and emissions charges and tolls are best kept for their specific purpose: to reduce congestion and emissions through financial incentives and to charge for the use of key infrastructure. In 2021-22, London's congestion charge net revenues reached £307 million, while its Ultra Low and Low Emission Zones generated a net income of £111 million and £34 million. Building road pricing management systems around the whole of the UK would be impossibly expensive; the huge number of cameras and supporting technology needed is surely best kept focused on small, specific areas.

Charging for road mileage

The bigger question is how to charge road users for their mileage. I would suggest that requiring power companies to levy charges when users charge their vehicles is probably the best answer. There are a manageable number of power suppliers, similar in concept to the relatively small number of fuel suppliers. They can manage collection of tax from their customers – which is part of the fundamental design of most taxes. Electricity suppliers currently offer specific pricing for electric car home charging packages, demonstrating that they can identify differing home use of electricity. Obviously, public charging stations can do the same. It is estimated that there are currently about 400,000 home chargers, as well as over 42,500 public chargers in 25,000 locations (see tinyurl.com/4ebx3sfe).

The other alternative seems to be fitting a monitoring device to every vehicle. It would be possible to monitor exactly where a vehicle went and at what times, so it could be used to charge differing amounts based on specific types of use. However – and leaving aside the privacy question – the problem is who would manage the system. Levying charges individually on the UK's 40 million vehicles (see tinyurl.com/5apz783b), including 33 million cars, would be an almost impossible task, open to massive fraud and collection difficulties.

It is surely time for greater public understanding of the future for vehicle taxes, accompanied by a range of modelling to highlight the impacts.

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Making disclosures

Put your cards on the table

If you need to correct mistakes in tax payments, a voluntary disclosure can be less intimidating than facing an extensive enquiry or complex investigation.

by Helen Adams and Daniel Lusted

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Key Points

What is the issue?
HMRC provides several methods for taxpayers to tell it about their mistakes and bring their tax affairs up to date by making disclosures.

What does it mean to me?
Acting quickly to make a full, unprompted voluntary disclosure before HMRC asks questions should reduce any tax-geared penalties due, mitigate late payment interest charges and avoid a full investigation.

What can I take away?
It is important that taxpayers choose the correct method for their disclosure and avoid the pitfalls.

The UK government regards tax compliance checks as a key tool to help tackle the tax gap and fund the Exchequer. In 2021 and 2022, the Chancellor increased HMRC's funding for tackling non-compliance, including by wealthy taxpayers and in relation to tax fraud. HMRC increasingly uses nudge letters to encourage taxpayers to check their tax returns and correct mistakes. Consequently, when mistakes come to light, it is vital for taxpayers to act quickly and proactively register to make voluntary disclosures.

What is a voluntary disclosure?

HMRC's ability to gather information and data on each individual taxpayer is wide reaching. Powerful software programs (e.g. Connect) glean large amounts of data from numerous sources, which HMRC uses to build a detailed picture not only of a person's tax position, but also their lifestyle. HMRC can access data from Companies House (including the new register of overseas entities owning UK property), banks and the Land Registry. It regularly receives overseas data under the Common Reporting Standard and will also receive data under the forthcoming digital platform reporting rules (Finance Act 2021 s 129).

Despite compiling this information, HMRC still doesn't know everything about every taxpayer and so may be unsure whether they have paid the correct amount of tax. This provides scope for taxpayers to act before HMRC's spotlight shines upon them, by means of a new enquiry or investigation.

Telling HMRC about mistakes voluntarily, without being prompted, is known as making a 'voluntary disclosure'. The key word here is 'unprompted'. This is defined as telling HMRC at a time when the taxpayer has no reason to believe that HMRC has discovered (or is about to discover) non-compliance (Finance Act 2007 Sch 24 para 9(2)).

Generic nudge letters, particularly educational ones, do not constitute prompting. However, receiving a specific, targeted nudge letter which HMRC issued as a result of analysing data usually means that the subsequent disclosure is prompted (Compliance Handbook CH82421).

The need to confess mistakes to HMRC can arise for several reasons, predominantly when someone becomes aware of undeclared income, profits or gains that were omitted from previous tax returns or realises that they should have filed returns. Sometimes taxpayers recognise that they failed to correctly implement planning, for example where a company makes mistakes in conducting its operations and triggers a UK permanent establishment.

On other occasions, taxpayers may realise that advice they received several years ago is now obsolete due to changes in the law but they failed to adapt their actions accordingly. Therefore, more tax is due – for example, by a person who did

not refresh advice received about their tax residence status and consequently became UK resident after the statutory residence test was introduced.

Alternatively, they may realise, perhaps because of due diligence relating to a business transaction, that they incorrectly understood a technical issue or received incorrect advice in the past so their tax needs correcting.

Why disclose voluntarily?

Making a disclosure means that the taxpayer is starting the process so they may feel somewhat more in control, even if it starts after HMRC sends them a nudge letter. It is often considered less intimidating and more focused than facing an extensive enquiry or complex investigation.

If the disclosure is unprompted then the taxpayer may benefit from lower tax-geared penalties for errors (Finance Act 2007 Sch 24), failures to notify (Finance Act 2008 Sch 41) or Failure to Correct penalties (Finance (No2) Act 2017 Sch 18). For example, in the absence of a reasonable excuse, Failure to Correct penalties are a minimum of 100% or 150% of the tax (for unprompted and prompted disclosures, respectively) or 200% maximum.

Unprompted disclosures also reduce the chances of the taxpayer's details being published even if the disclosure relates to offshore issues (Finance Act 2009 s 94). Settling the tax following a disclosure stops late payment interest running, which motivates taxpayers to conclude disclosures given the current rate is at a 14 year high.

Disclosure facilities

There are several methods for taxpayers to tell HMRC about their mistakes, each with different criteria and benefits. The best option for the taxpayer will depend on the precise circumstances and the specific issue or issues to be disclosed.

The Contractual Disclosure Facility exists for disclosures of deliberate non-compliance involving tax return errors and failures to notify of any type of tax. The Contractual Disclosure Facility is within the Code of Practice 9 framework and is operated by HMRC's Fraud Investigation Service. Making full disclosures through this facility offers taxpayers immunity from criminal investigation, ensuring that the matter is resolved using civil law. Voluntary disclosures start with the submission of form CDF1.

The Digital Disclosure Service portal is used for the following facilities:

- The Worldwide Disclosure Facility: to disclose offshore income, gains or profits on which additional UK tax is due.
- The Digital Disclosure Facility: to tell HMRC about additional onshore liabilities of income tax, capital gains tax, inheritance tax, corporation tax, NICs and annual tax on enveloped dwellings.
- The Let Property Campaign: allows landlords to disclose tax non-compliance for let residential property, either in the UK or overseas.

There is no immunity from criminal investigation offered when using the Digital Disclosure Service. Consequently, it is primarily suited to taxpayers whose mistakes were not deliberate. Once HMRC acknowledges the taxpayer's intention to disclose, the taxpayer has 90 days to submit their disclosure and offer letter.

The best option for the taxpayer will depend on the precise circumstances and the issues to be disclosed.

HMRC introduced a new facility in January 2023 enabling taxpayers to submit a form online to disclose electronic sales suppression (see bit.ly/42HesRc). In April 2023, HMRC started issuing nudge letters to those who it believes need to disclose additional tax due to electronic sales suppression.

Electronic sales suppression involves using software which manipulates electronic till systems to supress the level of takings recorded, thus reducing its declared taxable profits. Additionally, HMRC can now charge additional penalties to those who make, supply, promote or possess electronic sales suppression tools (Finance Act 2022 Sch 14).

Whilst HMRC's online form is available, electronic sales suppression involves fraudulent behaviour. Therefore, as set out in a posting by CIOT (see bit.ly/44McGjP), taxpayers should be hesitant to use it because the process offers no immunity from criminal prosecution. Advisers should consider whether the Contractual Disclosure Facility is the better option for clients to make disclosures of such deliberate non-compliance.

Large businesses and wealthy taxpayers usually have Customer Compliance Managers to contact with queries and disclosures, but mid-size businesses that need to make a disclosure should contact HMRC's Mid-sized Business Customer Support Team via bit.ly/42sMA3s. The Profit Diversion Compliance Facility may be used by multinationals to rectify transfer pricing issues which might otherwise give rise to diverted profits tax liabilities (see bit.ly/2Dc9xPj).

The disclosure process

Disclosures generally involve:

- notifying HMRC that the taxpayer wants to make a disclosure;
- receiving HMRC's acknowledgement, together with a registration number if the Digital Disclosure Service is used;
- submitting the disclosure, telling HMRC what went wrong, why the mistakes were made and quantifying the tax, interest and penalties due;
- HMRC checking the disclosure, asking questions to check whether the submission is correct and complete; and
- closure, usually via a contract settlement (Taxes Management Act 1970 s 54), although sometimes formal assessments are issued. A case may proceed to appeal if liabilities are not mutually agreed. Where time is needed to settle the liabilities, instalments may be included in contract settlements.

For unprompted Contractual Disclosure Facility disclosures, HMRC expects taxpayers to file an admission of deliberate behaviour and an outline disclosure within 60 days. Subsequently, taxpayers must submit a statement of their assets and liabilities at a specific date, together with certificates of bank accounts and credit cards operated and their full disclosure reports. HMRC also requires a signed Certificate of Full Disclosure confirming that all non-compliance is disclosed and rectified.

It is essential that taxpayers carefully reflect before signing this document, because if HMRC discovers any inaccuracies in a period covered by a signed Certificate, this can be used in any future prosecution or taken into account in quantifying behavioural penalties in relation to those issues.

Potential pitfalls

Firstly, it is important to register for the most appropriate facility to suit the nature and extent of the mistakes to be corrected.

Secondly, all disclosure processes involve deadlines. Missed deadlines, without good reasons such as serious illness, may cause HMRC to take the initiative and open extensive compliance checks, seeking information and documents to establish the tax due, which may take years to resolve. Missed deadlines also risk lower penalty reductions, thus increasing the overall amount payable to finalise a disclosure.

Thirdly, the disclosure will be incomplete if it omits any non-compliance, so care is needed to disclose both the initial problem and tax arising from subsequent decisions.

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For example, if business profits were hidden from HMRC and the money invested in shares and buy-to-let properties, then the investment income, rental profits and associated capital gains must be disclosed in addition to tax on the undisclosed business profits.

Submitting incomplete disclosures risks HMRC asking extensive questions and investigating all the taxpayer's tax affairs to establish the full extent of their mistakes, with increased penalties. In the most serious (Contractual Disclosure Facility) cases, if the Fraud Investigation Service suspects an incomplete disclosure, it can refer the taxpayer back to HMRC's Criminal unit for further consideration. The terms of the Contractual Disclosure Facility only apply to the admissions contained in the outline disclosure (Fraud Civil Investigation Manual FCIM204050), so anything outside of that is potentially liable to criminal investigation.

The potential pitfalls and complexities of making disclosures, not to mention the Professional Conduct in Relation to Taxation, make it abundantly clear that advice should be sought from a suitably qualified tax dispute resolution specialist. The specialist will recommend the most appropriate method for the disclosure given the client's circumstances and guide them through the process. This includes advancing suitable arguments on technical matters such as discovery, assessment time limits and penalties depending on what went wrong and any mitigating factors which may give rise to reasonable excuses or special circumstances.

Voluntary disclosures are an important mechanism for taxpayers to correct their mistakes.

Conclusion

Voluntary disclosures are an important mechanism for taxpayers to correct mistakes, putting their mind at ease and potentially bringing both financial and reputational benefits. However, care and experience are needed to choose the right disclosure method, avoid the pitfalls and reach a mutually acceptable agreement with HMRC.

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Combining EOTs with share schemes
A complicated compound

If you wish to reward the management team in an employee ownership trust with share schemes such as enterprise management incentive options, what are the traps to avoid?

by Nick Wright

Key Points

What is the issue?
A common question when establishing an employee ownership trust is how to reward, incentivise and retain the management team. Share schemes, such as enterprise management incentive options and growth shares, are an obvious answer.

What does it mean to me?
There are several traps for the unwary as a result of the drafting of the employee ownership trust legislation under the Taxation of Chargeable Gains Act 1992.

What can I take away?
Employee incentivisation must be carefully considered in designing an employee ownership scheme structure and ensuring that the structure is flexible enough to allow such schemes in the future.

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More and more is being written about employee ownership trusts and the tax incentives available when establishing them (see 'Employee ownership trusts', *Tax Adviser*, April 2023), not to mention the intended commercial benefits such as rewarding and retaining staff.

Individuals who are seeking an exit may be keen to utilise these structures for a tax-free exit, whilst realising a full market value for their shares. However, the benefits to employees are arguably less significant, mainly being the £3,600 per annum income tax-free bonus and, perhaps, the ability to pay staff higher salaries as no shareholders are requiring a return on capital in the form of dividends.

Thus, a particular concern for the exiting shareholders may be retaining the key management team, particularly as they are often crucial to ensuring that the business continues to flourish and therefore meet the terms of the employee ownership trust's deferred consideration requirements. However, for the management team, a £3,600 income tax-free bonus is unlikely to be a significant incentive given their existing remuneration level.

A common question when establishing the structure of an employee ownership trust is therefore: 'How do I further reward, incentivise and retain the management team?'

Share schemes, such as enterprise management incentive options and growth shares, are an obvious answer. However, there are several traps for the unwary as a result of the drafting of the employee ownership trust legislation (see Taxation of Chargeable Gains Act (TCGA) 1992 ss 236H – 236U).

It is also important to note that a straightforward gift of shares to an employee is unlikely to be possible in an employee-owned company due to the equality requirement of TCGA 1992 s 236J. This requires that shares in the trusts must be applied for the 'benefit of all the eligible employees on the same terms'. Clearly, gifting shares to a single employee would contravene this provision, resulting in a disqualifying event.

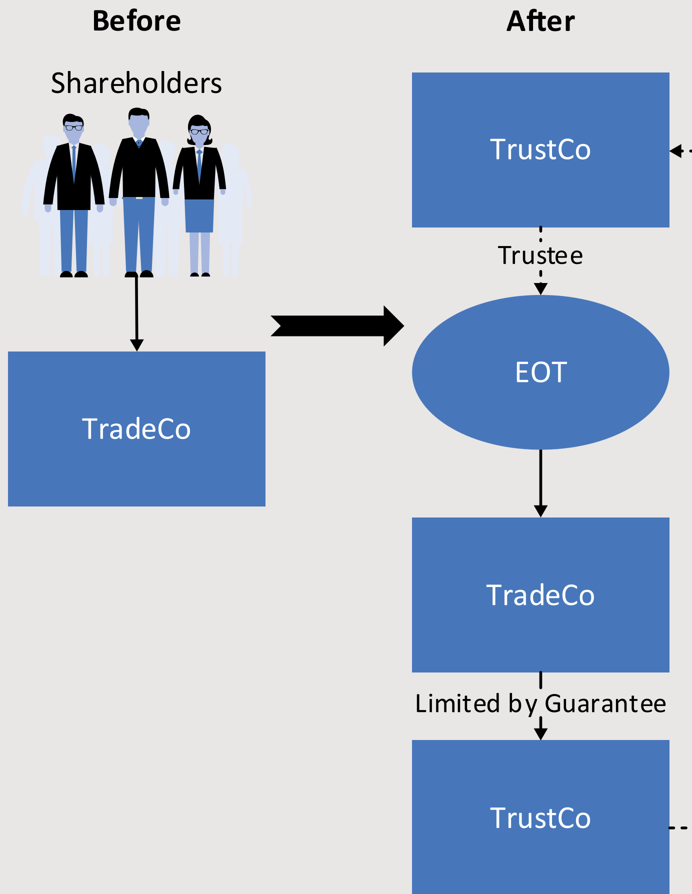
This article does not intend to detail the employee ownership trust, enterprise management incentive or growth share rules but rather highlight the specific areas to consider when combining share schemes with an employee-owned company.

The structure of the trustee company

To provide protection for the trustees, it is common to establish a trustee company of which the trustees will be directors. Furthermore, this company is often established as a subsidiary within the group (see ***Figure 1: The structure of the trustee company***).

This structure creates a circularisation of ownership: the trust company is the trustee of the employee ownership trust, which owns the trading company, which in turn then has the trust company as a subsidiary. With checks and balances inherent within the structure and trustees who have detailed knowledge of the business, the company can be efficiently and cost-effectively managed without the need for an independent owner.

FIGURE 1: THE STRUCTURE OF THE TRUSTEE COMPANY



It is often proposed that a company limited by guarantee is the sole corporate trustee; however, this is where our first issue arises.

For enterprise management incentive purposes, a qualifying company is one that only has qualifying subsidiaries (Income Tax (Earnings and Pensions) Act (ITEPA) 2003 Sch 5 Part 3 para 8). The conditions of being a qualifying subsidiary include, among other things, the subsidiary being a '51% subsidiary' (ITEPA 2003 Sch 5 Part 3 para 11).

This 51% subsidiary test applies to shareholders. Where the trustee company is a company limited by guarantee, it will not be a qualifying subsidiary by virtue of having no shares in issue. The result is that the trading company will fail to be a qualifying company for enterprise management incentive purposes and consequently enterprise management incentive share options cannot be issued.

There are two remedies to this problem. The first is to ensure that the trustee company limited by guarantee is held outside the group. Of course, this results in a loss of the circular ownership structure and the requirement for an independent owner.

Alternatively, ensure that the trustee company is a company limited by share capital. This may therefore be held within the group without the company failing the 51% subsidiary test.

Where an employee ownership trust structure is already in place and further employee incentivisation is desired, if the trustee company is limited by guarantee within the group, two solutions may be available:

1. Issue growth shares as an alternative to enterprise management incentive options as there are no such qualifying conditions.
2. Restructure the group to remove the trustee company. This should be a relatively straightforward solution on the basis that the trustee company is unlikely to have any real value. However, there are likely to be administrative costs involved in undertaking the process.

Either way, considering these issues on the implementation of the employee ownership trust, regardless of whether enterprise management incentive options are immediately envisaged, will save potential issues in the future.

The effect on the limited participation fraction

A second issue to be aware of concerning employee incentivisation within an employee-owned company concerns the limited participation fraction which is outlined within the employee ownership trust legislation at TCGA 1992 s 236N, as follows:

$$\frac{\textit{Participators who are employees or office holders}}{\textit{Number of employees}}$$

The numerator also includes individuals who are both connected to the participator mentioned above and also an employee or office holder. Where this fraction exceeds two-fifths, the requirement is failed.

Participators for this purpose follow the definition provided by the Corporation Tax Act (CTA) 2010 s 454. However, TCGA 1992 s 236N(6) requires a minimum of 5% for the purposes of the employee ownership trust legislation. The exact wording of this subsection is:

> 'The participators in C who are referred to in subsections (2) and (5) do not include any participator who:
> a) is not beneficially entitled to, or to rights entitling the participator to acquire, 5% or more of, or of any class of the shares comprised in C's share capital; and
> b) on a winding-up of C would not be entitled to 5% or more of its assets.'

Are option holders participators?

There are two important phrases in (a) above.

The first is 'or to rights entitling the participator to acquire'. This brings share options into consideration; for example, an enterprise management incentive option enabling the managing director of the company to acquire 20% of the ordinary shares in the company will be treated as a participator for the purposes of part (a) above.

This is consistent with the definition of a participator which states that a participator includes 'a person who possesses or is entitled to acquire, share capital or voting rights in the company' (CTA 2010 s 454(2)(a)). Again, being *entitled to acquire* share capital may include share options.

The second is 'or of any class of the shares'. This means that the share (or option) holder only needs to hold 5% of a particular share class and not the entire share capital to be caught by s 236N(6)(a).

The effect of this wording is that even two members of the management team holding growth shares in a separate class will hold 50% of that class, meaning they fall within the definition of a 5% participator.

Interestingly, both points are specifically included in s 236N(6)(a) and not s 236N(6)(b), meaning option holders may not have any right to 5% of the company's assets on a winding up unless, or until, the options are exercised.

