October 2023

TAXADVISER

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Chartered Institute of Taxation.

Statutory residence

When does the exceptional circumstances rule come into play for determining UK tax liability?

Business rates reform

The impact of new compliance obligations and framework changes

Value added tax

Holding evidence to prove that no output tax is due on zero rated and exempt sales

Transfer pricing

Determining the taxable profits of multinational enterprises

HELEN WHITEMAN
JANE ASHTON

Welcome
Busy times ahead!

Jane Ashton
Chief Executive, ATT
jashton@att.org.uk

Helen Whiteman
Chief Executive, CIOT
HWhiteman@CIOT.org.uk

Autumn has got off to a great start with the CIOT's Cambridge conference, our Joint Presidents' thank you reception for volunteers and over 2,000 students registering for the CTA exams and over 1,900 for the ATT exams, both in November. We have another meeting scheduled with the Permanent Secretary Jim Harra, and CIOT Council meets at the end of the month. It's an exciting time to think about applying to become a trustee of the CIOT. You will see on page 48 that we are looking for members to join our Council. Please do consider this and signpost any members who could be interested.

ATT and CIOT technical officers responded to the draft 2023/24 Finance Bill legislation in September which was issued on 18 July for comment. We would like to thank all of those who provided feedback to our technical teams. The input and comments provided by members help to ensure that our responses to HMRC and HM Treasury are focused, relevant and take account of practical consideration when applying and administering new and/or changes to legislation. Although the feedback period on the Finance Bill legislation has closed, we are always keen to hear from members about practical instances where the legislation is not working in the way that was anticipated when it was originally enacted. If you have come across such examples and would like to share them with us, please email technical@ciot.org.uk or atttechnical@att.org.uk.

There are lots of other ways in which we would encourage members to get involved. On 18 October, ATT Fellows can join a free webinar where they can meet other ATT Fellows and join discussion groups on various topics. The main session will cover 'New rules for divorcing couples' presented by Helen Thornley, and will be followed by discussion groups covering such diverse subjects as R&D – what's worrying non-specialists, the taxation of influencers and content creators, and what is on your Budget wish list? If you are an ATT Fellow, look out for your invitation and details of how to register.

In November, the ATT will again be running a Sharpen Your Tax skills series, together with the AAT. This year, Makayla Combes and the ATT technical team will update us on recent topical tax changes, including plenty of practical and interactive examples. We have two dates which are 8 and 24 November. Keep a look out in the weekly emails for details of how to register.

Also in November, the ATT will be launching its second Special Interest Group on Tax Disputes and Resolution (TDR). These Special Interest Groups have been set up to provide an informal and welcoming online platform for members to discuss, debate, consider and examine a particular area of special interest within the field of tax, including that area's development, administration, processes and practical application. The first topic for the TDR group will be looking at members' experiences of making disclosures using the Digital Disclosure Service. Keep a look out in the weekly emails for details of how to register for this and other Special Interest Groups.

For more CPD and professional skills updates, we recommend that you look at your local branch programme, where branches are offering free and low cost CPD on a variety of subjects. Many meetings are now held face to face, whilst others are provided online, so there is something for everyone.

A special mention to the Severn Valley branch which is holding a 40th anniversary networking event on Thursday, 9 November 2023 at the Revolution Bar in Cheltenham. If you are in that area and would like to support other Branch members, please sign up via your weekly Branch email.

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Editorial
Editor-in-chief Bill Dodwell
Publisher Jonathan Scriven
Editor Angela Partington
angela.partington@lexisnexis.co.uk
tel: 020 8401 1810

Advertising & Marketing
Advertising Sales Jimmy Jobson
advertisingsales@lexisnexis.co.uk
Commercial Marketing Director
Sanjeeta Patel

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

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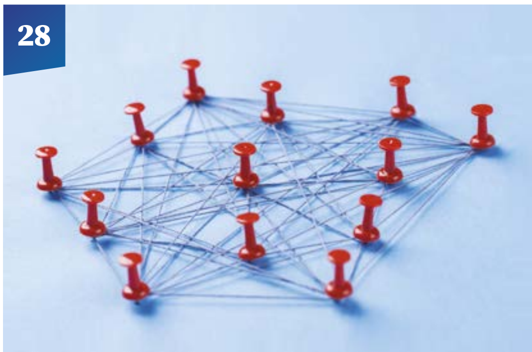
We'd love to hear your views on Tax Adviser magazine. Please share them with us at: www.surveymonkey.com/r/taxadviser2023



ONLINE PICKS OF THE MONTH
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NICHOLA ROSS MARTIN
VICE PRESIDENT

The struggles of business

> If you started a company on or after 1 April 2015, when corporation tax was set at a single 19% rate, you will have no idea what is about to hit you!

It's a great pleasure to be the new Vice President of the CIOT this coming year, while continuing to serve on its council of trustees. We trustees, like the CIOT itself, are a diverse and friendly bunch. If you are interested in serving on Council or indeed in getting involved in any CIOT committee, I commend the idea of getting involved with your Institute at any level.

I started my career in accountancy and audit, and gradually moved into tax by starting to answer the tax queries that appeared in the back of a well-known tax magazine. Next, I volunteered to sort out our tax partner's loose leafed tax manuals and add in the updates, reading as I went. After a few years, I left accountancy practice and went full-time into tax. How far technology has come since the days of the paper update! The only bit of technology that I note has hardly changed is the spreadsheet. What would anyone do without one?

My background in general practice was dealing with mainly owner managed businesses. After I moved full time into tax, like many tax advisers, over the years I have drifted into other areas, including share schemes, stamp duty land tax and Making Tax Digital for VAT, although always advising SMEs and their owners rather than large corporates.

It's a very tough time economically for many SME company owners. The cost of living crisis and pensions auto-enrolment have pushed up employment costs. The changes in the corporation tax rate, coupled with the creation of an extremely low small profits limit, has increased the costs of corporation tax. It means that doing business is a struggle. Since 2015, thanks largely to the availability of cheap software, it has been quite possible for directors of small trading companies to learn to do their own company tax and to file their own accounts and tax returns. From 1 April 2023, we returned to having two rates of corporation tax and we go back to the old rules for control, associated companies and augmented profits. If you started a company on or after 1 April 2015, which was when corporation tax was set at a single 19% rate, you will have no idea what is about to hit you!

Looking through my inbox, nearly every OMB owner that comes my way is a director who is running at least two if not three companies, and many people are running small groups separating out ownership of business premises from their trading activities. Although the associated company rules allow you to exclude companies that don't have any substantial commercial interdependence, I have a feeling that in a couple of years the tribunals will see a surge in cases where companies have failed to count up all their associates. The other trend in recent years has been the rise in family investment companies (FICs). A FIC may be dismayed to find that it is accidently a close investment holding company, another elephant trap for the unwary.

As the cost of living crisis squeezes budgets, clients are keener than ever to maximise tax savings wherever possible, which takes me on to 'rogue agents'. An agent in this context is not necessarily a tax professional, although it's often difficult for the public to discern that. The more dubious agents are normally characterised by a 'no win, no fee' offer and pop up to 'help' wherever you have the combination of an overtly complex set of rules and a claim for relief of one sort of another. The CIOT's Low Income Tax Reform Group (LITRG) has, as you are probably aware, been successful in lobbying government to reduce the public's exposure to rogue tax refund companies.

We have new legislation for research and development (R&D) claims which now require companies to take a lot more care over their R&D claims and to conduct something like due diligence on their R&D agents. HMRC has a sizeable task in tackling some of the more fanciful R&D claims that I hear are being made. Such is the nature of the new compliance rules that if you are advising a company that is using an R&D agent going forward, it will certainly require your assistance in ticking the boxes required by the new legislation. Draft secondary legislation detailing these requirements is due as I write this and will be out by the time you read this. I look forward to a CIOT webinar on this topic – it's going to be a hot one.

These are the sort of issues I thrive on, and I look forward to 'chewing the fat' with as many of you as possible, on these topics and more, in the coming months as I serve my time in the presidential team.

Nichola Ross Martin
Vice President
president@ciot.org.uk

Chartered Institute of Taxation.

SENGA PRIOR
DEPUTY PRESIDENT

Continual changes

> One issue which is likely to cause both one-off and ongoing headaches is basis period reform.

Hello and welcome to the Deputy President's page for October. Summer is well and truly over and I thought I would touch on some tax highlights that you may have missed or put to the back of your mind while away relaxing on your holidays.

We await with interest to see whether the temporary closure of the HMRC public helpline and the push to digital webchat has helped to clear the backlog of HMRC post. Along with the Agent Account Manager online service, enabling agents to highlight unanswered mail over 12 months old, this will hopefully lead to fewer chasing calls to HMRC phonelines and release their staff to deal more speedily with the remaining backlog. Only time will tell!

ATT and CIOT published the results of their joint Making Tax Digital for ITSA survey. The results can be found on our website at tinyurl.com/yx5tshrp. I won't give away any spoilers – but I don't think you will find any surprises!

Our technical officers continued to keep busy, responding to several HMRC consultations, draft legislation and attending many meetings with HMRC and other interested parties.

One issue which is likely to cause both one-off and ongoing headaches is basis period reform. From 2024/25, sole traders and partners will be taxed on their profits actually arising in the tax year – a major change for anybody who doesn't draw their accounts up to 31 March or 5 April. The current tax year 2023/24 is a transition year, in which we switch over from our current rules to this new tax year basis. The transitional rules are quite complex, and for some taxpayers will mean additional profits being brought into account this year. The good news is that it will be possible to offset any overlap relief brought forward. However, that good news may be tempered by difficulties in working out what overlap relief is available, especially if clients have been trading for some time or have changed advisers in the past.

By the time this is published, HMRC should have released a new online g-form for agents and taxpayers to request overlap information. This was originally planned to be released in late August but was delayed in response to issues arising from user testing. The ATT and other professional bodies have worked with HMRC to develop and test this form, which should speed up the process of getting the required figures from HMRC. If you have any feedback or comments once it is live, please send them to the technical team at atttechnical@att.org/uk.

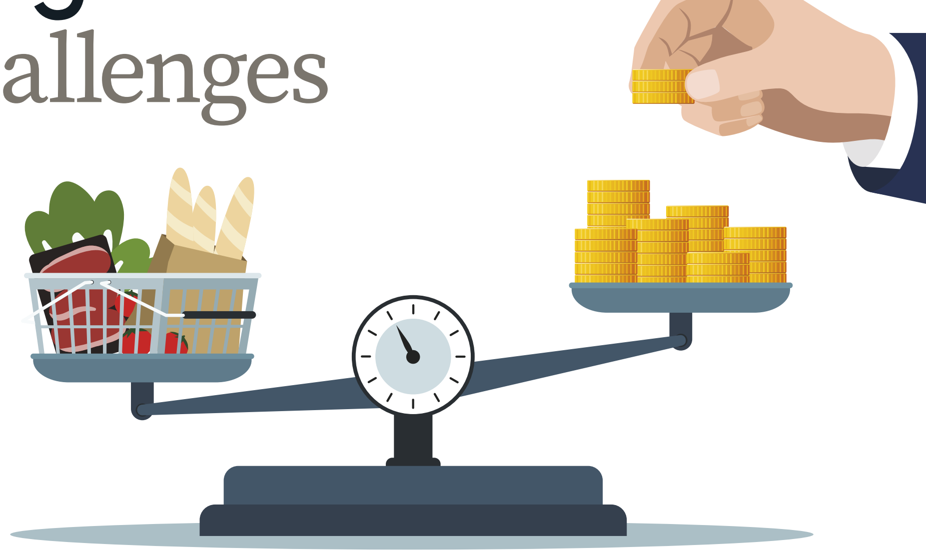
Another area where we are seeing constant shift and change is R&D tax relief. In the past year alone, we have seen changes in the level of relief available and a swathe of new administrative requirements, including the introduction of a compulsory additional information form. And the changes aren't stopping there! Recently published clauses for draft Finance Bill 2023/24 propose that, from as early as next April, we could have a brand new above the line credit scheme for all claimants regardless of size, with the current SME scheme restricted to the 'R&D intensive'. Whilst more should undoubtedly be done to crack down on fraud and abuse in the R&D relief schemes, there is a risk that taxpayers, advisers and HMRC will all struggle to cope with this pace of change.

By the time this is published, the annual Presidents' Reception will have taken place. This year, ATT President Simon Groom and CIOT President Gary Ashford will host the first joint ATT and CIOT Presidents' Reception, held at the Design Museum in Kensington. This event gives both professional bodies the opportunity to thank all their volunteers for their work throughout the year and gives us all a chance to meet together in an interesting venue.

In closing, you may remember that last month I mentioned that you might consider volunteering with ATT. Since then our technical officers have recorded a series of informational videos and two of these touch on that exact subject. There are several other videos which cover a variety of interesting subjects suitable for members, students and the general public. These can be found at tinyurl.com/2u4prjs4. It would be greatly appreciated if you could promote and share these on your social media networks.

Senga Prior
ATT Deputy President
page@att.org.uk

How to charge VAT? Structural challenges



While the complex structure of VAT is hard to rationalise, the huge costs of reform would be even more complicated.

by Bill Dodwell

The highly respected Institute for Fiscal Studies recently released a document 'Tax and public finances: the fundamentals' (see tinyurl.com/jrycjhy4) highlighting '10 key facts related to taxes and the public finances that will underlie the fiscal policy challenges and choices faced by citizens and governments in coming decades'. Fact No 5 said: 'VAT zero rates and exemptions cost £100 billion in forgone revenue. They place a large compliance burden on firms and are a very poorly targeted way to redistribute income to lower-income households.'

VAT was estimated to contribute £160 billion in 2022/23 to the Exchequer. We now have data from HMRC which costs the main VAT zero rates and exemptions. Zero rates are classified as non-structural reliefs (see tinyurl.com/yeykk9xb), whilst exemptions are classified as structural reliefs (see tinyurl.com/2jezbacs). The reason for the distinction is not obvious! The big difference in practice is that where sales are zero-rated, there is no loss of VAT in the supply chain. By contrast, exempt goods and services typically carry a built-in VAT cost directly borne by the suppliers, no doubt affecting their pricing decisions. The main areas, totalling just under £91 billion in 2022/23, are shown on the right.

In addition, VAT is refunded to a range of public bodies, estimated to amount to just under £23 billion.

In 1978, the Meade Report 'The structure and reform of direct taxation' was published (see tinyurl.com/yychw9yn). It reflected the deliberations of a committee put together by the IFS, chaired by Professor James Meade, and advocated significant expansion of consumption taxes and a corresponding reduction in direct taxes (see ***The Meade Report***).

Despite these urgings, the UK has not changed its general approach. We still raise roughly the same amount (as a percentage of GDP) from consumption taxes, although we have seen the expansion of VAT and a broadly equivalent reduction in specific consumption taxes. In fact, it is taxes on income which have risen, especially national insurance and corporation tax.

A confusing tax

It is easy to see why VAT is not charged in some areas. Most health services in the UK are supplied without charge, so adding VAT onto private health services would introduce a distortion. Both public and private health services do pay VAT on some purchases, which they cannot recover. The same issue arises in education, although the Labour party proposes making private school fees subject to standard-rate VAT.

There is no agreed approach globally to levying VAT on finance and insurance services, mainly because there is no agreement on what the taxable supply is or should be. The financial service sector bears a large amount of input tax which it cannot recover, as the purchases are not related to taxable sales. The EU has debated the issue for decades and not reached any conclusion. In 2021, Deloitte Netherlands produced a paper outlining various options, including doing nothing (see tinyurl.com/3wv49z82).

Housing is another area fraught with difficulty. Rents are exempt, so some VAT is borne by landlords in relation to building repairs and improvements and other administrative costs. Adding VAT to the price of new houses and increasing the cost of rents looks very unlikely. And how would VAT apply to second-owner housing?

