September 2023

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Chartered Institute of Taxation.

TAX ADVISER

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The relevance of EU law

As the Retained EU Law (Revocation and Reform) Act 2023 has now been enacted, we question the impact that this will have on UK taxes and HMRC.

Tribunal backlogs

How alternative dispute resolution could overcome the delays faced by taxpayers

Motoring expenditure

When relief applies to NICs for business mileage in a private car

Deemed domicile

The wide range of factors being considered in court judgments

ATT - MAY 2023

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HELEN WHITEMAN
JANE ASHTON

Welcome
Knowledge sharing

We hope you've enjoyed some form of break over the summer period. Since the publication on Legislation Day of the draft 2023/24 Finance Bill, the ATT and CIOT technical teams have been working hard reviewing, analysing and evaluating the impact of these clauses, and the effect that they will have on taxpayers, members and their clients. They are ensuring that the legislation is drafted in a way that supports how it is intended to work in practice and that there are no unforeseen consequences.

This is often the last opportunity for us to comment on proposed legislation before it becomes enshrined in an Act, so it's really useful to get as much input into the responses as possible. The deadline for submitting comments on the draft legislation is tight, 12 September 2023, but our technical teams would love to hear from you if you have any comments that you would like to contribute. Let them know by emailing technical@ciot.org.uk or atttechnical@att.org.uk.

It seems like no monthly update would be complete without mentioning HMRC's service levels. However, this month we hope that by the time you are reading this article there is some good news and that the Self-Assessment helpline will be fully operational (expected from 4 September), allowing taxpayers once again the choice to contact HMRC by telephone. Having the ability to call and speak to someone is so important for so many taxpayers, especially those who are uncomfortable using HMRC's preferred online tools and may not meet the criteria for extra support. Thank you to everyone who responded to our HMRC service level surveys. We are consolidating responses and will be providing anonymised feedback to HMRC for a second time. Do see Gary's update on page 4 for further detail.

As educational charities, one of our main charitable objectives is advancing the education of taxation to our students, members and the wider public. With this in mind, the ATT technical team have recently recorded 13 videos covering membership, ATT Qualifications, educational videos for taxpayers and educational videos for children and young people. Please take a look at them on our website (www.att.org.uk/media-centre/videos-and-audio) or on our You Tube channel at youtube.com/@ourATT) and let us know what you think.

The CIOT is welcoming a delegation from fellow CFE Tax Advisers Europe member organisation, the Chamber of Tax Advisers of the Czech Republic, in early September as part of a knowledge share. Representatives from the Chamber and some of their members will be visiting us to learn more about how we deliver exams, our approach to PCRT and professional standards, and the complexities of our tax system and our interaction and relationship with HMRC.

The world of tax is ever changing, and we are constantly striving for ways to help keep our members fully up to date with new developments using our regular emails, Employer Focus, branch meetings, conferences and webinars. If you are an ATT Fellow, a date for your diary is 18 October, when we will be holding our next online ATT Fellows Webinar. More details and how to register will be published through our weekly emails, but the webinar will follow the same format as previous webinars with a main presentation on a current topical area followed by three break-out sessions on interesting practical subjects for group discussion and participation.

The CIOT's Autumn residential conference returns to Queens' College, Cambridge on the weekend of 15 to 17 September 2023. There may still be spaces so if you are interested, please email our events team at events@ciot.org.uk. The programme is available here at tinyurl.com/mr3s8xms. We look forward to seeing you there!

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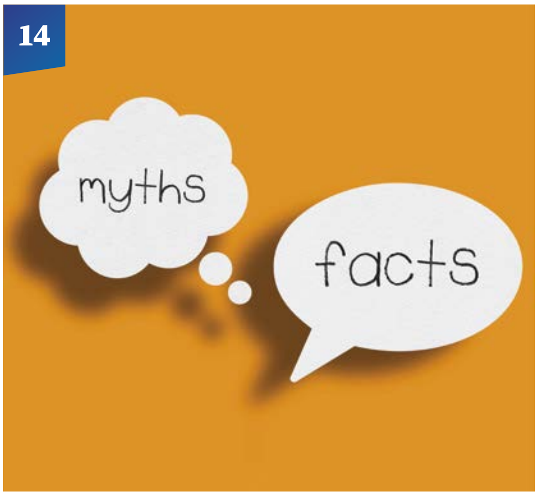

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GARY ASHFORD
PRESIDENT

Meeting with HMRC

> I took the time to reflect on some key issues for the tax profession, in particular HMRC service levels and professional standards.

I hope you had a great summer and a break to recharge yourself for the rest of the year. I took the time to reflect on some key issues for the tax profession, including two in particular which were discussed at a meeting I attended in July.

I joined my colleagues Susan Ball, CIOT Immediate Past President, Helen Whiteman, our CEO, and Ellen Milner, our Director of Public Policy, for a meeting with HMRC's Permanent Secretaries Jim Harra and Angela MacDonald. We focused on two issues in particular: service levels and professional standards.

HMRC service levels are still the biggest concern for members. We shared examples of members' experiences earlier in the year and again in July, which commonly featured the seasonal SA Helpline closure. In the meeting, HMRC recommitted to work with us on what they are doing to address the highlighted issues and we will be speaking to them later this month to see the actions taken.

Jim Harra set out some of the challenges that HMRC are facing. The 2021 Spending Review is in its penultimate year, resulting in a really stretched financial position for HMRC, as its funding does not get adjusted for inflation. He reiterated their approach to tackling this financial challenge by maximising resources on customer service, particularly for those who need to speak to an adviser, but reducing contact demand where there are other ways of meeting customer needs. We mentioned the unexpected challenges such as High Volume Repayment Agents (HVRAs) and HMRC's focus on looking at ways to drive up productivity using existing resource.

I stressed that CIOT is keen to maintain a constructive relationship with HMRC and help where possible to make the tax system work for all of us. But I made clear the extent of members' concerns in this area and the impact that poor levels of customer service are having on us and our clients.

HMRC were clear that they do not expect to get additional resources, which will place all the more importance on delivering digital services that are fit for purpose and have agent functionality. I took away that we are likely to see more test and learn initiatives and deployment of HMRC resources in the coming months, as they try to juggle demand with their overstretched resources. The most recent of these is the facility for agents to flag post that is over 12 months old.

The meeting led to genuine commitments from HMRC to work with us and try some different approaches to engagement and problem solving. HMRC wish to work with us on sharing earlier sight of key announcements and testing of ideas. We are working on putting this into effect. I'll pick up these points with HMRC when we meet again in the autumn.

Too late for our July meeting but informing us moving forward, were the results of our recent survey of members on service levels. These confirm previous feedback, providing useful evidence of the wider economic impacts of poor service levels and the take up and use of digital services. Our thanks to all who responded, and we will wrap your feedback into our ongoing conversations with HMRC.

The other topic at the meeting was professional standards and HMRC's standard for agents. We know these have the attention of HMRC and ministers as part of the wider debate on regulation of tax services. We explained that any diversion from PCRT (Professional Conduct in Relation to Taxation) by HMRC's agent standards causes uncertainty and compliance concerns.

HMRC expressed a commitment to PCRT and a desire not to disrupt the whole tax services industry but explained that they also have to respond to emerging risks such as HVRAs, which they do not think can wait for any fundamental reform. Therefore, we can expect to see more measures tackling specific issues in the coming years, and we have a role in helping HMRC target these in a way which supports our industry.

HMRC recognised the important role of the professional bodies in upholding standards but was also clear that they don't see the problem as just sitting with the unaffiliated. We welcomed their commitment to collaboration.

So, overall, this is a constructive conversation on some difficult themes with no easy solutions. But it is positive that we are in a position to be engaging on these critical issues at all levels of HMRC. As I opened when we met with HMRC, I believe we have a key role to play as a critical friend and look forward to taking the conversation forward.

Gary Ashford
President
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Chartered Institute of Taxation.

SENGA PRIOR
DEPUTY PRESIDENT

How can you help?

> I would like to use my first article to encourage you to consider what you could do to support your professional body.

Hello and welcome to the Deputy President's page for September. I hope you have all managed to get some well deserved holiday time over the last couple of months.

At our July AGM, I took over the role of Deputy President from Simon Groom, who is now our President, and I look forward to continuing to work with Simon and our new Vice President Graham Batty as part of the ATT Leadership Team. Graham's name will probably be familiar to many of you as a former President of ATT. Yes, the role is so rewarding that Graham is willing to do it twice!

Before we go any further, I should give you a few words of introduction about myself. I worked for several years as a bookkeeper and management accountant before deciding that a slight career change into the world of tax would be an interesting move! I joined a small four partner firm in November 2000 and sat my ATT exams in a single sitting, passing with distinction. In 2017, I took up the offer of a post with Johnston Carmichael where I am a Tax Senior Manager working in private client tax. I assist our Head of Private Client Tax in managing the compliance side of our tax team.

I first became involved with volunteering for the ATT when at one of the Scottish Spring Conferences, Will Silsby, who will be known to many of you as one of our then technical officers, spoke to the room about joining the band of volunteers who contribute towards the ATT responses to HMRC consultations. I thought I would give it a go and soon became involved in responding to consultations on the extension of averaging period for farmers, the identification of Scottish taxpayers and many more. It is very satisfying to feel that you are, in a small part, helping to shape tax legislation – even though occasionally it doesn't go in the direction you would wish.

I was then invited to become part of the ATT Technical Steering Group (TSG). The TSG supports our four Technical Officers in sharing our members' views with HMRC and other bodies, highlighting tax issues to the general public and supporting our members to understand changes in legislation, to name a view of the many tasks they perform.

I will always remember my first meeting, suffering on my journey down to London from a feeling of imposter syndrome. I was someone working for a small firm in a small city. What on earth was I doing? I found the ATT office and was welcomed so warmly by the then joint chairs Michael Steed and Yvette Nunn that I immediately felt at ease. Not long into the meeting, I realised that I was where I was meant to be. This was a special meeting with Rebecca Benneyworth giving a talk on the recently announced Making Tax Digital. More than seven years later, we are still waiting on MTD for ITSA...

I was invited to become a council member in December 2017 and chair of the TSG in July 2022.

I would like to use my first article to encourage you to consider what you could do to support your professional body. The ATT is so much more than just a means to obtain a professional qualification and maintain your CPD.

There may be a local branch that you can join and help on their committee. You may, like me, be really interested in the technical side of tax and could become one of our contributors. There are several steering groups or committees within the ATT that may appeal to you – have a look on our website. Perhaps you could give a talk at an event organised by our New Tax Professionals committee – a committee formed to help members of ATT or CIOT in the first ten years of their careers. Perhaps your firm has premises that could be used for events. We also have materials that you can use to present sessions on tax to your local school. The list is endless.

We would be interested to hear from anyone who feels they have something to contribute. I guarantee that you would find it rewarding and empowering. You would also enhance your skills and build long lasting professional relationships.

Senga Prior
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A sleight of hand
Group financing arrangements

Two recent cases show why the UK and the BEPS Inclusive Framework are tackling hybrid mismatch arrangements.

by Bill Dodwell

One of the key targets of the G20 led Base Erosion and Profit Shifting project was multinational groups that exploited domestic rules on financing arrangements. The basic idea was to lend money within an international group in such a way that either two tax deductions were generated in different countries, or that a single deduction was claimed without there being equivalently taxed income in another country. In theory, the arrangements satisfied the domestic requirements in the different countries involved; the 'magic' happened because of different approaches to classification of income or entities.

The BEPS project (see tinyurl.com/5n7jvf7a) included two actions specifically relevant to debt financing:

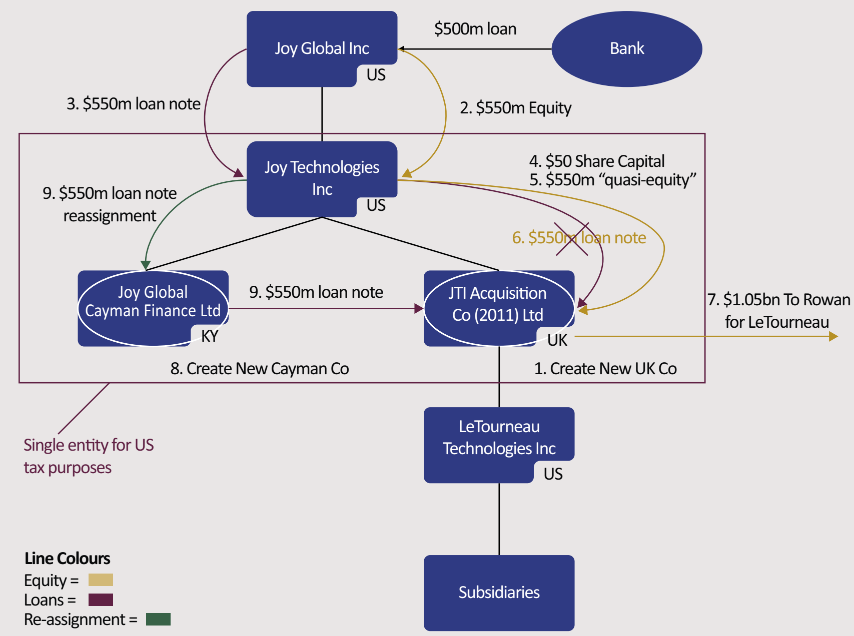
- Action 2: Neutralising the effects of hybrid mismatch arrangements; and
- Action 4: Limiting base erosion involving interest deductions and other financial payments.

Financing was also covered in Actions 8-10, on transfer pricing.

The UK was one of the first countries to adopt these measures, from 2017. Interest restrictions were thought in 2016 to bring in about £1 billion annually, with a further £200 million from the anti-hybrid rules – both figures are based on a 19% corporation tax rate.

Two recent cases illustrate why the UK – and the BEPS Inclusive Framework – have taken action against hybrid entities and hybrid instruments.

FIGURE 1: JTI ACQUISITIONS: US ACQUISITION STRUCTURE



JTI Acquisitions

The Upper Tribunal has just dismissed an appeal by *JTI Acquisitions (2011) Ltd v HMRC* [2023] UKUT 194 in respect of a US acquisition financing structure. The decision attached the structure (see **Figure 1: JTI Acquisitions: US acquisition structure**).

The judgment noted: 'In 2011, Joy Global acquired another US-headed equipment group for $1.1 billion using the appellant, a newly incorporated [UK] company, as the acquisition vehicle. The acquisition was part funded by an intra-group $550 million borrowing by the appellant on which it paid arm's length interest.'

The key part of the structure is the purple box – three companies in the US, Grand Cayman and the UK, which were effectively treated as a single entity for US tax purposes. This meant that there was no net income for US tax purposes, as the finance costs in the UK appellant company equalled the finance income in the US lender. This is an example of a one-sided deduction, which could only work thanks to the US entity classification rules.

The intended aim was that the UK acquisition company would receive a UK tax deduction for loan interest, which it would surrender as group relief to other UK companies in the group. Since the UK company was buying a US trading group, there would be no taxable income on any dividends, and it is likely that any future sale of the US sub-group would qualify for the substantial shareholdings' exemption.

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The First-tier and Upper Tribunals both decided that the loan interest was not deductible due to the ‘unallowable purpose’ rule, based on the acquisition having already been decided in the US and no obvious reason why a UK acquisition company was used. However, the structure probably could have worked with a UK target – which is why the anti-hybrid rules were needed to prevent this arrangement from working.

GE Financial Investments Ltd

The second case is *GE Financial Investments Ltd* [2023] UKUT 146 and there’s another flow chart, taken from the Upper Tribunal judgment (see **Figure 2: General Electric: simplified group structure**). In this case, the judgment notes that:

> ‘[The] structure was originally set up to obtain a US tax advantage. In the event, a change in US federal tax law meant that this advantage never materialised.
>
> ‘But the existence of the limited partnership also had a potential UK tax advantage in relation to the UK’s so-called “thin capitalisation” rules. A company whose equity capital is low compared to the amount of its debt is “thinly capitalised” and UK tax rules restrict the amount of interest deductions in those circumstances. The additional income arising to GE Financial Investments Ltd through the limited partnership structure was beneficial for the operation of those rules through an increased capacity to deduct interest. As it turned out, that extra capacity was not in fact needed.’

The ‘magic’ here was that the UK company changed its Articles of Association to provide that its shares were ‘stapled’ to the stock of a US company, requiring that both shares be transferred at the same time. The purpose of this was to treat the UK company as a US resident company under US domestic law. As a deemed US company, it was subject to US tax on its share of profits from the Delaware limited partnership – and US tax was paid on those profits.

The case was about whether the UK company could claim double tax relief for that US tax. This required that it be treated as a US resident for the purposes of the UK-US Double Tax Treaty. The Upper Tribunal reversed the decision at the First-tier Tribunal and decided that the company did qualify as a US resident under the treaty.

In conclusion

As the BEPS report on Action 2 said: ‘These types of arrangements are widespread and result in a substantial erosion of the taxable bases of the countries concerned. They have an overall negative impact on competition, efficiency, transparency and fairness.’

No doubt tax authorities hope that these types of diagram have been consigned to history.

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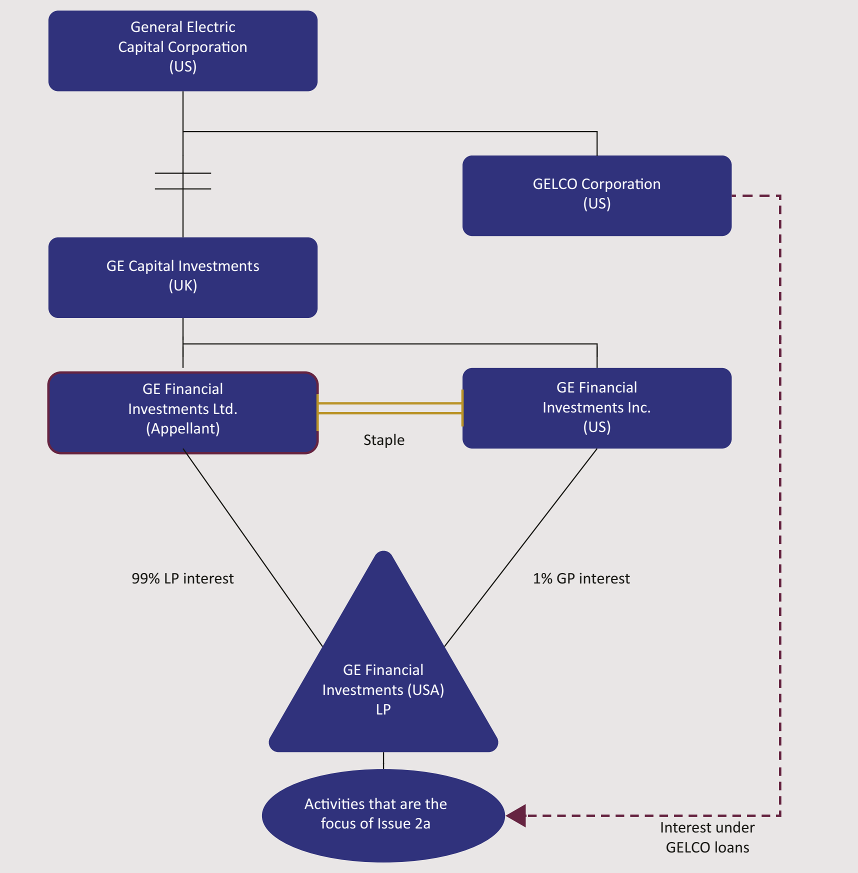
Profile: Bill is the former Tax Director of the Office of Tax Simplification and Editor in Chief of Tax Adviser magazine. He is a past president of the Chartered Institute of Taxation and was formerly head of tax policy at Deloitte. He is a member of the GAAR Advisory Panel. Bill writes in a personal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

FIGURE 2: GENERAL ELECTRIC: SIMPLIFIED GROUP STRUCTURE



Relevant motoring expenditure

Going the extra mile

Peter Moroz, who instructed counsel in the recent *Willmott Dixon* case, considers the issue of tax relief for NICs on business mileage in a private car.

Key Points

What is the issue?
For tax purposes, it is well known that there is relief for business mileage driven in a private car. The issue has been debated in the courts as to whether a similar relief applies in respect of NICs.

What does it mean to me?
The issue actually relates to a simple matter and ultimately much of the debate hinges on what is meant by the word 'use'.

What can I take away?
Protective claims should be made for the refund of NICs paid in error in respect of business mileage where car allowances have been paid. The claims can go back six full tax years under the error or mistake provisions provided in SSCR 2001 Reg 52.

For tax purposes, it is well known that there is relief for business mileage driven in a private car under Income Tax (Earnings and Pensions Act (ITEPA) 2003 ss 229-231 (mileage allowance relief). It is a straightforward matter of deducting 45p per business mile from taxable earnings; or if the employer has reimbursed the driver, then the total of the relief/amount paid tax free cannot exceed 45p per business mile. There is a reduction to 25p per mile where the business mileage exceeds 10,000 miles in a tax year.

The issue debated in the courts relates to the mechanism and law underpinning a similar relief in respect of NICs.

National Insurance vs tax

There are some obvious distinctions between tax and NICs.

An individual does not file a NICs return like they can a Self Assessment tax return, so any NICs relief is either at source via payroll or claimed by an error/mistake mechanism.

The tax law generally deems payment of expenses to be earnings and then provides relief for deductible items. National Insurance law has a different mechanism. One first has to decide if a payment is earnings for NICs purposes. The law then provides for a number of disregards from earnings in specific circumstances. One such disregard is in the case of providing relief for payments in respect of business mileage. However, to understand this issue we need to consider the detail of the law itself.

The central pieces of law involve the Social Security (Contributions) Regulations (SSCR) 2001 Reg 22A and para 7A of Schedule 3 Part VIII and were introduced in 2002.

Explanatory notes released at the time said that, as far as practicable, they were to give similar NICs relief to that allowed in tax law, which started at 40p per mile and was later increased to 45p per mile.

Reg 22A is actually a charging provision in that it seeks to deem as earnings any payments of what it defines as 'relevant motoring expenditure' (RME), but only to the extent that those payments are over 45p per business mile.

Para 7A mirrors this by saying:

> '**7A** To the extent that it would otherwise be earnings, [there is a disregard for] the qualifying amount calculated in accordance with regulation 22A(4).'

Reg 22A(4) defines the qualifying amount as the product of the formula:

M [business miles] x R [45ppm]

Background

The pattern in many companies is similar. A company pays a car allowance, which may be issued as an alternative to a company car. It is often treated differently from salary when it comes to pay rises. It is typically set by reference to the grade of the employee, such that more senior employees are entitled to a bigger car allowance.

In return for the car allowance, the employee is required to have an appropriate car available for business travel, and to service/maintain and insure it for business travel.

There may or may not be an additional payment by the employer for

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fuel costs. Many companies use the HMRC Advisory Fuel Rates for company cars to determine the rate of payment for business travel, but they can pay whatever they like. Some provide fuel cards.

Often, the employer does not treat the car allowance as pensionable; and HMRC says that the allowance does not usually count as earnings for National Minimum Wage purposes (although these rules use their own definition of earnings separate from tax or NICs.)

The cases at First-tier Tribunal

Two recent First-tier Tribunal cases related to these issues, and both concerned well-known construction companies: *Laing O'Rourke v HMRC* [2021] UKFTT 211 and *Willmott Dixon v HMRC* [2022] UKFTT 6.

Both cases looked at the following issues:

- Was the payment of car allowance earnings for NICs purposes?
- Is there a need for the car allowance payment to be relevant motoring expenditure to qualify for the disregard in Para 7A?
- Is the car allowance relevant motoring expenditure as defined in Reg 22A?

The taxpayers only needed to succeed with their arguments on any one of these points to win the case.

Case of *CESDL*

Looking back to previous judgments, in 2012 the case of *Cheshire Employer and Skills Development Ltd (CESDL) (formerly Total People Ltd) v HMRC* [2012] EWCA Civ 1429 was heard by the Court of Appeal. The outcome had been decided on the facts determined at the First-tier Tribunal; namely, and somewhat surprisingly, that the car allowance in that case was not even earnings at all.

As such, the Court of Appeal neatly dodged the issue of giving an opinion on the other two issues. However, just because CESDL's car allowance was not earnings, that does not imply the same for any other car allowance. One has to look at the rationale and construction of the car allowance payments on a case by case basis to understand whether or not they are earnings for NICs purposes.

I say 'surprisingly' above as the definition of earnings for NICs purposes reads '"earnings" includes "any remuneration or profit derived from an employment"' (Social Securities Contributions and Benefits Act 1992 s 3).

As such, there was much debate in the *CESDL* case on the structure of the car allowance policy to decide whether or not there was indeed any profit from employment.