Exit only options

However, we must also consider the scenario where enterprise management incentive options are granted that are 'exit only options'; for example, where the enterprise management incentive options entitle the individual, in the event of a sale or winding up, to 5% of the share capital and subsequently to 5% of the sale/liquidation proceeds.

Consequently, there may be a case where exit-only options could very well fall within the definition of a participator under s 236N(6).

Growth shares and the participator fraction

In the case of growth shares which are granted at (or shortly after) the time of sale to the employee ownership trust, assuming the rights of the growth shares only entitle the holder to a certain percentage of capital value in excess of the capital value at the date of issue, growth shares will not cause the holder to be a participator for employee ownership trust purposes immediately.

Summary

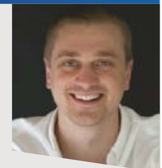
As a result of this, it is quite possible that neither enterprise management incentive share options nor growth shares will cause an immediate issue with the limited participation fraction. Also, given that the exiting shareholders' capital gains tax relief will only be clawed back if the conditions are failed at any time up to the end of the tax year following disposal, this will rarely be their problem.

It is, however, an important point for the trustees to be aware of, as the failing of the limited participation fraction at any point following the end of the tax year following disposal will result in a deemed disposal and reacquisition by the trustees.

The mechanics of capital gains tax relief of the vendors is that of a no gain no loss disposal, meaning that the trustees inherit the base cost of the vendors, often a nominal value. A disqualifying event triggered by the exercise of share options, or growth shares falling within the above definitions, is therefore likely to cause a significant capital gains tax liability for the trustees.

Either way, employee incentivisation must be carefully considered in designing an employee ownership scheme structure and ensuring that the structure is flexible enough to allow such schemes in the future. It will also be important for the trustees to be fully briefed and understand under what circumstances a disqualifying event may be triggered.

The intentions of the employee ownership trust legislation are to encourage employee ownership. However, incentivising key management of an employee-owned company within the employee ownership trust legislation itself (e.g. £3,600 income tax-free bonuses) is unlikely to present a major benefit to them. Therefore, how the two schemes interact should perhaps be reviewed in more detail. Relaxations of enterprise management initiative qualifying conditions for employee-owned companies should be considered, much like the business asset disposal relief regime provides relaxations for enterprise management incentive shareholdings.



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US citizens in the UK
A New World of taxation

With approximately quarter of a million US citizens living in the UK, we take a look at the problems, pitfalls and planning opportunities that their tax advisers must be aware of.

by Andrew Walters

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Key Points

What is the issue?
The United States has uniquely maintained a citizenship basis of taxation, meaning that US citizens, regardless of their residence, are fully liable to file and pay the US on worldwide income.

What does it mean to me?
Many are surprised to learn that, despite having never actually lived in the US themselves, or having left as a young child, they still have a full requirement to file and, in some cases, pay US taxes.

What can I take away?
If you are advising US citizens on their potential US tax obligations, double-check with your professional indemnity insurers to ensure it is covered, as some insurers exclude it as standard.

The ratification of the 16th Amendment to the United States constitution in 1913 imposed the first permanent income tax, and uniquely maintained a citizenship basis of taxation, meaning that US citizens, regardless of their residence, are fully liable to file and pay the US on worldwide income.

With approximately a quarter of a million US citizens living in the UK, tax advisers may inevitably come across American citizens, who may or may not be aware that they should be filing tax returns, and potentially paying tax, in the US.

Unexpected taxation

I recently received a hysterical phone call from an elderly lady who had moved to the UK from the US in 1974. She had just discovered, due to her bank applying the requirements of the US Foreign Account Tax Compliance Act (FATCA) (see below), that she should have been reporting her small pension to the IRS. She was terrified the IRS would be seeking extradition and that the police would shortly be breaking down her front door.

Further, it's not only income and disposals of property (see ***Example 1: Sale of property***) that must be reported. Since 1970, US Foreign Bank Account Reporting requirements mean that, subject to a de minimis of $10,000, the quantum of all non-US bank accounts must be reported too. If this $10,000 threshold is reached, all non-US bank accounts must be reported, even those with less than $10,000 in them. The $10,000 is calculated by adding up the highest balance, at any point in the year, of each foreign account.

The Foreign Bank Account Reporting is not reported to the IRS, but to the Financial Crimes Enforcement Network. Penalties for non-filing are high; up to $10,000 for a non-wilful non-filing. In the recent Supreme Court case of *Bittner v United States* (see bit.ly/3B3U8xP), Mr Bittner failed to report 272 bank accounts over a five year period. The IRS assessed a penalty of $2.72 million – $10,000 per unreported account! Mr Bittner challenged this, claiming that the $10,000 penalty should be per report, not per account. Fortunately, the Supreme Court agreed with him. We are currently in the process of appealing several wrongly imposed penalties.

The Foreign Account Tax Compliance Act

Since 2011, with the introduction of the Foreign Account Tax Compliance Act, an additional asset reporting requirement has come into place. The reporting threshold is now satisfied only if the total value of the foreign financial assets is more than $200,000 on the last day of the tax year or more than $300,000 at any time during the tax year. These limits are doubled for married taxpayers filing jointly.

However, whilst Foreign Bank Account Reporting required reporting only of foreign bank accounts, the Foreign Account Tax Compliance Act requires more in-depth reporting, and also includes assets beyond accounts, such as stock ownership. Significantly, real estate does not need to be reported. The form is filed alongside the tax return.

As a result of a UK-US inter-governmental agreement, the Foreign Account Tax Compliance Act is now part of domestic UK law, by virtue of Finance Act 2013 s 222 and its supporting

> **Many are surprised to learn that despite never having lived in the US themselves, they still have to file, and in some cases pay, US taxes.**

EXAMPLE 1: SALE OF PROPERTY

Barry was born in Connecticut in 1950. His parents were international students studying at Yale. They moved back to the UK when Barry was three, and other than a two week holiday in the 1980s, Barry had never been back to the US.

In 1975, Barry bought a two bedroom apartment in Covent Gardens for £35,000. After retiring in 2022, he decided to move to the countryside. He sold the apartment for £1,275,000, and bought a cottage in the Lake District. He was not expecting to pay capital gains tax, due to the principal private residence exemption.

However, since Barry was a US citizen, he was in for a surprise. Whilst the UK's principal private residence exemption is unlimited, the US exemption is restricted to the first $250,000 of gain. So, assuming Barry had no other income in 2022, he was subjected to US tax in excess of £200,000!

Cost: £35,000 x 2.2 (GBP-USD in 1975) = $77,000
Sale: £1,275,000 x 1.22 (GBP-USD in 2022) = $1,555,500

Gain: **$1,478,500**
Less relief for sale of main residence: ($250,000)

Taxable gain: **$1,228,500**
Less: Standard deduction ($12,950)

Tax before alternative minimum tax: **$213,870**
Alternative minimum tax: $2,590
Net Investment Income Tax: $39,083

Tax: $255,544 (£209,462)

regulations. This means that UK banks need to establish whether their customers are US citizens and, if so, report their bank balances to the IRS via HMRC.

Who is an American?

The US operates with a combination of *jus soli* (whereby citizenship is acquired by birth within the territory of the state, regardless of parental citizenship) and *jus sanguinis* (whereby the nationality of children is the same as that of their parents, irrespective of their place of birth).

Almost anyone born in the US, regardless of his parent's nationality or immigration status, is automatically a US citizen. (The exception is those born to a parent with diplomatic immunity.) Children of US citizens born abroad may also be automatic citizens, depending on how long their parents spent in the US prior to their birth.

Many are surprised to learn that, despite having never actually lived in the US themselves, or having left as a young child, they still have a full requirement to file and, in some cases, pay US taxes. Colloquially known as 'Accidental Americans', many traditionally applied the 'ostrich algorithm'; by burying one's head in the sand, the problem would somehow vanish of its own accord. Those who did try to slip back into the system would do so by means of a 'quiet disclosure' – i.e. by back-filing past tax returns without making a formal disclosure – and in the majority of cases, these were processed with no penalties or other repercussions.

Options for disclosure

Offshore Voluntary Disclosure Programs

This all changed in 2009, with the introduction of the first of four Offshore Voluntary Disclosure Programs, the last of which ended in 2018. Like the UK's Liechtenstein Disclosure Facility (which gave eligible UK taxpayers the chance to declare their worldwide income and bring

their UK tax affairs up to date quickly and without having to undergo an in depth investigation), these US schemes were intended to target individuals who had utilised foreign accounts to avoid tax. At least from the IRS's perspective, they were highly successful, bringing in over $5.5 billion.

The main 'selling point' of the initiative was immunity from criminal prosecution. However, whilst penalties were reduced, they weren't quashed entirely. And since the initiatives were intended to allow deliberate tax evaders to bring their affairs up to date, rather than penalise the Accidental Americans who were at no risk of criminal prosecution and in many cases had no tax to pay anyway, they were like using a sledgehammer to crack a nut.

The Streamlined Foreign Offshore Procedure

Thus, in 2012 (and significantly expanded in 2014), the Streamlined Foreign Offshore Procedure began, allowing Accidental Americans to become compliant with their US filing obligations without penalty.

The Streamlined Foreign Offshore Procedure is available to anyone who:

- satisfies the non-residency requirements (broadly, that for at least one of the previous three years, the individual did not have a US abode and was physically outside the United States for at least 330 full days);
- can certify that the non-filing was non-wilful (i.e. due to negligence, inadvertence, mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law); and
- either has unreported foreign taxable income or an unfiled Foreign Bank Account Report.

The Streamlined Foreign Offshore Procedure requires the filing of three delinquent tax returns, and six delinquent Foreign Bank Account Report.

If, for example, the Streamlined Foreign Offshore Procedure was filed on 1 June 2023, tax returns would need to be filed for 2019, 2020 and 2021, and Foreign Bank Account Reports for 2016 onwards, in addition to the 2022 tax return and report.

If the Streamlined Foreign Offshore Procedure was filed on 16 June 2023 (after the filing deadline for the 2022 return), tax returns would only need to be filed for 2020 onwards, and Foreign Bank Account Reports returns for 2017 onwards.

Other filing requirements

Two other filing requirements often catch people out.

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Companies and Form 5471

US citizens who own a 10% or greater shareholding in UK companies need to file a Form 5471 attachment with the tax return (see bit.ly/42zhTtc). This is a highly complicated return, estimated by the IRS in 2015 as requiring 27 hours and 12 minutes to prepare, which excludes the 18 hours and 19 minutes estimated to learn about the form! (Since 2016, the IRS have ceased providing estimated time burdens, but the form has subsequently become even more complicated.)

Form 5471 requires reporting, amongst other things, the balance sheet and profit and loss of the company, under US Generally Accepted Accounting Principles (GAAP).

Controlled foreign companies

If the UK company is considered a controlled foreign company, tax may be due on certain passive income under what is known as Subpart F (and outside the scope of this article).

However in 2018, Congress, determined to avoid the indefinite deferral of tax of controlled foreign companies' unremitted income, introduced a new liability – a tax on a pro-rata share of the foreign companies' global intangible low-taxed income (GILTI).

Fortunately, there is an exemption in cases where the effective foreign tax rate is at least 90% of the US corporate tax rate. Since the US corporate tax rate is currently 21%, the effective rate to meet the high-tax exemption is 18.9%. This brings UK companies, with a headline corporation tax rate of 19%, within the scope the exception.

President Biden has indicated that he wishes to raise the US corporate rate to 28%, requiring a headline tax rate of 25.2% for an exemption. Even with the UK's headline corporation tax rate increasing to 25%, this will not be sufficient to meet the exemption. However, the President alone cannot change tax rates; that requires agreement from both Houses of Congress.

Fiscal transparency

One possible option that may avoid these issues is to make an election for the UK company to be considered fiscally transparent. This entity classification election, colloquially known as a 'check-the-box election', enables the owner of the company to have the company's income pass-through to the shareholders; equivalent to how the UK treats a limited liability partnership.

The company's profits would thus be directly taxed on the shareholder as though they were self-employed, with the foreign tax credit allowing a set-off of UK corporation tax against US income tax. A totalisation agreement (the social security equivalent of a tax treaty) is in place between the US and the UK, avoiding the need to pay US Self-employment tax (the equivalent of Class 4 National Insurance).

However, with the company treated in the UK as a taxable entity, but in the US as fiscally transparent, this may trigger further complications due to the UK's introduction of the hybrid mismatch legislation, introduced by Finance Act 2016. The UK Supreme Court case of *George Anson v HMRC* [2015] UKSC 44 illustrates some of the complications caused by hybrid and reverse hybrid entities.

In practice

It's not all bad news though. Whilst the US requires the filing of a tax return for anyone earning above a *de minimis* – currently $12,950 for an unmarried person under the age of 65 – in many cases, due to a combination of Foreign Tax Credits and other exemptions, there may be no US tax to pay. (See ***Example 2: Foreign Tax Credits***).

Unlike the UK tax year which ends on 5 April, the US uses a calendar tax year ending on 31 December. Therefore, UK

EXAMPLE 2: FOREIGN TAX CREDITS

Sarah, a US Citizen, moved to London from Miami in 2020, to take up employment as an IT consultant. Her income consists solely of her employment income of £95,000. She paid £25,428 ($31,022) in income tax in the UK.

Her US tax, before applying credits, would be $18,544. She can claim a Foreign Tax Credit, to offset, dollar for dollar, her US tax bill, leaving her with no US tax due, and $12,478 in Foreign Tax Credits available to be carried forward for up to ten years.

Alternatively, Sarah could have elected to claim the Foreign Earned Income Exclusion and foreign housing exclusion, which would also reduce her US tax to nil, albeit without the benefit of the Foreign Tax Credit carry-forward.

EXAMPLE 3: GOOD NEWS FOR PARENTS

Albert and Brenda are both US citizens living in London with their four school-aged children. Both parents worked, between them earning £50,000.

When in early June 2023, Albert and Brenda became aware of their filing obligations and took steps to enter the Streamlined Foreign Offshore Procedure, they were delighted to receive a refund of over £30,000!

Stimulus (adult) 2 x $3,200: $6,400
Stimulus (child) 4 x $2,500: $10,000
Child Tax Credits (2019) 4 x $1,000: $4,000
Child Tax Credits (2020) 4 x $1,400: $5,600
Child Tax Credits (2021) 4 x $1,400: $5,600
Child Tax Credits (2022) 4 x $1,500: $6,000
Total: $37,600

income will need to be apportioned to the correct US tax year. The tax return must be filed, and any tax due paid, by 15 June of the following year (two months later than the 15 April deadline for those resident in the US), although the filing date (but not the due date for payment) can be automatically extended until the 15 October if required, by filing Form 4868. In all cases, interest is payable from 15 April.

Another key difference between the US and UK's tax system is that married couples can optionally file a joint return, including the income of both partners, but giving double allowances. This is the case even if one spouse is not a US citizen, as an election can be made for the non-citizen spouse to be considered a citizen for tax purposes (although this has no effect on immigration status).

This can be useful where one party is a non or low-paid earner, as income tax brackets are effectively doubled. (This is far more beneficial than the UK's marriage allowance, and would avoid the need for artificial income splitting as seen in the Arctic Systems case of *Jones v Garnett* [2007] UKHL 35.) Further, children and other dependents can be 'claimed' on the return, providing significant tax benefits.

Pitfalls

Since UK marginal tax rates are generally higher than US rates, in the majority of cases, due to the pound for pound (or dollar for dollar) foreign tax credit available (see ***Example 2***), in theory, no US should be due on UK income.

Problems arise, however, in cases where no UK tax is due. The most common examples are interest, dividends and gains arising in an ISA. Whilst these are tax-free in the UK, they are still taxable in the US, and a taxpayer with significant income from an ISA may not have enough foreign tax credits available to set off the US tax, creating a liability. (Conversely, certain investments that are tax-free in the US, such as municipal bonds, are fully taxable in the UK.) A particular concern is a share portfolio containing OEICs (open-ended investment companies), which are considered to be passive foreign investment companies (PFICs) and taxed at rates that can exceed 100%.

(A PFIC is a company that meets either or both of the following two criteria: (a) 75% of the company's gross income comes from passive income; or (b) 50% of the company's assets are held as investments. The asset gains are allocated pro-rata to each day in the holding period and aggregated within each tax year. Tax is then calculated at the highest marginal rate for that tax year, and interest calculated upon that. Generally, no foreign tax credit is allowed against the 'prior year' tax and interest charge. The lack of foreign tax credit and interest charges can push the effective tax rate on the gain to – in theory – above 100%.)

Gambling income is also taxable in the US. I once had a client inform me she had won £100,000 on a lottery. Sadly, this was fully taxable in the US.

As discussed above, principal private residence relief is restricted to the first $250,000 of gains, although for a married couple filing jointly, this is doubled to $500,000.

Trusts are also an issue that creates problems. Since even the briefest glimpse into how the US treats UK trusts would require this magazine to double in size, I will summarise in one word: 'Beware!'

Time for some good news!

Every cloud has a silver lining. In some cases, taxpayers may end up with a refund. One significant benefit is the child tax credit, which is available to many US citizens with children worldwide, and dependant on income can be up to $1,500 per child under the age of 17 per year.

In response to Coronavirus, the US government paid three 'stimulus checks' to US citizens worldwide. Together, the three payments totalled $3,200 for adults, and $2,500 for children. Those who haven't filed tax returns are not too late; it is still possible to claim as long as the relevant tax returns are filed by 15 June 2024. (See ***Example 3: Good news for parents***.) It is my understanding that the 'stimulus checks' are not taxable in the UK (see bit.ly/42EqquO).

A few final points

If you are advising US citizens on their potential US tax obligations, it would be a good idea to double-check with your professional indemnity insurers, to ensure it is covered, as some insurers exclude it as standard. Advisors should be aware of their anti-money laundering requirements, which require a suspicious activity report to be made to the US National Crime Agency if they suspect a client of evading US tax.

I haven't touched upon state tax, as it is usually (but not always) less relevant to expatriates, but in some circumstances may also need to be considered.

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Flat rate scheme
Has the final whistle been blown?

Many businesses should now consider leaving the flat rate scheme or not join in the first place. The business world has changed massively since its introduction in 2002.

by Neil Warren

Key Points

What is the issue?
Until 2017, the flat rate scheme produced many VAT savings for an SME with annual sales of less than £150,000 excluding VAT. However, the introduction of the limited cost trader category largely eroded these savings, making it unattractive for most small businesses.

What does it mean for me?
Now is probably a good time to review client lists to check that scheme users are applying the rules correctly and if they should withdraw and revert to traditional VAT accounting. A business can withdraw at any time but not retrospectively.

What can I take away?
The article highlights examples of how errors can arise because of many quirks with the regulations. All errors made in the last four years should be corrected.

My previous article for *Tax Adviser* about the flat rate scheme was published in July 2019. The headline was 'Where are we now?' and I considered how the scheme could still be a winner for some businesses, despite the introduction of a new 'limited cost trader' category on 1 April 2017 with its draconian rate of 16.5%. More about that later.

However, the main difference between my past and present thinking is that I previously concluded that it was important to keep the flat rate scheme door slightly ajar; there were still worthwhile tax and time saving benefits in some cases. My current opinion is that it should now be completely avoided by clients and advisers because its best days are in the past. It reminds me of an ageing rock star desperately trying to hang on to his youth. I'll explain why in this article.

PODCAST AVAILABLE
Shan Sun talks about the development of the CIOT's Diploma in Tax Technology. See bit.ly/431taTr

Frozen thresholds for 20 years

The flat rate scheme was introduced in 2002 after great acclaim by the government that it would revolutionise VAT accounting but it was adopted by very few SMEs. It could be used by a business with annual taxable sales of less than £100,000 excluding VAT and was promoted as a time rather than tax saver. The main advantage was that users did not need to keep input tax records because their VAT return only applied a specific flat rate scheme percentage – based on their trading activity – to their gross business income.