	Estimated 2022/23 cost (£ millions)	
Food and cold takeaway	22,500	Zero-rated
Housing: new dwellings	16,900	Zero-rated
Housing: domestic rents	7,300	Exempt
Finance and insurance	16,300	Exempt
Health: prescriptions	3,700	Zero-rated
Health: services	500	Exempt
Education	5,200	Exempt
Burial and cremation services	700	Exempt
Passenger transport	4,560	Zero-rated
Betting and gaming	2,900	Exempt
Children's clothing and protective gear	2,200	Zero-rated
Books, newspapers, inc. electronic	1,900	Zero-rated
Water and sewerage	2,400	Zero-rated
Vehicles for disabled people	910	Zero-rated
VAT registration threshold	2,900	Effectively exempt

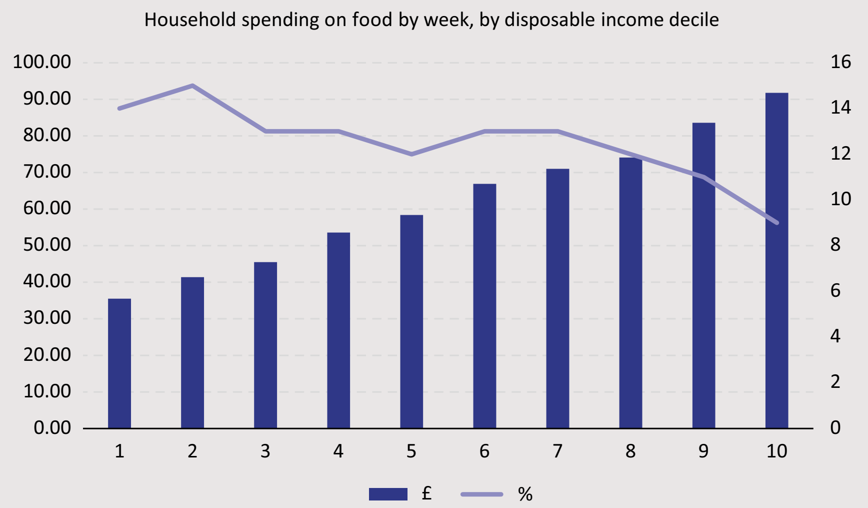
THE MEADE REPORT

In his preface to the Meade Report, Professor Meade wrote:

'An appropriate structure … would be the combination of:

i. a "new Beveridge" development of social welfare to remove the poverty trap…
ii. arrangements for the taxation of wealth, in particular of inherited wealth…
iii. a basic reform of direct taxation which levied a charge on what people took out of the economic system in high levels of consumption rather than on what they put into the system through their savings and enterprise…

'[I]n this way all forms of enterprise – big or small, privately owned, state owned or labour-managed – would be able to plough back their own profits or to borrow the savings of others free of tax for all forms of economic development. But at the same time, wealthy persons who were maintaining a high standard of living by dissaving from their capital wealth would be more heavily taxed than at present.'



ONS data for 2021/2 (see tinyurl.com/ym26yfa4)

Betting and gaming don't need VAT, as specific tax regimes are designed for the sector. That leaves us with children's clothing, books, newspapers and magazines, passenger transport, disabled people's vehicles, burial services and water. It would theoretically be quite easy to add on VAT, as there are no boundaries with other currently standard-rated items. Burial services already bear some VAT, as they are exempt – but everything else is zero-rated, which means that 20% would need to be added to the sales price to preserve supplier margins. There isn't much complexity here, though.

The complications of food

Food remains the largest item benefiting from zero-rating. However, not everything we eat or drink is zero-rated. Restaurant meals are liable to standard-rated VAT, as is confectionary, chocolate, and chocolate-covered biscuits, fruit and nuts. Hot takeaway food and drinks are liable to VAT, while cold food and drink is zero-rated if takeaway but standard-rated if eaten in the café. We won't mention pasties, which are only hot if you are lucky enough to catch one fresh from baking the oven…

Food obviously remains the most complicated area on this list, as providers need to work out which side of the boundary the product lies and take account of their customers' consumption intentions in some cases. There would be a clear logic to having a single VAT rate for everything that is eaten or drunk, no matter its temperature, or the location. But the challenge is made harder by the UK's relatively high 20% standard VAT rate. Adding 20% to the cost of food would be a major increase for many households. On the other hand, introducing say a new 5% rate would reduce the tax take from currently standard rated items and would bring in only something like £5-6 billion before considering what compensation would be needed for less well-off households.

Household spending

Household spending on food goes up in absolute amounts by income decile but drops as a percentage of household disposal income (see ***Household spending by week***). The wealthiest decile spends more than twice as much on food as the second decile – but it is just 9% of disposable income compared to 15%. Interestingly, there are 1.5 people in the second decile household, but 3.2 people in the top decile – so a 1.5 person household in the top decile would probably spend less than 5% of disposable income on food.

Any decision to start charging VAT on food would need to take into account the burden it would place on households. For some, increasing benefits could give the necessary income to help, but the current benefit system does not reach all low-income individuals, requiring a new design for benefits. Inevitably, some households would fare better than others, with larger households facing greater hardship and single people not obviously fitting into any easy route for support. The poorest fifth of households spent about £330 pw on food in 2021/22 – so a 20% VAT rate would mean those households would need something like £3,500 annually, just to stand still. The richest fifth spent over £800 every week – so would be over £8,000 worse off every year. Where should the cut-off for compensation be?

This remains the challenge for any government. Having a single VAT rate for all food and non-alcoholic drink would be simpler – but the transition would be very hard. The same applies to other areas, especially transport. The impact on inflation would be obvious, as would the challenge in trying not only to compensate less well-off people but demonstrating that the compensation did actually cover extra costs. It's not surprising that no government has sought to pick up that challenge.

If governments are to start broadening the VAT base, economists need to demonstrate that this would be better for the economy; in other words, that a barrier to growth had been reduced. At the moment, all we have are fine words, when what a government (and the public) needs is clear evidence that there are indeed sunlit uplands worth the very painful transition. Increasing the cost of items that form a much larger part of a poorer household's budget (food, transport, housing, energy) looks regressive and very bad politics. Meade's 1970s fears that too many households live off inherited wealth look much less relevant today.

Name: Bill Dodwell
Email: bill@dodwell.org
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.

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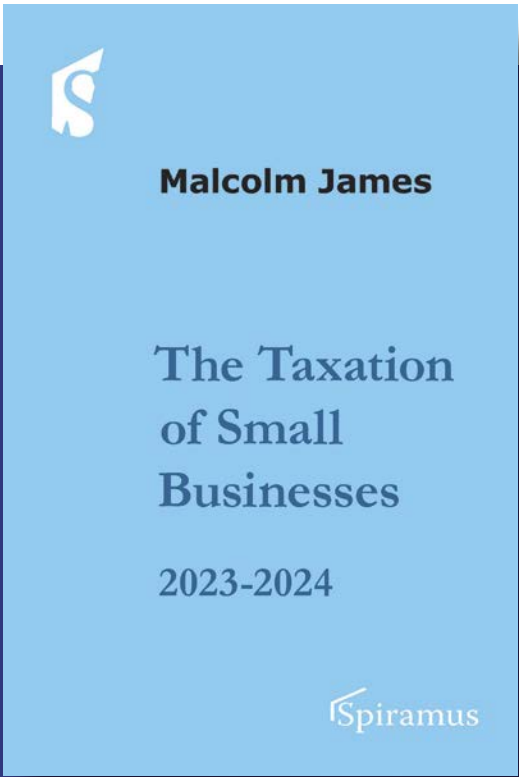

Taxation of Small Businesses 2023-24

by Malcolm James

This is a practical guide to all aspects of direct taxation of small businesses in one volume. It is ideal for sole practitioners and small partnerships, but will be a handy reference guide for all tax advisers.

The sixteenth edition has been updated to incorporate changes as a result of the Finance Act 2023.

Paperback: £60 **PDF: £30**

ISBN: 9781910151129 **ISBN: 9781913507473**

NEW EDITIONS, UPDATED FOR 2023-24 LEGISLATION

UK Taxation: a Simplified Guide for Students 2023-24

by Mark Hunt

This book covers the five main UK taxes: income tax, capital gains tax, corporation tax, value added tax, and inheritance tax, and National Insurance Contributions.

It is written in a user-friendly manner and assumes no prior knowledge about UK taxation. It includes 180 worked examples, true and false quizzes and further questions for the reader.

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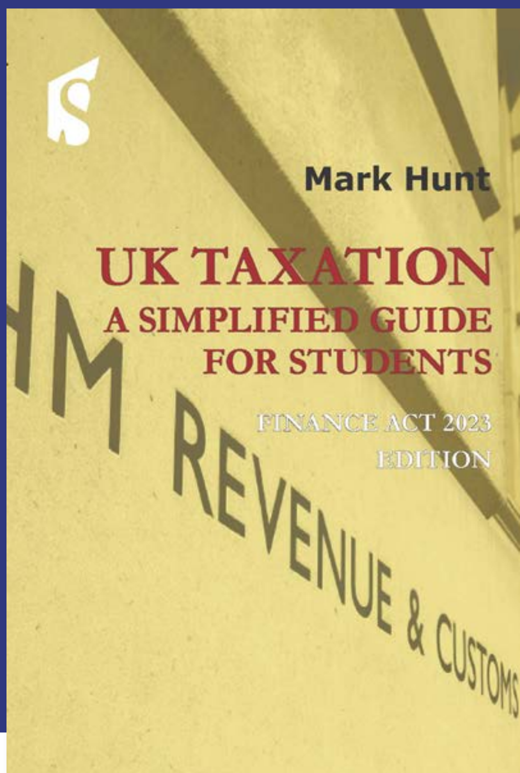

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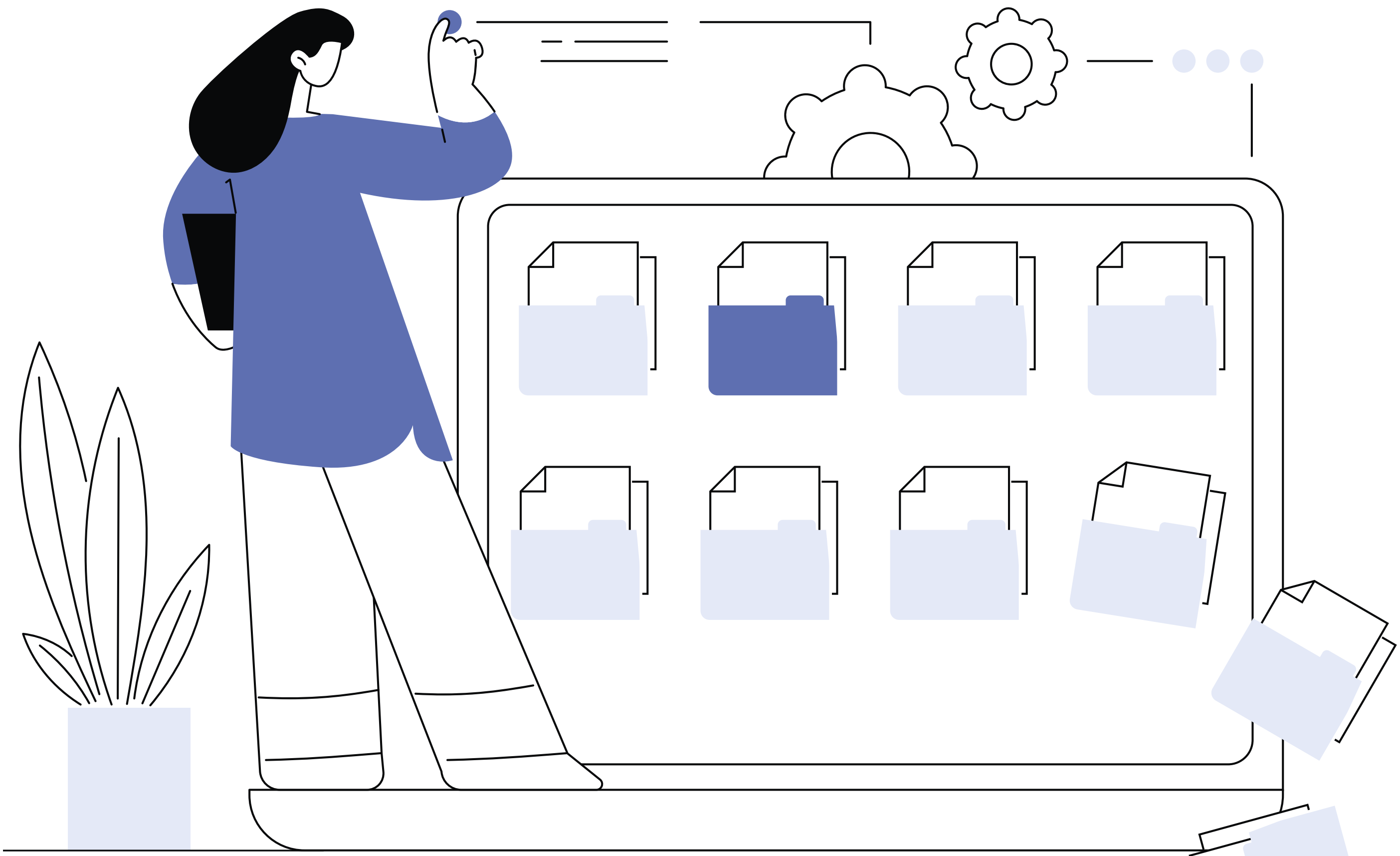
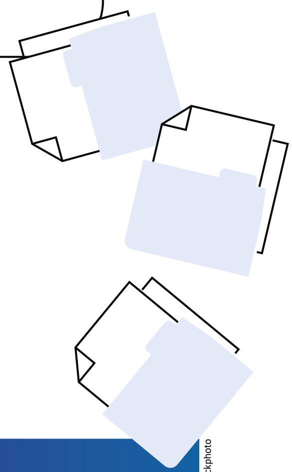




Getting the paperwork right

Zero rated and exempt sales

Two VAT cases lost by taxpayers have highlighted the need for a business to keep proper evidence to support its zero-rated and exempt sales.

by Neil Warren

Two cases recently heard in the First-tier Tribunal have given us an important reminder about VAT and record-keeping: if a business makes any sales or receives income where it does not charge VAT – or charges 5% VAT instead of 20% – then it must keep proper records and accurate information to support its decision. And, most importantly, these records and documents should be made available to HMRC if requested during a compliance review.

I'll consider the cases in this article and other practical situations where inadequate record keeping could create a major VAT problem. Don't forget that HMRC has the power to correct errors for the last four years, which could produce a large output tax assessment in many cases.

Medical care or cosmetic treatment?

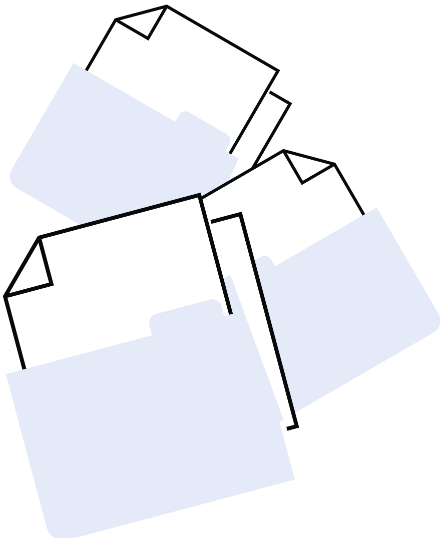
The starting point in the world of the nation's favourite tax is that all supplies of goods or services made in the UK by a taxable person are standard rated; some sales then escape a VAT charge because they are either exempt, zero-rated or outside the scope. The goods and services that qualify for zero-rating are listed in Value Added Tax Act (VATA) 1994 Schedule 8 and those which are exempt are contained in Schedule 9. Those

Key Points

What is the issue?
Two recent tribunal cases about medical care and VAT exemption were lost by the taxpayers. A key factor in the decisions was the lack of evidence produced by the suppliers to support their decision to not charge VAT on their fees.

What does it mean for me?
Taxpayers who make sales that are exempt or zero-rated should always hold proper evidence and documents to confirm that no output tax is due on these supplies. For example, proof of shipment must be retained to support the zero-rating of export sales.

What can I take away?
If the supporting evidence retained by a business is insufficient, HMRC can issue a 'best judgment' assessment for the last four years to treat sales as standard rated. The assessment could also be subject to interest and penalties.



5% VAT ON BUILDER SERVICES: THREE SITUATIONS

A 5% rate of VAT applies to labour and materials supplied by builders on the following projects:

- work on a residential property that has been empty – not lived in – for at least two years;
- converting a non-residential building into dwellings or a building to be used for a relevant residential purpose; for example, an office block is converted into apartments or student accommodation; and
- a project results in a change in the number of dwellings; for example, when a detached house is converted into two semi-detached houses.

HMRC Notice 708 ss 7 and 8

supplies subject to 5% VAT – for example, smoking cessation products and children's car seats – are included in Schedule 7A.

In the recent FTT cases of *Illuminate Skin Clinics Ltd* [2023] UKFTT 547 and *Epem Ltd* [2023] UKFTT 627, the court considered whether a range of skin and facial treatments carried out by two businesses run by registered medical practitioners qualified for VAT exemption as medical care or were standard rated as cosmetic treatment. To achieve exemption, the treatment must be carried out by a registered health professional and the purpose of the service must be to protect, maintain or restore the health of the patient. So, for example, a cataract operation qualifies as medical care because it improves the sight of the patient.

The problem with the cases – both won by HMRC – was that the patient records to support the business decision not to charge VAT were either inadequate, completely lacking or not made available to HMRC's compliance officer because of client confidentiality. There was no third-party documentation or other evidence to support any medical care outcome. To quote the judge in the *Epem* judgment: 'Whilst it may have made some VAT-exempt supplies as well, there was no evidence before me on which I could determine the extent of any such supplies.' And, as a further reminder about the legal position: 'The burden of proof is on the taxable person, Epem, to show that it made exempt services and the proportion of such services. In the absence of such evidence, the general rule applies and the services are to be treated as standard rated.'

Evidence to support zero-ratings

Going back about a hundred years, I was the Customs and Excise officer in charge of checking the VAT returns of a major UK clothes retailer – they are unfortunately no longer trading.

An important priority was to ensure that the business was correctly applying the zero-rating legislation for children's clothing. To the credit of the manufacturing and merchandising departments, the record-keeping and audit procedures were impeccable: each garment had its own product card, with details of size measurements, target age range, how the item was advertised in the stores, and how the VAT liability was decided in accordance with the legislation and HMRC's guidance.