Case of Laing *O'Rourke*

Laing O'Rourke was the first of the recent cases to be heard. The First-tier Tribunal judge decided that the car allowance in question *was* earnings based on that company's policy. It is not, however, ideal that in order to get the NICs treatment right, a company needs to interpret reams of case law in order to establish whether a payment constitutes earnings. The judge also expressed her belief that the car allowance needed to be relevant motoring expenditure for the para 7A disregard to apply; and ruled that in the case of *Laing O'Rourke*, the car allowance did not qualify as such.

Case of *Willmott Dixon*

In *Willmott Dixon*, the First-tier Tribunal judge made similar rulings on the first two points. However, he crucially disagreed with the *Laing O'Rourke* judgment on the final point, deciding that the car allowance was relevant motoring expenditure and hence the para 7A disregard applied.

The distinction boiled down to interpreting the definition of relevant motoring expenditure in Reg 22A(3):

> '(3) A payment is relevant motoring expenditure if:
> a) it is a mileage allowance payment within the meaning of section 229(2) of ITEPA 2003; or
> b) it would be such a payment but for the fact that it is paid to another for the benefit of the employee; or
> c) it is any other form of payment, except a payment in kind, made by or on behalf of the employer, and made to, or for the benefit of, the employee in respect of the use by the employee of a qualifying vehicle.
>
> Here "qualifying vehicle" means a vehicle to which section 235 of ITEPA 2003 applies, but does not include a cycle…'

There was not much discussion in the tribunals of either case about (a) or (b), but a considerable amount of time was spent on analysing what was meant by 'any other form of payment in respect of the use by the employee of a car'.

HMRC's position was that in order to be relevant motoring expenditure, a payment had to be intrinsically linked to the use of the car; i.e. linked to the miles driven. HMRC argued that a payment for the use of the car could not be a payment for potential use, or availability for use. Further, a payment for the acquisition of the car could not be a payment for the use of the car, and neither could a payment which was 'in lieu' of providing a company car.

The First-tier Tribunal judge in *Laing O'Rourke* agreed with HMRC.

In *Willmott Dixon*, the judge viewed the definition of relevant motoring expenditure as being far broader. It is, after all, a charging provision and includes 'any other form of payment in respect of the use…'. As such, in his view, the car allowance payment fell within the definition of relevant motoring expenditure and the Para 7A disregard applied.

Appeals heard at Upper Tribunal (UT)

HMRC appealed the *Willmott Dixon* decision; and *Laing O'Rourke* appealed the decision made against it. The two cases at were heard jointly at the Upper Tribunal in March 2023 ([2023] UKUT 155).

All three of the bullet points above were analysed again. The Upper Tribunal does not have the power to change findings of fact, but only to determine whether there was an error in law or its interpretation.

HMRC's argument was broadly that it agreed with the First-tier Tribunal decisions that the car allowance should be regarded as earnings; and that for Para 7A to apply, the car allowance had to be relevant motoring expenditure. Further, it argued that the definition of relevant motoring expenditure should be interpreted narrowly, so that only actual expenditure on the use of a car should fall within the definition. To HMRC, this excluded the payment of round sum car allowances.

When instructing counsel for Willmott Dixon, we argued conversely that the intention of the Regulations was to align the treatment of business mileage and car allowances for income tax and NICs, giving relief irrespective of the actual amount expended on travelling business miles, equivalent to mileage allowance relief pursuant to ITEPA 2003 ss 231 and 232.

Our contention was that we should therefore not restrict the definition of relevant motoring expenditure to payments which are reimbursement of actual expenditure by an employee. Following this logic, the car allowances in question did fall within the definition of relevant motoring expenditure.

The judges agreed and held that:

> 'In our view, regulation 22A(3)(c) captures a payment by an employer which is broadly in respect of the use by an employee of a vehicle. It is not limited to reimbursement of expenses for actual use, which is the subject of regulation 22A(3)(a). It can extend to payments in respect of future use, whether or not the employee bears the cost of that use. To that extent, it aligns the NIC treatment with the income tax treatment.'

They therefore thought it unnecessary to consider the earnings question, as they ruled in favour of both of the taxpayers on the relevant motoring expenditure point with the outcome that a refund of NICs was indeed due.

Conclusion

There still remains the chance of a further appeal by HMRC. But notwithstanding that I would advise generally:

1. It is clear that protective claims should be made for the refund of NICs paid in error in respect of business mileage where car allowances have been paid. The claims can go back six full tax years under the error or mistake provisions provided in SSCR 2001 Reg 52.
2. The question of how to agree the quantum of the claim with HMRC, and what evidence it requires of business mileage driven, is beyond the scope of this article and we are advising several companies on precisely that issue. There are further complications where drivers used a company fuel card.
3. The question of whether the car allowance paid by any given company falls within the definition of relevant motoring expenses is crucial and depends on the facts in each case. What matters is the nature of the payment as exemplified by the intention and requirements of employer and employee. These are typically set out in the employment contract and car allowance policy documentation.

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Alternative dispute resolution

Rethinking the 'alternative'

As the tribunal case backlog continues to grow, could alternative dispute resolution alleviate the process?

by Talia Greenbaum

What is immediately obvious from the tax dispute resolution statistics recently published both by HMRC's Annual Report and Accounts for 2022 to 2023 (see tinyurl.com/mxfa4b85) and the Ministry of Justice in its quarterly report for 2023 (see tinyurl.com/5eub4psw) is that HMRC's conventional approach to dispute resolution is, to put it mildly, 'not operating as best it could'. More worryingly, the direction of travel, evident from the growing tribunal case backlog, indicates that things are getting worse rather than better.

We know that in some areas both the taxpayer and HMRC are experiencing acute challenges in establishing an appropriately balanced approach to dispute resolution. In the context of R&D disputes, the CIOT on 3 July 2023 took the fairly unprecedented step of writing an open letter to HMRC regarding enquiry conduct in this area.

In the context of this landscape, it is clear that considering alternative dispute resolution (ADR) as merely an 'alternative' part of the process is not enough. ADR could and should be a key part of the solution for preventing the breakdown of the whole dispute resolution process ecosystem. Given the statistics, it is evident that using the Tax Tribunal as a backstop is not a viable option for either HMRC or the taxpayer, so we have no choice but to use ADR more to help alleviate this unsustainable position.

The ADR statistics also tell an interesting story. The consistently high resolution rate, averaging 85% over the past five years, indicates that when ADR is used it is an extremely powerful and effective tool.

The relatively low uptake of ADR tells another story. We see that in overall terms, the ADR numbers (a little more than 1,000 applications per annum) are not consistent with the high number of ongoing tax interventions. I believe both HMRC and professional tax advisors have a part to play in unblocking this status quo.

Increasing engagement with ADR

As advisors, how do we interpret the relatively low engagement with ADR? BDO's own research among mid-sized businesses shows that awareness is high with 92% saying they have heard of ADR. Yet with over 60% saying they had been stuck in a dispute with HMRC lasting longer than a year, it's clear that only a tiny fraction are considering it for their dispute.

Anecdotally, I see that many disputes proceed unthinkingly along the traditional route – of protracted correspondence with occasional meetings – for far longer than they ought to. In practice, taxpayers and their advisors often keep ADR in reserve in their 'back pocket' until all else has failed.

It seems evident therefore, that the education priority for ADR specialists must move on from ensuring that there is a general awareness of the availability of ADR. Instead, the focus must be on the more subtle articulation to taxpayers of how they, supported by specialists, must engage with ADR as soon as it is clear that a difference of opinion is emerging. ADR is not just relevant when the taxpayer is knocking at the tribunal door, but must be 'upstreamed' as much as possible.

Another statistic that needs unpicking is that HMRC rejects over half the applications for ADR. About half of these rejections are because the applications are 'out of scope' – which means they are likely to be a dispute about one of the fairly limited areas which are excluded from ADR and are outlined in HMRC's ADR Guidance.

It is the other half of the rejection rate – i.e. those cases rejected by the Governance Panel – that requires more explanation. In these instances, it is likely that the panel rejects the applications on the grounds that ADR will not add value. We need an understanding of why this is. And more critically, HMRC needs to focus on what can be done about this in a wider policy context.

ADR was introduced over a decade ago in recognition of the problem articulated above. In that period, the need for effective dispute resolution support has grown hugely but the take up of ADR has remained broadly static. ADR is constantly evolving in response to taxpayer and HMRC feedback and in my opinion needs to be recognised as the 'go to' rather than 'alternative' tool to accelerate dispute resolution in most cases, allowing the courts to focus their limited resources on those minority of cases that really do need judicial determination.

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VAT and property
Dispelling the myths

We dispel some myths and common mistakes that are sometimes made on property deals and builder services.

by Neil Warren

VAT and property is a nightmare topic for clients and advisers. It is also probably the most important one to get right because of the amount of tax involved in many deals. It is a classic case of when you can easily get bitten in the shark-infested waters of the nation's favourite tax.

In this article, I will make some statements about VAT and property to clarify some of the cloudy issues that can cause sleepless nights for clients and advisers. It is important to get the VAT right before a deal takes place; it is difficult getting the greyhound back in its trap once it has started chasing the hare.

Builder services on new dwellings are zero-rated but you need to be clear about the definition of a 'dwelling'.
If a farmer decides to build a bungalow next to the farmhouse on his farm – perhaps for a relative to live there – will builder services to construct the bungalow be zero-rated because they relate to a new dwelling?

For zero-rating to apply on construction services, the new building must meet four conditions of a 'dwelling', as stated in Value Added Tax Act 1994 Sch 8 Group 5 Note 2. See ***Conditions of a new dwelling***.

However, the reality of this project is that it will almost certainly be a condition of the planning consent that the main farmhouse and new bungalow can only be sold at the same time as a single package. The third bullet point has failed, meaning that builder services are standard rated. Although the new bungalow will look like a new dwelling – and be treated as such by the farmer – it is classed as an extension to an existing dwelling as far as VAT is concerned.

The 5% rate on builder services includes residential conversions where the number of dwellings is *reduced* as well as increased.
The reduced VAT rate of 5% applies to construction services carried out on certain residential conversions. For example, it applies to building work carried out on a dwelling that has not been lived in for at least two years and the conversion of a non-residential building into a dwelling; e.g. a pub converted into a house. It is also relevant when a project produces a change in the number of dwellings.

I was always mystified by the fact that the law change in 2002 applied the reduced rate to a 'change' in the number of dwellings rather than an 'increase'. Why would Parliament reward a project that reduces the number of dwellings; for example, by converting two semi-detached houses into a detached mansion?

In my opinion, this makes as much sense as asking a busker playing a didgeridoo to perform at a world class symphony hall but we must not complain because it produces a welcome tax saving for property owners that cannot claim input tax.

A partly tenanted property can still qualify as a transfer of a going concern when it is sold.
Imagine the following situation: you have traded from an office for seven years and are now selling the freehold of the building. You opted to tax the property when you purchased it because you sublet the top floor of your four-storey building. The tenant will remain in situ after the sale.

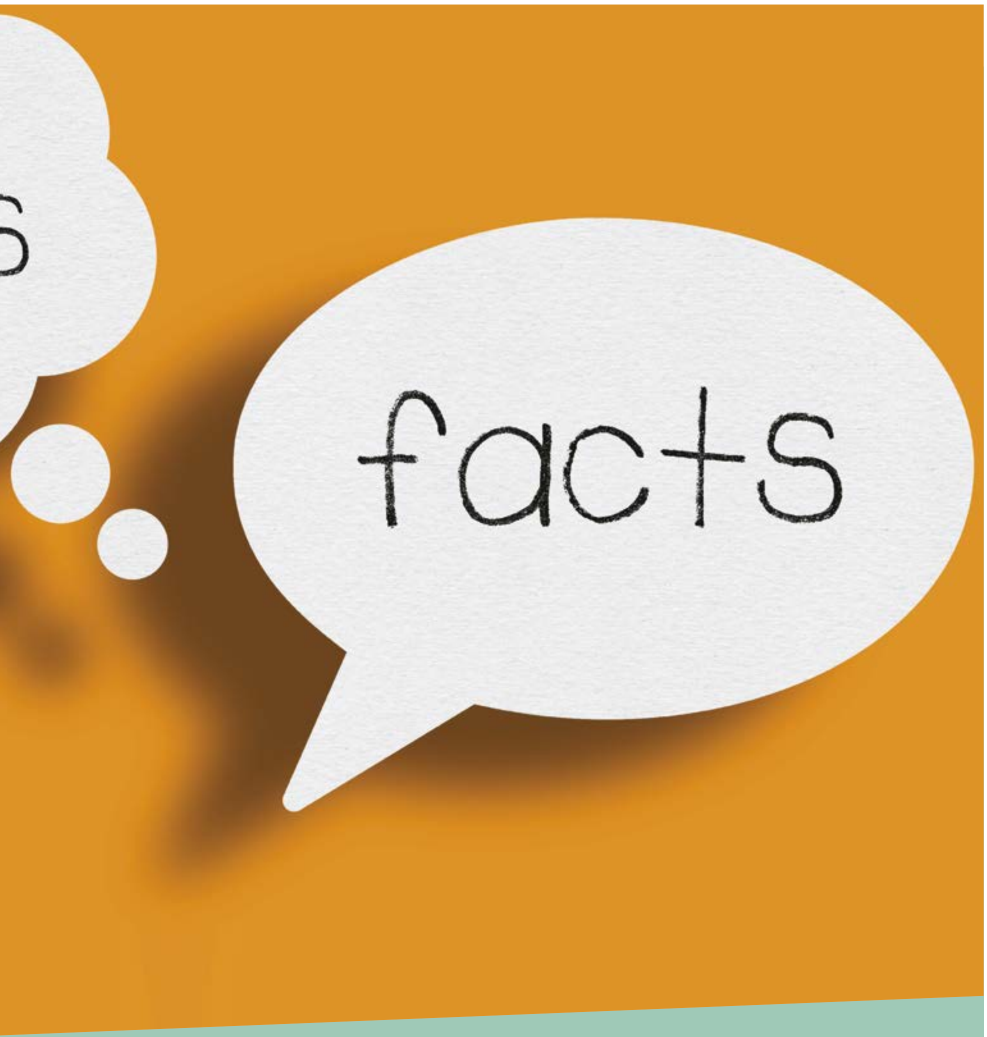
Advisers sometimes think – incorrectly – that the top floor will qualify as a transfer of a going concern; i.e. being relevant to a property rental business. They think that therefore no VAT will be charged on 25% of the selling proceeds, while the other three floors will be the sale of an empty building, which is standard rated because of the option to tax election. However, the good news is that the entire sale will qualify as a transfer of a going concern if the rental arrangement with

Key Points

What is the issue?
The VAT rules for land and property and construction services are complex and often involve large sums of money. It is important that clients and advisers consider the relevant issues before a project starts to ensure the legislation is applied correctly.

What does it mean for me?
If a developer or property owner cannot fully claim input tax, the reduced 5% VAT rate on some builder services can save a lot of money. The article explains when 5% rather than 20% is charged.

What can I take away?
The sale of a partly tenanted building will be outside the scope of VAT as a transfer of a going concern if the rental income is earned on a commercial basis, and the other transfer of a going concern conditions are met. This will produce a saving of stamp duty land tax for the buyer because it is charged on the VAT inclusive cost of a building.



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the tenant is made on a commercial basis, rather than a peppercorn rent. The buyer must also opt to tax the property and meet the other TOGC conditions specified in the legislation. This outcome also produces a welcome saving of stamp duty land tax, which is charged on the VAT inclusive price of a sale (see VAT Notice 700/9 s 6).

An absorbing First-tier Tribunal case about the twists and turns of a property sale and the transfer of a going concern rules involved the Haymarket publishing company in *Haymarket Media Group Ltd* [2022] UKFTT 168. The company sold their offices for £80 million to a developer and tried to claim it was a transfer of a going concern because there was a small amount of rental income being earned from the building. The directors also claimed that the company had partly started the construction work to convert the building into dwellings. However, the tribunal agreed with HMRC that the commercial reality was that the company was selling an empty property with an option to tax election in place, so the sale proceeds were standard rated.

Builders will not charge VAT for work on overseas buildings, even if they invoice a customer who is resident in the UK.

Let us pretend that I own a holiday home in Spain, a nice thought. If I ask a UK builder to travel to Spain and do some work on the home – perhaps fitting a new kitchen – the place of supply for his services will be Spain. The fact that he will address his invoice to my UK address is irrelevant. The place of supply for land services is where the work is carried out. If he charges me UK VAT, he has made an error.

However, this is not the end of the story. My builder is providing services in Spain and I cannot apply the reverse charge on his invoice(s) because I am not registered for VAT in Spain. The zero-registration threshold that applies under EU law to any supplies of goods or services made by a business that is not resident in that country means my builder will need to register for Spanish VAT – even if he charges me only one Euro – and charge me Spanish VAT.

As a final twist, a builder who is not VAT registered can exclude their work on overseas properties from the £85,000 registration test. See ***Builder services supplies abroad***.

Anti-avoidance legislation prevents a business with all or mostly exempt income from claiming input tax on a property purchase by buying it in a separate legal entity.

A booming business in recent times has been children's nurseries. These

CONDITIONS OF A NEW DWELLING

A building is designed as a dwelling or a number of dwellings where in relation to each dwelling the following conditions are satisfied:

a) the dwelling consists of self-contained living accommodation;
b) there is no provision for direct internal access from the dwelling to any other dwelling or part of a dwelling;
c) the separate use, or disposal of the dwelling, is not prohibited by the terms of any covenant, statutory planning consent or similar provision; and
d) statutory planning consent has been granted in respect of that dwelling and its construction or conversion has been carried out in accordance with that consent.

VAT Notice 708 para 14.3.1

BUILDER SERVICES SUPPLIES ABROAD

Mike is a builder based in Manchester with annual sales of £70,000. He travelled to Ireland in July 2023 and worked for an Irish building business, renovating properties in Dublin, earning £20,000. The contract meant that his annual turnover for the 12 month period ending 31 July 2023 was £90,000. However, the Irish income is outside the scope of UK VAT – the place of supply is Ireland – so his UK taxable income is £70,000. As this figure is less than £85,000, he does not need to register for UK VAT.

Note: If the building business in Ireland is registered for Irish VAT, Mike will not need to register for Irish VAT because his customer can account for VAT by doing a reverse charge entry on their own returns, based on the Irish rate of VAT for the services in question. This is because Ireland applies what is known in VAT speak as a 'reverse charge extension for land services'.

businesses will not be registered for VAT because their income is exempt from VAT. A common VAT question from nursery owners or their accountants – and other businesses with exempt income – is often along the following lines:

> 'We are buying new premises for £300,000 plus VAT. Can we buy the property in a separate legal entity, register for VAT, opt to tax the property with HMRC and then claim input tax – charging a low future rent plus VAT to the trading business?'

This question is logical and the principle of buying a property in a separate entity is well-established and makes commercial sense; i.e. protecting the asset from any potential financial problems incurred by the trading business. However, anti-avoidance legislation means that any option to tax election is disapplied if the following conditions are relevant:

- The property purchase price exceeds £250,000 excluding VAT; i.e. it comes within the capital goods scheme.
- The property owner and tenant are connected parties – as defined by Corporation Tax Act 2010 s 1122 – and the tenant's business has taxable income of 80% or less. In other words, the tenant is either not registered for VAT or partly exempt.
- The rent charged by the landlord to the connected party will still be exempt from VAT, meaning an input tax block – or inability to register for VAT – on the purchase of the property.
- The legislation prevents an exempt business from claiming input tax on a property purchase but only gradually repaying this VAT to HMRC with a small rental charge.

VAT Notice 742A s 13

> **The VAT rate of 5% applies to construction services carried out on certain residential conversions.**

Final tips

Here are three final snippets about builder services:

- If a builder provides services on a continuous basis, a tax point is created if either an invoice is raised or payment received, whichever happens first. A tax point is not created by issuing a document such as a fee note or application for payment.
- Most services provided by subcontractors to contractors will no longer be subject to VAT on the subcontractor's invoices. The contractor will instead account for the reverse charge on their own returns. However, this outcome only applies if the contractor is selling on the services in question (VAT Notice 735).
- Builder services on a new charity building are zero-rated if the charity issues a certificate to the contractor(s) confirming the building will be wholly used for charitable purposes (VAT Notice 708 s 19). However, a charity can still issue a certificate if there will be non-charitable use of up to 5% in the building; e.g. a small café or gift shop.

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The hidden economy

Behavioural challenges

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We consider the findings of research commissioned by HMRC into the hidden economy, the latest tax gap statistics and what more could be done to improve compliance.

by Helen Adams and Jack Sloggett

Key Points

What is the issue?
HMRC research shows almost 9% of UK adults participate in the hidden economy. Its estimates indicate that 30% of the tax gap arose due to evasion-type behaviour. HMRC needs to tackle this to increase compliance and tax collections..

What does it mean to me?
Forthcoming measures such as digital platform data sharing and, potentially, adopting the OECD's Cryptoasset Reporting Framework should help HMRC to increase compliance activity in this area.

What can I take away?
While those in the hidden economy tend not to have advisers, when they choose or are nudged towards compliance and filing returns, it is important to ensure their past is regularised via disclosures too. Taxpayers may benefit from being made aware of new data sharing provisions in case this also prompts them to correct historic mistakes.

Improving tax compliance so more people file correctly and on time is one of HMRC's key aims. The Public Accounts Committee's May 2023 report (see tinyurl.com/2hn24ch9) demonstrated that HMRC remains under pressure to 'ensure it is never easier to cheat the tax system than comply' and to help those who want to pay their taxes correctly. Consequently, HMRC seeks to estimate the tax gap and better understand why some people consistently do not meet their tax obligations and to help it tackle non-compliance: its findings shed light on what advisers may expect next from HMRC.

The tax gap

On 22 June 2023, HMRC published its latest estimate of the 2021/22 tax gap (see tinyurl.com/a83f6da5). The tax gap is the difference between the tax that HMRC thinks should, in theory, be paid and the amount actually paid.

Its causes include non-payment, simple mistakes, carelessness, fraud (deliberate wrongdoing), tax avoidance, organised crime and differences in legal interpretation of tax laws.

The figures show that the tax gap remains unchanged – stubbornly high at 4.8% of total liabilities. However, while the percentage remained constant, the estimated monetary total increased by £5 billion to £35.8 billion. HMRC's statistics categorise the tax gap by taxpayer behaviour, tax and taxpayer type. Individuals and small businesses accounted for 62% (£22.1 billion) of the tax gap, up from 59%. Income tax, NIC and capital gains tax together comprise the largest 'tax type' segment at 35% of the tax gap (£12.7 billion).

As in 2020/21, 'carelessness' was the biggest behavioural cause of the tax gap: up 4% at 30%. Given the amount of media publicity it receives, some may be surprised to see that tax avoidance is again the lowest contributor but this illustrates HMRC's successes from focusing on promoters and scheme users over recent years.

Together 'evasion', the 'hidden economy' and 'criminal attacks' comprise 30% (£10.74 billion) of the tax gap, down from 33% for 2020/21. HMRC had some success tackling criminal attacks. More could be done by its Fraud Investigations Service if HMRC can identify taxpayers to target. HMRC's 2022/23 statistics show the number of suspected serious fraud investigations under Code of Practice 9 fell (more cases were closed than opened) (see tinyurl.com/bddvbcup). However, a different approach may be needed on the hidden economy.

Hidden economy

HMRC defines the 'hidden economy' as economic activities which are entirely hidden from HMRC. HMRC is so concerned about this that they recently released new research on it, 'The hidden economy in the UK: wave 2' (see tinyurl.com/2p9yhxhb).

It estimates that 8.8% of UK adults participate in the hidden economy, up from 4.8% in its 2017 research, which is perhaps unsurprising given the growth in digital platforms over the period. Participation was split between three key types of behaviour:

- 'moonlighters', whose hidden economy activity supplements declared activity;
- 'ghosts', who have not declared any of their sources of income; and
- VAT non-registered businesses, despite their turnover being assumed to exceed the VAT threshold.

Of those participating in the hidden economy, around half (54%) had a total personal income above the income tax threshold. In most cases (56%), their hidden economy income was not their main source of income. Although 12% of participants' activity was their main source of income, only 1.1% are estimated to generate over £5,000 from their hidden economy activity.

The most popular supplementary (moonlighting) activity was buying things to sell, closely followed by making things to sell. With the continued popularity of online marketplaces such as eBay and Vinted, this is not surprising.