However, the percentage rates for the 55 different categories were too high. In some cases, a business paid more VAT than it collected from its customer; i.e. negative input tax!

The revised legislation in 2003 moved the goalposts by offering ***tax*** rather than ***time*** savings. We suddenly became interested!

- The annual joining threshold was increased to £150,000.
- A 1% discount on all rates was introduced for the first year of VAT registration.
- The percentage rates were dramatically reduced in most cases and there were some rich pickings now available.
- Input tax could be claimed on capital goods costing more than £2,000 including VAT.

However, the thresholds have been frozen since 2003 and – almost certainly – will be frozen in perpetuity. The joining threshold is still £150,000 over 20 years later – it would exceed £300,000 if it had been increased for inflation. The exit thresholds are also unchanged, meaning that an increased number of businesses must leave in the next few years because of price rises, particularly in these times of high inflation.

Making Tax Digital

In 2002, it was common for many SMEs to give their accountant a carrier bag full of purchase invoices and expect the accountant to complete manual records or spreadsheets for the quarterly VAT returns. However, roll forward to 2023 and it is now compulsory for all VAT registered entities – including voluntary registrations – to keep their records in a digital format and submit returns electronically. That is a massive change of direction.

As an important question, therefore, why would a business in the modern digital world not keep purchase records where a VAT code of, say, T1 or T0 can easily be recorded to deal with input tax? The time saving benefits of the flat rate scheme are now as useful as a cigarette machine at a fitness club.

Changing business models

The brainchild of this article came from an accountant who called me in late January about one of his clients who had used the flat rate scheme for many years, only benefiting from the time savings. Her annual VAT payment was about the same as with normal accounting.

> **My opinion is that the flat rate scheme should now be completely avoided because its best days are in the past.**

However, three important changes had taken place in the financial year to 5 April 2022:

- The business had moved offices in July 2021 and the new landlord charges VAT on the rent because of an option to tax election. The rent on the previous office was exempt.
- She had recruited two new staff and incurred high costs with a recruitment company, which charged 20% VAT on its services.
- For a major project, she used a VAT registered subcontractor to help with her work.

The accountant asked if the client could retrospectively leave the scheme and revert to normal accounting from July 2021 when these new sources of input tax first arose. He asked if the past overpayment could be included on the next return as an error correction. The answer to both questions is 'no'. A business can only leave the flat rate scheme from a current date, including part way through a VAT period (see VAT Notice 733 s 12).

In the post-Covid world, many business models have changed. For example, a business might have a new source of income that is zero-rated or exempt, therefore making the continued use of the flat rate very expensive. Alternatively, the mix of sales might have changed; the legislation means that a single rate is applied to all sales based on the activity with the greater or greatest percentage of turnover. A pub with 60% drink and 40% food sales would apply the 6.5% rate for pubs to all sales. But if the balance was reversed, with 60% of sales being for food, it would use the higher rate of 12.5% for restaurants. Is this type of situation relevant to any businesses?

Limited cost traders

Here is a number challenge: Janet is a retired actress who now earns £100,000 per year plus VAT doing after dinner speaking gigs. She uses the flat rate scheme and her only business expense is for zero-rated train fares, plus fees paid to her accountant who is not VAT registered. How much extra VAT does Janet pay in 2023 compared to 2016?

The answer is £5,400. In 2016, she would have applied a 12% rate to her annual gross income of £120,000 because she qualified for the sweep-up category of 'business services not listed elsewhere' and its favourable rate of 12%. Happy days. In 2023, she is a limited cost trader with its penalising rate of 16.5%.

To summarise: £19,800 in 2023 less £14,400 in 2016 amounts to £5,400. That's a big increase in Janet's liability.

Note: The £19,800 VAT payment is close to the £20,000 of VAT charged to her clients. The limited cost trader rate of 16.5% gives minimal credit for input tax sacrificed by scheme users.

The limited cost trader rules mean that any business spending less than £250 per quarter or less than 2% of its gross turnover on 'relevant goods' must apply the rate of 16.5% to its gross sales. Oh dear! However, the main problem with the law change introduced in April 2017 – intended to reduce aggressive abuse of the scheme by labour-only agency workers – is that it has added many layers of complexity to a scheme that is supposed to be about simplicity:

- The limited cost trader test must be carried out at the end of each period. I wrote a *Tax Adviser* article, 'A new category', in February 2017 about a builder who could end up using five different flat rate scheme percentages in successive periods.
- To prevent a business buying goods to 'get over the line' with the test and avoid being a limited cost trader, the rules about what is classed as 'relevant goods' are very complicated. For example, road fuel can only be included if it is purchased by a transport business; food and drink is excluded if it is purchased for staff but included for a business such as a café or restaurant.

(See VAT Notice 733 para 4.4)

EXAMPLES OF FLAT RATE SCHEME ERRORS THAT UNDERPAID TAX

- A business owner did not realise that the limited cost trader test is carried out each quarter. She thought she did not have a problem because her annual purchases of goods exceeded the relevant 2% and £1,000 thresholds. However, seasonal and bulk purchasing meant she was a limited cost trader in two quarters each year.
- A florist took advantage of the 1% flat rate scheme discount in her first year of registration but forgot to increase the percentage for the next three years, underpaying VAT by £1,200 each year.
- A management consultant sold a business car for £9,000 – correctly not charging VAT – and was shocked that the proceeds were subject to flat rate scheme tax of 14%.
- A hairdresser spent large sums of money on salon improvements and thought she could claim input tax. However, the flat rate scheme input tax concession only applies to capital goods costing at least £2,000 including VAT – like a van or computer – and not to capital services such as an office extension or building improvements.

Scheme complications and errors

Compliance checks carried out by HMRC have greatly reduced in recent years, with an emphasis on larger traders and a business that submits a repayment return for its first period after registration.

Therefore, flat rate scheme users have largely escaped checks and it has been left to accountants to identify errors. However, that might change in the future, as HMRC's resource-draining challenges with Covid-19 and Brexit have reduced.

The flat rate scheme complications could open a can of worms if HMRC starts the racing car engine, so to speak. See ***Examples of flat rate scheme errors that underpaid tax***. These are errors alerted to me by accountants that all produced significant underpayments.

Conclusion

The flat rate scheme has diverted many SMEs from the basic principle that VAT payments are based on output tax charged to customers less input tax claimed on invoices received from suppliers. The tax windfalls with the scheme benefited thousands of businesses for 14 years until the limited cost trader was introduced but the game is now over. The final whistle has been blown. The issues I have considered suggest that it is a good time for advisers to rethink their strategy of encouraging some clients to join the scheme and – for existing users – to check they are doing the sums correctly. Is it sensible to head for the exit door and revert to traditional VAT accounting?

Finally, I also think it would be helpful to staff at HMRC if the scheme was abolished. I have enjoyed reviewing and advising about its rules for 21 years, so am familiar with its many twists and turns in the same way as an experienced football referee understands the offside rule. However, inexperienced HMRC officers might find it a baffling and unnecessary diversion. To quote a former Prime Minister from the 1990s… it's time to get back to basics!

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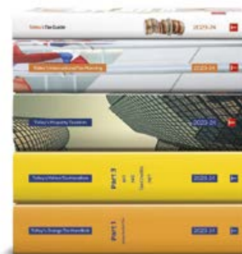

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Introducing VAT liabilities

A wrong turn for supply classification?

The Court of Appeal judgment in *Gray & Farrar* on the VAT liability for its matchmaking service raises important points about the method of supply classification.

by Hui Ling McCarthy KC

The Court of Appeal judgment in *HMRC v Gray & Farrar International LLP* [2023] EWCA Civ 121 may seem inconsequential – a case about a niche sector, apparently answered by clause 1 of the contract. In fact, it raises two important points: the first about the scope of consultants' services; and the second about the very method of supply classification for VAT.

The case

The case concerns Gray & Farrar's VAT liability on its matchmaking service for clients outside the UK and EU. Under Article 59(c) of Council Directive 2006/112/EC (the 'Principal VAT Directive'), the place of supply of 'the services of consultants, … consultancy firms … and other similar services, as well as data processing and the provision of information' to a non-taxable person is the place where that person is established or resides.

In essence, Gray & Farrar agreed to provide clients with a minimum of eight carefully curated 'introductions' to potential matches over a 12-month period, having discussed, verified and considered their clients' characteristics, suitability and requirements.

Clause 1 of the contract sets out Gray & Farrar's obligation to 'provide you, within 12 months of your becoming our client, with a minimum of eight introductions that we consider suitable for your requirements'. An 'introduction' was an exchange of telephone numbers.

The decisions below

The First-tier Tribunal decided that providing contact details where a person had been verified by Gray & Farrar and was considered compatible fell within paragraph (c) because it was the provision of information and advice. However, the presiding judge concluded that 'post-introduction' services of Gray & Farrar's liaison team went beyond this and involved material support in developing a relationship which fell outside the paragraph. He exercised his casting vote and dismissed the appeal.

The Upper Tribunal held that the First-tier Tribunal had erred in its approach to supply classification. It considered that the CJEU's judgment in *Mesto Zamberk v Financni reditelvsti* (Case C-18/12) ('*Mesto*') set out the primary test for characterising a supply – a 'predominant element' test.

Since the First-tier Tribunal failed to apply this test, the Upper Tribunal considered that it could remake the decision. It held that 'the qualitatively most important element to the typical consumer was the provision of the introduction to a prospective partner', which incorporated the provision of both information and advice about the potential

The case raises important points about the method of supply classification for VAT.

Key Points

What's the issue?
The Court of Appeal has held that a matchmaking agency was not providing services of consultants because the 'predominant element' of its supply was the making of introductions.

What does it mean for me?
As well as the impact on the consultancy profession more generally, the Court of Appeal approved the Upper Tribunal's formulation of a 'hierarchy' of tests for supply classification, identifying a 'predominant element' test as the main one.

What can I take away?
Recent CJEU case law refuting the existence of a 'predominant element' test was not brought to the court's attention, calling into question its guidance. If there is no appeal to the Supreme Court, advisers must consider carefully how best to engage with HMRC on supply classification until the position is resolved in a future case.

match. The supply therefore fell within paragraph (c).

'Post-introduction' services were not reflected in Gray & Farrar's contract and were insufficient to disturb that conclusion.

The Court of Appeal's judgment

In the Court of Appeal, the parties agreed that services of consultants involved giving 'advice based on a high degree of expertise'. Since clause 1 of the contract stated that clients paid for eight 'introductions' (rather than for 'advice'), the court purported to apply *Mesto* and concluded that the 'predominant element' of Gray &

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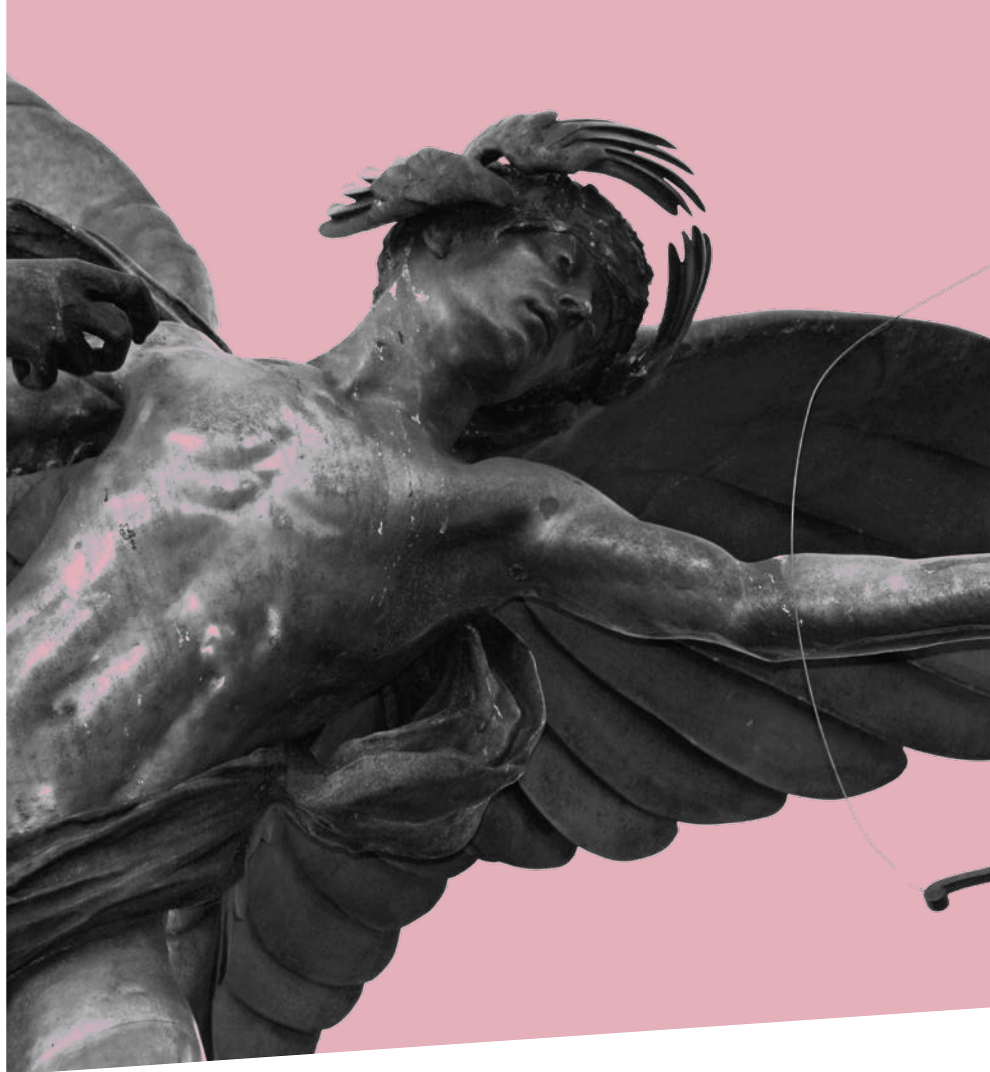

Farrar's supply was the provision of introductions. The judges held that dissecting this introduction service further into its constituent elements of advice and information, as the Upper Tribunal had done, was artificial. Since an introduction service was not a service habitually supplied by consultants or consultancy firms, the Court of Appeal allowed HMRC's appeal.

What is advice based on expertise?

The court's analysis seems unduly restrictive, both in relation to paragraph (c), and to Gray & Farrar's services. It also has the potential for unexpected consequences. The most obvious is the treatment of recruitment consultants paid to match candidates to suitable jobs which would now seem to fall outside paragraph (c).

What of consultants hired not just to advise but also to implement projects? Implementation is a common feature of 'the myriad of possible forms of modern consultancy work' (to borrow the Advocate General's language from *Maatschap M and others v Inspecteur der Belastingdienst/Ondernemingen Roermond* (Case C-167/95)).

In Gray & Farrar's case, introductions were not just names plucked from the phone book. Gray & Farrar considered a client's brief, undertook necessary research and applied their specialist expertise to make tailored recommendations. Isn't making a recommendation in these circumstances the giving of advice based on a high degree of expertise? Or on any view, the implementation of such advice? Aren't these the hallmarks of 'modern consultancy work'? Bearing in mind that Gray & Farrar's fees range from £15,000 to £140,000, it seems tolerably clear that clients are really paying for the application of Gray & Farrar's specialist expertise, as a matter of economic reality.

The 'predominant element' test: a wrong turn?

Turning to the matter of supply classification, the Court of Appeal approved a 'hierarchy of tests' to be applied in characterising a single supply for VAT purposes. This hierarchy was first identified by the Upper Tribunal in *HMRC v Metropolitan International Schools Ltd* [2017] UKUT 431 (TCC):

1. 'The *Mesto* predominance test should be the primary test to be applied in characterising a supply for VAT purposes.
2. 'The principal/ancillary test is an available, though not the primary, test. It is only capable of being applied in cases where it is possible to identify a principal element to which all the other elements are minor or ancillary. In cases where it can apply, it is likely to yield the same result as the predominance test.
3. 'The 'overarching' test is not clearly established in the ECJ jurisprudence, but as a consideration the point should at least be taken into account in deciding averments of predominance in relation to individual elements, and may well be a useful test in its own right.'

The 'overarching' test at (3) comes from *HMRC v College of Estate Management* [2005] UKHL 62, where the House of Lords held that distance learning courses were educational services, not supplies of books. It has been neatly explained by the High Court in *Byrom, Kane & Kane (t/a Salon 24) v Revenue & Customs* [2006] EWHC 111 as meaning 'a generic description of the supply which is distinct from the individual elements. In many cases the tax treatment of that overarching single supply according to that description will be self-evident.'

In contrast, the 'predominance test' at (1) is said to emanate from *Mesto*, a case about entry fees to an aquatic park which contained a variety of sporting and leisure facilities. It involves weighing up the individual elements of a supply to determine what the typical consumer would regard as qualitatively the most important one.

The Court of Appeal concluded that *Mesto* went further than the earlier cases and established a new principle of EU law that the predominant element test was mandatory and was the primary test to be applied in characterising a supply for VAT.

This is surprising, not least because the CJEU in *Mesto* proceeded to judgment without an Advocate General's Opinion. In other words, the CJEU thought the case raised no new point of law (see Article 20(5) of the Statute of the CJEU). This is a clear indication that the CJEU was not seeking to go further than its previous case law, far less to mandate a new primary test.

With respect to the Court of Appeal, this is also a misreading of *Mesto* itself and a detailed analysis of the key paragraphs in *Mesto* appears in the longer version of this article. CJEU support for the 'overarching' approach is to be found in a post-Brexit judgment of the CJEU, *Frenetikexito – Unipessoal Lda* (Case C-581/19). Unfortunately, this case does not appear to have been brought to the court's attention.

Frenetikexito: important guidance

Frenetikexito concerned a fitness studio that offered a fitness service and a nutrition advice service. The question was whether the studio made a single supply or multiple supplies. If the latter, was the nutrition advice service exempt medical care?

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FRENETIKEXITO: ADVOCATE GENERAL'S OPINION [27] AND [28]

'27. From the perspective of the typical consumer, where there is a single complex supply the individual elements lose their independence and become secondary to a new *sui generis* supply. The object to be examined is then only that single supply as a whole. Any weighting of the individual elements of the supply is rightly irrelevant. It is also to be determined solely according to the generally accepted view whether the single complex supply constitutes a supply of goods under Article 14(1) or a supply of services under Article 24(1) of the VAT Directive.

28. It is therefore slightly misleading when the Court sometimes states that the material factor in the assessment of a single supply is whether the elements of the supply of goods or of the supply of services "predominate". This wording suggests that the individual elements must be broken down and then weighed. In fact, this merely distinguishes between whether, in the generally accepted view, the complex (*sui generis*) supply is to be regarded as a supply of goods or a supply of services.'

If the case is not overturned on appeal, the 'hierarchy of tests' will likely be binding on taxpayers.

In contrast to *Mesto*, the Advocate General in *Frenetikexito* explains that the referring court (Portugal) could not identify clear criteria for assessing bundles of supplies from the CJEU's existing case law. This case has therefore given the CJEU the opportunity to clarify the criteria governing the VAT treatment of bundles of supplies so as to provide national courts with legal certainty. The paragraphs of central relevance to this article (AGO [22]-[33]) were expressly approved by the CJEU, underlining that the Opinion contains important clarification and analysis.

There is no substitute for reading both the Opinion and the judgment in full. Not only do they identify the different situations in which a single supply exists, but they also summarise the relevant indicia for differentiating between them. For present purposes, the salient points are:

- Every supply must normally be regarded as distinct and independent (AGO [16]).
- There are two exceptions arising from the CJEU's case law: (a) single complex supplies; and (b) dependent ancillary supplies (i.e. principal/ancillary cases) (AGO [21]).
- The Advocate General is clear that where there is a single complex supply (i.e. where the first exception applies), the multiple elements of the supply form one *sui generis* supply (AGO [22]). The individual elements merge into a new *distinct* supply such that there is only a single supply from the viewpoint of a typical consumer (AGO [25]). This is the same as the 'overarching supply' analysis: 'a generic description of the supply which is distinct from the individual elements. In many cases, the tax treatment of that over-arching single supply according to that description will be self-evident' (*Byrom* at [43]).