The biggest risk of an HMRC assessment as far as zero-ratings are concerned is for a business that exports goods.

This level of detail was what the judges and HMRC were hoping to find in the medical care cases.

As most advisers will agree, the VAT legislation about food and zero-rating is a minefield of confusion and complexity. It is completely out of date and in need of a major overhaul. It reminds me of a tribute band that needs to sing some fresh songs, rather than churn out the same old tunes from yesteryear. However, suppliers must work hard to achieve their zero-ratings.

I recently visited a well-known bakery to buy a bun and was impressed by the brightly written sign on the pasty display cabinet: 'Please take care as the freshly baked products may be hot.' Brilliant! This message is supporting the outcome that there is no sale of VATable hot food taking place, only a zero-rated product that is cooling down after the baking process. I am sure that if I had asked the retail assistant to heat a pasty for me in the microwave, she would have refused because it would then be subject to 20% VAT again. The business has completely ticked the zero-rating boxes.

High risk: export of goods

The biggest risk of an HMRC assessment as far as zero-ratings are concerned is probably for a business that exports goods. The risks have increased since 1 January 2021 because all sales outside of the UK are now classed as an export, including those to the EU.

The evidence retained by an exporter to support its zero-rating forms an important part of the business accounting records and must clearly show that the goods have left the UK and been shipped to another country. The package of evidence must be a healthy combination of both commercial documentation and transport details.

The onus is on the exporter to retain and produce adequate evidence. If this is lacking, HMRC has the power to issue a 'best judgment' assessment in accordance with VATA 1994 s 73(1) and treat the goods as being sold in the UK. HMRC Notice 703 has the force of law in both specifying the relevant time period for proof of export to be obtained by a seller – three months – and the quality of evidence that must be sufficient to show that the goods have been shipped abroad.

In the case of *Pavan Trading Ltd* [2023] UKFTT 79, an HMRC assessment about export evidence was overturned by the tribunal. The judge accused HMRC of 'picking holes' in the quality of the company's export evidence for its sales of goods to America. He allowed the appeal and commented: 'If ever there was a counsel of perfection for the provision of export documentation, then the appellant has achieved it.' Well done to the directors!

Sales subject to 5% VAT

The evidence theme repeated itself in the case of *Adrian McKiernan* [2023] UKFTT 80, who did not keep adequate records to support the fact that he sold coal from his shop, subject to 5% rather than 20% VAT (VATA 1994 Sch 7A Group 1 Item 1). He submitted an error correction notice to HMRC for £61,106 for the period from January 2016 to December 2019, which HMRC rejected because he had not kept sales invoices, till rolls or other records to support the reduced VAT charge. His representative claimed that HMRC should 'look at the situation from a lenient and sympathetic point of view' but the judge dismissed the appeal.

For many advisers, the 5% reduced rate is important for building projects (see ***5% VAT on builder services: three situations***). In each scenario, the onus is on builders to provide evidence to HMRC, if requested, that supports the 5% charge:

- In the case of the empty property rules, the evidence of a vacant building must be third party data, such as council tax records or information held on the electoral register. A signed statement from the property owner is not acceptable.
- In the case of residential conversions, the builder must be able to produce architectural drawings, photographs or other evidence to show that a building started as, say, an office block, and finished as six apartments that qualified as dwellings.

Outside the scope income

To complete the loop, a business must also be able to provide evidence to support any sales or income sources that are outside the scope of VAT; i.e. where neither a supply of goods nor services has been made in the UK. This is important for charities and not-for-profit organisations which often receive grants and funding from various bodies. HMRC might want to check that there are no conditions attached to the payments which could mean that VATable services are being supplied. The evidence is usually the grant contract and funding documents agreed between the two parties.

Most B2B services supplied to overseas customers are outside the scope of VAT because the place of supply is the customer's country. It is usually easy to provide evidence to HMRC, if requested, that the customer is based outside the UK and is also in business in their own country. In the case of EU sales, the customer's VAT number is usually the best evidence.

To share a tale about 'outside the scope' income, I recently enjoyed a restaurant meal where the cost was £25 and an extra 10% was added to the bill as an 'optional service charge'.

The word 'optional' was crucial here; it meant that the extra £2.50 was outside the scope of VAT because it was not compulsory. To complete a tight VAT audit trail, the bill also specified the total VAT charged as £4.17; i.e. £25 x 1/6. The boxes had all been ticked to avoid an output tax liability on the service charge.

Conclusion

It might be a good time to check that there are no record-keeping gaps which could give HMRC the power to treat some sales as standard rated rather than exempt or zero-rated. It is important to spread the message that zero-ratings and exemptions are legislative privileges that need to be justified and earned, rather than assumed to be an automatic right.

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

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Business rates reform
New compliance obligations

Business rates tax is about to undergo significant changes. We examine how ratepayers in England can prepare for the proposed developments.

by Colette Henshaw

Business rates and the system and policy surrounding it are about to undergo changes on a scale not seen before. Since 2020, business rates have been a topic of constant discussion, with the 2020 Call for Evidence and subsequent Business Rates Review (see tinyurl.com/yc37eadj) seeking to establish whether the tax on occupation of commercial property was still 'fit for purpose'.

According to the review, business rates are most certainly here to stay. It concluded that a tax on the use and value of commercial property is an important part of a balanced tax system, alongside taxes on profit and consumption. The review went on to recommend key changes that should be implemented to improve the system and the framework for the tax. These vast changes will significantly alter the system as we know it.

The present Non-Domestic Rating Bill 2023 making its way through Parliament will implement many of the changes set out in the findings. Further change will come from parallel open consultations, notably the 'Business rates avoidance and evasion' consultation published on 6 July 2023.

As it becomes harder to raise debt to fund property investment, it is going to be key for investors to understand the costs they will face from day one of investment, as well as the challenges there may be in securing empty rates relief. The tightening of the rules around applying for empty rates relief will place an additional burden on ratepayers in an increasingly tough economic market.

Much of the proposed change remains 'under the radar' for ratepayers in England. There has been limited communications to date on the changes, leaving many businesses unaware and lacking knowledge on how to plan for its implementation.

This article seeks to highlight the changes and how businesses can

Key Points

What is the issue?
Business rates tax and the framework surrounding it are about to undergo a seismic amount of change on a scale not seen before. Changes are due to be introduced largely through the Non-Domestic Rating Bill 2023 and other open consultations yet to conclude.

What does it mean to me?
Ratepayers need to understand new compliance obligations, alongside key framework changes which impact how they can effectively review and challenge business rates tax liabilities to ensure cost effectiveness.

What can I take away?
Those that invest the time to understand the road map for change will be able to best ensure they are challenging liabilities effectively and are adhering to tax compliant duties timely and effectively.

understand and prepare for what is coming. The main changes in the Non-Domestic Rating Bill 2023 are set out below.

Shortening the revaluation period

Business rates reflect an opinion of rental value of commercial property at a snapshot in time known as the antecedent valuation date (AVD). Historically, the tax has been reset against a new market rental valuation date every five years. Towards the end of each five-year period, there is inevitably greater disconnection between a property's current rental value and that pegged to the AVD. More frequent revaluations should, in theory, ensure that tax assessments across all commercial property sectors align more closely with the reality of the rental market and economic climate, limiting the scope for disparity. Increased frequency may be a benefit to those occupying property in secondary and tertiary locations. However, it will be less welcome news for those occupying commercial property in prime sector and market locations.

The new compliance regime

To support the greater frequency of the revaluations, new compliance obligations will be introduced. Three key obligations will be placed upon the ratepayer.

Notifications to the VOA

The first two obligations involve notifications to the Valuation Office Agency (VOA):

- a duty to notify the VOA of notifiable events in real time (i.e. within 60 days of the event): broadly speaking, this involves any changes to the property, tenancy or usage that affect rental value, or trade information if the property is valued on a receipts and expenditure basis; and
- an annual duty to notify the VOA that all data held is correct within 60 days of 1 April each year. The notification must be made via an online platform.

There will be penalties for failure to comply within the timeframe or for the provision of false data:

- False data offences carry a penalty of 3% of rateable value plus £500. The new VOA information duty also includes criminal sanctions where false information has been knowingly or recklessly provided.
- Failing to comply with the penalty notice within 30 days of service will result in penalties of the greater of 2% of rateable value and £900, plus £60 per day.

Notifications to HMRC

Taxpayers also are also obliged to provide their taxpayer's unique reference number to HMRC on becoming a ratepayer of a property for the first time, using a new online platform. (This adheres to the new digitalising business rates agenda.)

The taxpayer reference notification must be made within 60 days of becoming liable for rates on a property. Failure to make the notification in the time scale or giving incorrect tax reference numbers will hold penalties of £100 for a failure to notify and up to £3,000 for false data. If the ratepayer fails to comply with the penalty notice, there will be an additional fine of £60 per day capped at £1,800.

> **To support the greater frequency of revaluations, new compliance obligations will be introduced.**

Ramifications for ratepayers

There are numerous implications for ratepayers. The first is to understand that this new compliance obligation is compulsory and that there are penalties for both delays and the provision of false data, given unwittingly or not.

Organisations need to start familiarising themselves with who will be responsible for compliance with these new requirements. Business rates are often left to in-house property or facilities teams, and often treated differently from other business tax compliance tasks within the organisation.

The intention is that the compliance regime will accommodate large bulk transfers of data. However, at this stage nothing has been confirmed and ratepayers must begin preparing for the possibility that they may have to undertake these tasks on a property by property basis. This would be a sizeable task for ratepayers occupying or owning vast property portfolios.

At present, it is the desire of the VOA and HMRC to have one single online platform for the proposed new duties and to challenge assessments. However, this is yet to be unveiled. Ratepayers need to be aware of the possibility that there could be multiple online platforms for these functions.

Ratepayers need to think about organising their data. It is key to have an internal awareness of what is required at any given moment throughout the rate year – tracking when the business is liable; providing notifications within the timescale; and ensuring data can be transferred on time and in the right format. The onus will be on the ratepayer to take reasonable steps to familiarise themselves with their new obligations and the platform or platforms on which to complete and transfer the data.

The new duties are expected to improve the quantity and quality of the rental data that the VOA can utilise to compile valuations. This should also streamline the process of setting the tax and challenging it in the longer term.

Introduction of new reliefs

There will also be an introduction of business rates reliefs. For ratepayers looking to invest and make improvements to properties they occupy, a new improvement rate relief will be available from 1 April 2024. This is targeted at light programmes of improvement and not major redevelopments.

The programme of works must be 'qualifying works' and the ratepayer must remain in situ throughout the period of the improvement. The result must be improved rateable value. Under the relief, no increase in value will be attributed to the property for 12 months following completion of the works. The improvement relief will run to 2028, when it will be reviewed again.

On 1 April 2022, the Chancellor introduced a 100% exemption until 31 March 2035 for eligible plant and machinery used in on-site renewable energy generation, such as electric vehicle charging points, solar panels, and battery storage used with renewables. In addition to this, 100% heat network rate relief for low carbon heat networks that have their own rates bills, effective from 1 April 2024. The Non-Domestic Rating Bill 2023 also allows the government and Welsh government to deliver this.

Improved transparency and data gateway sharing

The Business Rates Review also highlighted the need for greater ratepayer understanding of the compilation of the business rates assessments and the values utilised. This has led to a two-phased approach, which is due to be implemented:

- Phase 1 will ensure that there is greater access online to information on the valuation methods used.
- Phase 2 is to provide access to the comparable data utilised.

Only ratepayers who have complied with the new obligations to notify will be able to request the rental analysis the VOA have utilised to compile the business rates assessment. The request for data is

TIMELINE OF CHANGES AND CONSULTATIONS

- **August 2020:** Call for Evidence on the review of the business rates system
- **Oct 2021:** The final report of the Business Rates Review
- **November 2022:** The Chancellor announces a freeze to the uniform business rates multiplier for the 2023/24 rate year and the removal of downwards transitional relief for the 2023 revaluation period.
- **March 2023:** Publication of 'Business rates technical consultation: A summary of responses'
- **March 2023:** Consultation on 'Business rates: Transparency and description of information on business rates valuations' (closed 7 June 2023)
- **May and June 2023:** The Non-Domestic Rating Bill 2023 passed through first and second readings in the House of Commons and the Bill has been sent to committee stage with the House of Lords
- **July 2023:** The consultation on 'Business rates avoidance and evasion' was published seeking to review empty rates relief in England (closes 28 Sept 2023)

2020 2021 2022 2023

made independently from and made prior to a business rates challenge on the 2026 revaluation.

The recent consultation on 'Business rates: transparency and disclosure of data' highlights the need to protect sensitive rental data and landlord and tenant agreements. Concerns have been raised by landlords in particular about the sensitivity of the rental evidence information requested and shared.

The new system will ringfence data requests to ratepayers and rating agents. It will also omit any further data around incentives and turnover arrangements. The proposed layout of the provided evidence analysis still fails to provide information on challenges received on comparable properties. This lack of data overlooks the principle of 'tone of the list' when challenges to and agreements on comparable properties begin to take precedence over the rents nearest the AVD.

Although a step in the right direction, flaws remain in the intended provision of comparable evidence data by the VOA as set out in the recent business rates: transparency and disclosure of information on business rates consultation. For the ratepayer to truly understand the fair composition of the tax assessment, they need to know more factors involved in the rental analysis, the incentives or uplifts attributable, and the basis on which the rents have been analysed. More information shared at the pre-challenge stage would reduce the need for ratepayers to make a challenge to obtain data. The consultation findings are yet to be disclosed.

Tightening the scope for securing disturbance allowances

Raising a challenge to secure an end allowance for a disturbance or a market event is known as a material change in circumstance challenge. Following the review of the impact of Covid and the subsequent legislative change, the scope of what qualifies for a material change in circumstance will now be tightened. Major market events will be factored into the revaluations instead of providing an opportunity to lodge a challenge on the basis of a material change in circumstance.

Improvements to the uniform business rate multiplier

The uniform business rate (UBR) multiplier will now be pegged to CPI inflation instead of RPI and the new multiplier will not have to be set or announced for the preceding year until February.

> **The tide of change in business rates represents a seismic shift in the administrative framework of the tax.**

The Chancellor took the decision at the Autumn budget 2022 to freeze the uniform business rates multiplier for the 2023/24 rate year. This seeks to support the ratepayer keeping the multiplier capped to 49.9p for properties with rateable values to £50,999 and 51.2p for properties with £51,000 or more rateable value. Despite the freeze the multiplier is still very high and ultimately dictates a high level of rates payable. Ratepayers should remain aware and mindful that the rate at which liability is heavily linked to this rate which tracks CPI inflation.

Billing authorities and discretionary rate relief

The Non-Domestic Rating Bill 2023 also seeks to allow billing authorities the ability to retrospectively award discretionary rate relief at any time.

The current position is that they will be precluded from doing so for six months after the close of each financial year. In reality, this has meant that many ratepayers who delayed seeking discretionary relief missed out on savings. This was common with the retail rate relief discount schemes and covid assistance relief funds.

This change is really positive for both the ratepayer and the billing authority ensuring reliefs are given to those most in need and are there to support the ratepayer. Ratepayers who are eligible for reliefs should look to pursue them at the first opportunity but will not be penalised if they fail to.

Reforming empty property rates relief

Another finding from the 2020 Business Rate Review was that empty property rates relief was not working as intended in England, with many ratepayers seemingly abusing the empty property rates relief scheme. Consequently, the publication of the 'Business rates avoidance and evasion' consultation on 6 July 2023 set out the intention to review and amend the six week reset period for making a further application for empty rates relief; and to increase the reset period to three or six months on certain commercial property assets.

The increase in the reset period seeks to disincentivise ratepayers from engaging in avoidance activity. There is also discussion in the consultation about limiting the number of times a property can benefit from empty rates relief, as well as a possible amendment of the Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008 to require 50% of a floor space to be occupied to qualify.

Abuse of the empty rates relief or any discretionary rate relief system will be evident through the new information collected through the compliance obligations. HMRC's newly collected data will allow it to share data with billing authorities, who can then verify ratepayers' eligibility for relief schemes.

HMRC will also be able to identify ratepayer breaches where they occupy multiple properties across different billing authorities; and where they may have made a claim for small business rate relief or exceeded the cash caps in respect of the total amount of retail, hospitality and leisure relief being claimed.

It is highly unlikely that limiting the ability to mitigate empty rates will lead to a sudden reoccupation of commercial property. There needs to be a balanced understanding that the tightening of the relief will place additional pressures on businesses against the backdrop of rising interest rates and the cost of living crisis.

Be aware and be ready

The tide of change in business rates represents a seismic shift in the administrative framework of the tax, which includes transferring the onus to provide information onto the ratepayer. Business rates will be brought more into line with the compliance requirements relating to other business taxes. Ratepayers must start thinking now about how they will deliver on their compliance obligations and understand how to track, organise and return data.