The main reasons research participants gave for not declaring their hidden economy income was that they considered it too small, temporary or irregular, and so did not consider that declaring it was worth the time, or were unaware of the need to do so. Only 47% thought that they should tell HMRC if they were buying and selling on eBay to make money. The majority of research participants considered it acceptable to not declare occasional or small amounts of income and 15% considered it acceptable not to declare amounts up to £10,000.

These outcomes echo those of HMRC's research on individuals holding cryptoassets (see tinyurl.com/mwr579xx). This affected one in ten of the adult population and, although most of them had holdings of less than £5,000, many of them were unaware of the correct tax treatment.

Cross border reporting rules

Along with 22 other early adopting countries, the UK is implementing the OECD rules for digital platform transparency. On 19 July 2023, the government issued The Platform Operators (Due Diligence and Reporting Requirements) Regulations 2023, setting out rules requiring digital platforms to share data with HMRC.

From 1 January 2024, digital platforms must collect information for HMRC about the income of sellers of goods, accommodation, transport and personal services on their platform. Businesses must identify whether their online operations are within the scope of the rules and, if so, set up reporting systems and familiarise themselves with the penalties for non-compliance before 1 January 2024. The first reports will need to be submitted to HMRC by 31 January 2025. For overseas resident traders, HMRC will exchange the information with the other participating tax authorities for the relevant jurisdictions.

One positive about this measure for taxpayers is that, unlike Common Reporting Standard data, they will receive a copy of the information provided to HMRC. This will provide them with a statement of the amount earned through the platforms, as well as any fees, commissions and taxes paid or withheld by platform operators (albeit on a calendar year basis) to help prepare their tax returns.

Additionally, the OECD has announced that the Common Reporting Standard is being extended to include a Crypto-Asset Reporting Framework (CARF). The CARF provides for automatic exchange of tax relevant-information on crypto-assets – although we await formal confirmation that the UK will adopt it.

What may HMRC do in future to encourage compliance?

HMRC already receives a plethora of information from a variety of public and private sources, including banks, the DVLA and the Land Registry. This data is analysed via HMRC's Connect system and compared to taxpayers' tax returns. If discrepancies are identified, HMRC initially issues 'nudge letters' to prompt taxpayers to review their tax affairs and rectify any errors or omissions.

Earlier this year, HMRC issued nudge letters to individuals using some online marketplace platforms (including 'content creators'), encouraging them to either confirm that their tax position is up to date or make a voluntary disclosure of undeclared tax. Further nudges on online trading can be expected when it receives data from the digital platform and cryptoasset initiatives. HMRC can follow up by opening compliance checks too if individuals do not voluntarily bring their tax affairs up to date.

HMRC consulted on streamlining bulk data collection to make it easier for HMRC to obtain and process large data sets from third parties (see tinyurl.com/2b6vy5by). The consultation also considered pre-population of taxpayers returns using data that HMRC holds and who should be responsible for accuracy in such situations.

Cross-border data sharing, including for digital platforms, is on a calendar year so this data may not help pre-population, although HMRC may design in other pop-up prompts for those using its portal to file returns. HMRC also consulted on updating the criteria for individuals to file returns and other changes to encourage more taxpayers to register for self-assessment

TAX GAP BY BEHAVIOUR

	2021/22 % of tax gap	2021/22 Value of tax gap (billions)	2020/21 % of tax gap	2020/21 Value of tax gap (billions)
Non-payment	9%	£3.2	12%	£3.7
Legal interpretation	12%	£4.3	11%	£3.4
Avoidance	4%	£1.4	4%	£1.2
Error despite taking reasonable care	15%	£5.4	14%	£4.3
Carelessness	30%	£10.7	26%	£8
Evasion/deliberate behaviour	13%	£4.6	12%	£3.7
Hidden economy	6%	£2.1	6%	£1.8
Criminal attacks	11%	£4.1	15%	£4.6

and file online. Making processes simpler may overcome some of the concerns identified in the hidden economy research and improve compliance rates.

HMRC's 2018 research indicated that the Publishing Deliberate Defaulters' regime (Finance Act 2009 s 94) is ineffective at pushing taxpayers to comply, probably due to low awareness of this measure. Instead, taxpayers' experiences of direct contact with HMRC via compliance checks and the imposition of financial penalties was more effective at encouraging future compliance. Creating or enhancing potential 'sticks' to punish non-compliance via its ongoing Tax Administration Framework review may be a poor substitute for direct contact with the individuals involved in the hidden economy.

HMRC's successes in using targeted nudge letters illustrate that contacting and educating taxpayers directly is likely to be more effective. Its digital platforms measure will be a good test. Platforms will have to go through a process of checking sellers' identities before data sharing starts, and then notify them of the data shared with tax authorities: this should make tax obligations obvious to individuals. If this is bolstered by a wide-ranging multi-media campaign by HMRC to encourage people to regularise their historic years' tax via disclosures and user-friendly information and disclosure options on gov.uk, then we might finally see a step change in the hidden economy tax gap.

Conclusion

Although the tax gap percentage remained the same, the increase in revenue lost to suspected deliberate behaviour and the increasing hidden economy population highlight the size of the task HMRC faces.

Implementation of digital platform data sharing and the CARF should provide more data for HMRC to use, although the Treasury should ensure that HMRC is resourced to use it to close the tax gap.

Advisers should ensure existing clients are aware of these developments just in case some do not realise they should declare their hidden economy or cryptoasset activities. For new clients wanting to file for the first time, it will be essential to understand their financial history and make disclosures to regularise any historic tax liabilities, taking into account discovery assessment time limits and penalty rules.

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The relevance of EU law

A significant diminishment

The Retained EU Law (Revocation and Reform) Act 2023, which has just been enacted, will significantly diminish the relevance of EU law.

by Jeremy Woolf

In February 2021, I wrote a *Tax Adviser* article, 'EU withdrawal a half-hearted separation' (see tinyurl.com/2jzktd8y), which sought to analyse the impact of the partial snapshot of EU law enacted by the European Union (Withdrawal) Act 2018 ('the 2018 Act'). Since then, there have been court decisions that have clarified some of the consequences of the 2018 Act. Even more significantly, the Retained EU Law (Revocation and Reform) Act 2023 ('the 2023 Act') has just been enacted.

The 2023 Act

The 2023 Act will significantly diminish the relevance of EU law.

Under the 2018 Act, section 4 preserves the ability to rely on EU Treaty rights and rights arising from directives, provided they are of a 'kind recognised by the European Court or any court of tribunal of the United Kingdom' on 31 December 2000. However, as a result of section 2 of the 2023 Act, this will cease to apply after 31 December 2023.

Section 3 of the 2023 Act also abolishes the principle of the supremacy of EU law and section 4 abolishes the general principles of EU law from 31 December 2023.

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Paragraphs 87-90 of the Explanatory Notes to the Bill in the House of Lords indicate that these charges are also intended to abolish requirements to adopt a muscular conforming interpretation, which in the past has resulted in legislation being construed in a conforming manner even when this did not accord with a natural reading of the UK legislation.

So, the European Union origins of legislation will just be relevant as a contextual and purposive aid to construction.

Impact on direct taxes

As a result of these changes, EU law is unlikely to have any material significance in direct tax after 31 December 2023. This probably extends to the transfer of asset provisions, where Income Tax Act 2007 s 742A provides an explicit statutory EU defence. Despite this statutory recognition, it is difficult to see how, after the 2023 changes come into force, there can be a 'contravention of a relevant treaty provision', which is a condition to this EU defence. The UK will no longer be a party to the relevant treaties and there will then be no legislation, in the form of section 4 of the 2018 Act, seeking to maintain the relevant rights as a matter of domestic law.

Unless fresh legislative action is taken, it will also impact on stamp duty reserve tax and the ability to rely on *HSBC v HMRC* (Case C-569/07) to contend that charges on issue are contrary to EU law.

Impact on indirect taxes

The repeal of section 4 of the 2018 Act means that it will no longer be possible to rely on the VAT directives to override provisions of UK legislation. However, the Value Added Tax Act (VATA) 1994 in its current form remains retained EU law or, as it will now be called, 'Assimilated Law'. The directive will therefore remain an aid to construction, although the Explanatory Notes suggest that the muscular principles of conforming interpretation will no longer apply.

Impact on UK courts

The 2023 Act clearly envisages that former judgments of the Court of Justice on the VAT directive may remain binding on lower courts. However, the general principles of EU law will no longer be part of UK law and the principles of conforming interpretation will cease to apply. This will bring into question whether past decisions that have relied on those principles remain binding on the tax tribunals.

An example of a case whose status may be brought into question is *HMRC v Axa UK plc* [2012] STC 754. In that case, the Court of Appeal considered that a conforming construction of Item 1 of Group 5 Schedule 9 VATA 1994 meant that the Group 1 should be subject to an implied exclusion for debt collection services. It must be very moot whether this will remain good law after 31 December 2023.

The 2023 Act also seeks to give higher UK courts a greater discretion to depart from decisions of the Court of Justice. Section 6 of the 2023 Act amends section 6 of the 2018 Act to make it clear that 'a relevant court of appeal is not bound by any retained EU case law' except when there is binding domestic case law.

The new section 6(5) of the 2018 Act, as inserted by the 2023 Act, also makes it clear that, when deciding whether to apply EU case law, regard is to be paid to 'any changes of circumstances which are relevant to the retained EU law' and also 'the extent to which the retained EU case law restricts the proper development of domestic law'. A court is likely to consider that these considerations are, in any event, relevant when deciding whether to follow decisions of the Court of Justice under section 6 of the 2018 Act prior to its amendment by the 2023 Act.

An example of a case where changed circumstances may mean that it is not appropriate to follow a judgment of the Court of Justice is provided by *Danske Bank v Skatteverket* (Case C-812/19), concerned with the VAT grouping. The court made comments suggesting that it is only fixed establishments within a member state that can form part of a VAT group. The court, at paragraph 33, considered that any national VAT groupings of a member state should 'where appropriate' be recognised by other member states. However, similar policy considerations no longer apply in the United Kingdom because Brexit means that there is no need to recognise VAT groupings in other countries. So different policy considerations now apply in the United Kingdom, where there is no similar need to adopt the restrictive approach applied by the Court of Justice – which, in any event, is not consistent with VATA 1994 s 43(2A), which clearly assumes that non-UK fixed establishments of a group member also form part of a UK VAT group.

Impact on HMRC

These changes will also impact upon HMRC. HMRC will equally be unable to rely on a muscular conforming interpretation of the VATA 1994.

When it was pointed out that the provisions of the 2018 Act might impact on HMRC's ability to rely on the principles of abuse of rights, specific provisions were enacted in Taxation (Cross-border Trade) Act 2018 s 42(4) and s 42(4A) confirming the continued application of the abuse principle. However, it must be doubtful whether those provisions will continue to have any effect when the 2023 Act comes into force, since the 2023 Act is later legislation that explicitly states that 'no general principle of EU law is part of domestic law'.

The arguments for contending that there has been an implied repeal are probably reinforced by the fact that s 42(4) purports to apply as 'one of the consequences of' the 2018 Act and s 42(4A) also purports to apply 'accordingly', although the wording of s 42(4A) also refers to the principles applying to 'any matter relating to VAT' and the addition of that subsection probably only makes sense on the basis that it was intended to have a wider effect.

However, the cessation of the abuse principle may be of limited comfort to tax avoiders if it makes the courts more receptive to challenges under the *Ramsay* principle.

New reference procedures are also introduced by inserted sections 6A to 6C of the 2018 Act, so higher courts can more speedily determine whether prior EU decisions should be followed. A reference can be made under section 6A when the lower court is bound by retained case law and the issue is one of general public importance. However, in some cases, it could be contended that the first condition for a reference is not satisfied because the lower court is , in any event, no longer bound by a prior decision because the 2023 legislation has changed the legal context by removing any requirement for a conforming interpretation. It would be unfortunate if too literal a construction of the 2023 Act ousted a lower court's jurisdiction to make a reference for this reason.

The position under the 2018 Act

The 2018 Act will continue to largely govern the extent to which reliance can be placed on EU law until 31 December 2023. Since I wrote my earlier article, there have been cases that have shed further light on some of the issues arising from the 2018 Act.

Paragraph 39 of Schedule 8 of the 2018 Act suggests that some of the restrictions on the ability to rely on the general principles of EU law apply retrospectively. Paragraph 39(4) of Schedule 8 prevents any retrospectivity in relation to conduct giving rise 'to any criminal liability'. To ensure that this provision is construed in a manner that conforms to the European Convention on Human Rights, this exclusion probably extends to claims for civil penalties that are criminal for the purposes of that Convention. This may be significant with requirement to correct penalties, which may be contrary to EU law.

As anticipated in my earlier article, the significance of this point has also been significantly limited by Article 89 of the Withdrawal Agreement and section 7A of the 2018 Act. Article 89 of the Withdrawal Agreement provides for judgments of the European Court delivered prior to 31 December 2000 to have binding force. This is also extended to subsequent judgments of the court on references from the United Kingdom. Lord Lloyd-Jones, at para 8, in *Fratila v Secretary of State for Work and Pensions* [2021] UKSC 53, and Asplin LJ, at paras 63-66, in *Dawson's (Wales) Ltd v HMRC* [2023] EWCA Civ 332 accepted that these provisions preserve the binding force of judgments of the Court of Justice during periods when the UK was in the Union and during the transitional period.

The extent to which paragraph 3 of Schedule 1 of the 2018 Act prevents UK legislation being disapplied because it is contrary to the general principles of EU law has also been considered in *Adferiad Recovery Ltd v Aneurin Bevan University Health Board* [2021] EWHC 3049, *Secretary of State for Work and Pensions v Beattie* [2022] EAT 163 and *Allianz Global Investors GmbH v Barclays Bank Plc* [2022] EWCA Civ 353. All three decisions accept that the effect of that paragraph may be to preclude claims based on general principles that were possible prior to 31 December 2020. However, Judge Keyser QC, in *Adferiad Recovery Ltd* at para 120, accepted that retained general principles remained relevant when interpreting retained EU law.

None of these cases focused on paragraph 39(6) of Schedule 8 of the 2018 Act, which states that paragraph 3(2) of Schedule 1 of the 2018 Act does not apply to the necessary consequences of any court decision given before 31 December 2020. That is clearly intended to give some continued effect to the direct consequences of prior decided cases. However, its impact is limited by the fact that it just overrides paragraph 3(2), which precludes the disapplication of legislation, and not paragraph 3(1), which precludes claims based on a failure to comply with EU law.

The 2018 Act will continue to largely govern the extent to which reliance can be placed on EU law until 31 December 2023.

In many cases, general principles are in substance relied upon as a defence to claims by HMRC, so it can hopefully be contended that paragraph 3(1) should not be in issue for that reason. A possible helpful analogy can be drawn with *King v Walden* [2001] STC 822, where Jacob J, at paras 57-71, accepted my arguments that tax appeals were instigated by HMRC for the purposes of the Human Right Act 1988 s 22(4).

HMRC is already contending that paragraph 3 of Schedule 1 of the 2018 Act precludes claims for restitution based exclusively on EU rights (see *Revenue and Customs Brief 4/2022*). In such cases, a taxpayer is clearly making a claim. However, the fact that paragraph 39(7) contains special rules for *Francovich* claims may possibly point to a distinction between 'claims' based on failures to comply with general principles and an entitlement to a remedy as a matter of EU law that arises as a result of a claim that arises for some other reason; for example, an overpayment of VAT. Even if such arguments are accepted, such claims will clearly be precluded by the 2023 Act changes.

In *R (o.a.o SS Consulting Services (UK) Ltd v HMRC* [2021] EWHC 3174 (Admin), Knowles J, at para 16, also accepted that s 42(4) and s 42(4A) of the Taxation (Cross-border Trade) Act 2018 preserved the abuse and *Halifax* principles. However, his comments do not appear to be central to his reasoning. While, as I have observed, s 42(4A) should almost certainly be construed more broadly, neither s 42(4) nor s 42(4A) are entirely clearly drafted because some of the wording suggests that they are merely declaratory of the consequences of the 2018 Act, which in fact limits the extent to which reliance can be placed on general principles of European law.

As I have observed above, the continued relevance of those sub-sections also becomes highly questionable when the 2023 Act comes into force.

Another possible area of uncertainty is how far s 4(2) of the 2018 Act enables individuals to continue to rely on the direct effect of the directive because it requires the rights to be of a 'kind recognised by the European Court or any court of tribunal of the United Kingdom' on 31 December 2020. This then raises questions as to how specific the recognition needs to be.

As far as I am aware, there have only been two related cases that have considered this issue: *Harris v The Environment Agency* [2022] EWHC 2264 (Admin) and *C G Fry & Son Limited v Secretary of State for Levelling Up Housing and Communities* [2023] EWHC 1622 (Admin). Both cases concerned the Habitat Directive. In the *Harris* case, Johnson J, at paragraph 91, helpfully observed that s 4(2) does not require a prior decision on the direct effect of the provision; instead it 'only requires that it is "of a kind" that has been held to have direct effect'. Despite the absence of any prior decision expressly stating that the relevant provisions had direct effect, both cases accepted that the provisions had direct effect.

Concluding comments

The idea of enacting a snapshot of EU law in the 2018 Act has a lot to commend it. Unfortunately, its half-hearted nature and, in particular, the way it limits the reliance that can be placed upon the general principles of EU law, creates some uncertainty. With VAT, that uncertainty will significantly increase when the 2023 Act comes into force.

The comments made in this article are all subject to any changes that might be made by either future primary legislation or by regulations made pursuant to ss 11-16 of the 2023 Act.

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Carrying back regardless
A matter of timing

We look at a recent case which considers how the loss carry back rules operate when the earlier year's profits are increased following an enquiry.

by Keith Gordon

When writing this article, I was reminded of my article 'What a carry back' in the January 2020 issue of *Tax Adviser*. That article noted how it is taking decades for some of the ramifications of the self assessment regimes (as introduced in the 1990s) to be fully understood.

The case of *Civic Environmental Systems Ltd v HMRC* [2023] EWCA Civ 722 will only reinforce that concern.

The facts of the case

Civic Environmental Systems Ltd (CES) prepared its accounts each year to 30 April. In the period to 30 April 2007, its corporation tax return showed a trading profit of (using rounded figures) £142,000. The return was submitted on time (in March 2008).

In May 2009, CES then submitted a return for the year to 30 April 2008. Again using rounded figures, the return reported a trading loss of £444,000. The company elected to carry back losses to offset the profits realised in the previous year. As those profits were £142,000, that left losses of £302,000 which were duly carried forward.The corporation tax paid in respect of the 2007 period was duly repaid.

In the meantime, HMRC opened an enquiry into CES's 2007 return. That was subsequently closed with HMRC concluding that the taxable profits should be increased from £142,000 to £450,000. HMRC's conclusion was subsequently upheld by the First-tier Tribunal on the company's appeal.

The parties' respective arguments

The company further argued that those additional profits could be relieved by the carry back claim made in respect of the 2008 losses. The logic is that loss carry back claims are made on an all-or-nothing basis: it is not possible to specify how much of a company's losses may be carried back and how much is carried forward. Instead, the carry back claim must exhaust the profits of the earlier year, leaving only the excess to be carried forward.

CES argued, therefore, that the loss carry back rules mandated a revision to the claim so as to ensure that the entire loss from 2008 (£444,000) would be set against the revised profits figure, meaning that corporation tax was payable on only the balance of £6,000. (CES accepted that this would lead to a removal of the losses previously carried forward to 2009.)

It was common ground that (if one were carrying out the exercise purely on paper) the 2008 loss would be fully set against the revised profits for 2007, leaving just £6,000 taxable profits in 2007 and no losses able to be carried forward.

HMRC argued, however, that the loss carry back claim was limited to £142,000 (being the relievable losses at the date of the claim). In the absence of any enquiry into the carry back claim itself, it was not possible to revise those figures, notwithstanding the subsequent increase in the profits in the earlier period.

HMRC's position was upheld by both the First-tier and Upper Tribunals. CES appealed against the decision to the Court of Appeal.

The Court of Appeal's decision

The case came before Lady Justices Asplin and Simler and Lord Justice Nugee. Lord Justice Nugee gave the only reasoned

Key Points

What is the issue?
The case of *Civic Environmental Systems Ltd v HMRC* [2023] EWCA Civ 722 highlights the fact that some of the ramifications of the self assessment regimes (as introduced in the 1990s) are still to be fully understood.

What does it mean to me?
It seems counterintuitive for the allocation of losses to be so dependent on the status of returns for periods other than that for which the original claim or election is being made.

What can I take away?
If the Court of Appeal's decision is correct, then a surprising outcome is that a company could manipulate the use of its losses by careful timing of its carry back claim.

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judgment, with the two Lady Justices concurring.

The court dismissed the company's appeal.

The principal argument put forward by the company (and rejected by the court) was that the carry back rules (then in section 393A of the Income and Corporation Taxes Act 1988) mandated the full use of losses whenever a claim was made under the section (up to the amount of relievable profits, if lower).

As the Upper Tribunal had done, the Court of Appeal said that argument, focusing on section 393A, ('if [that] were the only relevant provision') would give the company 'a powerful case'. However, the Court of Appeal was persuaded that the theoretical analysis relied upon by the company was 'materially overhauled following the introduction of self assessment for both individuals and companies'.

As a result, the court focused on the procedural provisions found in the Finance Act 1998 Schedule 18 governing corporation tax self assessment (CTSA). In particular, the court looked at paragraph 58, which refers to cases where claims and elections affect more than one accounting period. Paragraph 58(2) provides that where the claim or election affects a period for which a return has been submitted but where it is still permissible to amend that return (because the ordinary 12 month time for amending the return has not expired), then the claim or election should be treated as if it actually made the required amendment.

The court concluded that this meant that one had to consider the timing of the 2008 carry back claim. It was common ground that it could have been made at a time when it was still possible to amend the 2007 return. Had that been the case, the 2007 return would automatically have been amended so as to take into account the carry back claim. It would therefore have been that amended return that would have been the subject of HMRC's enquiry. As a result, any increase in the profits arising from the enquiry would then be subject to potential additional relief from the carry back claim.

However, the court said that a different analysis should apply if the carry back claim was made at a time when it was too late to amend the 2007 return. In such a situation, the claim is subject to the provisions of paragraph 58(3) which, in turn, provides that the provisions of Schedule 1A to the Taxes Management Act 1970 apply. Schedule 1A effectively provides a code for dealing with claims outside tax returns – this code broadly matches the self assessment provisions that govern returns but operates in parallel.

The court concluded that, in such a scenario, any enquiry into the 2007 return has to be into the return as unamended by any carry back claim. As a result, it is not permissible, when concluding that enquiry (or in any consequential tribunal proceedings), to somehow give any revised effect to the 2008 carry back claim. That claim stands alone. As the court said, that result gives finality to the 2008 carry back claim (and, presumably, the subsequent years which might or might not have been given relief for any surplus losses brought forward) – such finality being a key tenet of the self assessment regimes.

Commentary

When reading the earlier Upper Tribunal's decision in this case, I considered that the outcome was odd and probably wrong. With respect, I feel no differently having read the Court of Appeal's decision. It seems counterintuitive for the allocation of losses to be so dependent on the status of returns for periods other than that for which the original claim or election is being made.

However, I recognise, as the court itself said, that any regime which has time limits could lead to different outcomes in what are otherwise broadly similar scenarios. Furthermore, such oddities that remain do not mean that the court's decision is wrong. It all turns on what the legislation says.

That said, I still do not believe that the court has read the legislation correctly.

Underlying the court's decision is the assumption that the CTSA rules were intended to change the procedural landscape and it should therefore be unsurprising if there are now different possible outcomes of a carry back claim. Furthermore, the court recognised that

these changes were made in the interests of enhancing the finality of returns, etc. (such finality being given after a year, except where an enquiry is opened).

However, it remains my view that that assumption was wrong and thus led the court to reaching the wrong conclusion. Ultimately, this is one of the cases where one can justifiably look at the same coin from two different perspectives and reach fundamentally different conclusions. As a result, it is necessary to look at other legislative clues to better discern Parliament's intent. In this case, I believe that there is a provision which (although referred to) was not in my view given sufficient emphasis by the court. That provision is paragraph 34(2A) of Schedule 18.

That is a provision that ensures that, when an enquiry comes to an end, it is not only the return under enquiry that can be amended but also any other return by the company if necessary 'to give effect to the conclusions stated in the … closure notice'.

I recognise that that subparagraph was introduced some ten years after the CTSA code was first enacted. However, the original provisions (paragraph 34(1)(b) and (2)(b)) had a similar effect.

That provision tells us that the finality granted to a tax return is not absolute, even outside the enquiry window. Indeed, an enquiry into year 1's return can have a knock-on effect on many other years, without an enquiry into those other years returns being necessary.