AGO [27] and [28] are worth setting out in full (see the box above).

Does it matter?

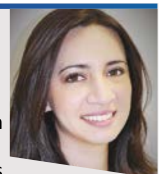
The Court of Appeal seems to accept that exceptions to the predominant element test might exist – but given the imprecise nature of the test itself (something that is more than merely important or essential, but not dominant enough to be a principal supply), how is one supposed to know in practice if a taxpayer's case is indeed an exception? Moreover, both *Metropolitan International Schools* and *Gray & Farrar* illustrate the difficulties in applying a primary 'predominant element' test:

- In *Metropolitan International Schools* (another distance learning case), the Upper Tribunal was unable to identify the predominant element of the supply, other than that it was not books. This was sufficient to dispose of *that case* – but had the tribunal needed to identify what the supply was (as opposed to what it was not), by its own admission it would have had to resort to the 'overarching' test to characterise the supply as that of educational services.
- In *Gray & Farrar*, notwithstanding that both the Upper Tribunal and the Court of Appeal purported to apply the same 'predominant element' test, they reached opposing conclusions because they disagreed on how far the individual elements they were trying to weigh should be broken down.

Advising taxpayers and corresponding with HMRC

If *Gray & Farrar* is not overturned on appeal, the Court of Appeal's 'hierarchy of tests' will likely be binding on taxpayers and HMRC since *Frenetikexito* is a post-Brexit CJEU judgment. Domestic case law may take another turn if and when the higher courts come to consider *Frenetikexito*. Pending any restatement, we are left with a disconnect between the approach of the UK courts on the one hand and the CJEU on the other.
In dealing with HMRC and the tribunal, advisors should be careful not to be over-reliant on a 'predominant element' test to the exclusion of all other analyses and should ensure that a taxpayer's facts, evidence and legal analysis can also be presented in such a way to satisfy the guidance in *Frenetikexito*.

This article comes from a longer piece which can be found at: www.11newsquare.com/gray-farrar-accidental-departure-from-cjeu/



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The treatment of vouchers

When does VAT become chargeable?

Single-purpose vouchers can be taxed upon issue but because the end use of multi-purpose vouchers is subject to choice, their taxation has to await redemption.

by Michael Taylor and David Anderson

For years, the VAT treatment of vouchers has asked searching questions of businesses, advisers and perhaps even tax authorities. In the absence of binding EU legislation or case law from the Court of Justice of the European Union, the Value Added Tax Act (VATA) 1994 Sch 10A(1) defined a 'face-value voucher' as 'a token, stamp or voucher (whether in physical or electronic form) that represents a right to receive goods or services to the value of an amount stated on it or recorded in it'. Other paragraphs within Sch 10A defined 'retailer vouchers', 'credit vouchers' and 'single-purpose vouchers'.

These provisions were the exclusive creation of the UK Parliament and of the Finance Bill 2003, the notes to which explain that Sch 10A was introduced 'to block leakage and avoidance of VAT on the sale of face value vouchers'. But did it create certainty for business?

The case law of the last 20 years suggests not. In well-known cases such as *Leisure Pass* [2008] EWHC 2158 (Ch), *Wiltonpark* [2016] EWCA Civ 1294, *Associated Newspapers* [2017] EWCA Civ 54, *FindMyPast* [2017] CSIH 59 and *London Clubs Management* [2020] UKSC 49, the application of the UK's vouchers legislation to diverse commercial practices posed complicated questions of fact and law which frequently troubled the higher courts.

Key Points

What is the issue?
In the EC's proposal for the new directive on the VAT treatment of vouchers, the distinction between single-purpose and multi-purpose vouchers 'hinges on whether the information is available to tax on issue or whether, because their end-use is subject to choice, taxation has to await redemption'.

What does it mean to me?
In the official records of the negotiations which informed the final draft of the directive, the European legislature also identified a number of commercial contexts where this new multi-purpose voucher legislation was expected to apply.

What can I take away?
Where businesses offer vouchers that give customers a choice of *what* to consume or *where* that offering might be consumed, they may need to consider whether VAT is chargeable at the time of the initial transaction or only when a customer in fact receives the underlying goods or services.

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Single-purpose and multi-purpose vouchers

With similar scenarios repeating across the member states of the European Union, in 2012 the European Commission proposed a new directive to govern the VAT treatment of vouchers. Observing that 'uncertainty about the correct tax treatment can … be problematic for cross-border transactions' and that 'the absence of common rules' had created an 'inevitably uncoordinated' legislative landscape, this new directive sought not only to distinguish between 'vouchers and generalised payment instruments' but also to impose common definitions of different types of vouchers across the single market.

Since 2019, therefore, the Principal VAT Directive and VATA 1994 Sch 10B have defined vouchers – in more or less identical terms – as physical or electronic instruments which must be accepted as consideration for the provision of goods and services.

'Single-purpose vouchers' are vouchers where the place of supply and the applicable rate of VAT are known at the time such vouchers are issued, and each transfer of a single-purpose voucher is subject to tax.

Conversely, where either the place of supply or the applicable rate of VAT is unknown, such a voucher is a 'multi-purpose voucher', and VAT is not chargeable on a multi-purpose voucher until it is finally redeemed for the actual provision of goods and services.

As the European Commission explained in its proposal for the new directive, the distinction between single-purpose and multi-purpose vouchers 'hinges on whether the information is available to tax on issue or whether, because their end-use is subject to choice, taxation has to await redemption'. The Economic and Social Committee of the European Parliament reinforced this distinction during the legislative process when it observed that: 'In the case of multi-purpose vouchers only the redeemer of the voucher knows what has been supplied, when and where.'

In the official records of the negotiations which informed the final draft of the directive, the European legislature also identified a number of commercial contexts where this new multi-purpose voucher legislation was expected to apply. Noting that vouchers could be distributed by newspapers, intermediaries, supermarkets and other outlets, the Commission alighted on the example of 'an international hotel chain [which] seeks to promote its products through vouchers which can be redeemed for accommodation in its establishments in any of several member states'. This, of course, calls to mind the case of *Macdonald Resorts* (Case C-270/09), where uncertainty as to ***where*** consumers would spend timeshare 'points' meant that payments for those points were held to be preliminary transactions rather than consideration for a supply.

The Commission also paid close attention to the telecommunications industry, suggesting that an obvious example of a multi-purpose voucher was where prepaid credit 'could be used either for telecommunications (standard rated for VAT) or to pay for public transport (where a reduced rate may apply)'. On this point, the Commission then drew a distinction between 'a multi-purpose voucher (where the holder has access to telecommunications services, as well as other specified services or goods) and a payment service (where the purpose is to facilitate the spending of a prepaid credit for the purchase of goods or services, notably including from third party providers)', and that the distinction turned on whether the right to receive goods or services – of whatever description – was inherent to the issuance of the voucher.

> **The case of *DSAB Destination Stockholm* has provided valuable guidance on the interpretation of the new vouchers regime.**

The case of *DSAB Destination Stockholm*

Understandably, given that the Vouchers Directive came into force only in 2019, there is relatively little jurisprudence concerning its application. Indeed, in the UK, given the time that it can take to resolve disputes, even the most recent case which addressed the VAT treatment of vouchers – *Lucky Technology Limited* [2022] UKFTT 366 (TC) – concerned only the old Sch 10A.

In the CJEU, however, the case of *DSAB Destination Stockholm* (Case C-637/20) has provided valuable guidance on the interpretation of the new vouchers regime. Here, the taxpayer issued city cards to visitors to Stockholm which entitled consumers to visit more than 60 attractions and use various forms of public transport. In the taxpayer's submission, the city cards were multi-purpose vouchers because when they were issued it was unknown which attractions a consumer would visit, and which rates of VAT would apply.

Rejecting the Advocate General's suggestion that any 'unused' credit on such a city card could be construed as taxable consideration 'for the distribution or promotion of services', the CJEU agreed with the taxpayer that the cards amounted to multi-purpose vouchers for VAT purposes. This was because the city card gave consumers 'access to various supplies of services, which are subject to different rates of VAT or are tax exempt' and, consequently, it was 'impossible to predict in advance which supplies of services will be selected by the cardholder'.

The court concluded, in language strikingly similar to the Commission's explanation of the multi-purpose voucher regime, that 'the VAT due on the services obtained by the cardholder is not known at the of issue of the card', and so VAT could not be charged on the full value of the city card when it was issued to a cardholder.

In conclusion

Because the referred questions in *Destination Stockholm* were registered with the CJEU before 31 December 2020, the judgment of the court has the status and binding authority of a judgment of the Court of Appeal. However, it remains to be seen how HMRC and the UK courts will interpret and apply the CJEU's conclusions because, at the time of writing, the case has not been cited in either HMRC's guidance or any published decisions.

Even so, where businesses make commercial offerings that give customers a choice of *what* to consume or where there is uncertainty over *where* that offering might be consumed, they should consider whether those offerings fall within the vouchers regime, and therefore whether VAT is chargeable at the time of the initial transaction or only when a customer in fact receives the underlying goods or services.

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If not now, when? Getting your timing right

The recent case of *England v HMRC* involving a loan to participators highlights the importance of specifying the tax year in which a loan is released.

by Keith Gordon

Key Points

What is the issue?
Mr and Mrs England were directors of a company to which they owed just over £1 million. Under an agreement, they would pay £100,000 to the company and the balance of £900,000 would be formally released.

What does it mean for me?
The payment of £100,000 would be in instalments over a two-year period. If any payment was missed, the full balance (i.e. the £1 million) would become immediately payable. The release of the £900,000 balance was conditional on certain payments being made under the instalment plan agreed.

What can I take away?
The tribunal appears not to have asked when the Englands ceased to be obliged to pay the full £1 million. The case serves as a reminder that the wording of loan releases can impact upon the tax year in which a tax charge arises.

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I can remember the first time that I came across an assessment in relation to a loan to a participator. (A participator in relation to a company is broadly a person with shares in (or an interest in the capital or income of) the company.) Having spent the first three years of my professional life in what is now a Big Four firm, I was not aware of such loans existing in practice. However, when I moved to a smaller firm, which specialised in owner-managed businesses, they quickly became a regular feature of my work.

Under what is now the Corporation Tax Act 2010 Part 10 Chapter 3, loans to participators are treated as a form of temporary dividend. Indeed, a part of the rules appears to mirror the old rules concerning companies' former obligation to pay advance corporation tax following the payment of a dividend to shareholders.

Without going into all the complexities of the rules, an outstanding loan balance at the end of an accounting period gives rise to a standalone corporation tax charge broadly equating to the income tax that might have been due had a dividend been paid instead. Upon repayment of the loan, however, that tax charge is reversed. The logic is clearly that the tax consequences of paying a dividend cannot be avoided merely by lending the funds to the shareholder instead. Conversely, when the quasi-dividend is reversed, the tax charge is similarly cancelled.

From the individual shareholder's perspective, the loan will usually be taxed under the beneficial loan rules which apply to employees and directors in respect of the period for which the loan is outstanding.

Additional rules apply if the loan is released. From the company's perspective, a release is treated in the same way as a repayment, because (at the end of the day) the loan is no longer outstanding. As a result, the company should obtain a repayment of the corporation tax charge. However, the individual will then usually be subject to an income charge in respect of the 'benefit' of the loan being set aside. Reflecting the pseudo-dividend nature of the original loan, this tax charge is found in the Income Tax (Trading and Other Income) Act 2005 Part 4, which broadly covers savings and investment income and, in particular, s 415. That s 415 tax charge takes precedence over a similar provision found within the beneficial loan rules so as to avoid a duplication of tax charges.

The s 415 tax charge arises in the tax year in which the loan is released (s 416). Accordingly, the timing of the release will be of fundamental importance.

Although the question of timing will usually not be in any doubt, there will

be exceptions. The case of *England v HMRC* [2023] UKFTT 313 (TC) looks at that very question.

The facts of the case

Mr and Mrs England were directors of a company, Alexander Lauren Associates Limited. They were participators of the company, presumably the principal (or only) shareholders. By 28 October 2013, they together owed the company just over £1 million. By that date, the company was already in creditors' voluntary liquidation.

On 28 October 2013, an agreement was reached between the Englands and the liquidator concerning the £1 million owing to the company.

At the heart of the agreement was the fact that the Englands would pay £100,000 to the company and that the balance of £900,000 would be formally released. However, the payment of £100,000 would be in instalments over a two-year period (presumably with certain minimum payments due by specified dates). The final instalment was to be £77,000. If any payment was missed, the full balance (i.e. the £1 million) would become immediately payable. That full balance would be secured by way of a legal charge.

According to the tribunal, clause 4.1 of the agreement suggested that the agreement 'is in full and final settlement of the liability and subject to the payment of the settlement sum is in full and final settlement of all known causes of action that the liquidator may have against the debtors'.

HMRC argued that the £900,000 was released in the 2013/14 tax year, being the year in which the agreement was made. Accordingly, it made discovery assessments in respect of that year for additional income that had not been self-assessed by the taxpayers.

In response, the Englands argued that the release was not effective until such time as the £100,000 had been fully paid in accordance with the agreement (which, implicitly, did not occur until a later tax year).

The Englands' appeal against the discovery assessment was notified to the First-tier Tribunal.

The First-tier Tribunal's decision

The case came before Judge Fionagh Green and Member Jane Shillaker.

The tribunal first asked itself whether 'the settlement agreement was conditional and dependent on a condition being satisfied or an event occurring'. In summarising the agreement, the tribunal said that 'the appellants went from owing a debt of £1,009,063 to the company to owing £100,000'. In doing so, the tribunal referred to an earlier decision of the tribunal, *Esprit Logistics Management Limited v HMRC* [2018] UKFTT 287 (TC); however, it recognised that the facts of *Esprit* were different, in that the substance of the release of the loans in that case were the conferring of a reward on the directors.

The tribunal also referred to the Court of Appeal's decision in *Collins v Addies (HM Inspector of Taxes)* [1992] STC 746. That case is authority for the proposition that the novation of a debt can be a release for the purposes of what is now s 415.

On the basis of these principles, the tribunal proceeded to ask itself whether there had been a release in the present case. It addressed that question by looking at all the circumstances of the case as suggested by *Esprit*. The tribunal analysed the wording of the agreement and concluded that there was a release of the full £1 million debt as set out in clause 4.1. Indeed, the agreement provided that the £100,000 repayments would amount to full and final settlement of the amounts otherwise owing to the company. As the agreement was 'fully and effectively binding' on the date it was entered into, the tribunal concluded that the release was effective during the 2013/14 tax year.

The Englands' appeal was therefore dismissed.

Commentary

Students of contract law will come across a series of cases that consider to what extent debts can become validly released, given the need for 'consideration' to pass both ways if a contract is to be formed. However, those issues were not addressed in the present case and, I think rightly, the tribunal proceeded on the basis that the agreement in the present case would be effective in reducing the debt from £1 million to £100,000.

For the reasons that follow, however, it is somewhat unfortunate that the actual agreement was not reproduced in the decision. Instead, we have only the First-tier Tribunal's commentary on what the key terms said. However, even on that basis, it appears that the First-tier Tribunal has possibly reached the wrong conclusion. (I fully recognise the possibility that the commentary could have misled me and that the tribunal's conclusion is in fact consistent with the agreement's actual terms, even if not consistent with the tribunal's commentary.)

A lot of the tribunal's discussion appears to focus on matters that were either not in dispute (or should not really have been relevant to the question as to when the Englands were released from the £1 million debt). In contrast, very little time was spent on the key question at the heart of this case, being whether the agreement itself amounted to a full release of the £1 million debt.

On that point, the tribunal concluded that the agreement was to be fully and effectively binding as soon as it was entered into. However, that in itself should not be surprising, as most agreements are expected to be binding immediately, even if they can be subject to future events that are not certain to occur. More importantly, it does not appear to me to be the relevant question. As the tribunal noted, the agreement would lead to the release of the £900,000 balance; however, that was conditional on certain payments being made under the instalment plan agreed.

As a result, the tribunal appears not to have asked itself the question as to when the Englands could say that they ceased to be obliged to pay the full £1 million. In my view, the agreement seems to say that there remained a risk that the Englands would have to pay the full sum until the moment that the final £77,000 instalment was paid by them (and assuming that it was paid on time). Indeed, as the Englands had argued, HMRC's position would suggest that the Englands would have been assessed on the release of the £900,000 balance at a time when they could still have been liable to repay the same amount to the company.

What to do next

If my concerns are correct, then I would hope that the Englands would take the case to the Upper Tribunal.

Irrespective, however, of the correctness of this particular decision, the case does serve as a reminder that the wording of loan releases can impact upon the tax year in which a tax charge arises. Sometimes, this can be a mere question of cashflow. However, where marginal tax rates are different in different tax years, the timing can become even more significant. Furthermore, if the tax charge is reported in the wrong tax year, that could (depending on the circumstances) lead to penalties as well.

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Guidance reform

High on HMRC's agenda?

A new report from the CIOT's Low Incomes Tax Reform Group (LITRG), 'Good guidance: the importance of effective guidance for unrepresented taxpayers' puts forward 40 recommendations to improve HMRC's guidance.

by Tom Henderson

HMRC's public-facing guidance moved to gov.uk in 2014, as the Government Digital Service took charge of the government's public facing digital content. At that time, the CIOT's Low Incomes Tax Reform Group (LITRG) commented on the large degree to which tax guidance had been simplified and abridged – 'to the extent that some of it is incomplete or even misleading'. We have continued to press these points over time and have now consolidated all of the issues in a new report which highlights the attributes of good guidance and provides extensive recommendations (see bit.ly/3MO5VXA).

While the report outlines what more we think can be done to improve guidance, we recognise that progress has been made since 2014. The Office of Tax Simplification's 2018 report 'Guidance for taxpayers' (see bit.ly/2IFUxug) set out a strategic 'vision for the future' for HMRC's guidance provision. It ambitiously called for 'a truly modern 21st century product, underpinned by modern information technology', focusing on how guidance is delivered and managed, as well as calling for greater clarity about the reliance which taxpayers can place on guidance.

In its 'Guidance update paper' which followed in April 2021 (see bit.ly/3Ih6Gpn), the OTS acknowledged the progress that HMRC had made. In particular, HMRC created an external Guidance Strategy Forum and appointed a senior Strategic Head of Guidance to lead this work. This demonstrated HMRC's commitment to treating its guidance provision as an important workstream in its own right. The forum also provides a useful nexus for external stakeholders to provide input into HMRC's guidance strategy and to hold HMRC to account for its guidance objectives.

As HMRC continues with its Tax Administration Framework Review, taxpayer guidance remains close to the top of its agenda. In the recently published discussion document, 'Simplifying and modernising HMRC's Income Tax services through the tax administration framework', HMRC directly acknowledges the 'considerable scope' to reduce contact demand by improving the content on gov.uk. HMRC has also been successful in demonstrating the business case for increased resources in this area, recognising that investment in guidance pays off in the long run.

LITRG's latest report is therefore a timely contribution. It focuses on the importance of effective guidance for *unrepresented* taxpayers, for whom clear guidance is critical for the proper functioning of the tax system. Without it, aside from the financial consequences to both the Exchequer and the individual as a result of non-compliance (or unclaimed reliefs), one finds confusion, frustration and erosion of trust.

The role of guidance

It is useful to start with an understanding of why guidance is necessary and what it is for. At the most basic level, guidance is needed to help the population understand what they need to do in relation to their tax obligations. It is unrealistic to expect lay taxpayers to read and understand legislation, so they rely on clear guidance to communicate what they need to do to comply, as well as the consequences of a potential action or inaction.

Alongside explaining the law effectively, another aspect of the function of guidance is in raising awareness. This is particularly relevant to unrepresented taxpayers, who do not have someone to point out that their circumstances might trigger a tax compliance obligation or an opportunity to claim a relief.