More frequent revaluations will hopefully bring greater alignment of the rating assessment to the rental markets, reducing disparity in the figures. The increase in commitment to sharing evidence analysis will also be welcome news to ratepayers and rating agents alike. This will allow the review and challenge of assessments to be fairer for the ratepayer, who currently has limited accessibility to the facts on which the assessment has been compiled. However, only those who comply with new obligations will have the ability to access the evidence analysis.

Those occupying or owning large property portfolios with high vacancy rates need to be mindful of the intended amendments to the empty rates relief scheme, which could culminate in increased void costs and reduced capital value of assets.

With the rising levels of interest rates, increased costs and the shortage of labour in the UK market, it is prudent to keep track of outgoings. Shrewd ratepayers will understand the imminent changes to the system requiring them to undertake new obligations. Timely completion and tracking and sharing of key data will enable them to capitalise on business rates savings effectively and allow them if necessary to challenge future business rates assessments at greater speed and effectiveness.

Businesses need to understand and embrace the changes to maximise saving. Those who can confidently navigate the change will ensure costs are controlled and can feel at ease that they are comfortable and confident that they are paying the right amount in business rates tax.-

Name: Colette Henshaw MRICS MSc BA (hons)
Position: National Head of Business Rates, Partner
Employer: Evelyn Partners LLP
Tel: +44 207 131 8513
Email: colette.henshaw@evelyn.com
Profile: Colette joined Evelyn Partners LLP in January 2022 to establish and lead the national business rates tax service. She is a member of the Royal Institution of Chartered Surveyors and has 14 years' experience advising on business rates.

Statutory residence test
Establishing ties to the UK

Determining whether an individual is UK tax resident in a particular year can be more complicated than you might expect.

by Alexandra Britton-Davis

Key Points

What is the issue?
Whilst the statutory residence test does provide clarity for many taxpayers, there are still areas where the rules are not clear cut.

What does it mean to me?
A series of tests – automatic overseas tests, automatic UK tests and sufficient ties tests – are used to determine whether an individual is UK tax resident for a particular year.

What can I take away?
A number of complexities, inconsistencies and uncertainties can make this a challenging issue.

The statutory residence test was introduced in April 2013 by the Finance Act 2013. When it was announced at the 2011 Spring Budget, it was stated that it would 'provide greater certainty for taxpayers'. However, whilst the statutory residence test does provide clarity for many taxpayers, there are still areas where the rules are not clear cut. HMRC's guidance is at: tinyurl.com/5dzrdyzx.

An overview of the statutory residence test

The statutory residence test is a series of tests which must be applied in a strict order for each tax year. Firstly, an individual must assess whether they meet any of the automatic overseas tests (see below). If this is the case, then they are not UK tax resident for the relevant tax year.

If the individual does not meet any of the automatic overseas tests, they must assess whether they meet any of the automatic UK tests. If they do, then they are UK tax resident for the relevant tax year. If the individual does not meet any of the automatic tests, then they must apply the sufficient ties test. This considers both their days present in the UK and the ties they have to the UK.

If an individual is UK resident for a tax year, they may also be able to consider if they will qualify for split year treatment. Split year treatment may apply in the year that an individual moves to or leaves the UK. If the individual meets the necessary criteria, the tax year will be split into a UK part and an overseas part. The individual will then be taxed as though they were non-UK resident during the overseas part of the year, for the purposes of some (but not all) tax provisions.

Automatic overseas tests

The automatic overseas tests are as follows:

1. The individual was UK resident in one or more of the previous three tax years and spends fewer than 16 days in the UK.
2. The individual was not UK resident in any of the previous three tax years and spends fewer than 46 days in the UK.

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3. The individual works full time overseas, with limited visits to the UK. There are a number of criteria that need to be considered in establishing whether an individual meets this test, including a calculation of whether they have worked sufficient hours overseas.

There are further tests that apply where an individual dies in a tax year which are not covered here.

Automatic UK tests

The automatic UK tests are as follows:

1. The individual spends 183 days or more in the UK.
2. The individual has their only home in the UK. An individual has a home in the UK for these purposes if they have a home for a period of at least 91 consecutive days (of which 30 or more fall within the relevant tax year) and they actually used the home for at least 30 days in the tax year. An individual will not have a home overseas for these purposes if they either have no home overseas, or they have a home but spend fewer than 30 days there in the relevant tax year.
3. The individual works full time in the UK. This test varies from the full-time overseas work test as there is no limit on time spent overseas. Moreover, it will apply to a tax year if the individual works full time in the UK for a 365 day period, any part of which falls in the relevant tax year.

As for the automatic overseas tests, there is also a test which applies where an individual dies in the tax year.

Sufficient ties test

In establishing whether an individual is UK resident or not under the sufficient ties test, it is necessary to establish the days they have spent in the UK and their ties to the UK.

The days an individual is present in the UK for these purposes is calculated as follows:

1. Take the number of days on which the individual is present in the UK at midnight during the tax year.
2. Deduct any days on which the individual is only present in the UK due to transiting through the UK.
3. Deduct any days on which the individual is only present in the UK due to exceptional circumstances (limited to 60 days).
4. Add any days where the individual is deemed to be in the UK. Broadly, this applies to some individuals who have more than 30 days on which they were present in the UK during the day but not at midnight.

The ties which need to be considered are as follows:

- **Family tie:** An individual has this tie if their spouse, civil partner, cohabiting partner or minor child is UK resident for the tax year. There are certain exemptions where minor children are only in the UK for full-time education or where the individual does not spend sufficient time with a minor child.
- **Accommodation tie:** An individual has this tie if they have accommodation available to them for a period of at least 91 days, at least one day of which falls in the relevant tax year, and they spend at least one night there. The home of a close relative can also be considered for the purposes of the accommodation tie, but only if the individual spends a total of 16 nights or more there in a given tax year.
- **Work tie:** An individual has this tie if there are 40 days or more on which the individual does more than three hours' work in the UK.
- **90 day tie:** An individual has this tie if they spent more than 90 days in the UK during at least one of the two previous tax years.
- **Country tie:** This tie only applies to individuals who have been UK resident in one of the three previous tax years. An individual has this tie if the country in which they spend the greatest number of days in the tax year is the UK. For these purposes, days are counted where the individual is present at midnight.

Whether an individual was UK resident in one of the three previous tax years will impact how many days an individual can spend in the UK without being UK tax resident. The number of days an individual can spend in the UK without being tax resident are as follows:

	Number of days individual can spend in the UK without being tax resident	
Number of ties to the UK	**Non-UK resident in all three prior years**	**UK resident in at least one of the three prior years**
0	0 to 182 days	0 to 182 days
1	0 to 182 days	0 to 120 days
2	0 to 120 days	0 to 90 days
3	0 to 90 days	0 to 45 days
4	0 to 45 days	0 to 15 days
5	N/A	0 to 15 days

Issues with the statutory residence test

Complexities and inconsistencies

Whilst the statutory residence test does provide certainty for most taxpayers in respect of their residence status, the rules are complex. Moreover, there are a number of areas where similar but differing terms and tests are used. The complexities include:

Accommodation vs home: The term accommodation is used for the purposes of the sufficient ties test (namely, the accommodation tie). The term home is used for the purposes of the second automatic UK test and some of the split year cases. A property could qualify as an individual's home without giving the accommodation tie; for example, because it was not available for a period of 91 days. Similarly, an individual may have an accommodation tie without having a home if they have the use of their employer's property.

Full-time work vs work tie: As already mentioned, the tests for determining full-time work overseas and in the UK differ. In addition, the test for whether an individual works full-time overseas limits them to 30 days work in the UK. On the other hand, the test for whether an individual has the work tie is whether they work in the UK on 40 days.

Day counting: An individual will have different day counts for different purposes. For example, an individual may count a day as a workday (because they work more than three hours in the UK) but it is not a day of presence (because they left before midnight). Moreover, whilst days spent in the UK under exceptional circumstances and transiting may be excluded for calculating an individual's days in the UK for the sufficient ties test, these days are not excluded for establishing whether they have the country tie or the work tie/full-time work overseas. It can therefore be necessary for an individual to keep multiple running totals of UK days.

Record keeping: It is important for a taxpayer to keep sufficient records both to enable them or their advisors to determine their residency position, and also to provide evidence to HMRC in case of an enquiry. In respect of days spent in the UK, documents such as boarding passes and passport stamps may be sufficient. For matters such as work days, the position may be harder to prove, especially if trying to prove a negative (i.e. that an individual did not work more than three hours on a given day).

Uncertainties

In addition to areas where the legislation is complex to apply, there are areas where there is a lack of certainty.

Home: Whilst the legislation does define 'home' for the purposes of the statutory residence test, there is uncertainty regarding when a property would be considered a home. For example, the legislation states that a property which is 'nothing more than a holiday home' will not qualify (Finance Act 2013 Sch 45 para 25(3)). However, the formulation of the legislation necessitates that an individual's second (or third or fourth) home could qualify. Whilst some cases will be clear cut, there will be others where the position is not clear.

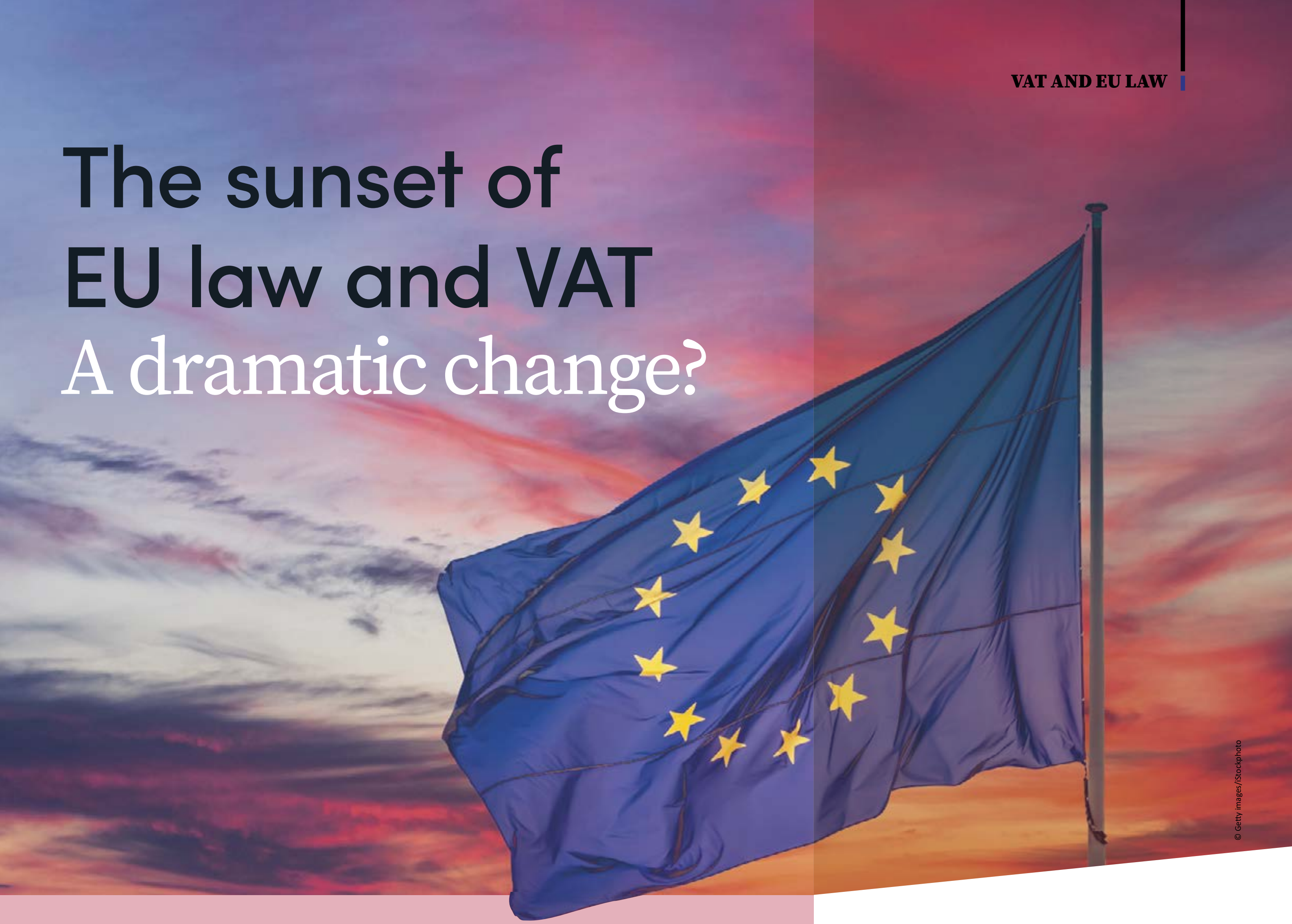
Exceptional circumstances: When counting the number of days an individual has been present in the UK, it is possible to exclude up to 60 days if they were only present in the UK because of exceptional circumstances and they leave the UK as soon as those circumstances permit. The legislation gives examples of 'national or local emergencies' and 'a sudden or life-threatening illness of injury'; however, these are examples and are not therefore an exhaustive list.

There has been one case on exceptional circumstances (*A Taxpayer v HMRC* [2023] UKUT 182 (TCC)), which has been heard by both the First-tier Tribunal and the Upper Tribunal. (The taxpayer won initially, with HMRC succeeding on appeal.) Whilst this case gives some guidelines for how to approach exceptional circumstances, the judgment was inevitably very specific to the facts of the particular case and therefore there remains uncertainly in this area.

See 'Family misfortunes: Exceptional circumstances rule' by Keith Gordon on page 23 for details of A Taxpayer v HMRC.

Name: Alexandra Britton-Davis
Position: Partner
Company: Saffery LLP
Tel: +44 (0)207 841 4062
Email: alexandra.britton-davis@saffery.com
Profile: Alex advises high net worth individuals, trustees and family offices on their UK tax affairs, estate and succession planning. In particular, she focuses on advising UK-resident non-domiciled individuals and those with multi-jurisdictional personal or business interests.

The sunset of EU law and VAT
A dramatic change?



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What impact will the change in our approach to EU law really have on VAT?

by Michael Taylor

The Retained EU Law (Revocation and Reform) Act 2023 received Royal Assent on 29 June 2023. When the Bill was introduced to Parliament in September 2022, it promised 'to put the UK statute book on a more sustainable footing … by ending the special status of retained EU law'. Indeed, it was conceived as the last of a trilogy of pieces of legislation – following the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020 – that would lead to the potential divergence of domestic law from EU law following the UK's departure from the EU.

Some of the proposals within the original Bill were startling. For instance, as initially drafted, it would have repealed from 31 December 2023 any and all retained EU legislation that was not otherwise saved by government ministers. And the government's retained EU Law Dashboard (see tinyurl.com/3ehrjvse) listed numerous key pieces of VAT legislation that would, in theory, have been repealed: the 1987 Order which governs the operations of the Tour Operators Margin Scheme; the 1992 Order which blocks the recovery of input tax on certain supplies; and even the VAT Regulations themselves.

What does it mean for VAT?

Having undergone significant amendment, however, the Act passed by Parliament is very different from that original draft. So what does it mean for VAT, for businesses and practitioners?

First and foremost, the Act reversed the Bill's position on repealing retained EU law. Rather than automatically repealing all such legislation unless it is specifically saved, only the retained EU law that is specifically cited in Schedule 1 of the Act will be repealed from 31 December 2023.

Though 'relevant national authorities' (s 1(4)) may seek to save specific pieces of legislation until 31 October, Schedule 1 already lists numerous pieces of tax-related retained EU law that will be repealed at the end of the year. The vast majority, however, concern the exchange of tax information with overseas British territories. Only two – regarding the taxation of motor fuel – appear to impinge upon indirect taxes. Even so, the Act has several other implications for the interaction of domestic law and EU law in the sphere of VAT.

Section 2, for instance, repeals the saving provisions enacted by the Withdrawal Act 2018, meaning that any and all EU law rights and liabilities that have not been recognised in domestic law will be extinguished at the end of the year. Given the four year time limit which applies to so much of the administration of VAT, one might wonder whether this will affect businesses beyond eliminating the retained EU law rights that may have accrued during 2020 (at the end of which, the Brexit implementation period expired).

Sections 3 and 4 provide for the abolition of the supremacy of EU law and the general principles of EU law, respectively. And whilst this might appear to represent a drastic change when interpreting and applying the law as it pertains to VAT – the conforming constructions and the *Marleasing* principle! – the change will be less dramatic in practice.

This is because the principles of effectiveness, proportionality and subsidiarity, for instance, are concerned primarily with the interaction of domestic law with EU law, which has not been unambiguously supreme since 2020. Accordingly, the accounting periods in which EU law *was* supreme have been gradually falling out of time in any event.

The principle of fiscal neutrality – that is, the principle that supplies which are identical or sufficiently similar from the perspective of a consumer should be taxed in the same way – is more important; a cornerstone of the VAT system. However, the Supreme Court has already recognised fiscal neutrality as underpinning 'domestic law jurisprudence in relation to VAT' (*DCM Optical Holdings* [2022] UKSC 26 at [34]). In this way, the Supreme Court has 'saved' fiscal neutrality from the abolitionist clauses of the Act.