In those circumstances, I would say that this provides a valuable clue to suggest the court's underlying assumption is wrong. Therefore, in my view, CES's powerful case remains as valid as it would have been pre-CTSA.

What to do next

If the Court of Appeal's decision is correct, then a surprising outcome is that a company could manipulate the use of its losses by careful timing of its carry back claim.

For example, suppose the company made trading profits of £100,000 in year 1, a trading loss of £400,000 in year 2 and trading profits of £300,000 in year 3. Suppose further that the tax rates were such that the company would be paying higher corporation tax rates in year 3 than it would in year 1 (and so the company is quite happy to be carrying forward much of the year 2 losses to year 3). The conventional wisdom is that the company should make a carry back loss, wiping out year 1's profits leaving the remaining losses available to wipe out year 3's profits. However, now suppose that the company was concerned that HMRC might consider there to be additional profits of (say) £300,000 in year 1 and that an enquiry was underway or at least imminent.

On CES's approach, that would simply be a risk that the company would have to face. However, the Court of Appeal's decision tells us that, provided that the carry back claim is delayed until after the period for amending the year 1 return passes, then the £300,000 losses carried forward to year 3 remain intact. Therefore, even if the company ends up with additional profits in year 1, the company has successfully preserved the relief in year 3.

It will also be noted that this strategy turns on the company tactically delaying its carry back claim (albeit still within its own time limit). It is my view that Parliament is unlikely to have introduced a provision that positively encourages such behaviour.

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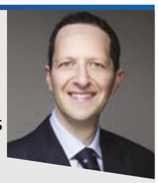

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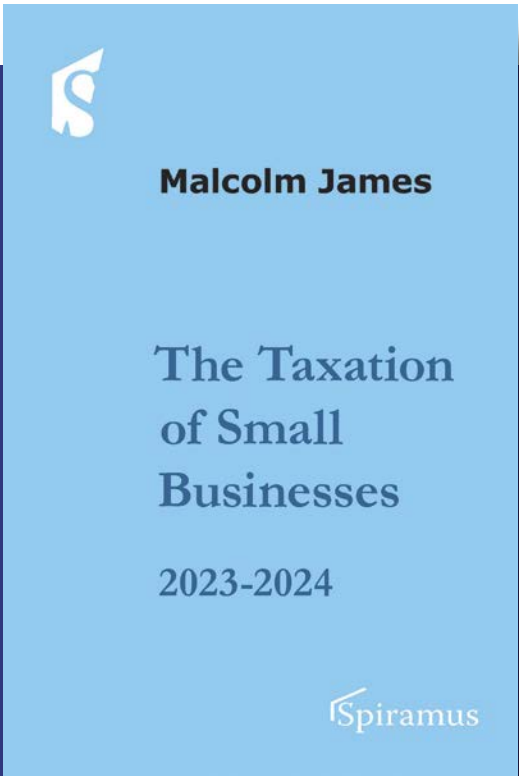

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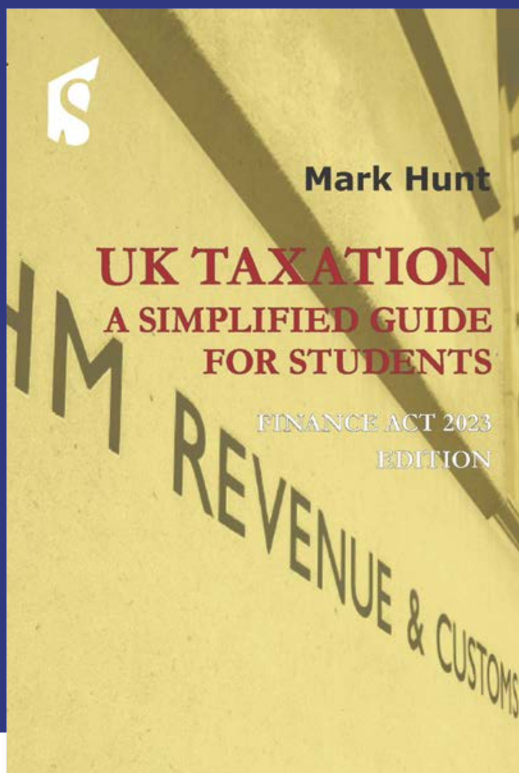

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Deemed domicile status

A multi-factorial approach

The First-tier Tribunal's decision on the acquisition of domicile of choice in the case of *Shah* illustrates HMRC's changing approach in these matters.

by Katy Shaw

Key Points

What is the issue?
The case of *Shah v HMRC* is relevant to individuals wishing to benefit from a UK estate treaty with, for example, India or Pakistan, which overrides the UK's deemed domicile provisions.

What does it mean to me?
The courts are increasingly applying a multi-factorial approach in such cases, and critically looking at the evidence available.

What can I take away?
Any individual relying on their domicile status should be made aware of the current focus of HMRC in pursuing domicile enquiries and have their status reviewed thoroughly.

There has been another success for HMRC at the First-tier Tax Tribunal in relation to a taxpayer's domicile status (*Shah v HMRC* [2023] UK FTT 539 (TC)).

Whilst parallels can be drawn with other recent domicile 'wins' for HMRC at the First-tier Tribunal, this case is particularly interesting as it is a case relevant to individuals wishing to benefit from a UK estate treaty with, for example, India or Pakistan, which overrides the UK's deemed domicile provisions.

Case overview

The case concerned an appeal against an inheritance tax assessment raised by HMRC in relation to the estate of Mr Anantrai Shah. The salient facts, which were not under dispute, were as follows.

Mr Shah was born in 1929 in Karachi (part of British India at the time). Between 1929 and 1954, Mr Shah moved between Karachi and Tanzania for education purposes and to live with family who had moved to Tanzania. In 1954, at the age of 25, Mr Shah moved to Sunderland in the UK to study pharmacy. After graduating in 1957, he moved back to Tanzania.

Mr Shah married in 1960 in Mumbai, India. Mr Shah continued to live in Tanzania with his wife and they had two children. In 1961, Mr Shah acquired UK citizenship following an offer made to him when Tanzania became independent from the UK. Mr Shah was required to give up his Indian citizenship as a result of this.

In 1972, Mr Shah with his wife and children moved from Tanzania to Mumbai, India and obtained a job with ICI. Around a year later, Mr Shah moved to the UK and his family followed suit a few months later.

Mr Shah worked as a pharmacist from 1973 and owned the freehold of a shop related to the pharmacy business. After selling the business in 1994, he worked as a locum pharmacist before retiring completely in 1997.

Mr Shah's daughter and wife died in 2010 and 2011 respectively. Mr Shah died in the UK in 2016, aged 87 years old. Mr Shah's executors claimed that the taxpayer had not acquired a domicile in choice in the UK as he had always intended to return to India. HMRC's task, being the party asserting the change in domicile, was to prove its case based on the balance of probabilities.

Mr Shah's son, as executor for his father, contended that Mr Shah had originally left India because he was unable to find secure employment there and that he had always intended to return to India at the end of his working life. Such a return was delayed by the deaths of his daughter and wife, and his own poor health. The return was then further delayed pending completion of his grandson's education in the UK. Overseas citizenship from India was acquired in 2014, and Mr Shah sent gifts to family members in India and remained in contact with them.

The decision of the tribunal

Taking all of the evidence into account across the course of Mr Shah's life, the tribunal concluded that he had settled and intended to remain in England permanently, such that he had acquired a domicile of choice in England and had not abandoned that domicile of choice before his death. Mr Shah's intention of moving to India was described as a 'vague and floating idea'.

In arriving at this decision, the following facts were taken into account:

- Mr Shah had no significant connections to India. He had only

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visited India twice for a total period of three weeks in a period of over 43 years. Such visits were related to family events.

- Mr Shah had no bank account in India or any assets or investments in India – consistent with somebody who might be planning to retire there.
- Whilst Mr Shah's deceased wife may have had closer connections to India, such connections could not be attributed to her husband.
- Although a DOM1 form had been completed, it had not been submitted to HMRC at the time and the tribunal found it unreliable and inconsistent with the evidence available.
- Despite potential trigger points at which Mr Shah could have left the UK (e.g. retirement, following the death of his wife, the sale of the family home), Mr Shah remained in the UK.
- Mr Shah's close attachment to his family in the UK was noted and the court considered it unrealistic for somebody of his age and health to relocate from a place where he was regularly visited by family living close by to a place which he had never visited before (i.e. Bangalore).
- The structuring of Mr Shah's investments into a non-UK company in 2014 was contended to be a move for inheritance tax purposes, rather than preparation for a move to India.

The 'multi-factorial' approach

It is clear from reviewing the judgments from the recent domicile cases of *Henkes v HMRC* [2020] UKFTT 159 (TC) and *Coller v HMRC* [2023] UKFTT 212 (TC) that the courts are increasingly applying a multi-factorial approach. This means that the court is arriving at its decision following consideration of a wide range of factors and critically looking at the evidence available.

This could be regarded as an unorthodox approach for the courts to take. After all, it is well known that a UK resident individual who does not have the necessary intention to remain in the UK permanently or indefinitely will not acquire a domicile of choice here. Furthermore, where an individual has not yet made up their mind about where they wish to retire to, the domicile of origin adheres.

Strictly, the retention of a foreign domicile is not seen as dependent on establishing a positive intention to return to the country of their origin. Similarly, the collating of evidence pointing to such a return, whilst potentially helpful, is not absolute to the test.

However, a taxpayer would be foolish to rely on such a strict interpretation, given the recent tribunal decisions finding in HMRC's favour. Such decisions have specifically highlighted the lack of ties with the country of origin as a key deciding factor.

If there is a third jurisdiction, in circumstances where the taxpayer doesn't intend to return to the country of origin, the links to that country should be strong and multi-faceted. Correspondingly, if the connections the taxpayer has to the UK are significant, their lack of connections to any other jurisdiction can affect the oft-quoted 'adhesive' nature of the domicile of origin.

What should taxpayers do?

The retention of a non-UK domicile of origin under common law is essential, not least for substantiating any claim for the remittance basis. This also applies in cases where deemed domicile status has been acquired and:

- the individual wants to rely on the provisions of an estate treaty between the UK and another country (such as India or Pakistan) which overrule the UK's deemed domicile rules;
- the individual wishes to benefit from the capital gains tax rebasing provisions if selling a foreign asset that was held when they became deemed UK domiciled on 6 April 2017; or
- the individual has settled a 'protected settlement' which attracts significant tax benefits and which can be lost in the event the settlor becomes UK domiciled.

Whilst the judgment in *Shah v HMRC* may be considered an easy 'win' for HMRC, its confidence in challenging domicile status will only increase following the outcomes in *Henkes* and *Coller*.

Domicile enquiries are unlike most other tax enquiries in that they involve extensive personal questions with the request for supporting evidence. Protracted correspondence can be exchanged between the taxpayer (or their adviser) and HMRC spanning several years. Furthermore, the financial and emotional cost of pursuing a domicile dispute at the First-tier Tribunal is not for the faint-hearted, given that one's life will be mapped out in the public arena.

Having a tax adviser who is familiar with dealing with domicile enquiries is key, because responding appropriately to what may seem an innocuous line of questioning requires in-depth knowledge of the relevant case law.

Any individual relying on their domicile status should be made aware of the current focus of HMRC in pursuing domicile enquiries and have their status reviewed thoroughly. As part of this review, contemporaneous evidence and any domicile opinions should be retained on file in the event of an HMRC enquiry.

Domicile enquiries which have become protracted or have reached an impasse with HMRC may require a different strategic approach, including the instructing of tax counsel or consideration of alternative dispute resolution.

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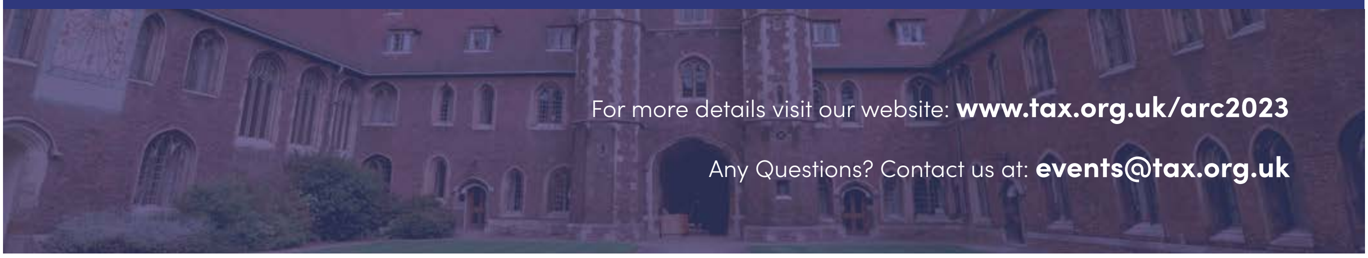

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In-house tax professionals

Keep the wheels turning

We explore the key skills required of in-house tax professionals: understanding how to operate commercially with an all-round knowledge of the business, adapting to change and enhancing systems.

by Will Foster-Kemp and Edmund Paul

No two years in tax are ever the same. With so much new legislation being introduced annually, increased scrutiny from tax authorities and alignment of tax rules across jurisdictions, the role of the in-house tax adviser is constantly evolving. The role demands new skills to be able to chart this complex course.

The pragmatist: operating commercially

An internal tax team has a huge task to undertake managing compliance across multiple jurisdictions and tax competencies. The landscape can quickly change as organisations rapidly make decisions and advisers cannot review every transaction. This leads to a natural question: how do you effectively manage tax risk? The answer is to operate commercially, a skill which has several facets.

Areas of potential risk

The first step is to invest time in getting to know the business(es) and their commercial drivers. This should allow the tax team to identify areas of greatest potential risk. Consider the business areas with the largest volumes and quantum of transactions. Ask whether another team already has ownership of that area and if up-to-date professional advice has been obtained.

Where a tax authority has a specific area of focus, this naturally increases its risk profile within the organisation and should be considered a priority risk area. Similarly, if a tax audit has flagged a tax risk in one particular country, this warrants greater attention being paid to that issue in other jurisdictions.

It is easier to manage tax risks before they crystalise into tax liabilities. Key to this is building strong internal networks and relationships, encouraging the business to proactively refer potential risks to the tax team. Identify key stakeholders and communicate with them regularly to understand their ongoing challenges and perceived areas of risk. Demonstrate value to the business by providing updates on key tax changes.

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Training sessions help to deepen relationships and allow the tax adviser to learn more about the business and educate staff on the potential cost of tax risks in their particular function. Providing clear instructions for the business without undue caveats ensures that tax is seen as part of the solution, rather than an unwelcome burden.

Using external advisers

You must also understand when it is necessary to engage external advisers. Internal budgets are limited, so it is not possible to obtain advice in every instance. However, you cannot know the intricacies of legislation in every jurisdiction so support is needed to bridge knowledge gaps.

Certain factors drive this decision. Where the potential tax liability is large, the value of tax advice is enhanced. It both demonstrates strong internal process controls and also mitigates the likelihood of tax authorities levying penalties for careless behavior. Advice can also provide certainty where there is limited tax authority guidance or the position is unclear. Where a clear risk is likely to crystalise, this can ensure the matter becomes a business priority and is resolved in a timely manner. This is particularly helpful when another team does not acknowledge the tax risk.

Assess your appetite for tax risk

The final step is understanding a business's tax risk appetite and how that impacts tax processes. Risk appetite can be driven by a number of factors, such as public reporting obligations, industry regulations or agreements with tax authorities (notably where a suspended tax penalty has been agreed and conditions must be followed). Risk appetite can also differ by jurisdiction, as tax authority scrutiny, employee headcount, maturity of the entities differ between countries. A business's tax risk appetite is not a static concept but can change as new legislation is introduced, tax authorities increase compliance activities or leadership priorities change.

The commercial application of risk manifests itself in a number of different ways. A business may prioritise speed of process or choose to internalise certain tax risks, as the overall cost to the business may exceed the tax and liabilities due. A legacy position may cause wider issues if unwound.

Overall, a commercial tax adviser acts as a partner to the business. They will understand that focus should be placed on material risks and provide pragmatic solutions to tax problems. This is a skill that benefits from experience both within the business and the role itself.

The all-rounder: providing deliverables

Tax teams are likely to become involved in a number of ad-hoc projects that require specific advisory skills. It is important to define the tax team's role in these projects from the outset. A project RACI (responsibility assignment) matrix can be drawn up to show who is responsible, accountable, consulted and informed – and be clear where the tax function sits within the project model.

Typically, tax is required to guide the business on options available, the consequences of decisions, quantify the tax exposure and show how any liability may be mitigated. This ensures that the project team can make an informed decision and obtain an increased budget where needed to cover additional tax costs.

Tax may need to supply data as part of these projects; for example, the total tax contribution made during the financial year for ESG reporting; how much of the apprenticeship levy has been utilised by the business; or modelling the financial impact of tax rate changes. It is important to understand the purpose behind the data to establish how it must be presented.

Where the data is used for statutory reporting, ensure that the data is suitably reviewed with robust evidence. Not having an appropriate review process in place can lead to unwanted statutory audit delays.

Within an organisation, stakeholders will have set their budgets at the start of the financial year. Where a project begins during a financial year, it is important to establish which team will own any adviser costs. Tax professionals can help by estimating the likely cost of support. It is also important to manage expectations, particularly the internal perception that tax advisers should know the intricacies of legislation in every country.

Finally, tax advisers within an in-house team need a broad understanding of taxation, extending beyond their particular tax competency. Many projects touch across all taxes, so you must be aware of the wider tax consequences of business decisions and refer questions to colleagues as required. Whilst experience does play a part, attending training and reading guidance provided by colleagues on similar questions can be critical.

The evolutionary: keep adapting

A tax team never stands still as new legislation is introduced and the business evolves. Keeping on top of changing legislation across jurisdictions can feel like an insurmountable challenge, but working collaboratively internally and with advisers can help ease this burden.

Regular catch-ups with colleagues in-country can help to highlight key changes – the HR, finance and country leadership teams are a great source of local knowledge. External advisers will also provide country updates across jurisdictions. Some tax authorities are collaborative and provide regular tax update webinars with relevant legislative changes.

Internal or external auditors can also flag potential areas of risk warranting further focus. Auditors are aggressively enquiring about tax affairs and large quantum payments to determine if they have been treated correctly. In these instances, where the item is inevitably included on a risk register, it can help to facilitate wider conversation and unlock budget to resolve the issue.

There may be personnel changes within the business. Working collaboratively with new stakeholders yields long term benefits and taking time upfront to upskill replacements minimises process disruption. New joiners will have new ideas and being open to these can enhance processes. It can also prove an invaluable metric in ensuring that internal processes are comparable to other businesses.

Personal development is also vital. Not every piece of advice or process will be perfect. Regularly obtaining feedback from stakeholders maintains a great level of service, highlights any implementation challenges and facilitates better decision making in future. Such conversations foster collaborative relationships, which leads to successful results.

The tax technologist: enhancing processes

Tax governance has become a key pillar for internal tax teams, creating a statutory requirement to monitor tax compliance and mitigate tax risks. Tax technology increasingly plays a key role in achieving these aims:

- Automated processes reduce the requirement for manual interventions and opportunities for human error.
- Preparing tax filings from a single source of truth reduces the risk of misaligned filings and the time spent on data analysis.
- Technology can enhance tax compliance and visibility. Many solutions offer automated filing deadline prompts or highlight high-value transactions requiring tax consideration.
- Technology can also help to manage processes, ensuring consistency and providing evidence that processes have been followed.

- Finally, tax is becoming more real time in nature. Good quality systems and data are becoming a business necessity.

A tax professional involved in technology projects must have a detailed knowledge of existing processes. You must understand the purpose of the process, the types of data currently being collated, gaps in the manual process and what efficiencies can be achieved via automation. Without this groundwork, it is not possible to assess the benefits of automation and build a successful business case.

Technology, whilst helpful, is often not a one-stop solution to all tax problems. Professionals need to co-ordinate with external providers to understand system capabilities and compare these to business requirements. Where there are limitations, most commonly where existing systems cannot interact directly with the proposed solution, a suitable workaround must be found.

Tax technologists also need to be effective communicators. A new system requires the time and resources of many teams, so being able to build a convincing business case may make or break a project. Consider how the system will be used so that training can ensure stakeholders can utilise any solution from day one.

Finally, a system change may be perceived as a hindrance to stakeholders who do not directly benefit and may result in the solution being ignored. Tax technologists must have appropriate discussions and accountabilities to ensure this does not happen.

Once a system becomes embedded, you must continue to monitor its outputs to ensure accuracy. Any statutory returns produced by the system should also be reviewed by a qualified tax professional to ensure they are correct. Where legislation changes, systems also need to be updated. Most updates happen automatically, particularly if cloud-based. But where an internal system connects directly to an external solution, care must be taken to ensure any updates do not misconfigure these links.

Overall, the mark of a tax technologist is being able to simplify difficult tax concepts into manageable steps that are compatible with IT systems and are easily understood by the business.

Conclusion

Working in-house is as challenging as it is rewarding. The skillset required to successfully manage the role can be diverse, and perhaps daunting when first making the transition from working in practice.

Constantly evaluating the skills that are required for your role and developing your network with the business and advisers is essential for maintaining the brilliant service that stakeholders demand from in-house tax professionals.

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Sustainability and tax
Sharing the load

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As the scale of the challenge needed to tackle climate change reaches unprecedented heights, we share a personal view on the role that tax strategies could play in building a sustainable future.

by Mark Feldman

Key Points

What is the issue?
Part of the transformation required by the need to build a sustainable future leads us to ask some fundamental and difficult questions about the role of business and tax in society and the very nature of our tax systems.

What does it mean to me?
In the UK and EU, the majority of tax revenues come from labour taxes, whereas only about 6% come from environmental taxes.

What can I take away?
Tax functions will need to learn a new sustainability lexicon to enable tax's essential role in supporting environmental mitigation and adaptation efforts.

In my experience working in the tax functions of FTSE 100 companies, in professional service firms and speaking to other tax professionals, the average tax function has tended not to dwell on the existential questions posed by our need to build a sustainable future. However, I believe we are all starting to recognise the scale of the transformation required of us as a society. Part of that transformation requires us to ask some fundamental and difficult questions about the role of business and tax in society.

We must put the scale of the challenge in perspective. During Covid lockdowns, when personal freedoms were severely curtailed, CO_2 emissions fell only by about 5.5%. Moreover, NASA reported that atmospheric levels of CO_2 actually continued to grow that year, not fall. Yet to reach Net Zero by 2050, we need to reduce global emissions by about 7% every year between now and then. Just think about the scale of disruption needed to deliver this existential goal.

A tax strategy shift

CEOs are increasingly factoring environmental, social and corporate governance (ESG) into their strategic decision making. In a recent outlook survey, over 80% of CEOs ranked ESG factors as more important even than revenue growth, return on capital or costs. Perhaps this is not surprising, as they will increasingly be held to account for their NetZero commitments and science-based targets. Every business will need a new holistic strategy infused throughout with sustainability. This strategy will shift capital to catalyse business model transformation at a pace and scale not seen before.

These issues now need to feature in tax teams' thinking. Tax functions will need to learn a new sustainability lexicon and will need to be mindful of over 3,000 environmental taxes and exemptions that that have been introduced globally – with no doubt many to come.

I will make the case for tax to be at the centre of efforts to meet the existential challenges that come from building a sustainable future. Understanding how a business fits within the socio-economic landscape will help tax functions provide essential support to the adaptation and mitigation efforts needed.

The Great Acceleration

The Great Acceleration covers the complex set of human-driven changes which have intensified dramatically since 1950, leading scientists to consider that earth has left the uniquely stable geological Holocene era, which lasted for around 12,000 years. It can be illustrated through the research of the International Geosphere-Biosphere Programme showing both Socio-economic and Earth System trends (see tinyurl.com/28jp972c).

Looked at another way, Earth Overshoot Day – the date in the year when our collective demands on the planet exceed its biocapacity to replenish itself – has been getting earlier each year. In 2023, Earth

Overshoot Day is 2 August – which means that as you read this, as a species we have already extracted more this year than the planet can sustain.

Climate scientists have tried to map this territory across nine planetary boundaries, which define the environmental limits of the critical earth systems within which humanity can safely live. By 2015, scientists had established that four of these had already been breached: climate change, biodiversity loss, land-system change and biogeochemical flows (nitrogen and phosphorus). In 2022, the boundary for novel entities (pollutants such as plastics and chemicals) was also found to be outside the safe zone. The boundaries for freshwater, ocean acidification and ozone levels are still within safe operating limits, while the boundary for atmospheric aerosols has not yet been quantified. Human actions in the next few years could have lasting impacts on the planet for centuries if not millennia.