An important example here is the high income child benefit charge. Taxpayers

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Key Points

What is the issue?
HMRC's guidance for taxpayers plays a critical role in a well-functioning tax system. A new report from LITRG explains how HMRC's existing guidance provision falls short and suggests what can be done to fix it.

What does it mean for me?
Poor guidance can be misleading for taxpayers and advisers alike. If you have noticed any recent examples of poor guidance on gov.uk that might mislead or otherwise impact low-income, unrepresented taxpayers, please get in touch.

What can I take away?
Guidance is high on HMRC's agenda, as they work with external stakeholders for continuous improvement. LITRG's report sets out practical recommendations to assist HMRC in that work.

> LITRG's latest report focuses on the importance of effective guidance for unrepresented taxpayers, for whom clear guidance is critical.

INACCURACIES: MARRIAGE ALLOWANCE

One example where gov.uk is consistently inaccurate is in relation to the operation of the marriage allowance. The main guidance page at www.gov.uk/income-tax-rates states: 'Your personal allowance may be bigger if you claim marriage allowance.' This is incorrect: instead of an increase to the personal allowance, the receiving partner gets a tax reducer.

The point may seem pernickety. But what may seem like a technicality led (in at least one case we are aware of) to an unexpected tax bill for thousands of pounds. This is because the tax rate on a pre-6 April 2016 deferred state pension lump sum depends on the rate of tax that a person pays on their other income. In this particular case, the person had income just over the personal allowance, and therefore owed 20% tax on the whole lump sum. However, they thought that because their net liability to income tax on their other income was nil (on account of the marriage allowance claim), the rate of tax on the lump sum would also be nil.

The misleading guidance is repeated in HMRC's 'Report and pay your capital gains tax' service. During the process of reporting a gain, the service invites the user to input their personal allowance for the year, stating again that a marriage allowance claim would increase the figure. However, inputting 110% of the personal allowance might lead the system to incorrectly calculate the amount of capital gains tax payable at the lower rate.

who are liable to the charge, including PAYE taxpayers who have never filed a tax return before, usually need to file a tax return for any year in which they are liable. However, large numbers of taxpayers failed to notify their liability to the charge because of a lack of awareness, leading HMRC to charge nearly £20 million in 'failure to notify' penalties for tax years up to 2019/20.

Accelerated capital gains tax reporting on UK residential property (or on all UK land and property, if non-resident) is another frequently missed compliance obligation. Meanwhile, reliefs, like the marriage allowance, can go unclaimed.

Guidance needs to do more than just explain what needs to be done. It should 'guide' in a more active sense, so that the user ends up on the right page on gov.uk in the first place. This is not just about ensuring that guidance is well-publicised (and not just on gov.uk itself), but also things like:

- having an effective search function;
- improving navigability between related and more detailed content; and
- 'holistic' guidance that links to other pages which are likely to be relevant to a person's situation. For example, a page that discusses the tax treatment of an income source might also link to relevant guidance for means-tested benefits.

Guidance as advice?

There is much debate about the dividing line between 'guidance' and 'advice' – despite the reality that there is some degree of overlap between the terms. In recent years, HMRC's guidance provision appears to be straying towards the latter, with the proliferation of interactive tools, nudges and prompts in HMRC's online software, as well as in third-party software, through the use of application programming interfaces (APIs). It has also answered questions posed on Twitter, and in forums and webinars.

On one level, this kind of interaction with the taxpayer should be welcomed – but there must be a clear and consistent framework for it. For example, it is not clear how taxpayers should interpret gov.uk's general disclaimer (bit.ly/3BMZbmp). This states that:

- there is no guarantee that the information is accurate, current or complete;
- 'advice' (which is undefined) is *not* published on gov.uk; and
- taxpayers should 'get professional or specialist advice before doing anything on the basis of the content'.

Not only is this unhelpful, but it seems to contradict the first standard of HMRC's

'CHECK IF YOU NEED TO SEND A SELF ASSESSMENT TAX RETURN' TOOL

This tool conflates the concepts of the legal obligation to notify chargeability with the legal obligation to file a return. HMRC's non-statutory Self Assessment criteria are also layered on top. The result is that the tool's output can suggest a taxpayer needs to file a tax return when in fact they have no legal obligation to do so.

For example, someone whose only taxable income is £3,000 gross income from self-employment would generally not have any tax (or other) liability on that income, and thus they would not have a legal obligation to notify chargeability under Taxes Management Act 1970 s 7. If that person had not been issued a notice to file a tax return under s 8 of that Act, they would have no legal obligation to notify chargeability and consequently in no legal sense would they 'need' to file a tax return for the year.

However, the tool suggests otherwise – leading to unnecessary burdens on that taxpayer to submit that return and on HMRC to process it.

Charter, which commits to providing 'accurate, consistent and clear information'.

More broadly, what happens if HMRC's response (or output, or prompt) is misleading or simply incorrect? HMRC's progress on the issue of reliance on guidance has been slower than hoped, although we understand at the time of writing that it is close to being able to publish an updated version of its public-facing statement on gov.uk.

Good guidance

The first finding of the report is that guidance should, of course, exist. For that guidance to be 'good', it should also be easily found, clear in scope, easily navigable and presented in a suitable format, be accurate, up to date, clear and unambiguous, holistic, consistent, accessible and timely; and should also use examples.

It is not possible in this article to discuss each of these attributes in detail. The full report contains a number of examples from gov.uk which are, or have recently been, lacking in one or more of these attributes, with suggestions for how they might be avoided in future. It is, however, worth discussing a couple of the most important attributes in this list.

Accuracy

Probably the most important attribute of good guidance is also the one on which it seems to fall down most frequently: accuracy. In attempting to fulfil the role of explaining the law clearly and simply, it can be tempting for guidance writers to omit certain detail that is not relevant to most people, or to swap technical terms for more everyday ones, or to paraphrase legal conditions so that they are easier to read.

We do not object to any of these techniques, but they must be carried out with utmost care so that the accuracy of the information is not compromised. Where accuracy *is* compromised, given the number of users of HMRC content on gov.uk (which gets a billion clicks a year), the likelihood of an individual or group of individuals being affected by that inaccuracy can be unacceptably high.

For example, HMRC's inheritance tax checker tool provides misleading conclusions in the case where the transferor is domiciled in the UK but their spouse or civil partner is not, where the inheritance tax exemption which applies on transfer to the latter is restricted to the nil-rate band.

Such a situation is not just relevant to the very wealthy or represented taxpayers. Yet the tool clearly states: 'Assets passed on to [the] surviving husband, wife or civil partner do not count towards the value of [the deceased's] estate' – with no caveat. We raised this issue with HMRC, but it advised us that it would not be making any changes to the page because the number of estates involved would be very small.

Clarity

A further attribute of good guidance worth highlighting is clarity: how easy guidance is to understand. One particular source of confusion resulting from gov.uk editorial guidelines relates to the use of bullet points. The gov.uk style guide prohibits the use of 'or' or 'and' after bullet points, so when bullet points are used to list conditions the user is often left confused as to whether just one, or all, are required.

There are examples galore. For instance, the gov.uk guidance on reporting property income (bit.ly/3OrebOw) states that:

'You must report [income from property] on a Self Assessment tax return if it's:

- £2,500 to £9,999 after allowable expenses
- £10,000 or more before allowable expenses.'

This might leave someone with gross property income of £12,000 and deductible expenses of £10,000 confused as to whether they need to report it on a tax return. Insertion of the word 'or' at the end of the first bullet would put the matter beyond doubt.

And regarding payments on account (bit.ly/3Ow9gfb):

'You have to make two payments on account every year unless:

- your last Self Assessment tax bill was less than £1,000
- you paid more than 80% of the previous year's tax you owed, for example through your tax code or because your bank had already deducted interest on your savings.'

Aside from the reference to banks deducting 'interest on your savings' being nonsense ('tax on savings income' being meant instead), and that reference being seven years out of date, this is an especially confusing formulation because of the word 'unless'. Among our recommendations in the report is a call for HMRC to eliminate this kind of logical ambiguity.

Final thoughts

It has only been possible to skim the surface of the report in this article. The full report contains 40 general recommendations covering:

- gov.uk structure and development;
- attributes of good guidance;
- interactive tools; and
- guidance as advice.

We hope that these recommendations are practical steps which HMRC can take to implement systematic and process-led change, with a view to long term improvement. So far, HMRC has been receptive and positive to these recommendations and we look forward to continuing to work with it to help with their implementation.

To help us with this work, please do get in touch if you have noticed any recent examples of poor guidance on gov.uk that might mislead or otherwise impact low-income, unrepresented taxpayers.

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HMRC's Guidelines for Compliance

Practical assistance

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HMRC's guidelines aim to help taxpayers navigate the more complex areas of tax.

By Adam Clarke and Ryan Bassett

Guidelines for Compliance (see bit.ly/3o2M9hu) are intended to be a valuable resource for taxpayers and their advisers. They aim to provide practical steps to help them better understand HMRC's perspective in complex, widely misunderstood or novel areas of taxation. The series of guidelines is intended to cover a wide range of tax regimes, helping taxpayers to navigate the occasional complexities of the UK tax system.

The origin of the Guidelines for Compliance

At the Spring Budget 2021, the government recognised the crucial role that tax administration plays in supporting the UK's competitiveness and promoting investment. As a result, it conducted a review of large businesses' experiences with UK tax administration, using various forums and dedicated events to engage with stakeholders. The discussions focused on tax risk and certainty, compliance, enquiries and disputes, and the Co-operative Compliance and Customer Compliance Manager (CCM) model.

This review took into account the experience of large businesses across different taxes and duties, regardless of which part of HMRC they typically interact with. It also complements the wider Tax Administration Framework Review. After engaging with stakeholders, HMRC took action to improve tax administration for larger businesses and make the UK a more business-friendly environment.

One of these actions was to address uncertainty by publishing new Guidelines for Compliance products whilst improving existing guidance.

The work of the Guidelines for Compliance team

The development of these guidelines is well underway, managed by a dedicated team at HMRC. Some aspects of the guidelines build on positive feedback on the practical guidance that was piloted to support the Profit Diversion Compliance Facility.

The Guidelines for Compliance team is also actively engaging with agents, industry specialists and representative bodies to ensure that each guideline is proportionate, clear and addresses areas where taxpayers need additional clarity.

These guidelines don't replace existing HMRC guidance and technical manuals, but complement them and provide additional support to taxpayers. Each guideline will be linked to the relevant pages of existing HMRC guidance so that they can be easily located when needed.

They will highlight approaches that HMRC views as lower risk in accordance with UK tax law. This will help to clarify HMRC's view in areas of uncertainty, providing examples for business taxpayers and their advisers to identify any tax compliance risks in their arrangements. They may give indications of likely HMRC compliance responses, as well as suitable documentation and record-keeping methodologies, and offer clear contact routes into HMRC for any updates needed.

The Guidelines for Compliance are part of HMRC's published material and should be considered in relation to the Notification of Uncertain Tax Treatment regime (see bit.ly/3pFzku2 and bit.ly/3M38Jyp). They are designed to help taxpayers navigate the complexities of taxation to reduce uncertainty and minimise tax compliance risk and the likelihood of compliance checks.

Published guidelines

So far, two guidelines have been published and are available on the Guidelines for Compliance page (see bit.ly/41GUIw6):

- Help with PAYE Settlement Agreement calculations GFC1 (2022); and
- Help with VAT apportionment of consideration GFC2 (2023).

What feedback has HMRC had?

Feedback for the first two guidelines has shown that taxpayers and agents have found them to be a valuable resource in understanding HMRC's perspective on the more complex areas of tax compliance. They provide clear explanations, practical examples and recommended approaches to help taxpayers understand the requirements and best practice. They also highlight common errors and risks to avoid.

The promotion of new digital submission routes, such as the PAYE Settlement Agreement (PSA1) form, also simplifies the process and saves time. The guidelines demonstrate HMRC's commitment to ongoing engagement

with taxpayers and its efforts to make tax administration more efficient and supportive.

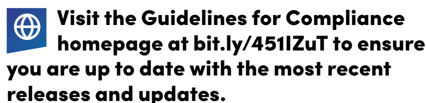
The development of these products based on this feedback and consultation shows that we are actively listening to customers and taking action to address their needs.

Future plans for Guidelines for Compliance

In addition to these two published guidelines, we plan to develop and release more Guidelines for Compliance products covering other tax regimes and areas where customers may face uncertainty. These guidelines will be developed through targeted engagement with taxpayers, working closely with tax advisers, industry specialists and representative bodies to make sure they meet their needs.

We hope HMRC's Guidelines for Compliance products will be a welcome resource for taxpayers, who want to ensure that their tax affairs are compliant with HMRC's requirements. The practical steps, examples and recommended approaches provided in the guidelines help reduce uncertainty and lower tax compliance risk.

We look forward to future releases of these guidelines covering other tax regimes and areas of potential confusion, as they will undoubtedly provide further support in navigating the complexities of tax compliance.



Visit the Guidelines for Compliance homepage at bit.ly/451lZuT to ensure you are up to date with the most recent releases and updates.

You can email the Guidelines for Compliance team at ccgguidelinesforcompliance@hmrc.gov.uk. We are also interested to hear your feedback, questions and ideas on existing and future guidelines.

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HELP WITH PAYE SETTLEMENT AGREEMENT CALCULATIONS GFC1: bit.ly/44Ytjsy

In designing this first Guidelines for Compliance, HMRC utilised customer behaviour analysis to expand on the support provided by existing guidance, clarify common errors and summarise contact routes. This will help to mitigate uncertainty and enable customers to self-correct.

HMRC identified a number of errors and emerging risks associated with PAYE Settlement Agreements (PSAs) and the associated tax calculations. We consulted with internal and external stakeholders and, subsequently, in October 2022 the first Guidelines for Compliance was published. The guidelines are written specifically for employers and cover the following topics:

- how to apply for a PSA with HMRC;
- what can be included in a PSA;
- how to pay a PSA;
- HMRC's recommended approach to PSA compliance;
- common errors and risks;
- calculating the income tax and Class 1B NIC due; and
- how to deal with any mistakes.

The overarching aim of these guidelines is to help employers reduce the risk of inaccuracies contained in their PAYE Settlement Agreement calculation and to avoid the most common mistakes seen by HMRC.

The guidelines provide an in-depth analysis of how to calculate income tax and Class 1B NIC. This includes consideration of devolved taxpayer rates, using a sample to calculate the tax rate, grossing up, employees who pay no tax, residence issues and concludes with an example clearly demonstrating how income tax and Class1B NIC should be calculated.

HELP WITH VAT APPORTIONMENT OF CONSIDERATION GFC2: bit.ly/3BrRPog

The second Guidelines for Compliance has recently been published following the outcome of a government consultation on 'VAT and value shifting'. The consultation proposed fixed rules for how the consideration (amount paid) must be apportioned when items with different VAT liabilities are sold for a single price.

Evidence gathered by HMRC identified valuation concerns and varied approaches to how the most common VAT apportionment methods were being applied. These selling price and cost-based methods are often used in the retail sector.

Following further stakeholder engagement and careful consideration of the proposed changes, HMRC concluded that the most effective way to address valuation concerns was to provide businesses with practical guidance on apportionment methods through new Guidelines for Compliance. HMRC also published minor amendments to VAT Notice 700 s 31 (see bit.ly/2QXUjS3) and updates to HMRC VAT Valuation Manual VATVAL03000 (Apportionment of monetary consideration) (see bit.ly/3W23947).

The Guidelines for Compliance team consulted with internal and external stakeholders to build on the feedback provided during the consultation. They worked with external VAT advisors and industry experts to develop the guidelines at various stages to ensure accuracy and clarity of content in the published product.

The guidelines were published in March 2023 to help customers apportion the consideration (amount paid) when they sell any goods or services with different VAT liabilities for a single price as part of a package or bundle. They set out:

- HMRC's recommended approach to the most common VAT apportionment methods;
- an overview of the types of supplies that are covered by the Guidelines for Compliance; and
- help and practical examples for businesses to understand approaches that HMRC sees as increasing or lowering tax compliance risk.

For ease of reference HMRC has provided links within the Guidelines for Compliance to the related HMRC manual and VAT Notice. The manual also links to the guidelines.

The guidelines set out HMRC's view of the areas to consider and the order in which to consider them to apply a fair and reasonable apportionment method on a robust basis. Applying that recommended approach means HMRC is less likely to challenge the method used.

Technical newsdesk

WELCOME

June
Technical newsdesk

It must be a sign of getting old when you start to talk about how tax was 'in the old days'. There was a time when tax changes simply involved inserting, removing or changing words on a page. Whatever your preference of tax handbook, you adapted accordingly. I accept that is an over-simplification, but I am sure you understand what I mean.

Fast-forward 30 years and our tax system is almost unrecognisable. I cannot remember the last time I picked up a hard copy tax book (everything is now online), about 96% of self-assessment returns are filed online, VAT returns are also submitted online, and HMRC's ambition is to become one of the most digitally advanced tax authorities in the world. There is little sign of this slowing down, with the extension of Making Tax Digital, the Single Customer Account, and even artificial intelligence on the near horizon.

There is no doubt that digital tools, if properly implemented, can bring huge benefits to those who can use them. But they take time to develop. A common theme of our engagement with HMRC, especially when tax changes are proposed, is to ensure there is adequate time to develop and test any new systems requirements before the changes take effect. This can create frustration amongst policymakers, especially if the measure is revenue-raising or intended to prevent abuse. However, it is necessary to ensure that the policy is properly implemented and that costs to all parties are reduced. We can all think of recent examples (such as the capital gains tax property reporting service or the trust registration service) where obligations have commenced before the systems are fully operational.

A similar case can be made for process changes that are not linked to tax changes, but intended to update systems. Adequate time should be allowed to ensure that these new systems have, at a minimum, the same functionality. There are frequent examples (the Agent Services Account or the VAT registration service) where the new system has less functionality and more glitches than the one it replaces. At least in the short term, that does not represent progress.

Where possible, we work closely with the revenue authorities on systems development. But this has become less of a two-way conversation between policy makers and taxpayer representatives, and is now also including the software industry. We must all be 'in the room' for any change to be as smooth as possible.

New systems and processes bring (at least) two further requirements. First, the need for adequate guidance. The aforementioned new services lacked timely, detailed guidance, leaving users needing to contact HMRC or us to understand what they need to do. Secondly, agent access. New systems frequently require the taxpayer to authorise their agent to use that service, typically with a 'digital handshake', leaving both agents and taxpayers frustrated at having to do something they think they have already done. Rest assured that these remain significant priorities for the technical teams.

We are looking to develop a series of principles which we believe should be applied to the introduction of new processes. This will include the two requirements above, as well as ensuring that a full tax 'cycle' is tested before any mandatory obligation, new systems have at least the same functionality as those they replace, and digital forms include basic functionality such as the ability to save and print. If you have any other suggestions, please send them in.

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GENERAL FEATURE

Tax Administration and Maintenance Day

Tax Administration and Maintenance Day saw the launch of several important consultations, and government responses to previous consultation exercises. We report on these briefly below and we welcome your opinion on the proposals.

While not the most dynamic sounding of titles, Tax Administration and Maintenance Day (or TAMD for short), is establishing itself as an important day in the tax calendar. Announcing that TAMD would be on 27 April, Victoria Atkins MP, the Financial Secretary to the Treasury, said: 'This will outline the action the government is taking to simplify the tax system, tackle the tax gap and modernise the tax system' (tinyurl.com/59usuekh).

On the day itself, those objectives, no doubt tweaked to reflect the announcements therein, became: 'the government is setting out further technical tax policy proposals that support its ambition to simplify and modernise the tax system, tackle non-compliance, make the tax system fairer for taxpayers and to make the customs system work better for traders' (tinyurl.com/ycxdf34y).