As for the remaining general principles of EU law, such as legal certainty and the protection of legitimate expectation, English common law has long recognised comparable if not identical rights. The standard judgment on legitimate expectation, for instance, is that of the Court of Appeal in *R (oao Coughlan & Ors) v North & East Devon Health Authority* [1999] EWCA Civ 1871, as endorsed by the Supreme Court in *Finucane* [2019] UKSC 7.

Retained EU case law

Turning to the status of retained EU case law – and it should be noted that anything heretofore referred to as 'retained' will from 1 January 2024 be known instead as 'assimilated' law – the Act does not disturb the present practice, whereby the Court of Appeal in England and Wales may depart from retained EU case law (if, per the *Bristol Aeroplane* dictum, it has not already endorsed it) and the Supreme Court is not bound by any such retained EU case law.

It appears, however, that Section 6 of the Act has amended the tests that apply to decisions on whether to depart from retained EU case law. From 1 January 2024, the Court of Appeal will be obliged to consider: 'the fact that decisions of a foreign court are not (unless otherwise provided) binding'; 'any changes of circumstances which are relevant to the retained EU case law'; and 'the extent to which the retained EU case law restricts the proper development of domestic law'.

As for the Supreme Court, from 1 January 2024 it will be empowered to depart from its own retained domestic case law – i.e. previous Supreme Court and House of Lords judgments which applied EU law – if it considers it right to do so, having regard to 'the extent to which the retained domestic case law is determined or influenced by retained EU case law from which the court has departed or would depart', 'any changes of circumstances which are relevant to the retained domestic case law', and 'the extent to which the retained domestic case law restricts the proper development of domestic law'.

It would appear, therefore, that the anticipated sunset of retained EU law, retained EU case law, and the general principles of EU law will be considerably less dramatic than the draft versions of this legislation had suggested, and that the VAT system should continue to operate much as it has done since the expiration of the Brexit implementation period. How all this plays out in practice, of course, remains to be seen.

Name: Dr Michael Taylor
Position: Manager, Indirect Tax Disputes
Company: PwC
Tel: +44 (0)77483 334197
Profile: Michael Taylor is a Senior Manager in PwC's ITX Disputes practice, which was named Best VAT/Indirect Tax Team at the 2022 Tolley's Taxation Awards. He specialises in technical research in support of dispute resolution in relation to indirect tax.

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Family misfortunes

Exceptional circumstances rule

The Upper Tribunal has considered the exceptional circumstances rule in the statutory residence test.

by Keith Gordon

Key Points

What is the issue?
The First-tier Tribunal decision of *A Taxpayer v HMRC* [2022] UKFTT 133 (TC) concerned the UK residence status of an individual who had spent 50 days in the UK, which would make her liable to pay tax in the UK. She argued successfully that six days could be excluded under the 'exceptional circumstances' let out.

What does it mean to me?
The Upper Tribunal set aside the First-tier Tribunal's decision, concluding that the taxpayer was not entitled to exclude the six days under the exceptional circumstances rule.

What can I take away?
If a significant tax liability is a likely outcome of being found UK resident for a particular year, then plan any return visits with at least a few days as a safety buffer, just in case an unexpected visit to the UK occurs.

In the July 2022 issue of *Tax Adviser,* I wrote about the anonymised First-tier Tribunal decision of *A Taxpayer v HMRC* [2022] UKFTT 133 (TC) concerning the UK residence status of an individual otherwise based in Ireland. With three UK ties and her being classified as a 'leaver', the taxpayer would be treated as non-resident provided that her day count was 45 or below for the year in question. However, the taxpayer had spent 50 days in the UK.

Nevertheless, she argued successfully that six of her days could be excluded under the 'exceptional circumstances' let out (Finance Act 2013 Sch 45 para 22(4)). That meant that she could be treated as having spent only 44 days in the UK and therefore non-resident for the year.

In my previous article, I commented that an HMRC appeal was not off the cards and the case has indeed proceeded to the Upper Tribunal, whose decision is reported as *HMRC v A Taxpayer* [2023] UKUT 182 (TCC).

The facts of the case

Some of the background facts are set out in my earlier article. I shall repeat only those that are critical for the purposes of the present article.

The taxpayer had originally lived in the Manchester area but moved to Ireland on 4 April 2015 with her younger daughter. In the 2015/16 tax year, a family company paid her a dividend of £8 million, by reference to shares that had been transferred to her by her husband earlier in the year (or, per the First-tier Tribunal's decision, in September 2014). The husband had remained resident in the UK but was planning to move to Ireland when he retired.

In relation to the 2015/16 tax year, the taxpayer was not covered by the automatic tests for non-residence or residence and therefore her residence status had to be determined by looking at her statutory ties to the UK and the number of days spent in the UK.

It was common ground that the taxpayer had three such ties:

- the family tie: through her husband's continued residence in the UK;
- the accommodation tie: through the family home which continued to be available to her; and
- the 90-day tie: by reference to the number of days spent in the UK in the two previous tax years.

It was also common ground that the taxpayer had been resident in the UK during at least one of (in fact, all three of) the previous tax years. As a result, it was common ground that the taxpayer would be treated as UK resident in 2015/16 if her day count for that year exceeded 45.

The actual days spent in the UK were 50. However, the taxpayer argued that the last six of those (spread across a two-day and a four-day visit) should be excluded due to exceptional circumstances. Under para 22(4) and (6), it is possible to exclude up to 60 days if:

a) P (the person whose residence is being considered) would not be present in the UK at the end of that day but for exceptional circumstances beyond P's control that prevent P from leaving the UK; and
b) P intends to leave the UK as soon as those circumstances permit.

The essence of the taxpayer's argument was that she had to attend to the needs of her twin sister who suffered from depression and alcoholism and was a suicide risk and that she had an urgent and unexpected need to provide care for the sister's own children.

The First-tier Tribunal did not accept all of the taxpayer's arguments so far as the sister's condition was concerned. However, the tribunal concluded that the risk of neglect likely to be suffered by the children did constitute exceptional circumstances that temporarily prevented the taxpayer from leaving the UK. Thus, the six days were to be excluded, keeping the taxpayer's total below 46.

HMRC considered the First-tier Tribunal's decision to be tainted by errors of law and it appealed to the Upper Tribunal.

The Upper Tribunal's decision

The case came before Mr Justice Michael Green and Judge Anne Redston.

The Upper Tribunal identified the centrality of the day-counting rules in the statutory residence test. It noted that a day is generally counted if an individual is present in the UK at midnight at the end of that day – thus, the taxpayer in the present case was physically present in the UK for 50 midnights. However, para 22(4) provides one of the limited exceptions to this midnight rule, permitting some days (or midnights) to be excluded.

The Upper Tribunal also remarked upon the vagueness of the evidence that had been before the First-tier Tribunal. For example, the taxpayer was aware of the 45-day limit and that, prior to the two visits in question, she had reached a count of 44; therefore, she knew that she was going to have to rely on the exceptional circumstances test. Despite this, the taxpayer had very little recall of how she spent those days or even which nights she spent at her sister's home and which at her own home with her husband.

The Upper Tribunal further commented on what it considered to be a gap in the First-tier Tribunal's reasoning. In particular, it had accepted that, during her two visits, the taxpayer had put in place measures to ensure that the sister's home was professionally cleaned and that the sister and her children were adequately supervised. However, this was in a case where the First-tier Tribunal disbelieved other aspects of the taxpayer's evidence (in particular in relation to the twin being a suicide risk).

The Upper Tribunal felt the First-tier Tribunal should have made clear why different parts of the taxpayer's factual case fared so differently. Furthermore, the Upper Tribunal was unclear why the taxpayer's involvement was so critical, given that the two sisters' brother (who lived only 20 miles away) was keeping a close eye on the taxpayer's twin, and that the twin also had two friends who visited several times daily.

The Upper Tribunal also remarked upon the lack of explanation as to why the taxpayer did not put in place ongoing arrangements to care for the twin and the twin's children after the first visit.

Moving on to HMRC's grounds of appeal, the Upper Tribunal then considered the 'exceptional circumstances' test. In contrast to the First-tier Tribunal, it decided that the test was entirely objective and did not permit a tribunal to consider any particular attributes of the taxpayer.

Furthermore, the Upper Tribunal emphasised that there must not only be an exceptional circumstance but it must also be one that prevents the individual from leaving the UK on each day for which the relief is being sought. Prevention was held to amount to stopping the individual from leaving the UK, making departure impossible. Referring to Supreme Court authority, the Upper Tribunal said that a 'mere hindrance' would not be sufficient.

The First-tier Tribunal had commented:

> 'It could hardly have been Parliament's intention to have required the "exceptional circumstances" test to be failed if, for example, a taxpayer thought it necessary to be present because of serious illness or at the death bed of a close relative.'

On the basis of the Upper Tribunal's interpretation, however, that is precisely what Parliament intended. As the Upper Tribunal explained, serious illness and death are not exceptional. Furthermore, the Upper Tribunal considered it not to be out of the ordinary for a person to have a sense of moral obligation towards a relative in such a position. In any event, continued the Upper Tribunal, it would not be the failing health of a relative that would be preventing the individual from leaving the UK but the individual's sense of moral obligation.

Similarly, the Upper Tribunal confirmed that an individual who has used up his or her allocation of days, who then finds that a relative is on their deathbed in the UK, must make the choice:

- visit (or remain in) the UK, satisfy his or her moral obligation and become UK resident; or
- remain outside (or leave) the UK, and maintain non-resident status for the year.

For these reasons, the Upper Tribunal concluded that the First-tier Tribunal had erred in law when making its decision. The Upper Tribunal further accepted HMRC's other three grounds of appeal.

It therefore set aside the First-tier Tribunal's decision. On the basis of its understanding of the law, it remade the decision and concluded that the taxpayer was not entitled to exclude the six days under the exceptional circumstances rule. Accordingly, the taxpayer must be treated as having been present in the UK on 50 days in the 2015/16 tax year. As an individual with three ties and who had been resident in at least one of the previous three tax years, she fell within the definition of resident for the 2015/16 tax year. As a result, the dividend paid to her was subject to UK tax.

Commentary

In my previous article, I explained that this case was not one whose facts looked the most compelling for an argument that the visits to the UK should be excluded on the basis of exceptional circumstances. However, I did feel that the First-tier Tribunal's approach to the exceptional circumstances test was reasonable and I am somewhat disappointed by the Upper Tribunal's undoing of that part of the decision.

However, it might be of some comfort that the interpretation put forward by HMRC in the First-tier Tribunal was not repeated in such strident terms in the Upper Tribunal. Care must now be taken to ensure that HMRC's arguments in future are based on the version that was endorsed by the Upper Tribunal and that HMRC does not revert to its previous formulation.

The case also illustrates how the phrase 'intention of Parliament' can be so easily misunderstood. This phrase is often used when describing the role of the courts when interpreting statutes; the courts' role being to ascertain Parliament's intention.

I doubt that many of the MPs who voted for the Finance Act 2013 would have intended an emergency visit to the UK to attend to a dying relative not to count as an exceptional circumstance for the purposes of this relaxation to the statutory residence test. However, the subjective intentions of MPs are of no relevance to statutory interpretation; instead, the intention of Parliament is discerned from an objective interpretation of the words Parliament used (although this exercise does not preclude the purpose of the legislation being considered).

According to the Upper Tribunal, Parliament did not intend to give any relief to individuals who were exceptionally discharging such a moral obligation.

The Upper Tribunal reached its view on the word 'prevents' from a Supreme Court decision which turned on the construction of insurance policies which covered 'loss ... resulting from ... Prevention of access to the Premises due to the actions or advice of a government or local authority due to an emergency'. It is immediately obvious that the context of that clause was very different from the rule in para 22 and I wonder whether the taxpayer will be tempted to appeal against the Upper Tribunal's decision to the Court of Appeal.

> **The new rules now adopt a more mechanistic approach, with their stronger emphasis on day counts.**

Indeed, the Upper Tribunal had reached its decision on the express basis that serious illness is not exceptional. However, Parliament had expressly provided, as examples of what might count, 'a sudden or life-threatening illness or injury'. This is also in a context where Parliament had permitted up to 60 days (i.e. approximately two months) in aggregate to be excluded from the day count. That in itself suggests a less extreme interpretation than that supported by the Upper Tribunal.

One possible response to the above reasoning is that the statutory words were not considering sudden illness or injury *per se* but only if suffered by the taxpayer him or herself. In other words, the taxpayer's falling into a coma *might* count as an exceptional circumstance preventing him or her from leaving the country but the taxpayer's spouse's similar predicament would not count. However, even that argument is likely to fail the Upper Tribunal's reading of the legislation because, applying the Upper Tribunal's own logic, it would not be the coma that prevents the individual from leaving the country; instead, it would be the medical advice and/or the good sense of relatives who follow that advice which ensures that the individual remains in the UK.

It should also be remembered that the statutory residence test was largely enacted to codify the more nebulous concept of 'residence'. Although pre-2013, an individual's day count was one of the factors used to determine whether or not they were resident in any particular tax year, it was always accepted that a one-off spike because of exceptional circumstances would not convert non-residence into residence. Ultimately, any additional days in any particular year would be viewed in the light of the full facts of the case.

It is fully accepted that the new rules now adopt a more mechanistic approach, with their stronger emphasis on day counts. However, in my view, the fact that the statutory test has included a similar exceptional circumstances rule suggests that, as did the First-tier Tribunal, the rule should not be interpreted by reference only to wholly objective criteria but should instead take account of the individual taxpayer's personal circumstances.

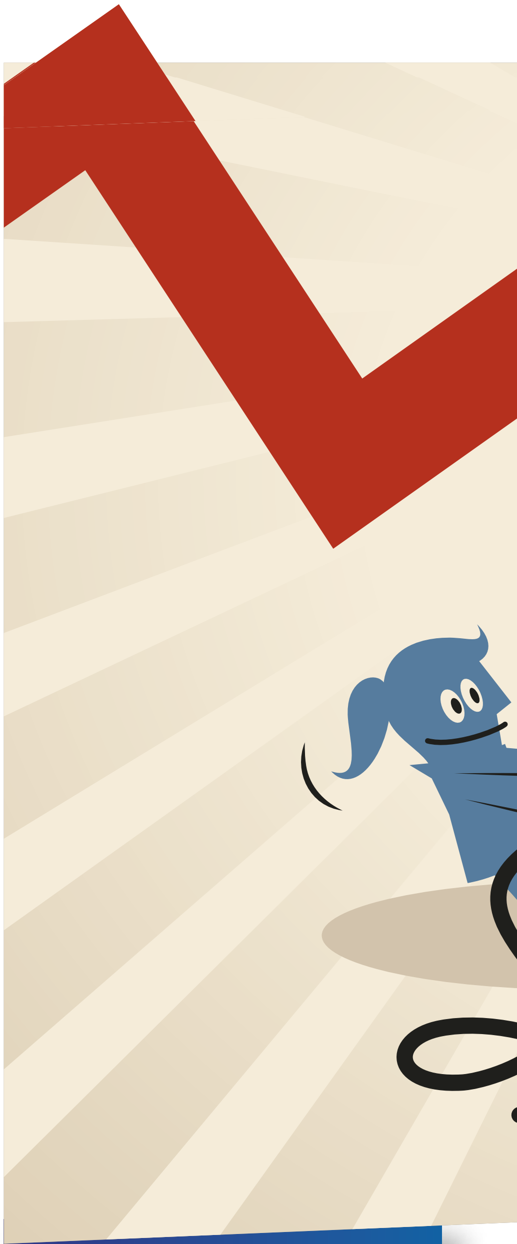
With several millions at stake and a new area of law under consideration, an appeal to the Court of Appeal should not be ruled out. If the Court of Appeal rejects the Upper Tribunal's view of the exceptional circumstances test, it is similarly possible that it will forgive the other complaints that the Upper Tribunal had about the First-tier Tribunal's decision. There again, it remains my view that the taxpayer was lucky in the First-tier Tribunal on the particular facts of her case. This is not the set of facts I would want to put forward to prick the Court of Appeal's conscience.

What to do next

Subject to any further appeal, there is a simple lesson to be learned from this case: do not rely on the exceptional circumstances rule. Indeed, that advice would be worth following whatever the courts finally conclude about the exceptional circumstances rule. As a result, if a significant tax liability is a likely outcome of being found UK resident for a particular year, then plan any return visits with at least a few days as a safety buffer, just in case an unexpected visit to the UK occurs.

Name: Keith Gordon
Position: Barrister, chartered accountant and tax adviser
Company: Temple Tax Chambers
Tel: 020 7353 7884
Email: clerks@templetax.com
Profile: Keith M Gordon MA (Oxon), FCA CTA (Fellow) is a barrister, chartered accountant and tax adviser and was the winner in the Chartered Tax Adviser of the Year category at the 2009 Tolley Taxation awards. He was also awarded Tax Writer of the Year at the 2013 awards, and Tolley's Outstanding Contribution to Taxation at the 2019 awards.