Humanity can still make a positive difference on a planetary scale, with a plan based on the 17 Sustainable Development Goals published by the United Nations in 2015 and developed with input from governments, business, academia and non-profit organisations. The Sustainable Development Goals seek a sustainable future by ending poverty, fighting inequality and tackling climate change. They define the agenda for inclusive economic growth to 2030.

The role of the tax system

It is in the interaction between the 17 Sustainable Development Goals and the planetary boundaries that tax's role becomes clear. Economist Kate Raworth describes this interaction as part of Doughnut Economics. The doughnut consists of two rings – a social foundation (below which people will fall short of life's essentials) and an ecological ceiling (beyond which the planetary boundaries are breached). Between these two boundaries lies the doughnut-shaped space in which humanity can thrive.

Tax has a key role to play at both edges of the doughnut. It is a major contributor to our global social foundation through redistribution. It also catalyses investment and innovation, which supports the regeneration of earth systems by driving behavioural change towards clean technologies and disincentivising polluting activities.

> **The Temporary Crisis and Transition State Aid Framework is aimed at incentivising clean tech investments in Europe.**

There are ten years of investment incentives offered by the US Inflation Reduction Act. $369 billion of tax credits are available for 'green investments'. Hundreds of companies have announced additional US investments since the law passed in 2022.

The EU – which wants to be the first carbon-neutral continent – is already responding through its Temporary Crisis and Transition State aid Framework (TCTF), which is aimed at incentivising and retaining clean tech investments in Europe. The Framework will operate until the end of 2025 and loosens EU state aid rules to allow EU states to offer 'matching aid' to companies where it is likely they would otherwise relocate outside the EU due to foreign subsidies.

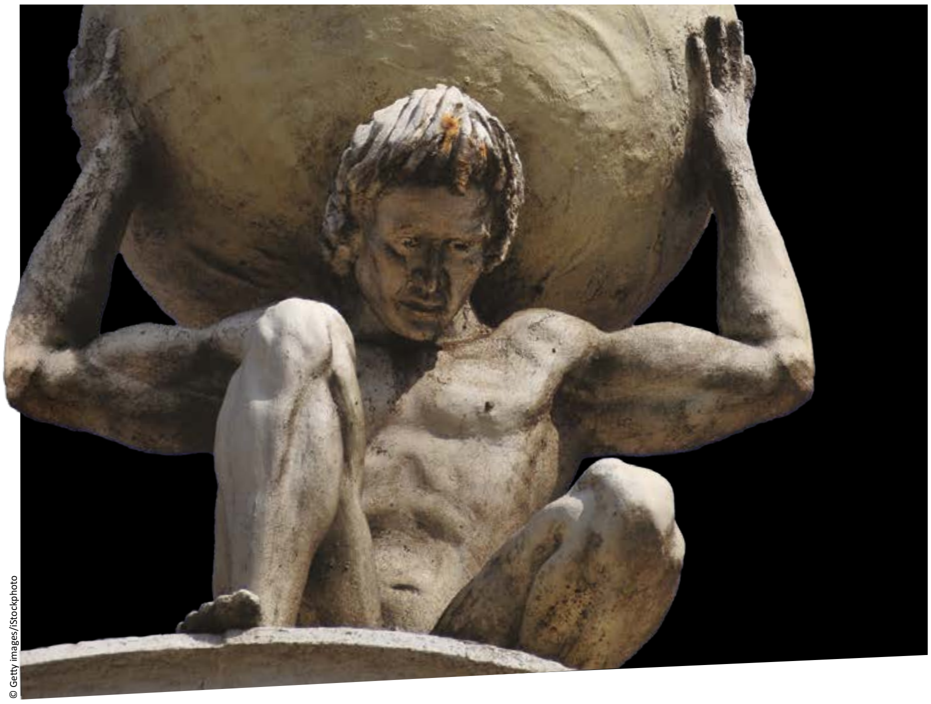
EY tracks nearly 2,000 sustainable incentives globally – encouraging a mix of mitigation and innovation. This number is likely to increase as the OECD's Pillar Two initiative will restrict countries' ability to compete through low headline tax rates. Above-the-line incentives that are qualifying refundable tax credits (QRTCs) will have limited dilutive impact on GloBE (global anti-base erosion) rates and will therefore become increasingly effective levers for countries to encourage inward investment.

The levels of investment needed are colossal, with some estimates of around $200 trillion in capital investment needed by 2050 just for Net Zero. This equates to around $7 trillion per year. (As a marker, during 2020 central banks increased their balance sheets by about $7 trillion globally to support their economies through Covid).

Accounting for investment

Huge upfront capital investments with long-term paybacks do not play well to the net present values (NPVs) of investment cases. Many green investment cases may be uncompetitive or marginal on a purely

UNITED NATIONS: 17 SUSTAINABLE DEVELOPMENT GOALS



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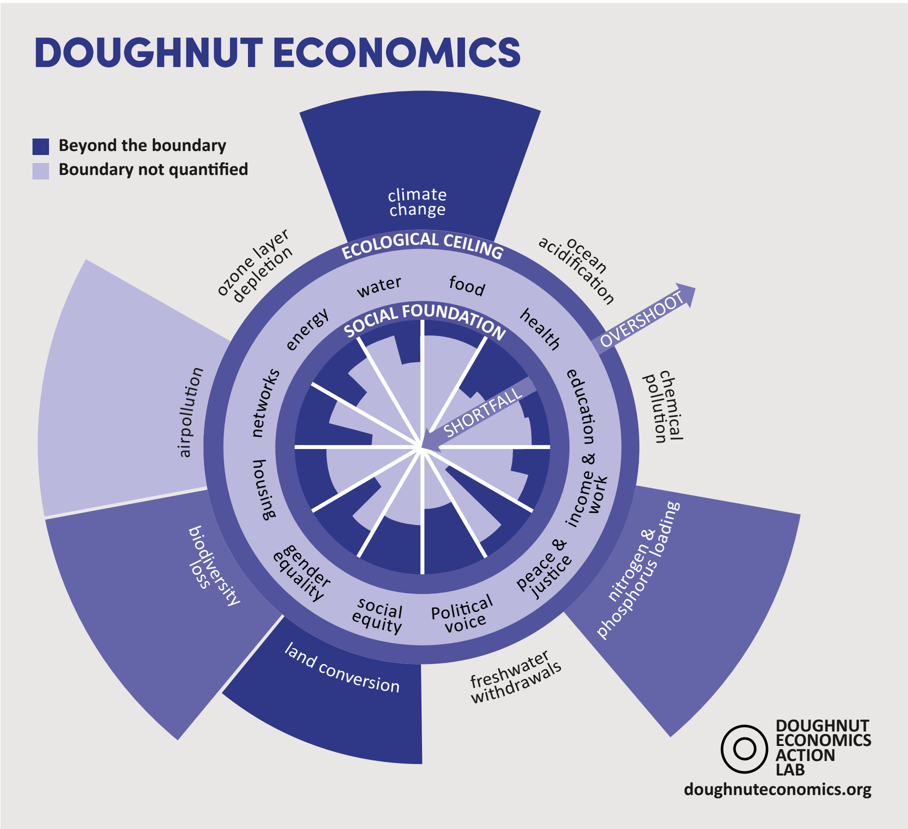

financial basis – even with tax incentives. This has led to calls to overlay qualitative non-financial measures, but if the financials are unattractive, short-term pressures will usually militate against qualitative overrides.

Discount rates are essential to arriving at NPVs. They are used to express future financial costs and benefits at their present value. A discount rate of 2% means that a project which would yield a benefit to society of $1 million in 50 years has a present value of about $371,500 today. At a discount rate of 5%, the present value would be around $87,000.

In effect, this means when evaluating the project's benefits, Person A alive today is treated more favourably than Person B living 50 years from now. In fact, Person A's needs today are treated as 2.7 times as valuable (at a 2% discount rate), or 11.5 times as valuable (at a 5% discount rate) as those of Person B living in the future. To put it more starkly, is a human life today really worth 11.5 lives of humans living 50 years from now?

So some investors are considering whether to use lower discount factors in their financial models to try to make some adjustments for intergenerational equity. Others argue that we should be adopting a different paradigm entirely – one that embodies seventh-generation decision making; i.e. decisions based on their impact 200 years or more into the future. Is now the time for humankind to think of itself as 'stewards of creation' for our descendants?

A question of tax

Whether or not such a paradigm shift is likely, there are still questions regarding what should be taxed in transitioning to a sustainable, thriving society. In the EU, the majority of tax revenues come from labour taxes, whereas only about 6% come from environmental taxes. At a time when generative AI is predicted to automate huge swathes of the labour market, is it sustainable long-term tax policy to incentivise investments in automation at the expense of employment? Femke Groothuis of Ex'Tax, in a report supported with contributions from all the Big Four accounting firms, has advocated for a Tax Shift. The basic principle is to lower the tax burden on labour and increase taxes on pollution and resource use. This approach is supported in the EU Green Deal which commits to 'create the context for broad-based tax reforms … shifting the tax burden from labour to pollution'.

This thinking is being put into practice. We are seeing more taxes on pollution as packaging taxes and recycling levies proliferate. The EU Carbon Border Adjustment Mechanism (CBAM) comes into effect on 1 October 2023, and there are now around 70 national or sub-national jurisdictions that are pricing or taxing carbon – with many more regimes anticipated.

I will explore these regimes, other specific environmental taxes and the circular activities that the Tax Shift seeks to encourage in future articles.

The author's views are his own and not necessarily representative of those of EY.

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WELCOME

September Technical newsdesk

It has been a while since I have talked about HMRC's service levels. This is not because we have forgotten about them, or given up. They remain 'front and central' in our engagement with HMRC. You may be aware that our President Gary Ashford and Immediate Past President Susan Ball discussed the issue with HMRC's Chief Executive and Deputy Chief Executive last month and have a follow up meeting scheduled for October.

Many of you have completed our recent survey on HMRC's service levels. We received over 750 responses, and thank you to those who took the time to respond. We have shared the results of the survey, and are discussing them, with HMRC. There are no surprises regarding the general themes: the ability to get through to HMRC, the level of tax technical skills within HMRC, response times, etc. However, there are several results that we hope will provide useful feedback for HMRC.

Webchat: We are becoming familiar with the increasing 'channel shift' by HMRC, moving people away from phones and onto digital interaction, such as self-service on GOV.UK, or webchat. In our survey, when compared to the agent dedicated line or to HMRC's general phone lines, webchat achieved the lowest satisfaction rates. Nearly half of respondents said that when using webchat they got through to HMRC less than 25% of the time; nearly a third typically had to wait over 45 minutes to do so; and two-thirds rated the service as 'poor' or 'extremely poor'. The actual resolution rate was also low, with nearly half of respondents saying that it resolved their issue less than 25% of the time. If webchat is to replace telephone contact, it needs to be quicker and more effective.
Digital functionality: When asked about their reasons for contacting HMRC by phone or webchat, nearly 90% of respondents said these could not be resolved using HMRC's online services or third-party software. However, 80% said they would use HMRC's online services or third-party software to deal with the issue if they could. So there is an appetite for digitalisation. Indeed, with the exception of the new VAT registration service, satisfaction with HMRC's online services was typically 'good' or 'adequate'.
Wider impact of HMRC service levels: The majority thought that good HMRC service levels have a significant positive impact on the ability to do business, the costs of doing business, attitudes to tax compliance and trust in the tax system, to highlight just a few. Conversely, a greater majority thought that poor HMRC service levels have a significant negative impact in those areas.

And, finally, to Making Tax Digital (MTD), and the repeated messaging from HMRC that it will free up time to help businesses grow. We report on our MTD survey below, which largely contradict this claim. Our service levels survey results suggest that growth would be better delivered through a more effective and responsive tax authority. I think an unfortunate consequence of the time we rightly spend on both service levels and MTD is that it can distract from the breadth of engagement we have with HMRC and policymakers.

Reviewing this month's Technical Newsdesk reminded me of wide range of work that the technical teams undertake – sometimes considered 'niche', but no less important if you operate in that field. It is welcome that we have the ear of the most senior people in HMRC on the impact of their poor service levels, but it is important that we do not lose sight of the role we play across the board as the leading voice in tax.

NEWSDESK ARTICLES

Contact

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GENERAL FEATURE

Progress with Making Tax Digital

The CIOT, ATT and LITRG have published their responses to the Public Accounts Committee's inquiry Progress with Making Tax Digital.

In May, the Public Accounts Committee (PAC) opened an inquiry entitled 'Progress with making tax digital' (MTD) (tinyurl.com/bdhjy7z7). The CIOT, ATT and LITRG each provided written evidence to the inquiry. Parliamentary rules prevented us from publishing this evidence until the PAC had done so.

CIOT response

We reiterated our position that, in principle, digitalisation offers the best way to improve the efficiency and effectiveness of the tax system, improve HMRC's performance, and enable them to provide better support for taxpayers trying to do the right thing. But again we emphasised that it should be allowed to grow organically, with systems that are attractive enough for businesses to choose to migrate to them, as has happened with online filing more widely.

We stated that failure to consult properly on MTD has directly contributed to its delays, rescoping and large-scale resistance to its requirements. Many see these requirements as unnecessary or unduly onerous.

We agreed that the decision in December 2022 to further delay and rescope the policy was necessary, reflecting the lack of testing, awareness and functionality at that stage. However, we said that decision should have gone further. While we welcomed the commitment to consult on the needs of smaller businesses, we believe the government should be consulting on the fundamentals of MTD. It is not apparent that the 'business case' for MTD, to the extent that it existed in 2015, still exists. Notwithstanding the deferral, the revised timetable remains extremely challenging, with major issues still to be overcome.

We also called for an in-depth evaluation of MTD for VAT, involving real business data. There is a lack of compelling data to demonstrate that MTD is reducing the tax gap and delivering efficiencies for businesses. Until this is available, progressing with MTD for Income Tax Self-Assessment (MTD for ITSA), with its associated costs for taxpayers, agents and HMRC, seems imprudent.

ATT response

We stated that the MTD programme has achieved very few of its stated goals, since the vision to digitalise the UK tax system was first announced in 2015. Therefore, the benefits promised by MTD have not been realised to any meaningful extent. Even in respect of MTD for VAT, which was fully implemented three years later than planned in 2022, there is no consensus on whether the user experience and economic benefits are positive. Feedback presented by HMRC is significantly more positive than the experiences reported by our members (see comments on our survey below).

We agreed that postponing the introduction of MTD for ITSA until 2026 at the earliest was a welcome decision, given the lack of progress to date. Whether or not the revised timetable is itself deliverable will depend on a number of factors, including public awareness, scepticism as to whether MTD will ever happen, technical complexities and HMRC resources. It is, however, encouraging that HMRC are engaging proactively with stakeholders to capitalise on the additional time available to address the significant challenges which remain. We welcome the level of engagement we receive from HMRC, and the recent willingness to listen to alternative ideas as to how MTD can be delivered.

Overall, whilst we welcome digitalisation for record keeping, and its role in the modernisation of the tax system overall, we remain concerned about the deliverability of the MTD programme, and its benefit (at least as currently proposed) to many taxpayers.

LITRG response

In our evidence, we challenged how realistic some of the apparent benefits of MTD would be for those on the lowest incomes. For example, there is likely to be as much confusion about in-year tax estimates as there are benefits, and the productivity benefits for those on low incomes are unlikely to be significant.

We highlighted the need to design a strong support model for unrepresented taxpayers as MTD progresses, because the amount of help required by small businesses will be considerable.

As part of HMRC's review of MTD for those with annual turnover below £30,000, we urged consideration of key issues such as the mandation threshold, provision of free software and need for quarterly updates. We also warned of the practical issues that need to be overcome before April 2026, such as allowing time for comprehensive testing.

The CIOT's full response can be found at: www.tax.org.uk/ref1146
The ATT's full response can be found at: www.att.org.uk/ref431
LITRG's full response can be found at: www.litrg.org.uk/ref2780

CIOT and ATT survey

To inform our ongoing engagement with HMRC on MTD, we recently carried out a survey to obtain members' feedback. The results can be found on the CIOT (tinyurl.com/4tzk5y25) and ATT (tinyurl.com/ycwkytkn) websites, and reinforce much of the evidence set out above. We have shared the results of this survey with HMRC.

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GENERAL FEATURE

Creating innovative change through new legislative pilots

The CIOT, ATT and LITRG have responded to a recent HMRC consultation exploring a new testing approach using a 'sandbox' pilot model, which could give HMRC the legislative ability to gather the evidence needed to make informed policy changes.

The sandbox piloting approach being explored is defined in the consultation document as 'a temporary environment where HMRC could conduct tests of new policy and processes which suspend, implement, ease and/or harmonise legal obligations. This could be for a distinct group of people or sector for a defined period of time and would be accompanied by appropriate safeguards and guidance.' The outcomes would then be evaluated to inform future decisions on adopting the change permanently.

CIOT response

The CIOT supports in principle the idea of HMRC developing an innovative approach to the development of new tax policy and legislation and trialling new processes. However, we think the 'sandbox' piloting approach could give rise to problems, particularly if it was run as a parallel tax or penalty system, rather than being treated as a trial involving a small number of taxpayers. In our view, participation in a pilot should be voluntary, no-one should end up in a worse position because they participated in it, and any adverse tax, interest and penalty position should be promptly corrected by HMRC. Also, participants (and their advisers) should be compensated for any costs incurred as a result of them being in the pilot. It is essential that existing taxpayer safeguards are protected within the sandbox environment.

If the results of a pilot indicate to HMRC that legislative change is desirable in a particular area of the tax code, that change should be follow the usual consultation process, and then be considered by Parliament during the legislative process. Equally, we think sandbox testing could be undertaken as part of the consultation process itself. But a sandbox should not be a short cut to enacting or introducing new rules without any external scrutiny, nor should it remove the need for proper piloting where there is a large scale system change, such as Making Tax Digital. Its value potentially lies in exposing issues in the early stages of policy development and helping HMRC to assess whether a policy idea is workable and likely to have the desired effect before it becomes 'baked in' and consequently harder to deviate from.

LITRG response

The Low Incomes Tax Reform Group's (LITRG) response highlights concern that implementing and operating sandboxes in practice presents challenges which do not have easy solutions. For example, the response states that sandbox participation should, in general, require taxpayer consent – but notes that this might mean the population of sandbox participants is too small and/or not representative enough for HMRC to draw useful conclusions.

There may, however, be statistical approaches to compensate for this – and in very limited circumstances there might be an argument for some form of mandatory participation depending on the pilot concerned (for example, where a policy was certainly going to progress in broadly similar form and where ultimately the whole population will be affected). However, mandatory participation would need to be accompanied by robust safeguards, support and controls.

The response also discusses the difficulty of maintaining fairness between sandbox participants and non-participants, and highlights the necessity of providing suitable support to sandbox participants (especially those who are unrepresented). It also notes that the question of fairness might be considered both ways: the sandbox environment might be favourable or not favourable compared with the position outside it. Finally, any safeguard that protects the taxpayer from additional tax, penalties or interest as a result of being in the sandbox should not rely on HMRC discretion – the safeguard should be an accessible legal right.

ATT response

The ATT agrees that might be helpful to test new ideas or processes on smaller groups before expanding to the wider population. However, we are yet to be convinced that the proposed approach of legislative sandboxes is the next step in solving the problems of testing new systems. There are a number of other aspects of the process of testing and developing policy which we think could be usefully explored and developed, with more time spent on policy design, supported by thorough consultation, before the testing of systems and processes commences.

One way in which we think this approach could be more usefully used is to protect those who cannot immediately access HMRC systems on launch. Instead of a *testing* sandbox, this would be a *shielding* sandbox, giving HMRC the powers to grant exemptions or exclusions for those who cannot immediately access new systems or processes.

We agreed with the CIOT that participation should be voluntary and suggested that there should be permitted opt outs, as are currently provided in jury service. We also consider that an independent oversight board would be a welcome safeguard.

The CIOT's response can be found at: www.tax.org.uk/ref1144
LITRG's response can be found at: www.litrg.org.uk/ref2785
The ATT's response can be found at: www.att.org.uk/ref427

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GENERAL FEATURE

The Tax Administration Framework Review: information and data

The CIOT, ATT and LITRG have responded to a HMRC consultation looking at opportunities to update HMRC's third-party data gathering powers and their information powers.

The consultation document considers: the use of third-party data by HMRC; pre-population of tax returns; who is responsible for the accuracy of the data; what processes should challenge and resolve discrepancies in the data; and HMRC's 'Unique Customer Record' programme to help assist data-matching. It also covers standardisation of information and data provision by third-party data holders, primarily under FA 2011 Sch 23.

FA 2008 Sch 36 concerns the issue of information notices requiring a taxpayer or third party to provide HMRC with information, data and documents, which allow HMRC to check an individual's tax position. The consultation document considers current challenges that have been identified by HMRC and discusses various suggestions which they consider might help to improve and update the process.

CIOT's response

The CIOT supports HMRC making better use of third-party data. As we move towards increased digitalisation of the tax system and the economy in general, a taxpayer should not have to give HMRC information that they already have in their possession if they have received that data from elsewhere. This could be potentially useful in the future for schemes such as Making Tax Digital. It will be important that the data provided to HMRC by third parties is accurate, and any scope for error in either the figures provided or in matching the data to the correct taxpayer is minimised.

In our view, the principle that UK taxpayers are responsible for the overall accuracy of their own tax return(s) should be retained. Clear guidance will need to be provided so the taxpayer knows that they need to check the data, and that they understand how to correct it if it is inaccurate. If there are discrepancies or misallocations, it should be easy for the taxpayer to correct any inaccuracies.

Any changes to HMRC's data-gathering and information powers should also fulfil the government's aims of simplifying and modernising the tax system and be directed at specific needs. A more flexible approach may be suitable for their third-party bulk data gathering powers, but we believe a more prescriptive approach is best for their more ad hoc information powers to allow sufficient parliamentary oversight while maintaining safeguards for taxpayers and third parties.

ATT's response

The ATT recognises that with the increases in digitalisation more data and information can be provided by third parties to HMRC and ultimately pre-populated into a taxpayer's tax return. We consider that the ultimate responsibility for the completeness and accuracy of the Self-Assessment tax return should remain with the taxpayer. It is important that taxpayers have access to clear, simple and timely processes to challenge and correct errors made by HMRC systems/processes – or indeed by the third party themselves. Whilst supporting ways to assist and accelerate the transfer of third-party data and information to HMRC, we also caution against extending existing legislation into areas where it was not originally intended.

LITRG's response

The LITRG is broadly supportive of HMRC making more use of third-party data and pre-population, as this has the potential to improve the taxpayer experience with HMRC. While we think the taxpayer should remain responsible for the accuracy of their final tax return, there nevertheless needs to be a review of the balance of responsibilities between the tax authority, the taxpayer and the third-party data provider in the light of greater use of pre-population.

In order for the taxpayer to be in a position whereby they can be responsible for the data populating their tax return, third parties should be obliged to provide a copy of the data that they provide to HMRC to the taxpayer, independently.

It is essential that there are clear, agreed processes for taxpayers to challenge the data that third parties provide to HMRC, the data that HMRC use (if that appears to differ) and if the taxpayer thinks that HMRC have misused the data provided.

We note that it is important that there is public education as to what data HMRC hold about them and collect. In addition, where the data is sensitive, there needs to be consideration as to whether taxpayer consent should be required to allow HMRC to collect it and hold it.

The CIOT's response can be found at: www.tax.org.uk/ref1132
The ATT's response can be found at: www.att.org.uk/ref426
The LITRG's response can be found at: www.litrg.org.uk/ref2786

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GENERAL FEATURE

Tougher consequences for promoters of tax avoidance

The CIOT, LITRG and ATT have responded to a recent consultation which proposed introducing a new criminal offence for promoters of tax avoidance schemes and expediting the disqualification of directors of companies involved in tax avoidance.

CIOT response

In its response, the CIOT reaffirmed its support for the government in taking a robust approach to those who continue to devise, promote or sell tax avoidance schemes. There should be no place for such people and their schemes in the tax services market. However, we have very serious concerns with the proposal in this consultation document to introduce a strict liability criminal offence for promoters who continue to promote tax avoidance schemes after being issued with a stop notice by HMRC.

Any new criminal offence is a serious matter and needs particularly careful scrutiny. That is all the more so where the offence is, as here, a strict liability offence – where the prosecution is not required to prove dishonest intent and guilt is established by commission of an act (in this case, continuing to promote the scheme subject to the stop notice). This is particularly important where government officials have the de facto power to decide what is and what is not a criminal act without any external scrutiny. In our view, the proposal places too high a level of reliance on HMRC's internal governance process.