Simplification and modernisation of the tax system

The government made eleven announcements under this heading, across a range of topics, including the launch of seven new consultations:

- Extending and simplifying the Help to Save scheme;
- HMRC's information and data-gathering powers and taxpayer safeguards;
- A new legislative approach to 'pilot' tax changes;
- The customs treatment of post and parcel exports;
- Tax treatment of Decentralised Finance lending and staking;
- Modernisation of the Stamp Taxes on Shares framework; and
- Introduction of a new type of investment fund: the Reserved Investor Fund.

Two further consultations (Diverted Profits Tax, transfer pricing and permanent establishment reform, and the VAT Terminal Markets Order legislation) will also be launched. The government will continue to engage with the charities sector to improve the way that Gift Aid works in order to minimise administrative burdens.

The government also published its response to HMRC's consultation on 'data gaps'. It intends to progress the proposals where it considers that data is already held by individuals and businesses, such as self-employed start/end dates, employee hours worked, and dividends paid by owner-managed businesses.

Tackling the tax gap

Seven announcements fell under this heading, including the launch of three consultations:

- Tackling promoters of tax avoidance;
- Construction Industry Scheme reform; and
- Charity sector compliance measures.

Two further consultations (Tackling non-compliance in the umbrella company market, and Employee Ownership Trusts) will also be launched.

The government also published its response to HMRC's consultation on modernising tax debt collection from non-paying businesses, announcing plans to further investigate the approach to modernising HMRC's powers in this area, such as taking control of goods and direct recovery of debts from digital wallets. It also published details on the new regime for repayment agents.

Everything else

In a wrap-up of other matters, the government issued a consultation on a potential legislative change to address the over-collection of tax in relation to non-compliance with the off-payroll working rules, and announced that it will consult on elements of the plastic packaging tax.

It also published a report setting out how it has delivered on the commitments it made to help build and maintain public trust in the tax system, and an update to HMRC's programme of evaluations of measures and reliefs. It will also set out steps to provide parents with a retrospective national insurance credit to preserve entitlement to the state pension.

A 'collections' page summarising the above, with links to each of the individual announcements, can be found on gov.uk (tinyurl.com/ytfz5p2p).

Reflections on the above

Having heard rumours of 'massive tax simplification plans', we were rather underwhelmed at the extent of the simplification proposals. There was nothing that most people would recognise as simplifying their taxes, and there is clearly still much to do in this regard. We are pleased that the government is consulting on several matters that we have been encouraging, such as IR35 offsets, employee ownership trusts and stamp duty on shares. We are also slightly relieved that TAMD has not brought an avalanche of major reforms, and hopefully this is a recognition of the need for stability in the tax system, as well as simplification.

The CIOT, ATT and LITRG technical teams will be reviewing the new consultations, and the government's responses, and if you have any comments please send them to technical@ciot.org.uk, atttechnical@att.org.uk or LITRG@ciot.org.uk.

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LARGE CORPORATE OMB

Finance (No.2) Bill 2023: corporate taxes

The CIOT and ATT sent briefings to MPs on the corporate tax provisions in the Finance Bill that were selected for debate by the Committee of the Whole House. The provisions debated related to capital allowances, R&D tax relief and the new multinational top-up taxes (Pillar 2).

The Finance (No.2) Bill 2023 is currently going through Parliament (Royal Assent is expected sometime towards the end of June/early July). MPs began committee stage consideration of the Bill on 18 April with the first of two days of the Committee of Whole House debate focusing on corporate tax changes, including capital allowances full expensing, the annual investment allowance, R&D tax relief and the implementation of Pillar 2 of the OECD/G20 Inclusive Framework.

Capital allowances

The Budget announced 'full expensing', which is in essence an unlimited annual investment allowance (AIA) for all companies. It is a generous relief for the largest companies whose capital expenditure on plant and machinery is in excess of the limit for the AIA (now set at a permanent level of £1 million). The Finance Bill introduces this new temporary first year allowance which will have effect for expenditure incurred on or after 1 April 2023 but before 1 April 2026.

The CIOT welcomed this measure, but said that it is not as beneficial as it might at first appear due to it being time limited, only applying to expenditure on plant and machinery, and only applying to corporates. The ATT noted that it will provide no benefit to 99% of businesses, and said that more focus is required on the needs of smaller businesses, including how the capital allowances rules could be simplified.

Both agreed that the scope of full expensing should be extended so that large, unincorporated businesses (such as farming partnerships or professional service firms) can benefit from it.

The CIOT said that it was unfortunate that the changes to the capital allowances regime in the Finance Bill do not deliver stability for all businesses, which is a missed opportunity because businesses require consistent levels of relief to help them plan and grow. The overwhelming feedback that the CIOT and ATT receive in relation to encouraging investment and ensuring that the UK is a more attractive place for business, is that stability and certainty is more important to businesses than any particular rate of relief.

R&D tax reliefs

The Finance Bill introduces changes to the R&D tax relief for small or medium sized companies ('SME tax relief'), and to R&D Expenditure Credit ('RDEC'), which is mainly claimed by larger companies, to widen qualifying expenditure to include data licences and cloud computing services. It also introduces new compliance measures.

The main compliance changes are:

- the requirement to make a claim notification of an intention to make an R&D claim in a shorter time frame than the period allowed for the making of the R&D claim itself; and
- a new requirement for claimants of SME R&D tax relief or RDEC to provide additional information to support their claims.

The changes generally have effect for accounting periods beginning on or after 1 April 2023, but the requirement to provide additional information with a claim has effect for claims made on or after 1 August 2023.

We understand that these measures are aimed at tackling error and fraud. Both the CIOT and ATT are supportive of the government taking action to do this, but we are doubtful that the measures will be successful in this regard. Rather, we believe that claim notification is likely to affect the ability of companies undertaking genuine R&D to access the relief to which they are otherwise entitled, whilst doing little to reduce abuse. The House of Lords Economic Affairs Finance Bill Sub-Committee report 'Research and development tax relief and expenditure credit', published in January this year, supported this view (tinyurl.com/mryj4zs2).

The ATT said that small and new companies in particular, which are often most in need of the support offered by R&D relief, are the most likely to miss the six month deadline for claim notification. Such businesses often lack dedicated in-house tax or R&D expertise, and may be focused on shorter term goals, getting products to market, etc. They might not appreciate the opportunity for R&D relief sufficiently far in advance to meet the claim notification deadline, and may not be able to afford timely professional advice.

The CIOT agreed and said that the real solutions to the issue of abuse in relation to the R&D tax reliefs lie in more graduated HMRC compliance responses in the R&D tax credits area, and in reviving the government's largely stalled agenda on raising standards in the tax services market.

Noting that the commencement date of the requirement for additional information to be submitted in support of R&D relief claims has been brought forward significantly from the date originally proposed, the ATT said that a concerted education and information campaign is required to ensure that genuine claimants are not prevented from claiming relief due to a lack of awareness of this change.

In addition, the CIOT said that if the requirements of the additional information are not carefully communicated by HMRC, this new compliance measure could cause confusion and may result in a lower standard of behaviour. This is because although the additional information form will only require details of a proportion of R&D projects undertaken, HMRC will be entitled to request further information in respect of all the projects a company has undertaken under their enquiry powers. HMRC need to make it very clear that the requirement to provide additional information in respect of some projects does not negate the obligation on a company to ensure that it has sufficient information in respect of all its R&D projects to support its claim for tax relief.

The CIOT suggested a change to the legislation in relation to the wording of a new power for HMRC to remove a claim for R&D relief from a corporation tax return when an officer of HMRC 'reasonably believes that the claimant company failed to comply with a requirement for making a claim'. Although we understand that this new power is only intended to be available to HMRC in relation to failure to comply with the new compliance measures, it is too widely and ambiguously drafted. Labour tabled an amendment responding to the concern that the provision may enable HMRC to reject claims without taxpayers having the normal rights of appeal, and raised this in the debate, but did not move the amendment to require a vote on it.

Finally, both the CIOT and ATT noted that the changes to the R&D regime are just a selection of the changes being made to R&D relief this year, which also include a reduction in the rate of relief available under the SME scheme and the introduction of enhanced relief for 'R&D intensive' SMEs announced at the Spring Budget. In addition, these changes sit alongside the ongoing consultation on whether to merge the two R&D tax reliefs into a single scheme.

Both organisations think that the pace and scale of change is too fast. ATT said that, taken together, this is a large volume of change for businesses and advisers to adapt to within a short period of time. It creates an overall feeling of uncertainty and makes it hard to plan. Businesses and advisers are concerned about making changes to their processes to accommodate administrative updates when the whole R&D regime could be replaced in under a year.

The CIOT said that most of the changes in the Finance Bill do not support the government's stated policy aim of encouraging innovation and achieving the ambitious target of total investment in R&D rising to 2.4% of UK GDP.

Multinational top-up tax and domestic top-up tax (Pillar 2)

The multinational top-up tax and domestic top-up tax introduced by Parts 3 and 4 of the Finance Bill are the first tranche of implementation by the UK of the agreed G20-OECD Pillar 2 framework. The principle behind the Pillar 2 rules is that where a group company in jurisdiction A has paid less than 15% tax on its profits, then jurisdiction B where there is another group company, higher up the ownership chain in the corporate structure, is expected to impose a 'top-up tax'.

The CIOT re-iterated that it is not opposed to the introduction of a global minimum tax in principle. The CIOT has long advocated a multilateral solution to the tax challenges arising from the digitalisation of the economy in the light of the increasing unilateral measures (and retaliatory actions) being taken by countries. Against that alternative, the CIOT has supported the work towards a multilateral solution and the two-pillar approach. However, it must be recognised that the scope and detail of the Pillar 2 rules – and, as a result, the multinational top-up tax that is the UK version of it – is vastly complicated and will create an enormous administrative burden for tax administrations and multinational businesses alike.

Throughout the process of developing the rules, the CIOT has been concerned that the desire to reach an apparently positive outcome to a timetable ran ahead of real resolution of the technical issues, casting doubt on whether we will achieve a workable set of rules that will result in a genuinely stable, reformed international tax system.

PERSONAL TAX EMPLOYMENT TAX

Finance (No.2) Bill 2023 clause 25: relief relating to net pay arrangement pensions

LITRG's Finance Bill briefing on clause 25 generated some helpful debate and reassurances relating to the proposed implementation of a scheme of 'top-up payments' to low-income contributors to net pay pension schemes.

The Low Incomes Tax Reform Group (LITRG) has been campaigning for more than five years for the government to address a longstanding pensions inequality impacting low earners. Workers contributing to net pay arrangement workplace pensions do not get tax relief on some or all of their pension contributions if their income falls below the personal allowance. By contrast, if their employer chooses to operate a relief at source scheme, the worker gets tax relief, even if they are a non-taxpayer.

The government recognised this as an anomaly needing a 'fix' in the 2019 Conservative election manifesto and aims to address the unfairness by legislating (Finance (No.2) Bill 2023 clause 25) to introduce top-up payments to those affected. This will be via an amendment to FA 2004, inserting a new s 193A.

HMRC will calculate these top-up payments using data available to them (for example, pay data obtained through PAYE and real time information). They will be calculated after the end of the relevant tax year, with the first payments being made in the 2025/26 tax year in respect of 2024/25. HMRC will contact the individual, inviting them to submit their bank details for the payment to be made. We understand that this will be via a secure digital channel, such as the individual's personal tax account. Except for the purposes of calculating the payment itself, the payments will be treated as taxable employment income in the hands of the recipient.

LITRG's briefing on the proposed legislation raised concerns about anticipated low take-up of the payments and how HMRC will implement them. For example, we stressed that HMRC need to be transparent about how the top-up payments have been calculated, so that an individual could check and challenge it as necessary (including challenging HMRC if a payment has not been made at all). Labour tabled several of LITRG's proposed amendments, which resulted in the Economic Secretary to the Treasury writing to them (quoted in the debate – see tinyurl.com/4sfe792t) with some reassurances, including:

- HMRC are already planning to provide customers with details of the payment and how it was calculated.
- Where an individual feels that a top-up payment is incorrect, HMRC will help them to understand what may have caused the issue. HMRC will either address this or direct them to their employer.
- Individuals who do not get a payment, but think they should, will be able to contact HMRC, who will explain why a top-up payment has not been made and what is necessary to correct the situation.
- HMRC can use existing powers under TMA 1970 s 9ZB to correct a self assessment tax return where they make a payment under the new FA 2004 s 193A for a tax year for which the return has already been filed.

LITRG will be closely following HMRC's plans to implement these top-up payments. We are particularly concerned that HMRC get their communication strategy right. We think this should include a collaborative publicity campaign – in conjunction with the pensions industry, employers, payroll industry and other organisations – so that low earners are aware of their entitlement under the new rules.

This is particularly important in the current climate where the public is encouraged, quite rightly, to be cautious given the proliferation of fraudulent activity related to tax repayments. Otherwise, there is a risk that individuals will not recognise that HMRC offering them a refund is legitimate.

The full briefing can be downloaded at: www.litrg.org.uk/ref2748

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Our full briefings can be found at:
Finance (No.2) Bill 2023 Corporate Taxes (all measures): www.tax.org.uk/ref1121
Finance (No.2) Bill 2023 Clause 7 Temporary full expensing: www.att.org.uk/ref425
Finance (No.2) Bill 2023 Clause 10 and Schedule 1 Relief for research and development: www.att.org.uk/ref424

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GENERAL FEATURE

Finance (No.2) Bill 2023 clause 29: low income trusts and estates in administration

CIOT commented on the consultation last summer and have more recently discussed with HMRC details of what is now clause 29 and Schedule 2 of the Finance Bill. Our Parliamentary Briefing explores the new rules, with examples. The changes will take effect from 6 April 2024.

Income from estates in the course of administration

The provisions in the Finance Bill will extend the scope of the existing concession to cover all forms of income from a deceased's estate (potentially therefore including, for example, rental income and dividends rather than just interest), provided that the total income over the course of a tax year is not more than £500. Such income will be exempt from income tax, so that neither the personal representatives nor the estate's beneficiaries will have any income tax liability.

Where estate income exceeds the threshold, all of it is taxed so that the normal rules apply. This is a practical reform that will genuinely simplify the position for small estates and their beneficiaries.

Trusts

The simplicity for estates has not been carried through to small trusts. The difficulty is that although a similar £500 exemption is applied to the income arising to the trustees of a settlement, it is not exempt when distributed to beneficiaries. We pointed out that the measure will actually increase compliance issues for some beneficiaries.

Beneficiaries of interest in possession trusts will receive the trust income (up to £500) gross, without any tax deduction. The trustees will have no obligation to report or pay. This process will help life tenants who are not taxpayers, as they will no longer need to submit repayment claims. However, basic rate taxpayers will still have to pay the basic rate tax due on their trust income. Currently, they may not be filing a tax return at all, as their basic rate liability will have been met by the tax deducted by the trustees. This measure means that they will now have to file.

This measure could increase the number of tax returns required. If there are five basic rate beneficiaries entitled to the trust's income in equal shares of £100 each,

PERSONAL TAX OMB

Finance (No.2) Bill 2023 clause 36: capital gains tax

The CIOT has responded to the draft legislation within the Finance (No.2) Bill 2023 on some of the capital gains tax proposals.

Two of the changes announced in the Autumn Statement in 2022 concerned share for share exchanges involving non-UK companies, and asset transfers and private residence relief (PRR) for separating couples. These changes are within the Finance Bill.

Clause 36 of the Bill outlines changes for share for share exchanges involving UK personal companies and when the 'target' company is non-UK resident. Under the normal share for share and scheme of reconstruction rules, the new shares are deemed to stand in the shoes of the old ones – it is a tax-neutral swap, unless there is an election to disapply that rule. By effectively transferring a latent gain in the UK shares into those located outside the UK, a UK resident but non-domiciled shareholder could utilise the remittance basis to keep that gain outside the reach of UK capital gains tax.

The proposal is to treat offshore companies as having a UK situs for these purposes; these deeming provisions will also apply to the dividends from the offshore company such that they are not considered as relevant foreign income for remittance basis purposes. (It will remain possible for a shareholder to elect to treat the swap as a disposal of the UK shares.)

Whilst CIOT welcomes this anti-avoidance measure, we raised concerns about the application of the legislation: whether persons acting as trustees would be affected; how the change might work with offshore trustees; and how it would interact with beneficiary charges.

Clause 41 implements the change to the no-gain/no-loss treatment of transfers of assets between separating spouses. For disposals after 6 April 2023, a three-year no-gain/no-loss window following that of permanent separation will be in place – prior to this date, couples only had the remainder of the tax year of separation before they were treated as connected parties. The Office of Tax Simplification had originally recommended that there should be a two-year window after that year. At the time of the original announcement, the CIOT had suggested the inclusion of an option to backdate the 6 April 2023 transfer commencement date, but this does not appear in the draft legislation.

A further change surrounding separating couples concerns PRR. For disposals prior to 6 April 2023, when a departing spouse left the marital home, the transfer of their share in the property to the remaining spouse, pursuant to a Court Order, will qualify for PRR provided the departing spouse had no other main residence. After 6 April 2023, PRR will instead apply when the property is sold to a third party.

The benefit of PRR will also be available pursuant to deferred sales orders; e.g. the sale of the marital house cannot take place until the couple's child turns 18, but the departing spouse's share of the house is nonetheless transferred to the remaining spouse. In this instance, the benefit of PRR for the departed spouse on their interest in the property is essentially preserved until the house is sold to a third party.

Our briefing to the Public Bill Committee that is considering the Finance Bill can be read at: www.tax.org.uk/ref1140 .

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five tax returns will be necessary where previously the trustees would have just filed one. This is also the case with higher rate taxpayers, although these taxpayers are more likely to be filing tax returns already.

The position for discretionary trusts is even more complicated. The £1,000 'standard rate' band will be abolished. Instead, the trustees will not have to report income under £500 but any income payment made to a beneficiary will remain subject to the 45% distribution charge. This requires the trustees to undertake complex computations (incomprehensible to many lay trustees) to determine the amount of tax payable on the income distributed, taking any existing tax pool into account.

Where a settlor has more than one current accumulation or discretionary trust, the £500 exemption will be divided by the total number of those trusts, with a minimum of £100 each. This mirrors the approach adopted in relation to the capital gains tax annual exemption for trusts. Interest in possession, settlor-interested, vulnerable beneficiary and heritage maintenance trusts are not taken into account. And, following doubts raised by one of our committee members on the scope of the clause, a government amendment was introduced to ensure that pension trusts are also ignored.

We expressed concern that this measure, while described as a simplification, could increase levels of confusion for trustees of small trusts. HMRC estimate that this measure will affect 37,000 individuals overall but it is possible that the effect could be greater and more adverse for many, maybe most, beneficiaries of small trusts, and may increase their compliance burdens – the reverse of simplification.

The full briefing can be found at: www.tax.org.uke/ref1139

John Stockdale *jstockdale@ciot.org.uk*

INDIRECT TAX

VAT groups with EU branches

The CIOT is a member of the CFE Tax Advisers Europe, an association of European tax advisers with members from 26 European countries. Through this membership, the CIOT is able to input on European Commission consultations and contribute to pro-active submissions on VAT.

The CFE (taxadviserseurope.org) published and submitted its Opinion Statement on VAT groups (tinyurl.com/y7bev7rj) to the EU Institutions on 23 March, with the request that it would be helpful to have further guidance from the EC's VAT Committee on a number of areas in respect of VAT groups and supplies to overseas branches in other member states.

The document provides an in-depth technical look at the background from case law and the arising VAT issues for VAT groups with branches in other member states and includes commentary on the UK position. The Opinion Statement considers the key decisions of the Court of Justice of the European Union (CJEU) on this topic. These are *Skandia America Corp (USA)* (Case C-17/13), *Danske Bank* (Case C-812/149) and *FCE Bank plc.* (Case C-210/04).

Establishment only approach

In *Danske Bank*, the bank head office was established in Denmark, where the tax authorities only allow fixed establishments located in Denmark to join a VAT group; hence, termed the 'establishment only' approach. This meant that the bank's Swedish branch could not join and was considered a distinct entity from the Danish VAT group. Further, the

Danish authorities deemed that VAT was due in Sweden on the supplies made by the head office to its branch.