Negligible value claims
Identifying the correct format



Making a negligible value claim can provide significant capital gains tax savings but close examination is required to identify opportunities.

by Julie Butler

Claims by farmers under the Basic Payment Scheme 2023 in England needed to be in place by midnight on 15 May. After this date, entitlements have no value and will no longer be tradeable. This results in some tax advantages. Those who bought, were given or inherited entitlements and have made taxable gains on other asset sales or other disposals have the chance to reduce their capital gains tax bill. This can be done by making what is known as a negligible value claim, or possibly a claim for a loss on the extinction of an asset. When the milk quota was abolished in March 2015, many producers made negligible value claims on their purchased quota, setting off their losses on then worthless milk quota against other capital gains.

In the case of basic payment scheme entitlement values, 100% of the purchase price can be offset against other gains, along with any agents' and legal fees directly attributable to the transaction. Farmers should act now to plan for a claim. Farm tax advisers should be looking closely at accounts and other tax information to help to identify opportunities. While it may not affect a huge number of people, those who are affected could make significant capital gains tax savings.

For entitlements that were gifted or inherited, their value at the time of the gift or inheritance is the starting point. For tax there is no accepted definition of negligible value, but it generally applies to assets that have become worth next to nothing while the owner owns them.

Identify the claim now

Whether making a negligible value claim or a claim for a loss on the extinction of an asset, the claim is made on the self-assessment tax return, which has already been started to be submitted for the year ending 5 April 2023.

Capital gains tax losses can be carried forward to be set against other capital gains tax liabilities indefinitely. Keep a clear record of any capital gains tax losses, etc. and utilise them to the maximum.

Capital gains tax losses cannot be carried back to set against income. Therefore, where there are gains to 2022/23 above the capital gains tax annual allowance, and all losses brought forward have been used, a claim should be considered.

The different business structures

The position of a sole trader is quite simple as any losses are offset against their own gains.

Partnership gains can be complicated by the common issue of questions as to who owns what in a partnership – assets are often owned privately but used in the partnership business. Who paid for the entitlements and in whose name they are held could be key, while whose name they are registered in with the Rural Payments Agency adds another level of complexity.

What do the accounts show and are they correct? What do the partners understand ownership to be? All of these need to be addressed, and not simply for the purposes of making such a claim.

Key Points

What is the issue?
Whether making a negligible value claim or a claim for a loss on the extinction of an asset, the claim is made on the self-assessment tax return. Capital gains tax losses can be carried forward to be set against other capital gains tax liabilities indefinitely.

What does it mean to me?
Whilst the recent case of *Williams v HMRC* [2023] UKFTT 429 concerns a capital loss in respect of a loan to a trading company converted into shares, it sheds light on the importance of making a negligible value claim correctly.

What can I take away?
Farmers and farm advisers wishing to make a negligible value claim in relation to the purchased Basic Payment Scheme entitlements should learn from the *Williams* case and make sure that any claims made are in the correct form and in an appropriate time.

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Those trading as a company can offset capital losses against other capital gains in a similar way.

The importance of making the correct claim

Whilst the recent case of *Williams v HMRC* [2023] UKFTT 429 concerns a capital loss in respect of a loan to a trading company converted into shares, it sheds light on the importance of making a negligible value claim correctly.

Williams claimed a capital loss in his 2015/16 tax return from a loan made to a Sierra Leone trading company. HMRC subsequently opened an enquiry where it was explained with supporting evidence that the loan had been converted into shares in July 2009.

In its response, HMRC asked whether it should be assumed that Williams wished to make a negligible value claim under the Taxation of Chargeable Gains Act 1992 s 24 and requested further information to support it. Williams' accountants provided the required information and confirmed that the taxpayer wanted to make a negligible value claim. They also stated that the taxpayer was withdrawing his losses claim.

A few months later, HMRC wrote to the accountants stating that, in the absence of a valid negligible value claim, the loss would be removed from the capital gains tax computation and issued a closure notice soon after. Williams appealed and HMRC applied to have the appeal struck out.

The First-tier Tribunal agreed with HMRC that the tax return did not include a negligible value claim as set out in Taxes Management Act 1970 Sch 1A para 2 and that the accountants' letter did not satisfy the necessary requirements. It is necessary for a claim to be made and this letter was not 'in such form' as required. Nor did it contain a declaration to the effect that 'all of the particulars given in the form are correctly stated to the best of the information and belief of the person making the claim', as required by para 2(4) of that schedule.

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As Taxes Management Act 1970 s 31 does not contain any right of appeal against HMRC's decision not to admit a negligible value claim that is not in the required form, the First-tier Tribunal did not have the jurisdiction to determine this issue or to consider the conduct of HMRC not to allow the claim or refer Williams to the appropriate guidance. HMRC's application to strike out the appeal was therefore allowed.

Despite the result going in HMRC's favour, it was accepted by HMRC that it should have explained to the appellant what was needed to put the claim in the proper form and set out the information needed, rather than seeking clarification as to whether a negligible value claim was being made.

Given that there is no time limit for making a claim, the taxpayer could still put in a fresh claim in valid form. However, given that this would trigger a loss in the current year (or under the Taxation of Chargeable Gains Act 1992 s 24(2) in the previous two years), it wouldn't reinstate a claim for the original year in which Williams had intended to use the loss so it may be of little benefit to him anyway.

Farmers and farm advisers wishing to make a negligible value claim in relation to basic payment scheme entitlements should learn from the *Williams* case and make sure that any claims made are in the correct form and in an appropriate time, so check the information now. All accounts should be reviewed by tax advisers and the question asked of farm clients to their understanding.

Name Julie Butler FCA
Position Founding Director
Company Butler & Co Chartered Accountants
Tel 01962 735544
Email j.butler@butler-co.co.uk
Profile Julie Butler is a farm and equine tax specialist. Her articles are published in the national accountancy and tax press and she is the author of *Tax Planning for Farm and Land Diversification* (Bloomsbury Professional), *Equine Tax Planning* and *Stanley: Taxation of Farmers and Landowners* (LexisNexis).

Intra-group transactions
How did transfer pricing come about?

We examine the principles of transfer pricing and the basis upon which the taxable profits of multinational enterprises are determined.

by Tosin Ajayi

International trade, technological advancement and integration of national economies have enabled the growth of cross border operations, with companies forming groups and setting up structures in different countries. These groups of companies, multinational enterprises (MNEs), vary in size and operate cross-border using structures such as incorporating subsidiaries, operating through branches, joint ventures or partnerships. MNEs are able to sell goods and provide services from one company within the group or regional centre to another company within the same group.

A substantial volume of global trade consists of international transfers of goods, services, capital (money) and intangible assets among members of the same group (i.e. intra-group transactions). There is evidence that intra-group trade arguably accounts for more than 30% of all international transactions (see The UN Manual on Transfer Pricing for Developing Countries at tinyurl.com/6dhmwe4p).

What is transfer pricing?

To facilitate the provision of these goods and services among members of the same group, companies typically set up transfer prices. Transfer price is the price charged for goods and services between members of the same group (also referred to as related parties or associated companies/ enterprises). Transfer price is also used to refer to the price that a business or division within a company charges for goods or services provided to another within the same company.

Companies are related or associated with each other directly or indirectly if one company controls the other, or both are controlled by the same person or persons. What constitutes direct and indirect control is defined in each country's tax laws; generally, however, direct control is where a company determines how the affairs of another company are conducted because of the shareholding, voting rights or any powers within the articles of association or other document regulating the company. Indirect control exists where rights and powers are held by another company or person connected to the company in question.

As you will see, transfer pricing is important as the need to set such prices is a normal aspect of how MNEs must operate, whether different companies are transacting with one another, or transfers are being made between divisions in the same company.

Transfer prices may also be used to evaluate the performance of divisions and companies. Divisions within a company and group companies within an MNE will generally have separate profit centres and transfer prices can help to determine individual profitability. For example, a business manager, say in the manufacturing division in a company requiring components for use in production, will wish to buy the components at the best price to maximise the division's profitability. Similarly, the

Key Points

What is the issue?
Multinational enterprises are able to sell goods and provide services from one company to another within the same group. To facilitate the provision of these goods and services among members of the same group, the companies set up transfer prices.

What does it mean for me?
Different tax authorities seek to ensure that the amount of taxable profit of a company in their jurisdiction represents the appropriate amount of profit and that multinational enterprises do not transfer profit to low tax jurisdictions to minimise their tax liability.

What can I take away?
Most tax authorities require transfer prices between associated enterprises to be equivalent to what the prices would have been in the open market and in similar circumstances were the companies not related; i.e. arm's length price.

sales manager in the same group will wish to sell its components at the best price possible.

For decades, international tax rules have required that group members use arm's length transfer prices – the price at which a third party would buy or sell the relevant goods or services. Without this requirement, groups could manipulate where their profits were recorded and thus taxed.

Why is there focus on transfer pricing?

Transfer pricing is thus a legal requirement in almost all countries and jurisdictions. Without this requirement, MNEs could achieve outcomes which are not consistent with their economic substance; e.g. shifting profits to a low/no tax country or jurisdiction.

Example: Manufacturing Group

A manufacturing group has a parent company in the UK with two 100% owned subsidiaries, Manufacturing Co in China and Sales Co in Ireland.

Manufacturing Co manufactures the product which it sells to Sales Co. The transfer price between the two companies is paid by Sales Co. Sales Co then sells the product worldwide to third party customers at market price.

Manufacturing Co in China has a tax rate of 25% and Sales Co in Ireland has a tax rate of 12.5%. The transfer price between Manufacturing Co and Sales Co affects the profits left in each country and in turn the effective tax rate for the Group. If Manufacturing Co sells to Sales Co at an unrealistically low price, more profits could be taxed in Ireland at a lower rate.

To address and prevent MNEs shifting profits, the arm's length principle is established as the agreed approach for an appropriate transfer price. This is typically set out in the domestic legislation of most countries and in their double tax treaties.

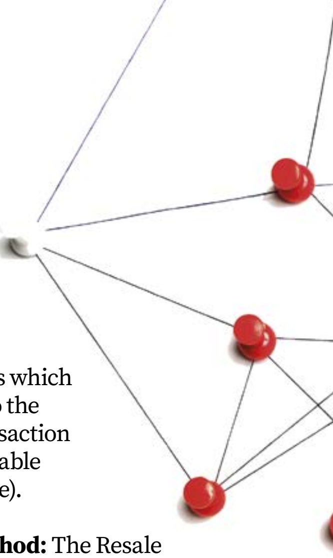
Guidance to determine the appropriate transfer price

Guidance on the determination of the appropriate transfer price originates from the tax treaties. Countries and jurisdictions bound by the tax treaty agreements are referred to as 'states'.

Tax treaties are agreements between two states designed to protect against the risk of double taxation, provide certainty of treatment for cross-border trade and prevent discrimination. Most tax treaties largely conform to the OECD Model Tax Convention on Income and on Capital (OECD Model); some instead use the United Nations Model Double Taxation Convention between Developed and Developing Countries (UN Model) as their base. The Model Conventions are intended to facilitate the negotiation of bilateral tax treaties. Guidance and explanatory notes attached to the Model convention help with interpretation, as well as setting out specific reservations from individual countries. A few countries have their own Model; the United States is the best example.

The UN Model is consistent with the OECD Model, except that the UN Model favours greater taxing rights to the host country of investment; i.e. the country where the income is sourced compared to the residence country of the investor.

The appropriate transfer price is price based on the arm's length principle, which represents the internationally agreed methodology of how transfer prices for MNEs intra-group transactions should be applied. The arm's length



principle covers all types of intra-group transactions, including (but not limited to): goods, services, intangible properties, financial transactions and business restructurings. (A country's tax legislation will specify the types of transactions for which transfer pricing and the arm's length principle applies.) The arm's length principle is expressed in Article 9 of the OECD Model. There are other articles embodying the arm's length principles and these are Articles 7, 11 and 12 of the OECD Model (and 12A of the UN Model, which is especially relevant to services).

Including an Associated Enterprise clause in a double tax treaty is important, as jurisdictions could disagree on how much should be taxed in each location. In our example, both China and Ireland have an interest in the profits taxed in each country. The double tax treaty should regulate that, as well as including a clause on resolving disputes. Without effective dispute resolution, multinational groups could face effective double taxation.

See ***Article 9 of the OECD Model*** in the box opposite. Paragraph 1 establishes when there is a special relationship between two enterprises. In such a case, transactions between the enterprises not consistent with what would be observed between independent parties (i.e. not arm's length) may be adjusted (increased) to reflect profits which should arise at arm's length. Paragraph 2 provides for a corresponding adjustment by the other country where an adjustment has been made to the profits of the enterprise in a country to reflect an arm's length situation, to avoid economic double taxation.

The conditions for the application of this article are set out in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines). There is also a United Nations Practical Manual on Transfer Pricing for Developing Countries (UN Manual). The UN Manual builds on the OECD Guidelines and is drafted to assist developing countries in applying the arm's length principle. The OECD Transfer Pricing Guidelines are the most commonly used and are periodically revised – with the biggest recent change taking place after the outcome of the base erosion and profit shifting (BEPS) project.

Transfer pricing methods

The OECD guidelines set out transfer pricing methods which provide ways to set transfer prices that are arm's length, or test the transfer price already in place, as to whether this is arm's length. The way this works is that a transfer pricing method is identified as the most appropriate method; and that method is then the mechanism by which the prices or results of the transactions between related parties are compared to those of third parties in comparable situation. In many cases, there is no direct third-party comparison, so alternative approaches are needed to find an appropriate method.

Prior to identifying the most appropriate transfer pricing method, a functional analysis needs to be performed to accurately understand:

- the transaction;
- the functions which parties to the transaction perform with respect to the transaction;
- the economically significant risks that may arise on the transaction;
- which parties bear the risks and how the risks are managed; and
- the assets owned or used by the parties for the transaction.

There are five OECD recognised transfer pricing methods, divided into two categories as shown below.

Transfer pricing methods

Traditional transactions method	Transactional profits method
Comparable Uncontrolled Price method	Transactional Net Margin method
Cost Plus method	Profit Split method
Resale Price method	

In addition to these five methods, the UN Manual includes a 'Sixth method' (or 'Commodity rule').

The traditional methods are referred to in this way as the methods in the category rely on actual transactions, and directly compare the terms and conditions in the related party transaction(s) with those of third parties in comparable transactions.

The transactional methods, on the other hand, are less direct than the traditional method and rely on profit levels to determine arm's length prices, measuring the net operating profits of related party transaction(s) and comparing this to that of independent companies engaged in similar or comparable transactions. Each of the methods is briefly discussed in turn below.

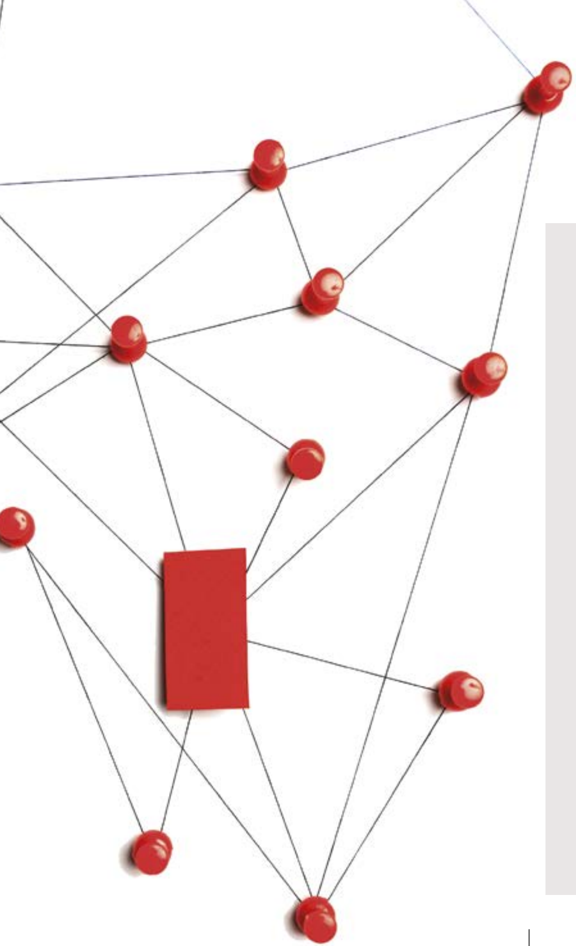
Comparable Uncontrolled Price method: This method compares the price charged for goods or services in a related party transaction to that charged in a comparable third party transaction in comparable circumstances (i.e. market price). This may be to compare the related party transaction to its transaction with third parties in comparable circumstances (internal Comparable Uncontrolled Price) or a comparison of two (or more) third party transactions which are comparable to the related party transaction (external Comparable Uncontrolled Price).

Resale Price method: The Resale Price method, also referred to as resale minus, is used in sales and distribution transactions. The method considers the price an item is 'resold' in a transaction when determining an arm's length price. The method establishes an arm's length gross margin from an entity's sales to third parties, and then uses the gross margin to determine the arm's length price in the entity's transaction with its related parties. (*Gross profit* is net sales less cost of goods sold. *Gross margin* is gross profit divided by net sales (expressed in percentage).)

Cost Plus method: The Cost Plus method analyses a controlled transaction taking place between two entities; usually, a supplier of property or services and the related party purchaser. An arm's length price is then determined by reference to an arm's length gross mark-up (or the average of a range of arm's length gross mark-up) earned on the direct and indirect costs in the related party transaction. (Mark-up is the gross profit / cost of goods sold.)