Using the existing safeguards which were designed for a regime attracting civil financial penalties, rather than criminal sanctions, will not be adequate. We suggest that at the very least there should be two levels of stop notice – the existing civil one and a new criminal stop notice. The latter should require an enhanced level of authorisation within HMRC and some form of external scrutiny before it can be issued.

As currently proposed, a person commits the offence even if the courts ultimately decide that the scheme covered by the stop notice did deliver the promised tax advantage. We think that legislation that could produce this outcome would not be fit for purpose.

We also have doubts about how effective the measure will be in deterring promoters from continuing to promote their schemes, all the more so because many of them are based offshore and it is unclear how this offence will impact upon them.

LITRG's response

LITRG's response focused on HMRC's proposals to expedite the disqualification of directors, given the problem of young, inexperienced or otherwise vulnerable individuals being recruited by tax non-compliant umbrella companies as nominee or stooge directors.

We tell HMRC that people who have been recruited as directors for a fee, and who are not really the ones in charge but are just desperate for the money, could find themselves caught up in this, with the problem being that disqualification has wide ramifications that can seriously impact on their lives.

We say it is vital that HMRC recognise the issue and have strong internal governance structures in place to ensure that the stooge or nominee directors are weeded out where it is clear that there is little or no understanding or involvement in day-to-day operations – before disqualification action is initiated. As well as responding to HMRC's consultation, LITRG issued a press release warning people on lower incomes of the potential risks when answering an advert to become a director of a company in exchange for a fee.

ATT's response

In its response, the ATT wholeheartedly agrees that there is no place in society for those involved in the creation, promotion and sale of tax avoidance schemes and fully supports the government's work to deter, disrupt and otherwise frustrate promoters of tax avoidance. However, a criminal sanction will only be a deterrent to the extent that it is enforceable in the country in which promoter organisations reside.

We also consider that, given the severity of a criminal conviction, the opportunity should be taken to review the promoters of tax avoidance schemes legislation in its entirety and strengthen the safeguards around the use of stop notices by building in independent oversight and operational transparency.

In relation to director disqualifications, we are calling for appropriate training and the dissemination of more promotional material on director's fiduciary duties.

The CIOT's response can be found at: www.tax.org.uk/ref1127
LITRG's press release (with a link to the consultation submission) can be found at: tinyurl.com/35wyrhmh
The ATT's response can be found at: www.att.org.uk/ref428

Draft legislation introducing the criminal offence and director disqualification measures was published on 18 July 2023 (see tinyurl.com/zmm6jurz) less than a month after the consultation closed on 22 June.

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INDIRECT TAX ENVIRONMENTAL TAXES

Addressing carbon leakage risk to support decarbonisation

On 30 March 2023, HM Treasury and the Department for Energy Security and Net Zero launched their consultation, 'Addressing carbon leakage risk to support decarbonisation', which sets out the measures under consideration that seek to encourage the decarbonisation of UK industry as part of the UK's journey to net zero by 2050.

The measures under consideration in the consultation (tinyurl.com/3jhd4vn5) include:

- Carbon leakage policy: carbon leakage is the process where businesses move carbon-intensive production and their associated emissions from their established location to an overseas country with less stringent climate policies; hence such emissions fall outside of local net zero measures.
- Carbon border adjustment mechanism (CBAM): a charge levied on imported goods based on an embedded carbon emissions value.
- Mandatory product standards: product regulations that set minimum expectations on the pace of decarbonisation in targeted manufacturing sectors and prevent the highest carbon products being in the UK market, undercutting lower carbon alternatives.

Debating the issues

To consider the consultation questions, the CIOT partnered with the Institute of Fiscal Studies to host a virtual debate 'Carbon Border Adjustment – what approach should the UK take?' (tinyurl.com/33922zer). Speakers from backgrounds in UK public policy, international academia and UK industry discussed issues arising from potentially introducing a CBAM in the UK. Some points raised on the proposed CBAM, such as expanding the products to which it applies, were included in the CIOT's response (www.tax.org.uk/ref1117).

The CIOT also said that if any of the proposed measures under consideration were to be introduced, we would like to see the introduction of estimation rules, particularly if the business must rely on overseas third parties to provide evidence to reduce the issue of data gaps.

Emissions Trading Schemes

Currently, the UK, the EU, China, Canada and New Zealand already have Emissions Trading Schemes (ETS) that provide allowances to carbon heavy sectors and can include power stations, heavy industry and aviation. The EU's ETS will be gradually phased out and superseded by a CBAM, and the consultation asked whether the UK should also do the same. If a UK CBAM is introduced, the CIOT said that the UK too should phase out its ETS, so that affected businesses are not subject to two decarbonisation regimes.

Tax planning for decarbonisation

Our response repeated our earlier calls for the UK government to create a climate change tax roadmap (tinyurl.com/bdf6ydwu) to assist in providing certainly in its medium to long term net zero and decarbonisation tax policy, so that businesses so that they can plan accordingly. We note that in the Climate Change Committee's 15th annual progress report to Parliament (tinyurl.com/3dacpre2), the committee mentions that there has still been little progress on one of their recommendations to 'undertake a review of the role of tax policy in delivering Net Zero'. We hope that this consultation will be the start of such work being undertaken.

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EMPLOYMENT TAX

Off-payroll working: calculation of PAYE liability in cases of non-compliance

The CIOT has supported proposals to allow a set-off for taxes already paid by a worker/intermediary against taxes due from a deemed employer in off-payroll working compliance settlement cases.

The CIOT has responded to a HMRC consultation proposing a legislative change to allow HMRC to take into account taxes already paid by a worker and/or their intermediary (typically a personal service company) when calculating PAYE/NIC due from the deemed employer, where the end client has mis-categorised a worker's deemed employment status as outside the off-payroll working (OPW) rules when it is subsequently agreed that they should have been within the OPW rules.

In effect, under the proposed set-off approach the PAYE income tax and employee NICs liability would be shared between the client (deemed employer), the worker and the worker's intermediary, rather than the client bearing all the liability while the worker and their intermediary are entitled to reclaim taxes already paid.

The solution proposed in the consultation document is a set-off approach, similar to the offset permitted for taxes, including corporation tax and NICs, that have already been paid by a worker/their intermediary in PAYE compliance settlement cases (see Regulations 72E-G of the PAYE Regulations 2003 (SI 2003/2682)). The CIOT were supportive of this approach, having previously suggested something along these lines for ease of administration and fairness.

In our opinion, a set-off approach would be much fairer than HMRC's current approach of notifying affected workers and intermediaries of the status recategorisation and then requiring the worker or their intermediary to recalculate their taxes, amend tax returns and submit claims for overpayment relief.

In our response, we also agreed that HMRC should have some flexibility in determining the amount of the set-off, including estimating the amount from information and data at its disposal. However, we recommended that this should be tempered with a right for the deemed employer to challenge HMRC's calculations and provide more accurate figures if it can obtain the necessary detail from the deemed worker and their intermediary.

If adopted, the legislation for this new approach will take effect from 6 April 2024 in relation to all open compliance settlement cases. While we agree with this, we have suggested early confirmation that the new approach will be legislated for, and also confirmation that ongoing compliance cases can be provisionally negotiated on the basis of this new approach being adopted. This is to avoid current cases being stalled while we wait until next April to negotiate the set-off and pay the resultant net liability.

The full CIOT response can be found here: www.tax.org.uk/ref1129

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LARGE CORPORATE INDIRECT TAX EMPLOYMENT TAX PROPERTY TAX

Simplifying the Construction Industry Scheme

The CIOT responded to the recent consultation that looks at simplification of the Construction Industry Scheme and adding VAT to the statutory compliance test for gross payment status.

The consultation considered three proposals.

Adding VAT to the list of taxes for the statutory compliance test for the granting or retaining of gross payment status for the Construction Industry Scheme (CIS)

We agree that the gross payment status test will be strengthened by including VAT. However, we are very concerned to ensure that genuine and minor VAT errors or delays should not exclude an applicant from gross payment status or remove existing gross payment status; and that existing safeguards for direct taxes in the current compliance test should also apply for VAT. We noted that loss of gross payment status has significant cash flow implications for businesses, particularly for smaller businesses operating on narrow profit margins.

GENERAL FEATURE PERSONAL TAX OMB

Cryptoassets decentralised finance consultation

The CIOT and ATT have responded to the second consultation by HMRC on the tax treatment of decentralised finance lending and staking of cryptoassets.

Back in July 2022, HMRC issued a call for evidence on the tax treatment of decentralised finance (DeFi) transactions, considering if and to what extent the staking and loaning of cryptoassets should be subject to capital gains tax (CGT). Three alternative suggestions were made: applying repo and stock lending rules to these transactions; treating such transactions as 'no-gain/no-loss'; and creating an entirely separate set of rules for DeFi transactions. The joint CIOT and ATT response was in favour of the third of these options. Whilst the other two would be an improvement, they would do little to reduce the administrative reporting burdens for taxpayers and agents. We went further by restating our view that specific legislation is needed for cryptoassets generally – not just for DeFi transactions.

In April 2023, a further consultation was released, containing draft rules proposing to disregard CGT when a cryptoasset is disposed of as part of lending or staking (or exchanged for a token representing the right to return) and where there is a right to withdraw at least the same quantity of the same type of tokens. This is more in tune with the economic reality of DeFi investment, with tax only applying once cryptoassets are converted into fiat currencies or other cryptoassets, and we were in favour of the draft proposals.

A further aspect was the tax treatment of the 'rewards' (that is the returns) from staking. The current position is rather confusing, with both capital and revenue tax treatment being a possibility. To date, our preference has been for capital treatment. This would reduce the administrative burden of having to isolate and report the rewards separately from the principal and further reflect the reality of DeFi investment which usually involves re-investment of the rewards. However, the proposal within this latest consultation is to treat these rewards as income. Whilst a definitive set of rules would be welcome, we disagree with this proposal.

We also used this second consultation response as a further opportunity to press home our call for a comprehensive and tailored set of legislation for cryptoassets beyond DeFi transactions. Cryptoassets have unique characteristics and usages beyond conventional investments, and they need their own legislation which reflects that. Given the sheer volume of transactions that can take place, we need rules which minimise the burden of the reporting requirements. Whilst the DeFi proposals will help, CIOT and ATT will continue to push for wider reform.

Our full response can be found on the CIOT (www.tax.org.uk/ref1126) and ATT (www.att.org.uk/ref430) websites.

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Excluding payments made by landlords to prospective tenants to carry out construction works from the CIS

Landlords often make payments to tenants in non-construction sectors such as hospitality, retail or tech who are carrying out construction works to finish or to fit out a building to their own specification. If the works fall within the CIS (and whether they do is far from clear), the tenant either must register for the CIS as a sub-contractor or receive the payment under deduction of tax and claim it back from HMRC. Tenants rarely or never carry out the works themselves but rather sub-contract works to third-party contractors. At that stage, the CIS rules operate as intended to capture actual construction operations. It is the application of CIS between tenant and landlord for the same works that adds legal and administrative costs, reducing productivity. It also adversely affects cash flow for start-up businesses or inward bound businesses that may not have sufficient payroll costs to offset the CIS deduction.

The CIOT originally raised this issue in a proactive submission in 2017. We were therefore pleased to see it in this consultation.

We consider that landlord to tenant payments should be wholly outside the scope of CIS, provided they properly derive from the landlord /tenant relationship, and that any potential for abuse is evaluated and proportionately addressed.

We evaluated the proposed solutions that were put forward in the consultation. Extending the scope of the existing exemption from CIS for deemed contractors for construction work on a property that they use for their own business (found in Regulation 22 (The Income Tax (Construction Industry Scheme) Regulations 2005) has the advantage of achieving change relatively quickly when compared to change via primary legislation. If adopted, it will be important to allow time for appropriate consultation on the revised draft regulation to ensure it addresses the issue comprehensively.

Introduce a grouping arrangement for CIS

We agree that a non-mandatory grouping arrangement is the best solution to the issue of infrequent and disparate payments by multiple group companies in the property. We suggest that the filing and payment obligation should rest with one representative group member, while the legal obligation should remain with each group company, to ensure HMRC have access to individual company records to check compliance, together with joint and several liability for all group members.

The full CIOT response can be found here: www.tax.org.uk/ref1131.

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GENERAL FEATURE

Charities tax compliance

The CIOT and ATT respond to the HMRC consultation on charities tax compliance.

In April, HMRC launched a consultation seeking views on several tax matters affecting charities and community amateur sports clubs, with a view to preventing non-compliance and helping to protect the integrity of the sector (tinyurl.com/464b43w7). The CIOT and ATT provided a joint response to the consultation.

Before addressing each of the proposals, we reiterated that the charity sector provides a huge contribution to UK society, supporting millions of people in a variety of ways, often filling gaps left by government or commercial enterprises in the provision of services or satisfaction of needs.

We said that many charities, particularly smaller ones, are run or substantially resourced by volunteers, and that these

ENVIRONMENTAL TAXES PERSONAL TAX

Taxation of environmental land management and ecosystem service markets

The ATT and CIOT have responded to the HMRC/HMT consultation on the taxation of carbon and nutrient credits and biodiversity units, as well as potential changes to Agricultural Property Relief.

The ATT and CIOT have responded to the HMRC/HMT consultation the 'Taxation of environmental land management and ecosystem service markets'. The ATT responded to both parts, highlighting the pressing need for clarity on the taxation position of these schemes, while the CIOT response focused on part 2 which outlined potential changes to Agricultural Property Relief (APR).

The first part of the consultation was a call for evidence looking at the tax issues around carbon credits (primarily the woodland and peatland codes), nutrient neutrality and biodiversity net gain. At present, there is little to no guidance in this area and no consensus on the treatment of some quite fundamental questions. This is preventing landowners from engaging with confidence in these environmentally beneficial schemes.

Uncertainties include whether disposals of credits should be treated as income or capital and whether the woodlands exemption can apply to income from woodland carbon credits schemes. The first credits generated from the Woodland Carbon Code have now been verified, but landowners looking to sell these units are unsure how HMRC expect the proceeds to be taxed.

In England, more certainty on the non-carbon schemes is needed, as planning applications for residential properties in England may be affected if developers are not able to find enough landowners willing or able to put land into nutrient neutrality or biodiversity net gain schemes due to uncertainties around tax. Nutrient neutrality requirements already apply to areas covered by 74 local authorities, while biodiversity net gain requirements are expected to come into force for most residential developments from November.

The ATT response included a number of examples provided by members to illustrate the difficulties and highlighted how some of the problems around treatment of process as income or capital is being addressed through the use of corporate structures.

Part 2 of the consultation looked at potential changes to inheritance tax (IHT). A major concern highlighted by most of the contributors to the ATT's response was whether or not land held in these schemes can continue to benefit from favourable APR for IHT purposes. HMRC have published some helpful guidance in this area recently, but we do not believe it goes far enough to cover all the situations where entering a scheme might put the availability of reliefs in question. The risk of increased IHT liabilities is a major disincentive for many landowners.

The consultation specifically excluded VAT, but the ATT's response concluded with feedback from members concerned that HMRC's current guidance is out of date and does not reflect the commercial realities of the current schemes.

The CIOT response endorsed the ATT's comments on part 1. On part 2 we emphasised that having a clear and comprehensive approach to the IHT issues is essential to unlock the willingness of landowners and farmers to commit their land to long-term environmental schemes. In addition to considering the availability of APR on the specific land being considered for any scheme, the wider impact on the availability of APR for other assets needs to be addressed. For example, the availability of APR on farmhouses, farm cottages and farm buildings is currently dependent on whether they are of a character appropriate to the land being farmed and are occupied for the purposes of agriculture.

CIOT pointed out that the consequence of government policy not to expand APR beyond land currently used for agricultural purposes is that in the future two otherwise identical blocks of land, used for identical environmental purposes, may have different IHT statuses because block A was previously used for agricultural purposes and block B was not (it was always used for environmental or non-agricultural purposes).

This is likely to lead to significant future difficulties: compliance costs in maintaining records of historic usage; extensive due diligence needed (for example when land is sold) to prove its historic usage; and significant valuation differences (as IHT-free land is likely to command a premium). This is likely to lead to future calls for reform – either to bring more land into scope of relief from IHT, or claims that giving relief to block A over block B just because, say, 30 years ago it was used for agricultural purposes is unjustified and that the relief should be withdrawn.

CIOT considers that the proposal to restrict 100% APR to tenancies of at least eight or more years is likely to reduce the amount of agricultural land available to tenants. The probable response of many landlords would be to bring the land in-hand or enter into a contract-farming arrangement.

We understand that HMRC have received a substantial number of responses to this consultation and we look forward to engaging further in discussions. We remain keen to hear from members about their experiences with natural capital. Please contact us on atttechnical@att.org.uk or technical@ciot.org.uk.

The ATT's response can be found at: www.att.org.uk/ref421
The CIOT's response can be found at: www.tax.org.uk/ref1105

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factors provide important context when considering the needs of charities and any sanctions they should face for non-compliance. We also stated that better guidance is needed, both to dispel the widespread view that charities do not pay tax, and to provide clear examples that illustrate the application of what can be complex rules.

Preventing donors from obtaining a financial benefit from their donation

HMRC are reviewing the tainted charity donations rules, saying that the rules have proven to be overly complex to apply to certain instances of abusive behaviour. The consultation offered three options for consideration.

We said that we would support a closer review of condition B (the main purpose of entering into the arrangements is for the donor, or someone connected to the donor, to receive a financial advantage directly or indirectly from the charity) (option 3). We said that we would not support the wholesale replacement of the tainted charity donations rules (option 1), nor removal of condition B (option 2).

Preventing abuse of the charitable investment rules

HMRC are considering whether to amend the charitable investment rules. In essence, charities would be required, where HMRC have cause to consider the reasons behind the investment, to justify any investment they make and demonstrate how this benefits the charity.

We do not have strong views regarding these proposed changes, largely because charities should not make investments other than for the benefit of the charity. However, we questioned whether any changes could be limited to particular investment types, and that some form of clearance procedure would be required to protect trustees.

Closing a gap in non-charitable expenditure rules

HMRC are looking to review the rules around the clawback of relief, which could involve a review of the definition of 'attributable income and gains' (to consider which types of income become chargeable following non-charitable expenditure) and a review of the current six-year carry back restriction.

We said that we do not consider that the non-charitable expenditure rules create a 'gap' in the sense suggested by HMRC, and we do not support the changes proposed in the consultation.

Sanctioning charities that do not meet their filing and payment obligations

HMRC are seeking views on withholding payments of Gift Aid and disapplying other tax reliefs from charities that have fallen behind on their reporting and filing obligations.

We do not think it would be appropriate to withhold charitable reliefs pending submission of a tax return. This seems excessive (considering that non-compliance might be inadvertent), would be complex to implement and administer, and similar sanctions do not exist for commercial enterprises.

Our full response can be found on the CIOT (www.tax.org.uk/ref1130) and ATT (www.att.org.uk/ref435) websites.

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GENERAL INTEREST LARGE CORPORATE PERSONAL TAX

Stamp taxes on shares modernisation: CIOT response

The CIOT responded to a consultation on a new single tax to replace stamp duty and stamp duty reserve tax that will modernise and consolidate the existing taxes on transactions involving securities (and, potentially, some historic land interests).

In April, the government published a consultation on 'Stamp Taxes on Shares modernisation'. This proposed that the existing stamp duty and stamp duty reserve tax legislation be rewritten, modernised and consolidated. The new single tax that would replace them would be self-assessed and administered in line with the rest of the UK tax system.

The consultation was the culmination of consultation process that began following the publication by the Office of Tax Simplification of a report in 2017 in which it recommended the modernisation and digitalisation of stamp duty. Following on from that report, HMRC published a Call for Evidence on the principles and potential options for modernising the Stamp Taxes on Shares Framework and established a joint HMRC and industry Working Group in November 2021. The CIOT has been part of this Working Group, discussing and exploring the various options and issues arising from the proposed modernisation.

In our response to the consultation, we welcomed the proposals for a new single tax on securities, as a welcome simplification. We said that the government should be bold in order to ensure that the opportunity is taken to achieve a clear and modern legislative framework for the taxing of transfers of securities.

We also noted, however, that there are some aspects where the differences between the transactions undertaken through CREST and those that are not significant. We said that it would be sensible to recognise these differences and have some distinct rules for listed and unlisted transactions, rather than having a single rule for every aspect to the detriment of one or the other type of transaction. This is particularly true in relation to the charging point and the accountable date.

In order to simplify and modernise the regime, we suggested that pre 2003 interests in land should be removed from scope. We said that, importantly, in terms of the administration of the tax system and its overall fairness, it is wrong to include a charge on interests in land within a tax that is otherwise presented as a tax on securities. We added that to the extent the government wishes to keep these historic transactions that are currently resting on contract potentially in scope, the rules should be subsumed within the stamp duty land tax regime.

We urged simplification and modernisation in relation to the more historic aspects of geographical scope. We also said that we do not agree with the proposal to remove the de minimis, the threshold of consideration below which transactions are treated as exempt. Removing this would create an additional burden for transactions of very low value. Instead, we suggested that the de minimis is increased to reflect inflation.

In conclusion, the majority of the proposals in the consultation document are sensible and a new single tax will be a welcome simplification. Inevitably, though, there are some areas that require further thought and some aspects where we suggested that the government should be bold in order to ensure that the opportunity is taken to achieve a clear and modern legislative framework for the taxing of transfers of securities.

Our full response can be read at: www.tax.org.uk/ref1125.

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GENERAL FEATURE

Reform of the anti-money laundering and counter-terrorism financing supervisory regime

Members in practice, and particularly those who are supervised by the CIOT and ATT for anti-money laundering, will be interested to know that HM Treasury have published a consultation on the reform to the anti-money laundering and counter-terrorism financing supervisory regime. The consultation sets out four potential models for supervision and also seeks views on the supervision of sanctions.

Currently anti-money laundering (AML)/counter-terrorism financing (CTF) supervision in the UK involves three statutory supervisors (the Financial Conduct Authority, the Gambling Commission and HMRC) and 22 professional body supervisors. The supervisors ensure that businesses comply with the Money Laundering Regulations and take enforcement action where the requirements are not met.

In 2017, the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) was created to oversee professional body supervisors and ensure that supervision was conducted to a high standard.

The 2022 Review of the UK's AML/CTF regulatory and supervisory regime (tinyurl.com/3xz2nu25) concluded that there had been continued improvement to the supervisory regime in the UK but that some weaknesses may need to be addressed through structural reform. The Review set out four possible models for a future AML/ CTF supervisory system and the current consultation develops the models further (tinyurl.com/muc7ef5w).

The proposed models are summarised below.

Model 1: Office for Professional Body AML Supervision (OPBAS)+

The first potential model would involve no structural change to the regime. OPBAS would be given enhanced powers to increase the effectiveness of supervision by the professional body supervisors.

Model 2: Professional Body Supervisor Consolidation

This would see either two or six professional body supervisors retain responsibility for AML/CTF supervision. There could be either one accountancy sector supervisor and one legal sector supervisor, both with UK-wide remits, or one accountancy sector supervisor and one legal sector supervisor within each jurisdiction: England and Wales, Scotland, and Northern Ireland. Under either option, a decision is required as to whether accountancy firms currently supervised by HMRC should transfer to the consolidated professional body supervisors.

Model 3: Single Professional Services Supervisor

The third model would see one single body supervise all legal and accountancy sector firms for AML/CTF. It may also supervise some or all of the wider sectors currently supervised by HMRC. This body would most likely be a public body.

Model 4: Single Anti-Money Laundering Supervisor

Under this model, all AML/CTF supervision in the UK would be undertaken by a single public body. The major difference between this and previous options is that the public body would also take on supervision of those currently supervised by the Financial Conduct Authority and Gambling Commission.

Financial Sanctions Compliance

The consultation will also be used to consider whether there is a need for formalised roles and powers for supervisors to oversee sanction compliance. This includes communicating sanctions risks to businesses and supporting and overseeing the development of effective sanctions compliance controls.

How to respond

HM Treasury have set a closing date for comments to be submitted of 30 September 2023.

CIOT and ATT will be responding to the consultation document, and we would welcome views members may have about the proposals. Please email comments or queries to standards@ciot.org.uk or standards@att.org.uk. It is also possible to submit responses directly to HM Treasury and relevant details are included in the consultation document.