In reaching its decision, the CJEU considered the extent that a tax authority in one member state must consider the rules relating to VAT groups in other member states. The conclusion was that these should be taken into account 'where appropriate'. Thus, the CJEU took into consideration the territorial boundaries applicable to the Danish VAT groups imposed by Danish law, which effectively meant the Swedish branch could not be considered to form part of the VAT group.

Whole entity approach

In *FCE Bank plc*, the CJEU found that no VAT was due on the supplies of services from the UK head office to its Italian branch, as the head office and the branch were not performing independent economic activities and the bank as a whole bore the risks and costs of the business; hence, termed the 'whole entity' approach.

The UK also supports the whole entity approach, as confirmed by VAT Act 1994 s 42A and Revenue & Customs Brief (RCB) 18/2015 (tinyurl.com/2e2buc22). This RCB sets out HMRC's position following the decision in *Skandia*, which was that a whole entity approach applied unless the branch in another member state was in a VAT group with a local associated business. UK head offices or UK branches can still benefit from the *FCE Bank plc* judgment.

The CFE statement also raises the point that as the UK has left the EU, it is free to apply the whole entity approach to all member states should it wish to, as it no longer has to consider rules adopted in member states, suggesting that HMRC's guidance requires some updating.

It should be noted that the above two approaches may not be the only scenarios; some member states still do not allow VAT grouping or only have basic VAT grouping rules. The local VAT grouping rules may have also changed since HMRC published its list in RCB 18/2015.

Conclusion

Any changes to the rules on VAT groups operating with cross-border branches would require legislative action by the Commission. The CFE calls for the EC to develop the concept of EU-wide VAT groupings, as the current establishment-only approach discourages the provision of cross-border services between the head office and local branches.

As noted in the CFE's Opinion Statement, HMRC's guidance will also require updating and the CIOT will take this forward with HMRC.

Jayne Simpson jsimpson@ciot.org.uk

PERSONAL TAX

Tax treatment of payments of state pension arrears: self assessment cases

HMRC have recently provided an update as to how self assessment customers who receive payments of state pension arrears will have any additional tax liabilities collected.

In 2020, the Department for Work and Pensions (DWP) became aware that some people had not received an automatic increase to their state pension. This prompted an exercise by DWP to identify those affected and make payments of arrears. The groups affected include certain married people or civil partners (including widows/widowers and divorcees) who reached state pension age before April 2016; and some people aged over 80, regardless of their marital status. Around 90% of those affected are women.

LITRG provides guidance on its website about the tax implications for those receiving payments of arrears under this exercise, as confirmed by HMRC (see tinyurl.com/2s4aka39). Broadly, the payment of arrears will be taxable in the tax year payment should have been received. Taxpayers will be assessed to income tax for the tax year of payment and four preceding tax years. Any payments of arrears relating to tax years before this will not be subject to income tax.

Payments of arrears under the DWP's correction exercise are not to be confused with cases where a person chose to *defer* claiming a pre-April 2016 entitlement to state pension. Pre-April 2016 deferred state pensions are subject to separate tax rules (see LITRG's website: tinyurl.com/2xez3prf).

The DWP shares information about payments to affected people directly with HMRC. For PAYE cases, HMRC automatically processes any underpayment arising and notifies the taxpayer. The process for self assessment customers has taken longer for HMRC to put in place. They have now confirmed that frpm April 2023 a dedicated team will look at the tax implications for each self assessment taxpayer receiving a payment of arrears. Such taxpayers can expect to receive a letter under a so-called 'once and done' approach. The letter will set out the calculated tax liability arising across all relevant tax years and explain what action is needed to settle their liability, including relevant contact details if taxpayers need support in paying.

Due to the delay in establishing the dedicated team for self assessment cases, we understand that HMRC are working through a backlog of around 3,000 cases, which they aim to process by the end of June 2023. HMRC intends to process all further cases within six months of receiving notification from DWP.

If members deal with any clients who receive a payment of these state pension arrears and notice any frustrations with the process, LITRG would be very interested to hear about it.

Antonia Stokes astokes@litrg.org.uk

CIOT		Date sent
Finance Bill draft legislation CGT on offshore company share for share exchange	www.tax.org.uk/ref1119	13/04/2023
Finance (No.2) Bill 2023 Corporate Taxes	www.tax.org.uk/ref1121	14/04/2023
Future financial services regulatory regime for cryptoassets	www.tax.org.uk/ref1081	28/04/2023
Climate Change Agreements: consultation on extension and future scheme	www.tax.org.uk/ref1109	11/05/2023
ATT		
Future financial services regulatory regime for cryptoassets	www.att.org.uk/ref422	28/04/2023
Finance (No.2) Bill 2023 Clause 10 and Schedule 1 Relief for research and development	www.att.org.uk/ref424	14/04/2023
Finance (No.2) Bill 2023 Clause 7 Temporary full expensing	www.att.org.uk/ref425	14/04/2023

Manchester Branch 90th Anniversary

4 July 2023 | The Rain Bar

Chartered Institute of Taxation.

The Manchester Branch Committee are delighted to invite members and students to attend their upcoming social event in the award-winning Rain Bar. Join the committee, the ATT incoming President, the CIOT CEO, the happy band of recently successful students, branch prize winners and recipients of other Institute and Association awards for a friendly, informal and fun event to network with peers.

There is a nominal charge to secure your attendance, but the Branch is delighted to be offering a good array of food, drinks and soft drinks for attendees fully funded until 9pm.

The venue offers a lovely outdoor space for this Summer Social. Do come along to celebrate this special anniversary.

North East England Branch 40th Anniversary

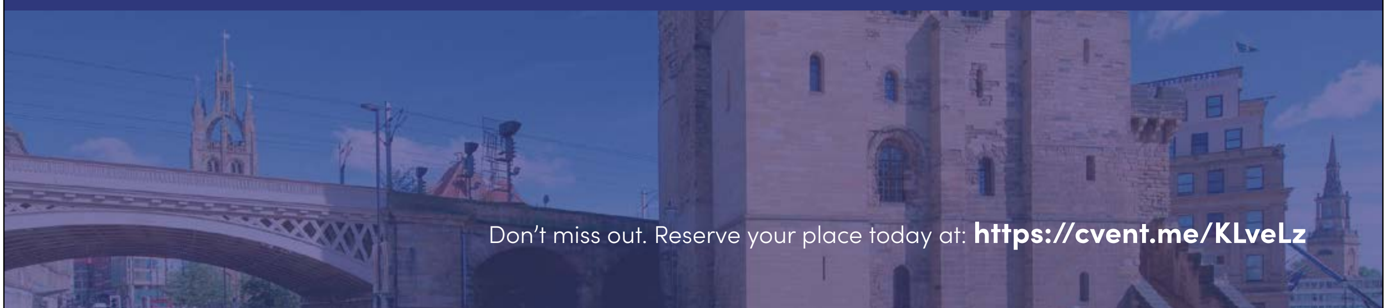
6 July 2023 | Newcastle Castle Keep

Chartered Institute of Taxation.

To mark this incredibly special occasion, we are holding our celebratory event at Newcastle Castle Keep, one of the North East's most iconic and historic buildings. Newcastle Castle is where the story of Newcastle began and the reason it got its name.

During the evening you can join a tour of the ancient passageways and chambers and learn more about the history of the Castle and its inhabitants over the centuries. We will also have full access to the Keep so for those who don't mind climbing the winding staircases they will be rewarded with spectacular views of the city and River Tyne.

Then in the Great Hall there will be music, food, and drinks with the opportunity to network with our tax community and join with us in celebrating 40 fabulous years of the North East Branch!



News from CIOT and ATT

Ministers must resource HMRC properly, says new Institute President

New CIOT President Gary Ashford has urged ministers to provide HMRC with the resources needed to improve service levels to taxpayers and advisers. He made the call in his inaugural speech as President, after taking over from Susan Ball at the Institute's annual general meeting on 30 May.

'Poor service levels at HMRC are not just a pain for taxpayers and advisers, they harm tax compliance, hinder business activity and hammer away at trust in the tax system,' said Gary. 'A strong economy needs an effective tax system.'

Pointing out that HMRC have 6,000 fewer customer service staff than they did five years ago, Gary said that while he is 'a true believer in the power and the potential of technology', cutting staff in anticipation of efficiencies from digitalisation which have not yet arrived, is 'putting the cart before the horse'. 'Ministers must resource HMRC properly for the job it has to do,' he concluded.

Impact of technology

The impact of technology was a theme running through Gary's speech. Drawing attention to his role as chair of the joint CIOT/ATT crypto assets working group, he said that the crypto assets and broader decentralised finance sector needs to be recognised as unique, with specific, clear legislation for how you tax it. 'The government's new consultation looks to be edging down this road, which is welcome,' he added. 'But there will have to be a huge awareness campaign to make owners of crypto aware of their obligations.'

Gary also reflected on the likely impact of artificial intelligence on the tax profession. His assessment was that, while 'chatbots' such as ChatGPT are not about to replace tax advisers, they will require the profession to adapt. 'There isn't a lot of space in the profession these days for people who can't use a spreadsheet or the internet,' he observed. 'In a few years' time, it could be the same with AI.'

Suggesting that AI is best thought of as a graduate researcher – 'smart and articulate, but you need to check their workings' – he said it was a powerful tool which could free up the time of advisers to let them provide more tailored support. 'Even more than now, successful future tax professionals will be those whose offer goes beyond simply crunching numbers and ensuring compliance, to become their clients' trusted advisers,' he concluded.

He encouraged CIOT members and others to take a look at the Institute's new Diploma in Tax Technology, calling it 'a qualification which matches the needs of the profession'.

Celebrating LITRG

Gary also used the speech to congratulate the Institute's Low Incomes Tax Reform Group (LITRG) on a quarter century of

CIOT President Gary Ashford

work for taxpayers on low incomes, ahead of the group's 25th anniversary in July.

He highlighted recent LITRG achievements such as HMRC's crackdown on rogue tax refund companies and the net pay pension top-up in the current Finance Bill, as well as older ones like setting up the advice charity Tax Help for Older People. He praised the group's websites which provide advice to more than five million visitors a year.

He paid tribute to the current LITRG team headed up by Victoria Todd, as well as their predecessors such as the group's founder, John Andrews, and first technical director, Robin Williamson.

View the speech at: www.tax.org.uk/annual-reports

To find out more about the new CIOT presidential team see page 49

Political update

CIOT, ATT and LITRG work with politicians from all parties in pursuit of better informed tax policymaking.

The Finance Bill committee stage began in April with two days of the Committee of the Whole House. On the first day, Shadow Financial Secretary James Murray highlighted CIOT concerns that the wording of a new power for HMRC to remove a claim for R&D relief from a tax return could be wider in scope than suggested, enabling HMRC to reject claims without taxpayers having any of the normal rights of appeal. Murray said that his amendment 26 had been drafted by CIOT and would provide a 'clear and technical' change that he encouraged the minister to accept. Disappointingly, in her wind-up speech the Financial Secretary Victoria Atkins did not comment on the amendment.

The debate also saw former Home Secretary Priti Patel cite CIOT comments that it is doubtful whether the global minimum corporate tax rate will raise the £2 billion annually in the UK that the government is predicting.

On the second day of committee, Murray spoke to a number of amendments drafted by LITRG seeking to improve the provision relating to pension top-up payments for low earners in net pay pension schemes. He commended the efforts of LITRG, along with pension providers and others, in campaigning for the change in the law which culminated in clause 25 of this Bill.

Responding to the amendments, the Economic Secretary Andrew Griffith said he had written to the shadow minister offering reassurance on some of the points LITRG had raised, including that HMRC will provide customers with details of how their payment was calculated.

At time of writing, the Public Bill Committee is about to begin, with a number of measures set for debate on which we have provided representations to the committee, including the abolition of the Office of Tax Simplification.

On 10 May, representatives from ATT, CIOT and LITRG were joined by those from ICAEW and ICAS for a meeting with Atkins to discuss tax simplification. A report on this meeting will appear in the Technical Newsdesk section of next month's *Tax Adviser.*

In the news

Coverage of CIOT and ATT in the print, broadcast and online media

'The perception of an ever increasing disparity between the taxation of higher earners in Scotland and the rest of the UK raises the possibility that those who are able to take steps to legitimately reduce their tax liabilities [will do so].'

Sean Cockburn, chairman of the CIOT's Scottish technical committee, on Scottish taxes in *The Times*, 24 April

'Last month, the Chartered Institute of Taxation (CIOT) published a report with 40 recommendations for ways in which HMRC should improve its guidance. This followed the CIOT finding that 78% of those contacting the organisation had been unable to find the information they needed using the gov.uk website.'

Daily Telegraph, 30 April

'Scotland's leading entrepreneurs have pinpointed higher taxes as a potential barrier to recruitment and business growth, after the Chartered Institue of Taxation warned high earners in Scotland could face an effective 68% tax rate, if First Minister Humza Yousaf goes ahead with a new charge.'

The Herald, 1 May

'Richard Wild, head of tax technical at the Chartered Institute of Taxation, said: "HMRC was cutting staff numbers in anticipation of efficiencies and time savings from digitalisation which have not yet arrived." The Low Incomes Tax Reform Group has said that 78% of those who have contacted the group since 2017 (did so) because they could not find the answer to their queries on gov.uk.'

Daily Telegraph, 5 May

'The Chartered Institute of Taxation and Association of Tax Technician said members were "finding it increasingly difficult to deal with crypto transactions in practice". The tax lobby groups called on the Treasury to address the tax treatment of cryptoasset transactions.'

Financial Times, 10 May

Scotland's Finance Secretary seeks the profession's input

David Bradshaw addresses the Joint Presidents' Lunch

Scotland's Finance Secretary Shona Robison has said she wants to work with the tax profession to shape devolved tax policy.

Robison made the comments at the CIOT/ATT Joint Presidents' Lunch, held at Edinburgh's Signet Library in May. Over 80 guests attended the event to hear the newly appointed Cabinet Secretary for Finance (and Deputy First Minister) set out her priorities for the Scottish tax system.

Robison welcomed the input of the CIOT and ATT, alongside the wider tax profession, in helping to shape Scottish tax policy. She hinted at upcoming efforts from the Scottish government to help to simplify the tax system north of the border.

The Cabinet Secretary lamented the loss of the UK's Office of Tax Simplification and suggested forthcoming announcements on actions to improve Holyrood's tax policy processes, with the possibility of a renewed focus on primary tax legislation alongside an updated Scottish Framework for Tax.

Robison also gave a strong defence of her government's approach to income tax, saying that it helped to increase Scottish tax receipts, while supporting increased investment in public spending priorities.

Her remarks were the subject of considerable media interest following the event.

Welcoming guests, ATT President David Bradshaw spoke of an action-packed year that saw the CIOT and ATT working closely together on issues important to the tax profession, including HMRC service levels, the abolition of the Office of Tax Simplification and the potential impacts of further tax divergence between Scotland and the rest of the UK.

Shona Robison

It was in many ways a valedictory event for outgoing CIOT President Susan Ball, who handed over the reins to Gary Ashford at the end of May. Ball offered thanks to those involved in preparations for the event and to all those who have provided help, support and encouragement in an 'eventful' presidential year.

Ashford's elevation to the CIOT Presidency sets in train a succession of Scottish presidential terms that will be followed by Charlotte Barbour and Senga Prior when they become CIOT and ATT presidents respectively in 2024/25.

The lunch remains a popular event in the CIOT and ATT calendar, with the great and the good of Scotland's tax and legal professions joined by guests from the worlds of politics, media and wider civic Scotland.

Event

ATT President's Reception

On 27 April 2023, ATT President David Bradshaw hosted a reception at The London Edition, a hotel in central London.

The reception provided an opportunity to say thank you to the many volunteers who have given their time to assist the Association in its activities.

Over 50 guests attended the evening, including representatives from other professional bodies, employers of ATT members and students and other stakeholders.

'It's absolutely great to see everyone gathered together in the old-fashioned way,' David told attendees. 'This event is all about rewarding the volunteers for their noble efforts throughout the year... Our volunteers number around 80, many of whom are here this evening, and combined they contribute approximately 6,000 hours of time to the Association.'

David was particularly pleased to present a number of awards at the Reception.

Tanya Wadeson was presented with the Council Award. Tanya has served on ATT Council for 12 years (2009 to 2021) and has served as a member and subsequent Chair of the Member Steering Group. She has also been active in the Sussex Branch for many years.

Diane Burleigh was presented with a certificate for Honorary Fellowship. Diane was appointed the Association's first Lay Public Interest Observer in 2016, a position she held until the end of 2022.

Arnold Homer was presented with a Certificate of Appreciation in recognition of his long service on the Technical Steering Group.

David presenting Tanya Wadeson with the Council Award

David presenting Diane Burleigh with her certificate for Honorary Fellowship

David presenting Arnold Homer with his Certificate of Appreciation

Appointments

CIOT Presidential team

The CIOT has announced its team of officers for 2023-24. Current CIOT President Gary Ashford will be joined by Deputy President Charlotte Barbour and Vice-President Nichola Ross Martin Vice-President.

The appointments were formally approved by the CIOT's council earlier this year and the three took their new roles on 30 May at the Institute's Annual General Meeting.

Gary Ashford

Gary Ashford, the CIOT President, is a partner at law firm Harbottle & Lewis, specialising in international tax, dispute resolution and the digital economy, and a former Tax Inspector at HMRC. He has been a CIOT council member since 2011 and chairs the joint CIOT/ATT Crypto Assets Working Group. He sits on the Institute's Management of Taxes Committee, which he formerly chaired, and is a former chair of the CIOT/ATT Birmingham and West Midlands Branch.

Charlotte Barbour

Charlotte Barbour, the Deputy President, is Director of Regulatory Authorisations at the Institute of Chartered Accountants of Scotland (ICAS) and a former ICAS Director of Taxation. A CIOT council member since 2019, Charlotte is Secretary to the Joint Professional Bodies PCRT (Professional Conduct in Relation to Taxation) Group and a member of the Institute's Scottish Technical Committee.

Nichola Ross Martin

Nichola Ross Martin is the Institute's new Vice-President. She is Managing Director of Tiger Dog Media & Publishing Ltd and Ross Martin Tax Consultancy Ltd, providing online tax resources and virtual support to SME firms of accountants and tax advisers. She has been a CIOT council member since 2017 and sits on the Membership and Branches Committee and Joint Equality Diversity & Inclusion Committee.

Appointment

CIOT welcomes new Director of Public Policy

The CIOT has a new Director of Public Policy.

Ellen Milner

Ellen Milner joined the Institute in April, having previously worked for HMRC. She replaces John Cullinane, who has retired. The Director of Public Policy oversees the Institute's technical and professional standards work, as well as media and political relations.

Following her law degree, Ellen started at HMRC on its tax professional training programme and moved to complete her training in Large Business. She gained experience through working on investigations – from one-man bands to some of the UK's largest household names.

Ellen got a taste for policy through a secondment working on the introduction of the bank levy, which influenced her upon qualification to take on a Corporation Tax Policy Adviser role in Whitehall. Her policy experience spanned the structure of domestic corporate tax – from setting the corporation tax rate to close companies, corporate loss reform and quarterly instalment payments. She undertook a significant stint leading on devolution on the Corporation Tax (Northern Ireland) Act 2015, and worked on cross-cutting issues, including some early work on Making Tax Digital, and capability building in Ukraine.

Several years, two referendums and a general election later, Ellen moved to the centre of HMRC as the Permanent Secretary's Principal Private Secretary. She worked there for three years, gaining a real insight into the wider department.