Transactional Net Margin method: This assesses the arm's length nature of a related party transaction by determining the net profit of the transaction relative to an appropriate base (e.g. cost, sales or assets), and comparing this to those of independent parties performing similar transactions. The ratio of net profit to an appropriate base is known as profit level indicator. There are several profit level indicators that can be used to apply the Transactional Net Margin method, making it appropriate to use for a wide range of transactions. Some of the profit indicators provided in the OECD guidelines are: net profit weighted to sales / operating margin; net profit weighted to costs / markup on total cost / total cost markup; net profit weighted to assets / return on assets; and the Berry Ratio, being gross profit divided by operating expenses.

The Profit Split method: The Profit Split Method is arguably the most complex of the five OECD transfer pricing methods. This method first identifies the profits of related parties from a controlled transaction and splits the profits between the parties to arrive at the profits each party would have made in an arm's length



ARTICLE 9: ASSOCIATED ENTERPRISES

1. Where:
   a. an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
   b. the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State;

   and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits on an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.

situation. The profits are split based on the value of the contributions of each party.

The 'Commodity rule': The Commodity rule has some similarity with the Comparable Uncontrolled Price method, and some countries use this method as an imperfect application of that method. It is used for commodities transactions and relies on the quoted prices on the commodities market to price commodity transactions between related parties.

Transfer pricing documentation

The application of the transfer pricing methods and determination of the transfer prices are to be described in a transfer pricing documentation. The BEPS project included specific new requirements for transfer pricing documentation, now in the OECD guidelines, which set out a three-tiered standardised approach to transfer pricing documentation:

- **Masterfile:** This provides high-level information on an MNE group, including an overview of the group's business, the global allocation of income and economic activity and the transfer pricing policies.
- **Local File:** This supplements the Masterfile and is a detailed transfer pricing documentation specific to each country, setting out details of the material related party transactions.
- **Country by Country Report:** This requires specific information (such as revenue, profit before income tax, income tax paid and accrued, and number of employees) to be provided by MNEs with annual consolidated group revenue of €750 million, to allow tax authorities to perform risk assessments on the MNE group. This report is normally sent to the tax authority in the headquarter location, which in turn forwards it to other tax authorities where the countries are party to Multilateral Competent Authority Agreement on Exchange of Country by Country Report, a Tax Information Exchange Agreement or other suitable bilateral tax treaty.

Mutual agreement procedure

Although the OECD guidelines and UN Manual describe the methods and approaches to determining arm's length prices, disagreements do occur between tax authorities and MNEs (taxpayer) over the most appropriate transfer pricing method or the arm's length price. These disputes may lead to double taxation.

In order to resolve these disputes and to reduce double taxation, tax treaties contain an article, the Mutual Agreement Procedure, to address and resolve disputes between tax authorities. The Mutual Agreement Procedure is also used where the tax outcomes to a person or entity from the actions of tax administration will result in taxation not in accordance with the provisions of the tax treaty.

Conclusion

The transfer price important for both companies and tax authorities. Transfer prices determine the taxable profits of MNEs in different tax jurisdictions and are required to compliant with tax laws.

The arm's length principle is the accepted approach to establish an acceptable transfer price between different companies and divisions within a multinational group. Intragroup transactions are compared to transactions between independent companies in comparable circumstances to determine acceptable transfer prices. Thus, the open market comprising independent companies is the benchmark for assessing the acceptability of the transfer prices.

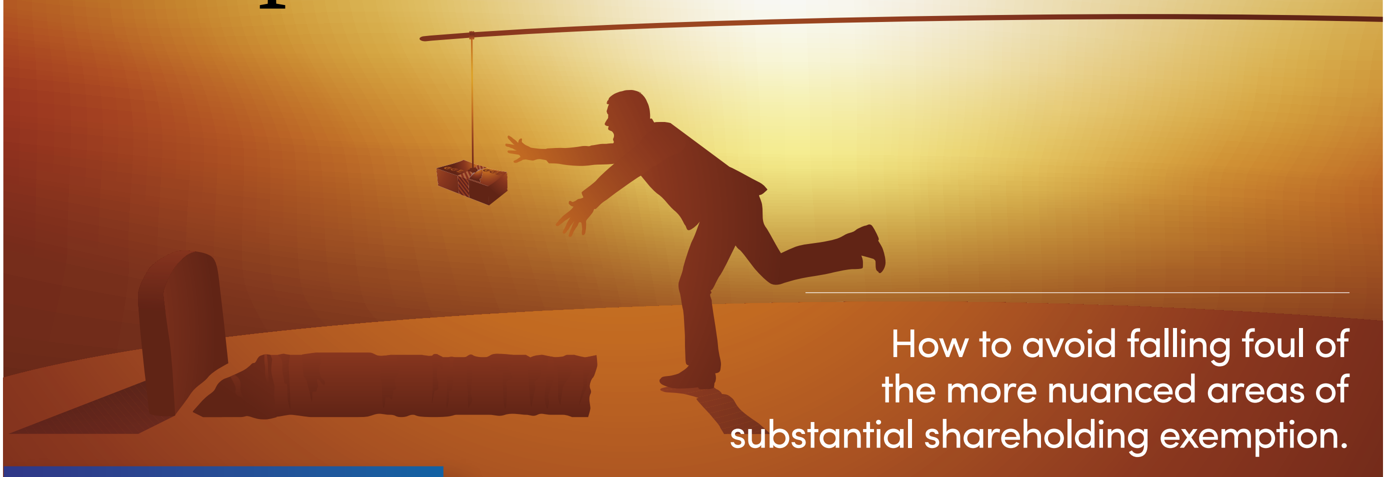
Double tax treaties set out the ground rules for determining arm's length prices and they also include vital dispute resolution approaches. The OECD Transfer Pricing Guidelines (or the UN Manual for developing countries) set out the approaches to be adopted by MNEs and tax authorities. The BEPS Inclusive Framework of approaches to transfer pricing, documentation and dispute resolution has set the future ground rules.

Further reading

The OECD Model Tax Convention:
tinyurl.com/3cav5a8v
The OECD Transfer Pricing Guidelines:
tinyurl.com/5sk9bm4s
The UN Model Tax Convention:
tinyurl.com/59f6seb6
The UN Transfer Pricing Guidelines:
tinyurl.com/6dhmwe4p

Name: Tosin Ajayi
Position: UK Downstream Tax Manager
Employer: Shell
Tel: 07951 359071
Email: tosin.ajayi@shell.com
Profile: Tosin Ajayi is a tax professional with over 12 years' experience working with a range of FTSE 100, 250 and 350 clients. She has in-depth knowledge of various tax and transfer pricing matters and their application to business structures, models and value chains.

Unusual pitfalls
Substantial shareholding exemption



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How to avoid falling foul of the more nuanced areas of substantial shareholding exemption.

by Matt Bell

Key Points

What is the issue?
It can sometimes be assumed that the substantial shareholdings exemption is available even in cases where this may not be the case.

What does it mean to me?
When assessing the availability of the substantial shareholdings exemption, joint venture arrangements and preferential instruments can cause uncertainty as to the availability of this exemption.

What can I take away?
Care should be taken to ensure that the specific facts and circumstances of each structure are carefully considered before making an assessment as to whether the exemption is available.

In the context of M&A transactions, the ability to benefit from the UK substantial shareholding exemption on gains derived from the sale of shares (or interests in shares) is commonly relied on and, in fact, is sometimes assumed to be available without formal analysis.

Recent changes to UK tax law have either:

- removed the requirement to assess the application of this position in certain circumstances (namely, the introduction of the UK qualifying asset holding company regime); or
- added additional routes by which the requirements can be met (through the qualifying institutional investor sub-set of rules).

However, this has not removed the requirement for careful analysis to be carried out to avoid falling foul of the more nuanced areas of the legislation.

Overview of the substantial shareholding exemption

The substantial shareholding exemption applies to exempt a qualifying gain (or loss) arising to a company (the 'investing company') on a disposal of shares (or interest in shares) in another company (the 'company invested in').

There are two primary tests that need to be met in order to benefit from the substantial shareholding exemption:

- The investing company must have held a 'substantial shareholding' in the company invested in throughout a 12 month period beginning not more than six years from the date on which the disposal takes place.
- The company invested in must have been a 'qualifying company' throughout the period beginning from the start of the 12 month period referenced above and continue until the date of the disposal (and immediately after in the case of a disposal to a person connected with the investing company).

In the case of investing companies that are owned 25% or more by qualifying institutional investors, there are additional ways to meet the substantial shareholding requirement, through the qualifying institutional investor sub-set of rules.

A detailed explanation of the requirements that need to be met in order to benefit from the substantial shareholding exemption is outside the scope of this article. Guidance can be found in Capital Gains Manual CG53000P to complement the relevant legislation (Taxation of Chargeable Gains Act 1992 Schedule 7AC, referred to throughout unless stated otherwise).

Joint venture companies

Typically, in the case of M&A transactions, the 'company invested in' is a holding company (rather than a trading/operating entity), such that Part 3 requires an assessment of whether it is the 'holding company of a trading group/subgroup' (i.e. looking down through the structure to the underlying operating business). In evaluating the holding structure, it is important to consider whether there are joint venture arrangements that could impact the Part 3 'qualifying company' status of the company invested in in (see Capital Gains Tax Manual CG53114).

A company is a 'joint venture company' if it is not a member of the same group as the company whose status is being determined, and:

- it is a trading company or the holding company of a trading group/subgroup; and
- five or fewer persons hold 75% or more of its ordinary share capital. For this purpose, all members of a group are treated as a single person.

In the case of joint venture companies, when determining the trading company status of a company (Company A), the holding of shares in the joint venture company by Company A shall be disregarded (provided that holding is at least 10%, taking account of shares held by Company A's group members). Company A shall instead be treated as carrying on an appropriate portion of the activities of the joint venture company; or, where the joint venture company is a holding company, the activities of that company and its 51% subsidiaries.

As set out in ***Figure 1: Determining whether the SSE applies***, Seller is looking to dispose of its shares in Company A. It needs to determine whether the substantial shareholding exemption is available in respect of any gains arising on disposal. All companies in this example are holding companies, except for Company D (the trading entity).

As Company B is a joint venture company, Company A shall be treated as carrying on the activities of Company B (of which there are no trading activities, only holding company activities) and its 51% subsidiaries when evaluating whether the 'Part 3: Company invested in' test is met.

- Company C is a 51% subsidiary of Company B but is a holding company, such that it has no trading activities of its own.
- Company D is a trading company but is not a 51% subsidiary of B (indirectly).

Given the above, when considering whether Company A is a trading company or a holding company of a trading group/subgroup, arguments can be made that the activities of Company D would not be included (when taking a 'top-down' view starting at the seller), resulting in the 'Part 3: Company invested in' test not being met. Given the lack of guidance or prescriptive legislation in this regard, taking a 'bottom-up' approach (i.e. considering the trading entity in the first instance) may give rise to a more positive interpretation of these rules.

It is not uncommon for joint venture arrangements to exist at multiple levels in a structure. Joint venture arrangements are also often bespoke with complicated commercial objectives. Specific analysis should therefore be undertaken when assessing the impact of such arrangements on the availability of the substantial shareholding exemption, based on the specific facts of a case. A non-statutory clearance from HMRC may be advisable.

Capital structures involving preference shares and shareholder loans

When considering whether the investing company has a substantial shareholding in the company invested in, an assessment needs to be made as to how profits available for distribution to equity holders (including on a winding up) will be allocated, unless the alternative qualifying institutional investor test is being applied. (For reference, an 'equity holder' is any person who holds ordinary shares in the company or is a loan creditor of the company in relation to a loan other than a normal commercial loan.)

If no such profits are available, the test is instead carried out on a deemed £100 profit amount (Corporation Tax Act 2010 s 165).

In private equity acquisition structures, it is not uncommon for holding companies to have no profits (due to income being recognised at the end of the investment; i.e. on disposal). Further, due to the difference between capital gains and income tax rates for individuals, management teams may prefer to hold preference shares instead of shareholder loans, but with equivalent economic terms (see ***Figure 2: Private equity acquisition structures***).

- Institutional investor via X (a UK tax resident holding company): A ordinary shares and loan notes (e.g. with an 8% coupon).
- Management: B ordinary shares and B preference shares (the latter of which provide an equivalent economic return to the loan notes held by the institutional investor; e.g. an 8% preferential return).

If an assessment of the profits available for distribution to equity holders was carried out at a time when Company Y has no profits, the full £100 of deemed profit would be allocable to the B preference shares held by Management. Company X would therefore not meet the 'Part 2: Substantial shareholding' requirement, such that the substantial shareholding exemption would not be available.

Conclusion

The substantial shareholding exemption provides a wide-ranging exemption for capital gains arising on the disposal of shares. However, as can be seen from the above examples, care should be taken to ensure that the specific facts and circumstances of each structure are carefully considered before making an assessment as to whether the exemption is available.

FIGURE 1: DETERMINING WHETHER THE SSE APPLIES

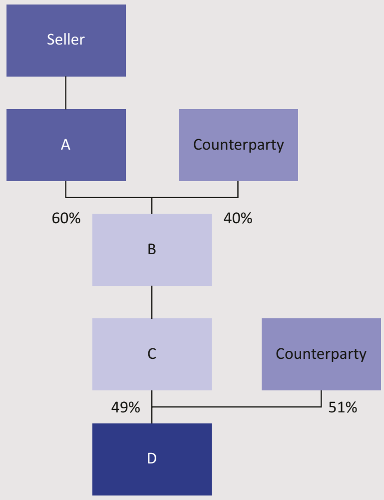
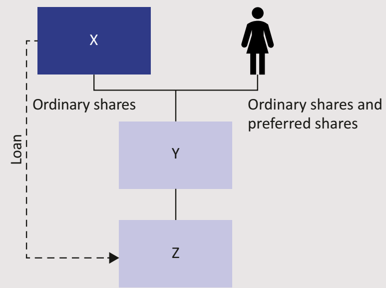


FIGURE 2: PRIVATE EQUITY ACQUISITION STRUCTURES

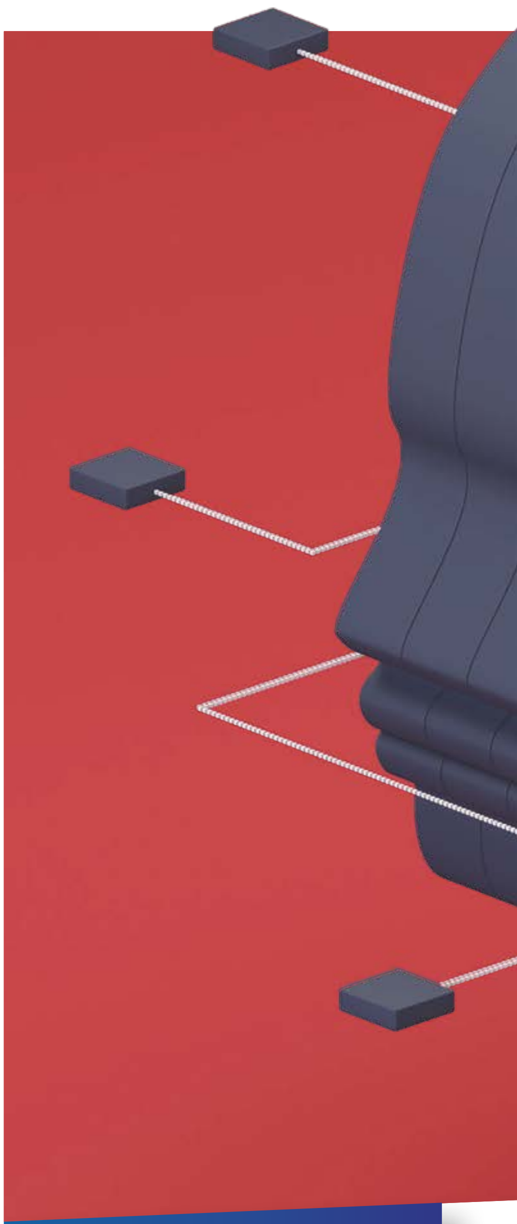


Name: Matt Bell
Position: Senior Director
Company: Alvarez & Marsal Tax LLP
Email: mbell@alvarezandmarsal.com
Profile: Matt Bell specialises in advising financial investors in the infrastructure space, with a particular focus on supporting clients on both domestic and international tax matters, tax due diligence and structuring services. With over 10 years of transactions tax experience, Matt has provided both buy-side and sell-side advisory services to a broad range of clients.

Digital transformation
Creative applications

With technology becoming more accessible and affordable, we consider what it means for the future of the tax profession.

by Shan Sun



Robotic process administration, artificial intelligence, machine learning, large language models: the buzzwords just keep coming. As we find ourselves in a period of digital transformation within the tax profession, it's worth reflecting on the technological advancements that are reshaping our industry.

The tax landscape is riddled with myriad challenges from BEPS Pillar Two to new reporting regimes like DAC7. Additionally, the tax department often needs to collaborate with other business units, guiding them on the tax implications of new business strategies or structural changes. The ever-evolving tax legislation and subsequent risks, audits and litigations further complicate the landscape.