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CIOT	Date sent
Progress with Making Tax Digital www.tax.org.uk/ref1146	07/06/2023
Taxation of environmental land management and ecosystem service markets www.tax.org.uk/ref1105	09/06/2023
Reserved Investor Fund consultation www.tax.org.uk/ref1124	09/06/2023
Tougher consequences for promoters of tax avoidance www.tax.org.uk/ref1127	20/06/2023
Off-payroll working: calculation of PAYE liability in cases of non-compliance www.tax.org.uk/ref1129	20/06/2023
Uncertainties as to the corporation tax treatment of property development business for letting (build to rent) www.tax.org.uk/ref1084	20/06/2023
The taxation of decentralised finance involving the lending and staking of cryptoassets www.tax.org.uk/ref1126	20/06/2023
Stamp Taxes on Shares modernisation www.tax.org.uk/ref1125	29/06/2023
R&D tax relief enquiries www.tax.org.uk/ref1166	03/07/2023
Addressing carbon leakage risk to support decarbonisation www.tax.org.uk/ref1117	06/07/2023
The Tax Administration Framework Review: Creating innovative change through new legislative pilots www.tax.org.uk/ref1144	17/07/2023
The Tax Administration Framework Review: information and data www.tax.org.uk/ref1132	18/07/2023
Construction Industry Scheme reform www.tax.org.uk/ref1131	19/07/2023
Charities tax compliance www.tax.org.uk/ref1130	20/07/2023
Improvement rates relief www.tax.org.uk/ref1145	26/07/2023
Reform of UK law in relation to transfer pricing, permanent establishment and Diverted Profits Tax www.tax.org.uk/ref1160	10/08/2023

ATT

The taxation of environmental land management and ecosystem service markets www.att.org.uk/ref421	07/06/2023
Tougher consequences for promoters of tax avoidance www.att.org.uk/ref428	20/06/2023
The taxation of decentralised finance involving the lending and staking of cryptoassets www.att.org.uk/ref430	21/06/2023
Progress with Making Tax Digital www.att.org.uk/ref431	03/07/2023
The Tax Administration Framework Review: Creating innovative change through new legislative pilots www.att.org.uk/ref427	21/06/2023
The Tax Administration Framework Review: information and data www.att.org.uk/ref426	25/07/2023

LITRG

Informal Finance Bill briefing: Clause 332: Right to repayment of income tax to be inalienable www.litrg.org.uk/ref2773	12/06/2023
Help to Save Reform www.litrg.org.uk/ref2776	22/06/2023
Tougher consequences for the promoters of tax avoidance www.litrg.org.uk/ref2778	23/06/2023
Progress with Making Tax Digital (MTD) inquiry www.litrg.org.uk/ref2780	28/06/2023
The Tax Administration Framework Review: Creating innovative change through new legislative pilots www.litrg.org.uk/ref2785	18/07/2023
The Tax Administration Framework Review: information and data www.litrg.org.uk/ref2786	19/07/2023

News from CIOT and ATT

Policy

R&D crackdown deterring genuine claims, Institute warns

CIOT has warned that HMRC's efforts to get tough on abuse of R&D tax relief are resulting in them rejecting legitimate claims and stonewalling other genuine claimants with a bureaucratic system driving them to give up on their claims.

In a letter to the Director of Wealthy and Mid-Sized Business Compliance at HMRC in July, CIOT sets out its view that the 'volume compliance' approach adopted by HMRC since late 2022 does not work well for R&D relief claims, due to the complex nature of the relief and the technical consideration required in ascertaining whether or not there has been a qualifying R&D project. The letter provides examples supplied by members of how the process is going wrong.

The volume compliance approach is based around frequent challenge and standardised letters with little or no opportunity for businesses and their advisers to explain the R&D activity they are engaged in. Whereas historically conversations were an important mechanism through which R&D could be explained to HMRC, under the new approach there is no direct engagement between the compliance team and the claimant, either in person or virtually.

Later in July, HMRC published its R&D compliance action plan and met with CIOT to discuss it. CIOT has expressed the hope that collaboration on this issue will continue.

Ellen Milner, CIOT Director of Public Policy, commented: 'We are keen to work with HMRC to improve compliance processes so that there is less of a collateral impact on genuine R&D claims, and the compliance processes support the policy objective of encouraging R&D.'

Merger plans

Both CIOT and ATT have responded cautiously to draft legislation to merge the UK's two R&D reliefs, which was also published in July.

Jon Stride, Vice Chair of ATT's Technical Steering Group, warned that successfully delivering a new scheme in April 2024 would be 'extremely challenging' for businesses, agents, software providers and HMRC, who would need to put the required systems and processes in place in a short space of time.

The government says that it has not yet decided whether to merge the two schemes, but the ATT says that, should the new regime be approved, its introduction should be delayed, with the extra time used to ensure it is designed in a way that works for companies of all sizes.


Ellen Milner

For CIOT, Ellen Milner warned that the government faces challenges ensuring a merged relief is both simple and fair. She noted that there will be a 'tricky trade-off' between the potential simplification of a merged scheme and policy decisions to provide additional support to SMEs (or some of them) through different rates of relief. 'Whilst we recognise that it would involve additional complexity within the scheme, consideration should be given to having a higher rate of R&D relief for all smaller companies within a single scheme, especially during a transitional period,' she said.

CIOT joined ATT in expressing concern about the 'overly ambitious' timetable for a merger.

Political update

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

The 2023 Finance Bill completed its passage through Parliament with the House of Lords debate in July. Chartered Tax Adviser Lord Leigh of Hurley raised CIOT concerns about the potential extent of the powers being granted to government to remove an R&D claim from a tax return, as well as quoting from the letter sent the previous day by the Institute (see story above). The minister acknowledged 'teething problems' with R&D compliance changes and promised that HMRC would 'continue to work with stakeholders to ensure that the department is managing checks professionally'.

Also completing its passage through the Lords in July was the Economic Crime and Corporate Transparency Bill. The government made substantial changes in the Lords, including a new offence of 'failure to prevent fraud'. Additionally, peers inflicted six defeats on the government, including extending the failure to prevent fraud to organisations of all sizes and to a failure to prevent money laundering. A gap in the Register of Overseas Entities identified last year by CIOT has been addressed by the government (see tinyurl.com/ECCTB23 for more detail).

The House of Commons Treasury Committee has published a report in which they call for a systematic review of the cost of all tax reliefs. This reflects submissions made to the committee by ATT, CIOT and other professional bodies.

In other developments, Ellen Milner and George Crozier of CIOT met with Shadow Financial Secretary James Murray to discuss current tax issues and Labour's policy development, while Helen Thornley of ATT met with Conservative MP Elliot Colburn to discuss mileage allowances ahead of a parliamentary debate on the topic.

CIOT President Gary Ashford met with members of the European Parliament's FISC Sub-Committee during their visit to the UK to discuss tax compliance and regulation of the tax profession. Preparations continue for CIOT's party conference events with IFS, which will take place in early October.

Debate

Panel debates future of income tax

The 'odd-looking' income tax system has continued to become more complex in recent years, but its status as a big revenue raiser means it is unlikely to undergo drastic changes, concluded a panel of experts assembled by CIOT and the Institute for Fiscal Studies (IFS).

At a debate titled "Where next for income tax?', held on Tuesday 27 June, the panel considered how the tax has changed and the impact of charges and reliefs on taxpayers.

Nigel Mills, a Conservative MP and former tax adviser, said income tax and VAT will continue to be the 'two big staples', as they are stable and simple to collect, and while there are 'crazy complexities' in the income tax system, these can occur for initially 'sensible' reasons. Despite this, Mills said that he expects the future income tax system to remain 'much the same as it is' with 'another bit of bell or whistle' every year.

Mills suggested that the term 'employed' should be redefined, as grey areas in this description have put 'real pressure' on how income tax is collected, but there remains justification for those who are 'really' self-employed to enjoy a beneficial regime.

The IFS' Head of Income, Work and Welfare, Tom Waters, agreed that income tax is an 'increasingly odd-looking' system, with a series of changes since 2009 making the system more complicated, creating cliff edges and providing additional opportunities for avoidance.

Waters pointed out that while, in 1991/92, just 3% of taxpayers paid higher rate tax, by 2028 this is due to be above 10%, or 14% once you incorporate higher marginal rates. He said that a good income tax system should avoid high marginal rates, be simple and transparent, and be decided by policymakers, not inflation.

Waters criticised the lack of transparency in personal taxes, saying it is 'quite common' for basic rate taxpayers to think of their marginal rate as 20%, as opposed to 32% once National Insurance contributions are taken into account.

John Barnett, chair of the CIOT's Technical Policy and Oversight Committee, suggested that many of the current concerns over the system relate to how it is presented. He noted that council tax bills break down the tax to show how much is going to different precepts such as water, social care and police. Income tax also serves other functions, he observed, suggesting that bills could be presented with elements such as 'social insurance' (National Insurance) and 'graduate reclaim' (student loan repayments) separated out.

Panel for the debate (from left to right): Nigel Mills MP, John Barnett, Fran Bennett, Tom Waters, Gary Ashford (chair)

Barnett said that Labour's estimates for how much abolishing the non-dom tax regime will bring into the public purse are based on good research but what we don't know is what the behavioural impact of the change would be, with people potentially leaving the country.

Fran Bennett, Associate Fellow in the Department of Social Policy and Intervention at the University of Oxford, discussed the high income child benefit charge, which she said was introduced 'largely for political reasons'.

Bennett also criticised the marriage allowance, calling it a 'slightly odd recognition of marriage', as it tends to benefit the higher (usually male) earner. Re-introducing it 'is a small step in the wrong direction,' she continued. Instead, government should 'keep it simple' and abolish both HICBC and the marriage allowance.

Read the CIOT's full report on the debate at: tinyurl.com/IT-IFS-23

In the news

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

'HMRC is suggesting that during the closure taxpayers can go online to resolve issues but there are lots of tasks, such as cancelling a tax return or chasing a refund, which some taxpayers may find it much more difficult to do without the helpline.'

Senga Prior, Deputy President, ATT in the Daily Telegraph on the closure of HMRC's Self-Assessment helpline, 9 June

'This looks like a cry for help in a desperate situation. This is another clear indicator that HMRC can't cope with everything it is being tasked to do, and simply cannot meet the demands of a growing and ever more complex tax system.'

CIOT President Gary Ashford in the Financial Times on the helpline closure, 9 June

'The LITRG explained that one of the main causes for tax code problems is that the DWP does not operate Pay As You Earn (PAYE) on the state pension.'

The Daily Express on the impact of failing to tell HMRC about state pensions, 9 June

'HMRC's justification for the difference in rates is that it is in line with the policy of other tax authorities worldwide. When taxpayers are really feeling the squeeze, it feels unfair to have such a big difference in HMRC's favour.'

Emma Rawson of ATT in the Daily Express on HMRC interest rates, 28 June

'We have seen exercises like this in the past work well to bring down backlogs of old post in smaller departments. As the trial is running for an initial period to 4 August, we urge agents to contact HMRC with any examples of post which has not been dealt with for over 12 months as soon as possible.'

Helen Thornley of ATT, in the Daily Telegraph on an HMRC taskforce set up to deal with the postal backlog, 11 July

'The CIOT said that poor service levels at HMRC were undermining HMRC's ability to maintain the health of the tax system. Richard Wild pointed to a separate survey of 900 taxpayers and tax agents released at the same time by HMRC, which gave the taxman low scores in "responsiveness, ease and accuracy".'

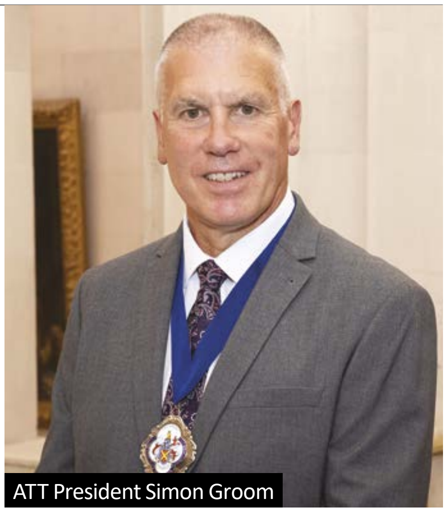
The Times, 20 July

AGM

New ATT President makes simplification offer in AGM speech

In his presidential inaugural speech at the ATT's annual general meeting on Thursday 13 July, Simon Groom told the Association's members that he had written to Harriett Baldwin MP, chair of the House of Commons Treasury Committee, encouraging her and her colleagues to canvass the views of the ATT and other professional bodies annually on the government's progress – or lack of it – in simplifying the tax system.

He also raised concerns over HMRC service levels and the implementation of Making Tax Digital, as well as speaking about the importance of tax education.



ATT President Simon Groom

Simon began his speech by thanking his predecessor David Bradshaw and saying how proud he was to become ATT President.

Given my background in tax education, it's not surprising that ATT, as an educational charity, would end up playing an important role in my life. A student conference role led to involvement in the Education sub-committee. And then to a seat at the Council table.

I have fond memories of my first Council meeting back in 2003. I'll admit to feeling a little nervous when I made my first contribution. Seated around the table were people I had long respected and looked up to: Council members such as Andrew Hubbard, John Kimmer, Trevor Johnson and Peter Horsman. But my views were received with respect, as they have been over the years, even if people do not always agree with them. This is one of the great strengths of ATT.

Celebrating ATT

I had great pleasure in attending the ATT admission ceremony last month. Here, we welcomed our newest members into the ATT family. Becoming a member of the Association involves a lot of hard work and a deliberately tough set of exams, so I was delighted to meet them, and their family and friends, to hear their stories and to celebrate with them.

I was struck by the fact that everyone had a different story to tell. We tend to think of new ATT members as being recent graduates or school leavers, but I was amazed to hear from those who had taken what might be called 'non-traditional' routes into the tax profession. This only adds to the diversity within ATT and, as a result, a greater richness of debate. I wish them all the very best of luck in their careers and their ATT journeys – hopefully, a few of them will be standing here in my place in the future!

The work we do here at the ATT is so important, and I want to take a moment to celebrate our incredible team. I had the honour of watching our technical team pick up the prestigious award for Outstanding Contribution to Taxation in 2022-23 by a Not-for-profit Organisation at the Tolley's Taxation Awards. This award is voted for by the public, so it goes to show that what we do is recognised and appreciated well beyond these (virtual) walls.

Ele Theochari, a member of ATT's Council, was also shortlisted for the Rising Star award, while Will Silsby, who retired as a technical officer in December last year after more than ten years, made the final eight for Tax Mentor of the Year. The number of nominations shows that we must be doing something right. It's just a shame we couldn't quite follow in the footsteps of Manchester City in winning a treble!

I want to wish Will well in his retirement – and I want to praise our current ATT Technical Team – now four-strong – and the committees they support, for their work for a better, more efficient tax system for all affected by it: taxpayers, their advisers, and the authorities. I won't list everything that they do, but they work tirelessly behind the scenes representing ATT on consultative committees to enable the views of members to be communicated to government.

They work with HMRC to make the tax system better. They educate our members, and the public, by writing topical articles, providing information to the press, delivering webinars and presenting at conferences.

HMRC service levels

We try to ensure that, for the public, the UK tax system is as workable and as fair as possible. But at the moment, calling the system 'workable' is a stretch. The problems currently faced by taxpayers, and their advisers, when trying to get in touch with HMRC, are having a big impact on both businesses and individuals.

In June, we were surprised by the announcement from HMRC that it would pilot a new 'seasonal model' for the Self-Assessment helpline. By 'seasonal model', they mean the closure of the helpline for three months over the summer. If it seems like only a few weeks since they were encouraging taxpayers to file their returns early, that's because it was! I think this is what you call mixed messages!

Over the summer, taxpayers are being encouraged to use HMRC's digital services instead. But many of us are concerned that those unable to find the answers that they are seeking will turn towards unofficial sources such as online forums. This increases the risk that they will receive inaccurate advice or no advice at all.

This is just one more example that HMRC is overwhelmed with the demands placed on it, without being given the resources to deliver. The tax system is becoming ever more complex and HMRC cannot meet the demands of that complexity. HMRC must have the resources to provide the services needed by taxpayers to assist them with their filing obligations. This is something we have repeatedly called for and without which it is unlikely that services will improve.

Tax simplification

The ATT has also long extolled the virtues of simplicity in the tax system. We want to ensure that all taxpayers are clear on their responsibilities, and those of HMRC. So we regret the decision to abolish the Office of Tax Simplification. We spoke out against it. We asked the government to reverse it. But they still went ahead.

Instead, we are promised that simplification will be 'embedded' in tax policy making. But what does this mean? Alongside other professional bodies, we wrote to the Financial Secretary in

April offering our support to help officials achieve simplification. We set out a number of processes which the government should introduce to demonstrate its commitment to simplification. We met with the minister in May, to try to persuade her of these.

One positive note is the announcement during the debate on the Finance Bill that the government will provide Parliament with an annual report on progress towards simplification. The keen interest in this issue being taken by the Treasury Committee suggests there will be pressure on ministers and officials to deliver on the simplification agenda.

We will play our part in holding them to account. I have written today to the Chair of the Treasury Committee, encouraging her and her colleagues to consult us and other professional bodies on progress towards simplification, alongside the government's own annual reports. Ministers should not be left to mark their own homework!

Making Tax Digital

And talking of homework, what marks would you give HMRC for their costing of Making Tax Digital? For years, we have warned that HMRC's estimates for the scheme have vastly underestimated costs to taxpayers and overestimated benefits to the exchequer. Now the National Audit Office have agreed. Their report last month was scathing. You have to wonder how dimly HMRC would have viewed this behaviour had a taxpayer acted in the same way.

Despite the delays that have beset MTD, the project is still moving forward too quickly, with a lack of proper testing or piloting. Transferring VAT records onto HMRC's new systems created, in one year, errors totalling more than the scheme is expected to generate by 2034! Perhaps now is the time to pause and take stock before things get further out of control.

Tax education

Given my background in education, it will come as no great surprise that our primary charitable objective at the Association of 'promoting education and the study of tax administration and practice', is extremely important to me. For me, this is not just about our examinations but involves a commitment to educate at all levels to ensure that we never stop learning.

You may not be aware of our education programme aimed at children at both primary and secondary level. We have developed lesson plans and videos which our volunteers can use in schools to both promote tax as a career and educate children as to why tax is important. We even have a video aimed at five to seven year olds – there is nothing like starting early! We would love to have more volunteers doing this, so let us know if this is something you would be interested in.

For those choosing tax as a career, we have a range of qualifications to suit all levels, from our Foundation Level Qualifications to the rigorous ATT modular examinations. Once qualified, members can keep their knowledge up to date by attending any of our varied CPD events.

Conclusion

To conclude, I am honoured and excited to be your President for the year ahead. I'm looking forward to getting out in person to as many events as I can, and meeting you face to face. I want to hear from you – what you think we should be saying, what you think we should be doing. And I invite you to get involved – in our committees and our branches. Your views make the debate richer and contribute to the diversity within ATT.

The ATT is a great ship to captain, but it is our members that put the wind in our sails. So get involved, tell us what you think and help us shape the future of our ATT and our profession. Thank you.

This speech has been lightly abridged. The full speech can be read or viewed at: tinyurl.com/ATT-Groom

Event

ATT Admission Ceremony

On Thursday 15 June, the ATT was delighted to welcome 49 new Members and eight prize winners from the November 2022 examination sittings to a double ceremony at the Law Society's Hall in Chancery Lane, London.

Simon Groom, then Deputy President, hosted the afternoon ceremony and David Bradshaw, then President, hosted the evening ceremony. Past Presidents Frank Collingwood, Trevor Johnson and John Kimmer attended the evening event to present medals and congratulate the prize winners.

The Association holds an admission ceremony each year for new members and their families. The next will take place on 27 June 2024 for members who have been admitted during 2023.

Then President David Bradshaw with the prize-winners from the November 2022 sitting of the ATT examination.

(From left to right): Front row: Bradley Colman (Jean Jesty Prize), Matthew Poole (Tolley Prize), Helena Heyndrickx (President's Medal), Zoe Dixon (Ivison Medal and Jennings Medal), David Bradshaw (then ATT President), Kirsty Stuart (Trevor Johnson Medal), Chloe Jackson (Kimmer Medal), Gemma O'Donovan (Stary Medal) and Michaelia Protopapa (Collingwood Medal). Back Row: Frank Collingwood, Trevor Johnson, Simon Groom and John Kimmer.

New members at the afternoon Admission Ceremony

New members at the evening Admission Ceremony

AGM

Outgoing President reports back on HMRC and MTD

ATT and other professional bodies helped to bring about a more realistic timetable for Making Tax Digital, and concerns about HMRC service levels are being listened to, but big problems remain with both, outgoing ATT President David Bradshaw told the Association's members in his valedictory speech in July.

David began by reflecting on the year past, including political developments, ATT events and the Association's progress. He noted the expansion of the ATT's technical team and celebrated the award for Outstanding Contribution to Taxation by a Not-for-profit Organisation at May's Tolley's Taxation Awards. He then returned to two priority issues from his inaugural speech.


Outgoing ATT President David Bradshaw

HMRC

Those of you who heard my speech a year ago will remember the concerns I raised over whether HMRC are sufficiently resourced to deliver for taxpayers. At ATT, we have repeatedly stressed that HMRC must be appropriately resourced and strongly oppose staff cuts, especially while service levels remain at an unacceptable level.

HMRC have a tough job to do, and we do our best to help, but the challenges that taxpayers and our members continue to experience with service levels are unacceptable and need to be addressed.

Our members tell us regularly about the challenges they have experienced and the impact these have had on their clients and their own businesses. They have pressed us to act on their behalf, because an effective and efficient tax system builds trust and discourages non-compliance. When the system is struggling, it can do neither.

We have been encouraged that our concerns are being listened to at the highest levels of HMRC. Some may say we are being 'critical', but I would prefer to say that we are being 'constructive', because we are proud of the relationship we have with HMRC and we want to see them succeed. An effective and efficient tax system is in all our interests – as is a 'simple' tax system. That is why I was dismayed by the decision to close the Office of Tax Simplification and we will be doing everything we can to keep the simplification agenda alive.

The Association supports digitisation, but the worry here is that simply closing helplines will hit those who can't, or won't, use computers. Those taxpayers who need help from HMRC to file their tax returns will now be forced to delay, leading to stress and inconvenience for themselves, as well as extra pressure on HMRC nearer the January tax return deadline.

MTD

I also spoke last year about the progress of Making Tax Digital. Well, the good news is that in December the Financial Secretary announced a more sensible, realistic timetable for MTD for income tax. Our input, alongside that of other professional bodies was, I believe, a significant influence in that decision. However, MTD still has big problems. Just last month, a report by the National Audit Office found that the project is now expected to cost around five times its original 2016 budget – and that budget excluded upfront costs of £1.5 billion to VAT and Self-Assessment customers from its business cases.

So, the cost to taxpayers is a lot more than HMRC said it would be, and the benefits to the Exchequer are a lot less. This is not a surprise. We have repeatedly questioned whether the business case for MTD stacks up and called out the many mistakes the system is seeing. Errors are precisely what MTD is seeking to minimise, not introduce, and this underlines the need for thorough testing before any additional MTD requirements are introduced.

The irony is that our current interface with HMRC as agents and taxpayers is anything but digital. Many routine tasks still cannot be achieved without either waiting on a call for what always seems to be 40 minutes listening to that awful hold music or resorting to good old fashioned pen and paper and the Royal Mail.

David concluded his speech with thanks to all those who helped his year run smoothly, including Jane Ashton and Sue Fraser, events and press teams and ATT Council members. He promised to support his successor Simon Groom, in his new role as Past President and continue to work to ensure that the UK tax system is workable and as fair as possible.

This speech has been abridged for space reasons.

Disciplinary reports

NOTIFICATION

Mr Martin Scullion

At a hearing on 16 May 2023, the Disciplinary Tribunal of the Taxation Disciplinary Board determined that Mr Martin Scullion of London, a member of the Association of Taxation Technicians, was guilty on his own admission of the following charges, namely:

a) having engaged in or been party to illegal behaviour, contrary to rule 2.2.2 of the PRPG;
b) having conducted himself in an unbefitting, unlawful or illegal manner, which tends to bring discredit upon himself, contrary to rule 2.6.3 of the PRPG; and
c) having failed to inform the Head of Professional Standards at the ATT in writing of his accepting a police caution within two months of 14 October 2021 in breach of rule 2.14.1 of the PRPG.

The tribunal made an Order that the complaint lie on file for a period of 12 months from the date of its decision. It ordered that Mr Scullion pay costs of £2,568.

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

New Officers

ATT Officers for 2023-24

At the AGM held on 13 July 2023, the new Officers took up their posts for 2023-24.

Simon Groom: President

Simon first joined Council in 2003 and served for an enjoyable 12 years until stepping down in 2015. He was delighted to be elected back onto Council in 2018. Simon is a member of the Finance Steering Group and a former member of the Audit and Risk Committee.