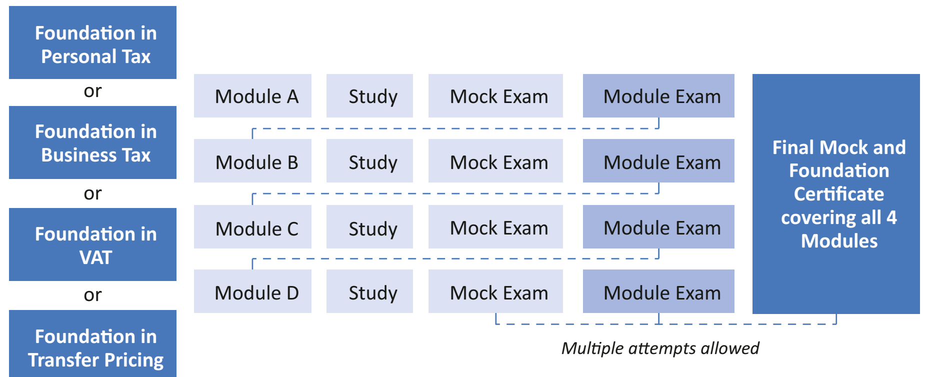
Deciding that her heart was closer to tax, Ellen took up a role as a Customer Compliance Manager in Large Business London, working with banks and asset managers before moving sideways to lead Large Business London as the Deputy Director.

Ellen is looking forward to drawing on her broad experience in this pivotal role in making the UK tax system more effective.

Qualifications

Build successful tax careers with the ATT's Foundation Level Qualifications

Alongside its main qualification, the ATT now offers Foundation Qualifications in: Personal Taxation, Business Taxation, VAT Compliance and Transfer Pricing.



Can be completed in 3 months (time dependent), but recommended not to be longer than 12 months.

The Foundation Qualifications are an ideal introduction to the relevant topics and an excellent way to develop the necessary knowledge and skills to progress within tax.

As business becomes more international, transfer pricing in particular is an area of growing importance. The Transfer Pricing Foundation Qualification is a convenient way to build expertise in this field, exploring key concepts and methods, and looking at specific transactions, common adjustments and issues and compliance.

Who are they for?

The Foundation Qualifications are ideal for anyone starting out in tax, or who may not be ready to take the full ATT Qualification. Potential students might be working in tax already and looking to broaden their knowledge, or they may be in complementary specialisms such as accountancy or even legal services.

Students can register for as many of the four Foundation Qualifications as they wish, and will gain a head start if they go on to study the main ATT qualification by acquiring a solid understanding of basic principles.

What are they like to study?

Tuition for the Foundation Qualifications is provided online in conjunction with Tolley Tax Tuition. Students study at their own pace via online classes which can be accessed at any time, supported by easy to follow study manuals. The manuals are designed to allow students to work at their own pace, and to progressively build understanding of the technical content. Support is available for students via the Tolley Online Academy.

Each qualification is split into four modules, with a question bank and online mock exam provided for each module. Students can sit the module exam online whenever they feel ready. Passing the first exam allows students to proceed to the next module. Once all four module exams have been successfully completed, a final exam brings the whole syllabus together. Passing the final exam results in an ATT Foundation Certificate being awarded. There aren't fixed 'sittings', but a minimum of three months' study is recommended before sitting the final exam. Multiple attempts are permitted at all exams.

How do I find out more?

Further details, including a syllabus summary for each Foundation Qualification, can be found at: bit.ly/42Oz2PG, or by visiting the Tolley Tax Tuition's dedicated page at: bit.ly/3MmKe0q.

Appointments

New Council members

ATT has appointed two new members of Council.

Paul Benton Eleanor Theochari

Paul Benton became a member of the Association in 2015 before qualifying as a Chartered Tax Adviser in 2016. He is currently Chair of the CIOT/ATT Sheffield Branch. Paul works in practice at a firm in Doncaster where he is Head of Tax. Paul is also treasurer for a local youth charity.

Eleanor Theochari is a qualified ATT CTA Corporate Tax Adviser specialising in R&D Tax Credits. Ele was a finalist in Tolley's Taxation Awards 2022 in the Taxation's Rising Star category, and was awarded a coveted place in the 2022 Accountancy Age's 35 under 35. Ele leads the tax consultancy function at Liberty Collins and is responsible for overseeing the delivery of all clients' R&D claims from start to finish, including liaising with HMRC.

AGM

ATT: Notice of Annual General Meeting

The 34th Annual General Meeting of the ATT will be held on Thursday 13 July 2023, at 14.00.

Civica have been appointed as scrutineers for the ATT AGM 2023. Access to the AGM Notice, Annual Report and Accounts and information regarding those standing for election to Council will be provided through links in an email sent to Association members by Civica in June. The CES proxy voting site will be accessible via a link in that email.

If you prefer a hard copy of the proxy form, email Support@cesvotes.com or telephone 020 8889 9203 and a form will be sent to you with a reply-paid envelope. You have until 11 July 2023 to return the form.

A copy of the AGM Notice and Annual Report and Accounts can be found on the Association's website: www.att.org.uk

A MEMBERS VIEW

Graeme Connell

Senior Tax Director, Alvarez & Marsal

This month's member spotlight is on Graeme Connell, Senior Tax Director at Alvarez & Marsal and member of CIOT.

How did you find out about a career in tax?
I did an accountancy degree at university, so there were always presentations from professional services firms about the career opportunities available.

Why is the CTA qualification important?
The CTA qualification is the gold standard qualification for those working in the tax field. I think they are so important in providing students with the depth and breadth of knowledge required to practice in tax, especially in general practices. Whilst other professional qualifications include some tax content, the CTA is a specialist qualification which gives those who have done the exams a fantastic grounding in the subject.

Why did you pursue a career in tax?
Tax was always a subject I enjoyed at university. In my third year, I was fortunate enough to get a tax internship and was able to see what it would be like to work in tax. I enjoyed my time (and was glad I had a graduate job), so came back the next year for a full-time position. The analytical and computational aspects of the job really appealed to me, and I really liked the people I worked with.

How would you describe yourself in three words?
Ambitious, hard-working, determined.

Who has influenced you in your career so far?
My wife and family – who see things from a different perspective.

What advice would you give to someone thinking of doing the CTA qualification?
Absolutely go for it, if it is what you want to do – but go into it with your eyes open. It is not an easy qualification and requires hard work and commitment.

I have interviewed many graduate applicants and I always spend part of the interview explaining to them the work involved in passing the ATT and CTA exams.

For those who are just graduating from university, the new need to balance full-time professional work and studying can be difficult. For those who have been out of the habit of studying for some time, this can also be a challenge. Sometimes social sacrifices will need to be made. However, it is definitely worth the hard work in the long term.

What are your predictions for tax advisers and the tax industry in the future?
It is hard to overlook the rise of AI and how that could change our profession. As the technology has only really come into popular use in the last six months, the progress is very impressive. However, it is not yet at a point where it can be relied upon for accurate advice. I do think that we will see it coming into use in more of what we do as the underlying technology continues to be developed, but I don't think we need to worry that we will be replaced any time soon.

What advice would you give to your future self?
You thought every decision was the right one at the time, even if that later turns out not to be the case.

Tell me something about yourself that others may not know about you.
I'm a national level referee with the Scottish Rugby Union and also play drums in a wedding band.

Contact

If you would like to take part in 'A member's view', please contact Salema Hafiz at: shafiz@ciot.org.uk

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Saffery Champness Harrogate

We are a leading national firm of chartered accountants and business advisors with an office in central Harrogate. We advise a wide range of commercial businesses, private individuals, landed estates, and not-for-profit organisations.

Our client base is diverse and includes owner-managed, small and mid-cap businesses, and private and estate clients. We work with clients to create bespoke solutions across their personal and business interests in building value at all stages to achieve long-term goals, often working alongside other professionals in the process.

Our office is based in the centre of the charming Victorian spa town of Harrogate, in the heart of North Yorkshire. We are ideally placed to serve not only clients in Harrogate and Leeds, but also the Yorkshire region with a population of over 5 million. Yorkshire remains a thriving community with many dynamic cities, and we are proud to look after a wide range of both private and corporate clients.

Our Yorkshire practice, with 7 partners and employing 81 members of staff, offers a suite of services ranging from tax and business advisory to audit. Due to expansion we seek several key hires for the tax team:

Corporate Tax Senior Manager or Director – departmental lead

The successful candidate will help partners to run the corporate tax offering, including developing and mentoring more junior staff. They will have an oversight of compliance and a wide range of advisory work, but a compliance focussed candidate would also be considered.

Landed Estates Specialist – a national role

Hires considered from Assistant Manager to Senior Manager level. You will work closely with the Head of Trusts and Landed Estates.

Corporate Tax Compliance Manager

This role involves managing client work and more junior staff. We would consider partly or fully remote working.

Senior Manager or Manager – Personal Tax – advisory focus

Could suit a manager looking for a step up to Senior Manager. Trust experience an advantage.

We are able to offer hybrid and flexible working.

To find out more about our friendly and positive working culture, or for more information about roles available, please contact our retained recruitment consultant Georgiana Head on 07957 842 402 or email her at georgiana@ghrtax.com.

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Lancashire
£excellent

Rapidly growing Top 20 accountancy firm has recently established a national OMB advisory team based in Lancashire (junction 27 M6). As part of the development of this offering, they seek a qualified tax professional at manager or senior manager/associate director level. You will provide tax advice to teams around the country, helping clients with a diverse range of tax problems from M&A work to Capital Taxes and Share Schemes. This role can be worked flexibly – ideally with some travel to Lancashire. The business is growing at a phenomenal rate and there is plenty of scope for promotion. **Call Georgiana Ref: 3372**

Advisory Senior Manager
Manchester
£excellent

As an Advisory Senior Manager in this Tax department of a Top 20 firm based in central Manchester, you will manage ad-hoc tax advisory projects across a varied portfolio of clients ranging from dynamic OMBs to UK offices of overseas parents. You will find that your broad tax advisory experience will be put to good use. Ad hoc duties will arise in supporting the local partners on project work. This role could suit a manager looking for a step up to senior manager/associate director or a more experienced person. Hybrid working available. Part time also considered. **Call Georgiana Ref: 3352**

Property and SDLT Tax Advisors
Nationwide
£55,000 to £85,000 + bonus + benefits

Our client is launching a new division of a consultancy business that will focus on Property and Stamp Duty Land Tax projects and clients. They are looking for qualified tax advisors (CTA) or solicitors with at least 2 years' experience in Property and SDLT advisory work. Looking at grades from Assistant Manager to Director, and there is huge scope for development. These roles can be flexibly worked and based from home initially. The salary will be generous and there will be the opportunity to earn a bonus of c50% of basic. **Call Georgiana Ref: 3357**

VAT Associate Director
Cheshire or North Wales
£excellent

Newly created role in a niche accountancy firm providing all-round indirect tax advice to OMB clients and also advice to other firms of accountants. Your job will be to help with broad-ranging queries from any area of the business on any VAT issue, including help with interactions with HMRC. This is a chance to develop your own niche, working in the advisory arm of an established firm of accountants.. There is plenty of scope for progression in the role, and it will involve some travel to other offices. Part-time, flexible and hybrid working all available. **Call Georgiana Ref: 3366**

Tax Investigations Manager and Senior Manager – Cheshire
£55,000 to £70,000 + benefits

This is a key role in the next stage of development of a large independent accountancy practice. They seek a tax investigations/ tax disputes specialist to join their advisory team based in Cheadle. From here you will help advise the different tax teams on their interactions with HMRC, dealing with anything from small queries to full COP8 and COP 9 investigations. It is likely that you will be a Manager or Associate Director, and you may be ex HMRC or have trained in practice. Whatever your background, you must have a real passion for helping tax payers to navigate their interactions with HMRC. This firm can offer full-time, part-time, flexible and hybrid working. **Call Georgiana Ref:3369**

Corporate Tax Compliance Specialist
Cheshire or North Wales
£55,000 to £75,000

If they cut you down the middle would it read corporate tax compliance? This role is for a true compliance specialist who can grow into a departmental management role running CT compliance across multiple offices in an independent firm. You can be based in Cheshire or North Wales. In this role, you will manage and develop more junior staff, improve systems and processes and help run a successful corporate tax compliance team. The firm can offer full-time, part-time, flexible or hybrid working. It is a friendly team with surprisingly large clients. **Call Georgiana Ref: 3368**

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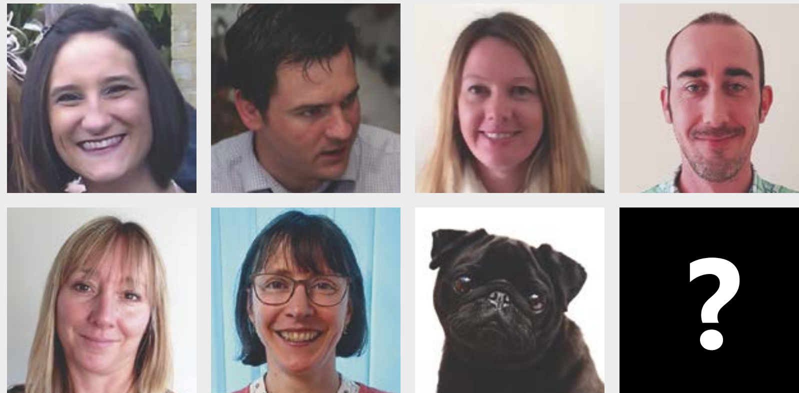
Gander Tax Services



We are a small but dynamic practice based in Petersfield, providing very high-level tax advice to individuals and businesses in the UK and abroad, as well as being a go-to tax department for small accountancy practices, financial advisers and solicitors.

We are specifically looking for a **CTA qualified individual** with **report writing experience in advising on private client work, including IHT, estate planning and trusts**. A good legal knowledge would be desirable but not essential.

We are **also interested in hearing from CTA qualified or experienced individuals in international tax planning or corporate tax planning**. We have more than one position available. The work is interesting, different every day and you will have a team to back up the advice with compliance services.

Competitive salary for the local area, option of private medical insurance, **a friendly office** with a laid-back approach.

One other requirement: you must like dogs as there are two in the office!

To apply, contact **nickygander@gandertaxservices.co.uk**.

www.gandertaxservices.co.uk

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TAX WRITER – EMPLOYMENT AND PERSONAL TAXES

A rare and unique role as an Employment and Personal Taxes writer ideally covering both UK and international tax has arisen in the Tolley content team. The role is to develop and deliver practical guidance and commentary for Tolley's market-leading tax research platforms, TolleyLibrary and TolleyGuidance. Working as part of a friendly and supportive team of tax specialists, there will also be the opportunity to support on our popular and expanding global mobility employment and personal taxes content.

The role offers:
- a competitive salary
- a rigorous technical and intellectual challenge
- a flexible culture of remote working with occasional travel required to our offices in London Farringdon
- an excellent work / life balance

Role responsibilities
- write and update content for TolleyLibrary (our comprehensive deep research product)
- write and update content for TolleyGuidance (our practical research product)
- support our international author network for the global mobility (GM) content that covers over 60 countries, providing feedback and guiding new contributors
- provide currency updates and technical reviews of the GM content
- support the Marketing and Go To Market teams in the promotion of, and strategic direction of, the GM content
- work with Tolley's Product team on ideas for technical tools and solutions to help customers with their tax research
- collaborate with fellow writers to share knowledge and content

Person specification
We welcome applications from a wide variety of backgrounds. You could be a recently qualified tax adviser with a few years post-qualification work experience and a passion for writing or you could be an experienced tax writer, manager, or senior manager. However, as a minimum we would expect:
- CTA qualified (or equivalent)
- a good technical knowledge of Employment and Personal Taxes including some experience of international and expatriate aspects, both advisory and compliance
- strong English writing skills
- an ability to communicate complex tax concepts in an understandable way
- a desire and ability to write across a variety of products tailored to different audiences
- an interest in supporting technological innovation to maximise the value of our content and materials for customers

The successful candidate will work as part of a collaborative content writing team as well as with external writers.

Note that this is a full-time position, but we may consider applications from applicants wishing to work part time. Please include details of your desired working pattern along with your application.

For more information and to apply:
https://relx.wd3.myworkdayjobs.com/LexisNexisLegal/job/United-Kingdom/Tax-Writer---Employment-and-Personal-Taxes_R59506-1

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HEAD OF TAX

MANCHESTER £six figures dep on exp

Longstanding independent practice is seeking an accomplished tax director / partner or ambitious senior manager with a broad skills base to join them in a key role. As well as taking responsibility for leading and developing the tax team, the role will have a tax advisory focus and will encompass a wide variety of assignments including tax work related to M&A transactions, corporate reorganisations, employee share schemes and property tax planning. Fantastic opportunity with a short-term path to equity on offer. **REF: A3456**

TAX ADVISORY MANAGER

SOUTH YORKSHIRE To £50,000

This role would suit a candidate with Top 10/Top 20 experience who wants to work with quality clients on interesting and complex projects. You would be involved in a broad base of projects including international, from share schemes, through to corporate restructuring and corporate finance related work. There are no limitations. Worklife balance and wellbeing is extremely important to this firm. They have an established engaging and collaborative culture where employees are trusted. **REF: C3463**

IN HOUSE DIRECT TAX MANAGER

STOKE £generous

Due to continued growth this role sits within the Direct Taxes team of this global business and encompasses both corporate and transfer pricing work, partnering with the business to identify and manage tax risks including permanent establishment, withholding taxes and identifying the tax implications of new products and services as the group grows. Will suit an ambitious CT tax manager or even an assistant manager who is keen progress their career a fast paced and technical environment.

REF: R3454

PRIVATE CLIENT TAX SENIOR M'GER

CHESHIRE To £75,000

As a result of growth and strong demand for private client tax advice this highly regarded tax consultancy is looking to recruit either an experienced manager or senior manager to support the tax partner. Work will be advisory focused and varied covering areas such as trusts, IHT, residency, succession planning and CGT. Hybrid and flexible working as standard and applicants wishing to work part-time hours will also be considered. **REF: A3458**

CORPORATE TAX ASSISTANT M'GER

LIVERPOOL To £42,000

This independent central Liverpool firm with an impressive reputation and exciting growth plans seeks a Corporate Tax Senior to promote and join their Tax team reporting into a specialist Tax Partner. You will be working with a diverse and genuinely exciting range of clients, with interesting and at times challenging complex tax technical work. This role will suit someone who is confident in their ability, who thrives on hard work and wants the opportunity to demonstrate and be noticed for their experience and ability. **REF: C3462**

PRIVATE CLIENT TAX AM

CHESHIRE To £42,000 dep on exp

A highly specialist private client firm in Cheshire are seeking an ATT qualified private client tax specialist who already has some experience working with ultra-high net worth individuals and would like to gain more experience with Trusts, IGT residency succession planning and CGT pieces of work. Ideally already ATT qualified you will be ready to step into this role as an experienced Tax Senior or perhaps you are already an Assistant Manager but just want more interesting and complex work. CTA study support will be provided. **REF: C3461**

OMB TAX ASSISTANT MANAGER

MANCHESTER £highly competitive

A unique opportunity for an ATT qualified Tax Senior or Assistant Manager to join a national specialist firm based out of their Manchester office. Its clients are UHNWIs with extremely complex portfolios that generate interesting and challenging pieces of tax work from Residency and Non-Dom issues through to tax investigations. You will be currently working for a large firm and have a passion and show aptitude for complex work that require research. You will be working with a team of ex Big 4 professionals who are super supportive with training and your long-term development. Impressive bonus scheme on offer. **REF: C3460**

EXPERIENCED IN-HOUSE TAX M'GER

CHESHIRE £65,000 to £75,000

In this truly varied and interesting role you will have ultimate responsibility for the compliance process across all taxes, including overseas jurisdictions with plenty of opportunity to get involved in complex project work, as well as exposure to cross border issues. You will likely be an experienced manager or even senior manager looking for a new challenge with experience of corporate tax compliance for large complex groups. **REF: R3427**

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

Mike Longman FCA CTA: mike@taxrecruit.co.uk; **Ian Riley ACA:** ian@taxrecruit.co.uk; **Alison Riordan:** alison@taxrecruit.co.uk; **Claire Randerson Smith:** claire@taxrecruit.co.uk

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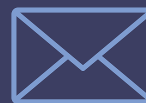

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