Simon has worked at LexisNexis since 2006, where he headed up their newly formed Tolley Exam Training. Having had various roles along the way, he now enjoys a part-time role as a Senior Tutor.

Senga Prior: Deputy President

Senga joined Council in 2017 and, as well as chairing the Technical Steering Group, is the ATT's spokesperson on Scottish Taxes. She represents the ATT on the Climate Change Working Group, the HMRC Representative Bodies Steering Group, the HMRC Issues Overview Group and at regular joint meetings with the Scottish Government, ICAS and CIOT.

Senga joined Johnston Carmichael in June 2017, where she specialises in private client compliance work with a particular interest in the farming industry.

Graham Batty: Vice President

Graham has been volunteering with ATT/CIOT for over 35 years. He has been involved with three different branches, starting in Sheffield and then going on to be Chair of both the Leeds and Birmingham branches as his career took him round the country. At ATT, he has been Honorary Treasurer, chair of the Finance Steering Group, a member of the Technical Steering Group and was President in 2017/2018.

Graham is currently chair of the Examination Steering Group, and a member of the Audit and Risk Committee and the Policy Review Group. For the 15 or so years, until he retired at the end of 2021, Graham was an Associate Director at RSM, specialising in the taxation of charities and other not-for profit-bodies.

ATT Officers 2023-24 (left to right): Senga Prior, Simon Groom and Graham Batty

Technical Spotlight

International Tax Committee

The remit of the International Tax Committee is UK direct taxes and, in particular, UK corporation tax, as they apply cross border to multinational enterprises (MNEs), as well as international tax obligations on companies resident in the UK.

David Murray, who is Head of Tax Policy and Sustainability at Anglo American, chairs the committee. Committee members come from accountancy firms and law firms, as well as industry, giving us a broad spectrum of input. Further details can be found at: www.tax.org.uk/our_tcs.

It is an interesting time, with international tax high on the political agenda. While the political momentum has driven change, it has also meant that some of the changes are being implemented at pace, exacerbating the huge administrative and compliance challenges for many tax authorities, as well as for taxpayers.

Much of the committee's focus has been seeking to ensure there is as much certainty and clarity as possible in the new rules – in accordance with the CIOT's objectives for the tax system.

In recent years, the work flowing from the OECD/G20's Base Erosion and Profit Shifting (BEPS) Project (now the BEPS Inclusive Framework) has been on the two-pillar solution, addressing the challenges arising from the digitalisation of the economy and agreed in 2021. The two-pillar solution aims to ensure that MNEs pay a fair share of tax wherever they operate and generate profits.

Pillar Two (the Global Anti-Base Erosion (GloBE) Rules) is being implemented in the UK, as the Multinational Top-up Tax and Domestic Top-up Tax (Finance Act 2023). The OECD/G20 Inclusive Framework continues to develop some elements relating to Pillar Two, as well as the multilateral convention that will be required to deliver Amount A of Pillar One and allow jurisdictions to reallocate and exercise a domestic taxing right over a portion of MNE residual profits.

Another area of focus has been profit diversion from the UK, which is tackled in a variety of ways, including through the Profit Diversion Compliance Facility. New requirements for transfer pricing documentation were consulted on during 2021 and 2022, and have been introduced with effect for accounting periods beginning on or after 1 April 2023. At the time of writing, we are responding to the consultation on reform of UK law in relation to transfer pricing, permanent establishment and diverted profits tax.

We welcome the consultation's overarching theme of aligning the UK's domestic legislation with equivalent international OECD standards to ensure consistency of application. We hope that the updated rules will provide greater certainty, assist in the settlement of mutual agreement procedures (MAP) and enhance the attractiveness of the UK. We also feed into HMRC's annual review of the priorities for the UK's network of double taxation agreements (DTAs).

Our responses and submission to the UK government and the OECD can be found on the usual technical pages of our website: tax.org.uk/submissions/1

Sacha Dalton
sdalton@ciot.org.uk

Meeting

CIOT represents its members at the CFE

In April, CIOT colleagues and volunteers attended CFE Tax Adviser Europe meetings, which included the New Tax Professionals committee that discussed the OECD Report on Tax Policy and Gender Equality. The Tax Tech committee discussed emerging themes and the Professional Affairs Committee (PAC) included lively debate about a number of professional standards related issues, which continue to be of relevance despite the UK's withdrawal from the EU.

The PAC meeting included a discussion about the CFE Statement on the European Parliament Report on the Pandora Papers Revelations. The statement was agreed for submission and the final version is available on the CFE website (see tinyurl.com/53pedcms).

PAC Committee members were aware of the work of the International Ethics Standard Board for Accountants (IESBA) on the code addressing tax planning and related services. CFE had already liaised with IESBA on earlier drafts. Some reservations about the proposals were discussed and it was agreed that these would be fed back to IESBA.

An update was provided to the Committee in relation to continuing CFE engagement and outreach activities with the European Commission and the European Parliament regarding their proposals on further regulation of the provision of tax advice in the EU. Whilst outreach continues, we await clarity on the EU direction of travel relating to this.

There was a discussion of the various EU Directives on Administrative Cooperation (DAC) and the CFE is engaging with the European Commission on the evaluation of DAC.

The Committee looked ahead to the September 2023 Professional Affairs Conference and it was agreed that the role of Technology and in particular AI should be included in the Conference programme.

CFE committee meetings with CIOT representatives: Helen Whiteman, CEO; Jane Mellor, Head of Professional Standards; and Ian Hayes, President CFE and CIOT Council member

Exams

Exam success for ATT and CTA students

On 20 July 2023, the Chartered Institute of Taxation and the Association of Taxation Technicians announced the results from their examinations taken at the May 2023 exam session.

810 CTA candidates sat exams, with a further 393 candidates who sat one or more papers on the ACA CTA Joint Programme (with ICAEW) and 42 candidates who sat a paper on the CA CTA Joint Programme (with ICAS). 838 ATT candidates sat exams in May 2023 and 1,010 ATT CTA Tax Pathway candidates sat a combination of ATT and CTA papers.

The Institute President Gary Ashford commenting on the results said: 'I would like to offer my heartfelt congratulations to those candidates who have passed all of the necessary exams for CIOT membership, as well as those who have made progress towards becoming a Chartered Tax Adviser after passing one or more papers at the May 2023 examination session. They should be really proud of their hard work, dedication and effort. It has paid off.

'330 candidates have now successfully completed all of the CTA examinations and we very much look forward to welcoming them as members of the Institute in the near future. Included in this figure are 80 candidates who were on the ACA CTA Joint Programme, 14 candidates who were on the CA CTA Joint Programme and 90 candidates who have now fully completed the ATT CTA Tax Pathway by passing the CTA element.

'We look forward to welcoming those new members into the Institute at the next Admission Ceremony.'

The Association President, Simon Groom, commenting upon the results said: 'I am delighted to congratulate all the successful candidates from the May sitting of our exams. In total, 838 ATT candidates and 556 ATT CTA Tax Pathway candidates sat 1,907 papers and 432 passes were achieved. 93 distinctions were awarded to candidates for outstanding performance. 'With my background in tax education, I am well aware of the many hours of study required to sit our examinations and I commend all the candidates for putting in the work necessary to achieve success.

'The ATT's modular system means that candidates can study at their own pace, within the five-year registration period, whether they are working towards full membership or simply wishing to obtain one or more Certificates of Competency in their specialist area.

'I look forward to meeting the candidates who take up membership at our next Admission's Ceremony.'

Information regarding these results, including pass lists, can be found on the CIOT and ATT websites and on the Tax Adviser website.

Charity

Beyond the numbers: human stories behind tax problems

We share an example of how Tax Help for Older People and TaxAid can provide real support to taxpayers in need.

Use the QR code to donate!

Without the support of a tax adviser, many people do not fully understand their tax liability. Misunderstanding the tax system and being unable to afford skilled paid tax help can lead to taxpayers on a lower income paying more in tax than they should.

Simon's story is a perfect example of how someone who could not afford paid tax advice benefited from the support of a professional tax adviser. Simon had received letters every year since 2018 describing his tax position. Simon is blind, and although the letters were in braille and he could read them, he did not understand what they meant.

He called Tax Help for Older People's helpline and asked for support understanding these letters. His case was passed to a volunteer tax adviser.

We helped Simon to understand that the letters were explaining that he owed tax to HMRC, as he had been underpaying tax through his wages. However, on further investigation, we discovered that there had been an error. Simon did not owe any tax to HMRC but, in fact, was owed a repayment of tax.

With our help, Simon received a repayment of £749. He was incredibly grateful for the support, sharing his thanks and feelings of relief that he no longer owed money to HMRC.

It is only thanks to our generous supporters in the tax community, volunteering, fundraising and donating to our cause, that we are able to help people like Simon, supporting him through our helpline service. Without help, Simon may have paid tax that he did not truly owe, simply because he did not understand the system.

Tax Help for Older People and TaxAid support people in the UK who are unable to afford paid tax help, but who have a tax problem. If you would like to support us please consider making a donation. View our CAF donation page to make a one-off or regular donation to the charities. Just scan the QR code above or visit this website: cafdonate.cafonline.org/18211

A MEMBER'S VIEW

Jane Deeks

VAT Specialist, Deeks VAT Consultancy

This month's member spotlight is on Jane Deeks, VAT Specialist at Deeks VAT Consultancy and member of CIOT

How did you find out about a career in tax?

I was interested in tax and PwC conducted a presentation about tax careers when I was studying my law degree at university.

Why is the CIOT qualification important?

The CIOT qualification was important to me because it is the highest tax qualification in the UK, it is highly regarded and very prestigious to qualify as a Chartered Tax Adviser. It is a difficult qualification to pass, so it was my ultimate academic challenge. Not only was I able to learn and understand my specialist area of VAT, but it also allowed me to have an overview of other taxes and how they interact with VAT.

I believe that being a Chartered Tax Adviser has helped me in my career to gain clients and employers' confidence.

Why did you pursue a career in tax?

I studied law with the intention of becoming a solicitor, which is very similar to the work I do as a Chartered Tax Adviser. I started as a VAT advisor on a graduate traineeship at PWC in 1999, as the salary was more competitive than that for trainee solicitors. Also, I knew working for PwC would result in a fantastic career opportunity.

I found VAT very interesting due to its complexity. I'm not a numbers person and advising on VAT is about interpreting the law and explaining it in simple terms to clients, which is something I enjoy. The work is challenging, and no two days are the same. To advise on VAT, you need to understand the client's business, which I find very interesting, and I enjoy getting to know clients.

How would you describe yourself in three words?

Friendly, confident and dedicated.

Who has influenced you in your career so far?

Firstly, my lovely dad, who taught me that you can do anything if you put your mind to it. I have worked with a number of intelligent VAT colleagues over the past 24 years, who have influenced me and are still influencing me. The most recent inspirational person in my career has been Tim Fife, another self-employed VAT consultant. Tim helped me significantly when I decided to set up Deeks VAT Consultancy Limited. I am very grateful for the advice and support that he gave me.

What advice would you give to someone thinking of doing the CIOT qualification?

Go for it but be prepared for a lot of hard work and a very reduced social life for a while. However, it is worth the sacrifice as not only is it a prestigious qualification to have, but it will also assist you with your client work as the exams are practical.

What are your predictions for tax advisers and the tax industry?

As most people do, I predict that the increase in artificial intelligence will result in some compliance work becoming more digital, but there will always be a need for your good old tax advisor. Many business transactions are changing due to the digital age and VAT laws will need to change with the digitally developing world.

Tell me something about yourself that others may not know about you.

I was born and bred into the fairground business, and from the age of five to 12, I only attended school when the fair closed for three months during the winter. I had an alternative education on the funfair where my parents taught me how to run the family business, weld, and repair engines and cars, and amusement machines in the family's travelling amusement arcade.

I always wanted to be self-employed and I am proud to have achieved this goal. I will be celebrating Deeks VAT Consultancy Limited's fifth anniversary in October.

Contact

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

SONIC HEALTHCARE UK

Tax Manager

Based in either Salford M5 4HB OR London WC1H 9JP

Sonic Healthcare UK encompasses two main entities in the UK, **The Doctors Laboratory (TDL)** and **Health Services Laboratories (HSL)**. HSL is a partnership between The Doctors Laboratory (TDL), Royal Free London NHS Foundation Trust (RFL) and University College London Hospitals NHS Foundation Trust (UCLH). HSL was formed to provide pathology services and has expanded further to provide services to numerous NHS Trusts since it formed in 2015. Over 2,500 staff work at Sonic Healthcare UK, across both TDL & HSL.

The continued increase in revenues in the UK means we now operate under the SAO regime. We have created a new Tax Manager role to be based in either our Salford or London offices. As Tax Manager at Sonic Healthcare UK, you'll step into a dynamic role that calls for your mastery of tax intricacies. With a diverse landscape spanning international operations, joint ventures, complex tax implications, and evolving legislation, this is a role that will truly challenge and reward your skills.

As the Tax Manager, you will work closely with the Management Accounting team of Sonic Healthcare UK, as well as the Director of Finance and the CFO and your opposite numbers in other territories. You will be the primary person responsible for ensuring the UK Group's adherence to various UK tax reporting calendars and deadlines, and for creating and managing plans to support timely delivery to those deadlines.

The Tax Manager will be a proactive self starter, a real "Completer/Finisher", who will have responsibility for the management and continued improvement of the UK group's tax policies, procedures, documentation and compliance activities. The compliance responsibility will extend to supporting the CFO under the SAO regime and ensuring the implementation of tax best practices, robust and pragmatic, and ensuring documentation and processes are updated for legislation changes.

At Sonic Healthcare UK, we value ***Continual Improvement, Respect & Honesty***. You will be an instrumental force in fostering a cultural alignment between Finance and the Business. Your ability to drive efficiency and improve processes will be truly transformative.

This isn't just a job; it's an opportunity to architect the tax landscape of a global healthcare leader. Your innovative thinking, meticulous attention to detail, and passion for continual improvement will be the driving force behind our financial success.

The role is office-based on a hybrid model, of 60% office / 40% Working from Home. The role may suit a part-time candidate able to commit to 5 days a week as a 0.8 FTE.

The role can be based at either our Corporate offices in London or in Salford (M5 4HB). If in Salford, the job will entail travel to London, working with the CFO and core Finance team. This is expected to be day trips, once or twice a month.

Indicative salary is up to £80,000 in Manchester and up to £95,000 in London.

Scan here to apply:

Corporate Tax Manager
Thames Valley (Reading)

About the role…

We have a Corporate Tax Manager opportunity to work in our Thames Valley office Tax team. This is a role with opportunities for progression so if you're an Assistant Manager looking for a step up or a Manager looking for a new and exciting challenge with scope for progression read on…

You will work closely with the tax partners delivering UK and cross-border special and project-based work and oversee larger or more complex compliance work with a portfolio of existing clients, ranging from owner-managed companies to quoted groups. You will also be involved in business development initiatives and working with the team to generate new work. There'll be a varied workload with an equally varied client base to include a good mix of compliance and advisory projects.

A key part of your role will be to develop and nurture the talented people in your team. You'll take responsibility for managing a growing team, providing an inspiring example with your positive attitude that aspiring leaders of the future should look to follow. You'll be a point of contact for technical queries from your team, empowering them to confidently tackle client challenges and to develop their own skills, experience and work towards their personal career progression objectives.

About you…

You may already be a Manager in another Corporate Tax function seeking a fresh new challenge in an engaging, positive and growing operation. Or you may be an aspiring Assistant Manager ready to take the next step in your career.

Either way, we'd expect you to have the requisite technical skills in a Corporate Tax setting that will enable you to confidently manage others in the field, coupled with a CTA / ACA qualification (or equivalent).

Finally, you'll be a naturally confident communicator with a palpable passion for client service. You'll be as enthusiastic about developing new business as you will be about developing people (including yourself).

About us…

Crowe is a leading Audit, Tax, Advisory and Risk firm with a vast global network and deep local expertise. In the UK, we have over 1,400 people delivering excellence in client service across 9 locations. We've worked hard to develop a people-focussed culture that's supportive, rewarding, professional and fun. Joining Crowe means you'll be surrounded by like-minded people who'll support you professionally and personally, equipping you with all the tools you need to fulfil your ambitions.

Our tax team has grown substantially, particularly during a highly successful last 3 years. We were shortlisted in the 2023 Tolley's Taxation Awards as 'Best Employer in Tax' – alongside a raft of similar awards and industry recognition – a testament to the amazing talent in our Tax team.

If this opportunity appeals, feel free to contact Jonathon Sheppard
(**jon.sheppard@crowe.co.uk**) for further details.

Director of Private Client Tax
Thames Valley (Reading)

About the role…

Following growth of our successful Private Client service in Reading, we are searching for a driven, ambitious and credible Director to lead this team into a new era.

Crowe in the Thames Valley are going from strength to strength. We've seen our client numbers, fee income and our headcount grow year-on-year. Tax has been a crucial part of this performance and remains a key pillar of our business strategy going forward. Consequently, leading this function will afford the holder with a golden opportunity to build something special.

About you…

Taking on this challenge will require a certain level of **technical experience and knowledge**, coupled with exemplary leadership traits. We'd expect that you will have had some notable experience in another leadership role in Private Client Tax, with some equally notable achievements to showcase your success. You'll a highly respected and credible 'go-to' for everyone in the office for all matters relating to Private Client Tax, using your technical knowledge in supporting Directors and Partners solve client challenges in an innovative and efficient way.

You'll also be an **inspiring leader and manager** of people and bring a collaborative, empowering and influential managerial style to the team. You'll have a natural instinct of when to delegate, when to support, when to take a lead – and mostly importantly, how to do these things in the right way. Your team will be inspired by the example you set and will be motivated to deliver outstanding work for their clients.

You will be able to provide examples of impressive client work that demonstrate your ability to skilfully **build lasting business relationships**, as well as be able to showcase an innate talent for the development of new and existing business for the betterment of your team's ongoing growth and success.

About us…

Crowe is a leading Audit, Tax, Advisory and Risk firm with a vast global network and deep local expertise. In the UK, we have over 1,400 people delivering excellence in client service across 9 locations. We've worked hard to develop a people-focussed culture that's supportive, rewarding, professional and fun. Joining Crowe means you'll be surrounded by like-minded people who'll support you professionally and personally, equipping you with all the tools you need to fulfil your ambitions.

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We are seeking a business tax lawyer to join the Practical Law Tax team in the UK.

Practical Law is a leading online know-how service providing rigorous, peer-reviewed resources, including practice notes, current awareness and standard documents to help legal professionals work more efficiently and advise with confidence.

About the role

As a senior editor in Practical Law Tax, you will use your specialist legal knowledge of business tax to provide and maintain a wide range of content. Working in a supportive team of highly experienced colleagues, you will deal with a breadth of interesting legal and editorial work including:

- Analysing the latest legal, regulatory and policy developments, deciding which items to cover and to what extent
- Creating new and maintaining existing materials in a variety of formats
- Commissioning, reviewing and editing content written by both lleagues in Practical Law and our external contributors
- Answering legal questions submitted by subscribers daily through the Ask service
- Meeting with customers and industry experts to maintain and build understanding of the latest developments and trends in tax law and practice

About you

The successful candidate is likely to have:

- Substantial post qualification experience (England & Wales) in either a law firm, in-house or at the bar
- A demonstrable interest and ability in writing
- In-depth understanding of business tax

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Director

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Audit of Tax
Manchester or London
£excellent

Top 10 firm seeks a qualified corporate tax professional (at Manager or Associate Director level) for key new role. You will work in a national team on tax audit work for clients. Working across an advisory and audit portfolio, this would suit someone who can evaluate judgements on complex tax risks and structures. The nature of the audit work within the tax line of service includes consideration of technically complex areas and review of third-party advisory reports. **Call Georgiana Ref: 3382**

In-house VAT Manager
Leeds, London or Dublin
£65,000 to £85,000

An experienced VAT professional is sought by large in-house team. In this role, you will help with review of VAT returns and also manage third party suppliers, as well as developing more junior staff. You will assist with the identification of VAT risks and opportunities including advising the business on the indirect tax technical aspects of projects both in the UK and internationally. A key element of the role is proactively promoting awareness of indirect tax issues across the group and building relationships with key stakeholders in all jurisdictions to achieve that goal. **Call Georgiana Ref: 3392**

In-house Corporate Tax Advisor
Didsbury – Manchester (hybrid working)
to £50,000 + benefits

Our client is the in-house tax team of a large international group. This business seeks a qualified tax professional to report to the Head of Tax and work on an interesting mix of tax compliance, reporting and advisory work. You will have the opportunity to be mentored by an experienced Head of Tax and to become a key member of the wider finance team. Would consider a more recently qualified individual working full time, or a more experienced hire working part time. Hybrid working available, minimum 3 days in the office. Friendly office culture. **Call Georgiana Ref: 4000**

Senior Manager or Director
Corporate Tax – Harrogate
£excellent

This is a key role in the next stage of development of an established tax team based in Harrogate. They seek an experienced senior manager or director to help lead a corporate tax team. You will need to be qualified (ACA, CTA, ICAS or equivalent) and will need an all-round background in UK corporate tax. This team deals with a good mix of dynamic OMB's, family businesses and also larger groups with international elements. They also manage both the compliance and the advisory work from the same office. Lovely office in a great location. **Call Georgiana Ref: 3360**

Personal Tax Manager
Cumbria
£market rate

Large independent accountancy firm seeks a personal tax manager to help manage and develop a team of more junior staff and to look after a portfolio of clients. You will keep up with technical developments and will regularly meet with clients to keep them up to date. Alongside compliance work, you will carry out tax planning work in relation to CGT, IHT, Trusts and Estates and other related matters. Classic all-round tax manager role, would suit someone who enjoys being at the heart of a tax team. Office based or hybrid working available. 4 day week also possible. **Call Georgiana Ref: 3389**

Group Tax Accountant
Bamber Bridge or Barrow-in-Furness
£45,000 to £55,000

Our client is the in-house tax team of a large international group. They seek a Group Tax Accountant for a role which reports to a Group Tax Manager and a Head of Tax. In this role, you will assist in the tax compliance cycle for the group. You will also assist in annual tax reporting, quarterly forecasting, SAO reporting and on tax projects and ad-hoc queries. This role would suit someone looking for a first move into industry from practice. This company would also consider a more experienced person looking for flexible or part time working and a local position. **Call Georgiana Ref: 4001**

www.georgianaheadrecruitment.com

Private Client Director or Partner
Manchester
£excellent

Our client is a Top 20 accountancy firm. They seek a new hire to help them further develop their private client offering in the Manchester office and across the North of England. In this market facing role, you will be actively tasked with work winning, developing relationships for private capital tax and cross line of service. Alongside this you will manage and develop a team of more junior people and will be instrumental in helping build a larger practice. The client base is weighted towards advice for private business, so owner managers and entrepreneurs and private equity clients.

Role requirements:

- You must have proven experience of business development and the ability to win new clients and business.
- You will be in a leadership role, working with other partners and directors to run the local office, and will also be part of a National Private Client Service line.
- A key element to this role is the day-to-day management of a team of more junior tax professionals and management of clients and key relationships.
- As well as strong technical tax skills, you will need the analytical and report writing skills to put it all together into clear advice for clients.
- Proven experience of personal taxes, including IHT and CGT planning, and ideally some experience of dealing with the interaction with business taxes for entrepreneurs and private equity.
- You will advise business owners on residence and domicile and cross border tax issues.

In return for your experience, this firm offers a clear opportunity for partnership. This business offers flexible and hybrid working and has impressive offices in Central Manchester.

Ideally, you will be a UK qualified tax specialist (likely CTA or ACA) and you will be looking for a role with the opportunity for promotion.

For further information please contact Georgiana Head at georgiana@ghrtax.com or on 07957 842 402

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&
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Fairhurst is a vibrant accountancy practice based in Wigan, Lancashire (approx. 65 employees, directors and partners). We have a diverse client base of principally owner managed and private equity supported businesses, high net worth individuals, trusts, including a number of large groups and international clients.

Our office has a friendly and relaxed atmosphere with excellent career prospects for candidates who thrive working within a strong team.

Our Tax & Structuring team is looking to recruit a CTA and/or ACA qualified personal tax manager/senior manager and corporate tax manager/senior manager, ideally with National firm experience, supporting two tax partners, tax director and the wider tax team, aided by first class technical resources.

The roles include both compliance management and advisory work, the balance of which is dependent on the candidate's preference. Advisory work includes tax clearances, transaction structuring and proactive tax planning, offering also the ability to develop further within specialist areas.

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