The digital age, with its ever-evolving technological advancements, calls for adaptation and evolution. Although the challenges are many, the tools at our disposal promise a future of efficiency, precision and innovation. This article sheds some light on emerging tax technology and how it is shaping our future profession.

Types of problems faced by tax professionals

At our core, tax professionals specialise in solving tax problems for businesses. The world of tax is multifaceted, presenting challenges that range from routine tasks to complex issues.

On one end of the spectrum, we grapple with mundane responsibilities such as regular tax return calculations, reporting obligations and reconciliations. These repetitive tasks are essential yet consume a significant portion of time and resources.

On the other end, we face responsibilities that demand human judgment and experience. Tasks such as anomaly detection, effective tax rate estimation and navigating an intricate web of ever-evolving tax legislation requires a depth of understanding and expertise in both business and tax law. Collaborating with other business units, providing guidance on tax implications and addressing risks, audits and litigations adds further layers of complexity to our roles. Meanwhile, we often rely on other business units to own and provide relevant data that enables us to focus on tax issues. The challenges are enormous.

The role of tax technology

In the face of various challenges, tax technology has emerged as a beacon of hope. Robotic process automation (RPA) tools use software 'robots' to automate tasks that are repetitive, computer-oriented and fundamentally rule-based by mimicking human mouse cursor movements on the screen and interacting with web browsers and other software to achieve a similar end result. RPA is revolutionising the way we handle routine tasks by delivering unparalleled efficiency and precision.

Nevertheless, technological advancements don't stop there. Exploratory data analytics and machine learning are carving out a niche in areas that require deeper insights, predicting future outcomes with calculated uncertainty or offering fresh perspectives on challenges that once seemed insurmountable.

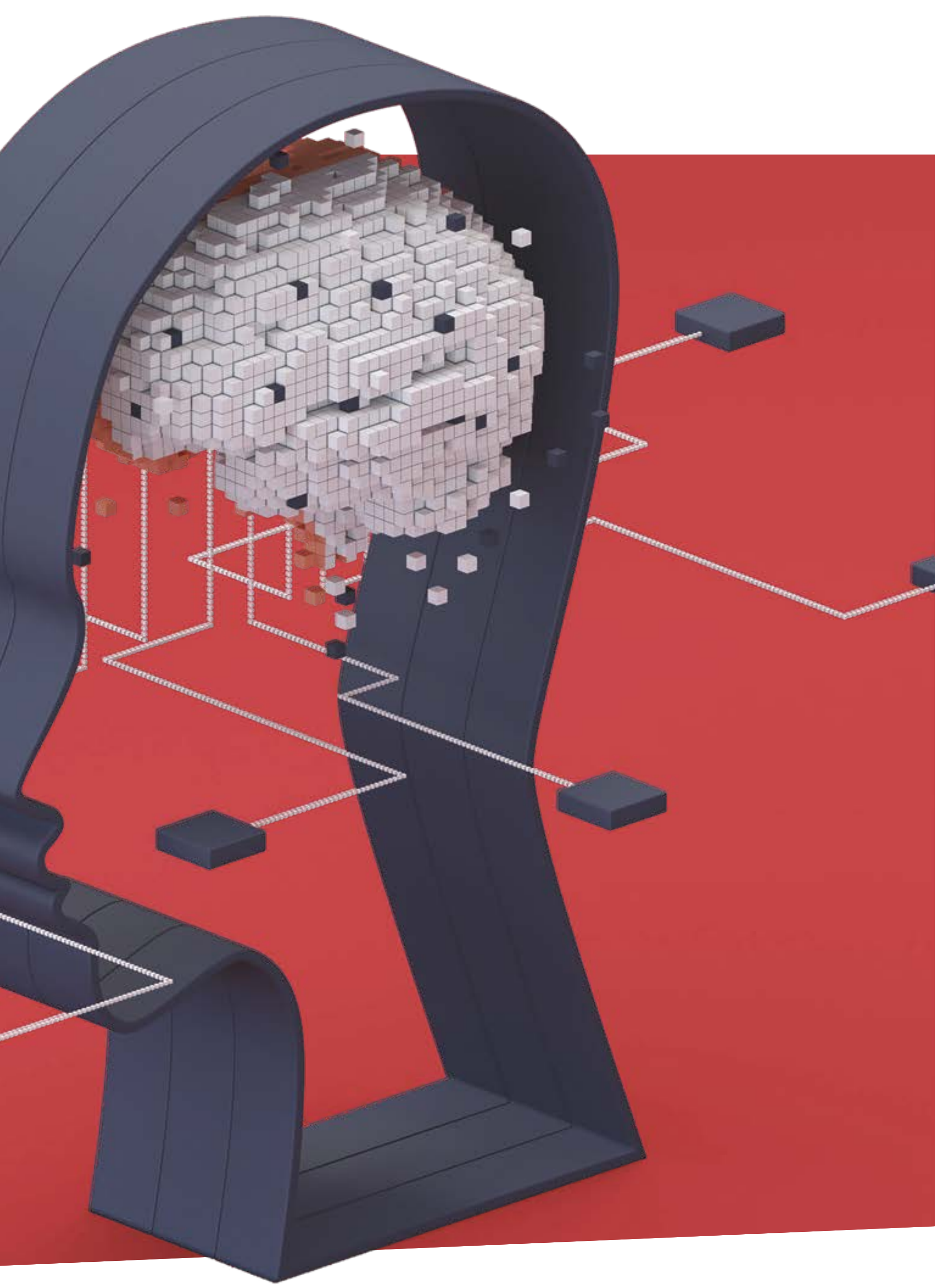
These techniques can analyse across a wide variety of historical data,

Key Points

What is the issue?
Core technology offerings, as well as more creative tech applications for tax, are emerging – such as providing automated tax advice, chatting with customers for routine tax questions or allowing intelligent searches within vast amounts of tax literature.

What does it mean to me?
The overall trend of democratising technology is levelling the playing field. With technology becoming more accessible and affordable, commercialised web-based solutions suitable for businesses of different sizes are plentiful.

What can I take away?
Focus on the underlying problems to be solved, instead of blindly adopting technology. Technology offers a plethora of tools; their effectiveness depends on how well they are applied to specific problems.



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using statistical methods to look for patterns within the data, and provide insightful observations that may be oblivious to the human eye. In some cases, they are also able to predict the most likely future outcomes based on past data.

Finally, the recent advent of Generative AI and Large Language Models (LLMs) is particularly promising. Generative AI is a type of artificial intelligence that uses machine learning algorithms to create new data similar to the existing data it has already seen. LLMs are a type of Generative AI designed to emulate natural language conversations between humans.

This type of technology is already used in applications such as text summarisation, and image and speech synthesis. However, we are increasingly seeing wider and more creative applications of such tools in many other fields. For tax, they have potential applications in advisory, compliance and research roles. As we stand at the cusp of this digital transformation, it's evident that tax technology is not just an accessory; it's an integral part of the future of our profession.

Real-world applications of tax technology

The realm of tax, once dominated by manual processes and traditional methodologies, is undergoing a paradigm shift. Leading tax practices and large corporations are embracing tax technological advancements to provide suitable solutions for both internal and external clients. Often, clients' tax problems require one or more techniques and technologies to achieve desirable results. Successful solutions require experience and expertise from professionals who are fluent in both the languages of tax and technology, as well as soft skills such as project and product management.

RPA, for example, can be used for data entry and cleansing to ensure the production of high-quality data for further consumption by advanced statistical models. RPA tools are also useful for creating automated workflows and stitching multiple intelligent solutions together to provide user-friendly, end-to-end solutions. Classification algorithms, a type of machine learning technique, are reshaping the way we categorise and manage vast amounts of tax-related data. For example, we might use classification techniques to provide a first pass on expense items to determine tax deductibility or predict tax rate based on an item's description. Predictive modelling, another machine learning technique, can have an uncanny ability to forecast effective tax rates, potential audit risks and tax trends, and is becoming an indispensable tool in the tax technology professionals' arsenal.

With the rise of LLMs, more creative applications for tax are emerging, such as providing automated tax advice, chatting with customers for routine tax questions or allowing intelligent searches within vast amounts of tax literature. Together, these tools are setting the stage for a revolution, where tasks that once took days can now be completed in a dramatically shorter time span. These tools equip tax professionals with high value insights allowing them to better serve the wider business. The real-world implications of tax technology are profound, with firms both large and small harnessing the power of technology to redefine their operations.

The impending impact on smaller practices and sole practitioners

The development of technology has revolutionised the way businesses operate, including those in the tax industry. However, the narrative surrounding tax technology often portrays large firms with vast resources as the primary beneficiaries. Smaller firms and sole practitioners may fear being left behind and unable to compete. This is far from the truth.

The overall trend of democratising technology is levelling the playing field. With technology becoming more accessible and affordable, there are many commercialised web-based solutions suitable for businesses of different sizes. This democratisation of technology is a game-changer for smaller firms and sole practitioners, who are now able to access and utilise the same technology that was once only available to those with plentiful of resources.

Most machine learning and AI techniques are accessible as high-quality free open-source software funded by

THE DIPLOMA IN TAX TECHNOLOGY

The CIOT understands the significance of digital change, which is an important part of tax practice and as relevant as tax law. The solution to this challenge is education. In November 2022, the CIOT launched the Diploma in Tax Technology (DITT) qualification.

While digitalisation has many benefits, the challenges remain around how tax advisers change, keep on top of tax technology advancements, and avoid being left behind. CIOT believes the solution to this is centred around an awareness of technology, the tools available and an understanding of how it works. The DITT is intended to educate and equip tax advisers with a solid foundation in tax technology so they can meet these challenges head on.

The overall learning outcome for this Diploma is that the holder will have sufficient knowledge to understand and participate in a tax-technology related project, including the ability to liaise with experts in tax and technology as required for the purpose of the project.

Further information, see: www.tax.org.uk/ditt

research grants and corporate donations. This allows small and niche technology firms to leverage cutting-edge technology to take advantage of these opportunities. Furthermore, these firms are nimbler and more flexible, enabling them to pick the most suitable solutions for similar-sized clients without incurring huge necessary overheads. This is a significant advantage for smaller firms and sole practitioners who are more agile, can experiment to try new things and can rapidly adapt to changing tax requirements.

The key is to focus on the underlying problems to be solved, instead of blindly adopting technology. Technology offers a plethora of tools, and their effectiveness depends on how well they are applied to solve specific problems. It is essential to first understand the needs and challenges of each business before identifying the most suitable solutions for each. In this sense, both big and small firms have an equal opportunity to understand their own issues and leverage technology to improve their processes and services.

Challenges and risks of emerging tax technologies

The allure of tax technology is promising, but it also comes with a set of risks that cannot be ignored. It is paramount to understand the limitations of each technology and manage expectations. As we integrate these tools into our tax-related work, it is crucial to also implement appropriate governance and mitigate risk as much and as early as possible.

For example, AI solutions are often ‘black box’ (hard to explain how they arrive at their conclusions) and difficult to maintain at peak performance over time. LLMs are (currently) known to be bad at maths, may hallucinate information, and their knowledge quickly becomes out-of-date until their training data is updated with more recent information. In a digital age, data privacy emerges as another pressing concern. With vast

> **The digital transformation of the tax profession is not a distant dream – it’s our present reality.**

amounts of sensitive information being processed, ensuring its security is not just a best practice; it’s a moral obligation.

As we dig deeper into the world of tax technology, we also face potential pitfalls and unforeseen challenges due to situations that are outside the control of tax departments. For example, tax professionals may have to rely on data sources with too much missing or incorrect data for machine learning algorithms to churn out any meaningful results. Cutting-edge AI solutions are at risk of generating out-of-date or inaccurate outputs without proper governance procedures. Overly fragmented software systems may pose incompatibility issues when attempting to create a combined end-to-end automated workflow using RPA tools.

Despite the challenges, with the right level of risk awareness and mitigation, clearer guidance from tax authorities around the world, and a commitment to continuous learning by tax professionals, these obstacles can be transformed into significant opportunities.

Tax technology’s potential benefits to HMRC

The impacts of tax technology extend far beyond the boundaries of individual firms and practices. At the core of the nation’s tax infrastructure is HMRC, which stands to gain immensely from these advancements. Despite the disjointed legacy data schemas of various tax systems, tax technology reveals the possibilities of creating a more streamlined tax collection process by minimising redundancy and emphasising efficiency.

The potential benefits of tax technology extend beyond operational enhancements. HMRC can leverage the power of predictive modelling to revolutionise its risk and compliance functions, adopting a more proactive approach to revenue forecasting, and enabling rapid identification of potential tax evasion. Furthermore, the integration of AI driven platforms promises to enhance the taxpayer experience. An intelligent content platform powered by LLMs could identify areas where taxpayers commonly struggle to understand tax rules and offer proactive guidance and interactive clarification, thereby ensuring a more informed and compliant taxpayer base.

As we continue down the tax technology path, taxpayers should expect to grasp the general level of governance and best practices from HMRC regarding the use of various technology tools in tax. Consequently, HMRC has a unique opportunity to level the playing field for taxpayers, regardless of their size.

Conclusion

This article provides a high-level review of the current status in the field of tax technology. The digital transformation of the tax profession is not a distant dream – it’s our present reality. The tools at our disposal, from RPA to AI, offer a glimpse into a future where efficiency, accuracy and innovation coexist harmoniously. The cornerstone is understanding the core business problems and identifying suitable solutions from the various tools available.

For tax professionals, the journey ahead is clear. It’s a path of continuous learning, adaptation and creation. In this ever-changing tax landscape, our ability to harness the power of technology will not only determine our success but also shape the future of the profession.

The opinions presented in this article are solely my own and do not reflect those of any of my previous or current employers.

Name: Shan Sun
Position: Tax Technology Lead
Company: Deliveroo
Email: shanxsun@gmail.com
Profile: Shan Sun trained as an economist before becoming a qualified accountant, tax advisor and data scientist. Her work focuses on the application of data analytics and machine learning to the tax and finance sector, and developing technology solutions to solve challenges across various tax areas, including both direct and indirect taxes.

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Technical newsdesk

WELCOME

October Technical newsdesk

If the answer is the cost of a jar of sliced beetroot, what is the question? Surprisingly, it is: 'What is the average additional annual cost of compliance for companies affected by the changes to R&D relief for SMEs?' If you don't believe me, take a look at the Summary of Impacts in HMRC's policy paper (tinyurl.com/yc47bsjr), as well as the websites of major grocery retailers. When I did an internet search for 'What costs 57p?', this policy paper was one of the first results!

As you probably know, most tax policy changes are accompanied by a Tax Information and Impact Note (TIIN). These are published when the policy is final or near final, and typically at a fiscal event. If you have not looked at one before, take a look at the TIINs collection page on GOV.UK (tinyurl.com/4xy4x2a6). TIINs generally follow a standard layout, setting out who is likely to be affected, a general description of the measure, the policy objective, the background to the measure, details of the proposal (effective date, legislative changes, etc.), a summary of impacts, and how the measure will be monitored and evaluated.

We review TIINs as part of our work scrutinising policy changes, paying particular attention to the summary of impacts. This considers the measure's impact on the Exchequer (will it bring in more or less tax revenue?), the economy, individuals, households and families, equalities, businesses and civil society organisations, as well as the operational impact for HMRC.

While we are concerned with all of these factors, it is generally the numbers that we are most drawn to, which takes us back to the jar of beetroot. This may be an average figure across tens of thousands of businesses, but the idea that anything to do with tax can cost just 57p a year seems incredible, never mind something as complicated as R&D. Other proposals also raise an eyebrow. From April 2025, it is proposed that employers will have to provide HMRC with more detailed information on employee hours worked via Real Time Information PAYE reporting. The regulations specifying the precise requirements are yet to be published (so it is unclear how to calculate any reliable estimate of compliance costs), but HMRC have calculated the average transitional costs to business as just £18.42, with 'negligible' ongoing costs.

To HMRC's credit, when challenged on these figures, changes can result. Some rather ambitious costings for Making Tax Digital were initially published by HMRC which, after significant engagement, are now a little more realistic (tinyurl.com/b939dv72). But even if changes to impacts and expected costings are achieved, the policy may be well on its way towards implementation with little appetite to re-evaluate the pros and cons.

When calculating these impacts, HMRC uses what is known as the Standard Cost Model (SCM) to apply a standard set of principles for estimating administrative burdens across all TIINs. There is little published information on HMRC's use of the SCM, and we are in contact with them to seek a greater understanding. As with many methodologies, the computer acronym GIGO (garbage in, garbage out) may be appropriate, so we are keen to understand what goes into the model: to ensure that what comes out is credible. There may be an eagerness to minimise the negative impacts of new measures, but costings like those above seem to illustrate a worrying disconnect between HMRC's understanding of the impacts, and what others feel is more likely. Again, something for us to discuss with HMRC.

NEWSDESK ARTICLES

Contact

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

GENERAL FEATURE

Minimum standards for new digital systems and digital forms

The CIOT has developed a set of minimum standards that should be applied when HMRC are developing new digital systems or introducing new digital forms.

As the level of digital interaction with HMRC continues to increase, it has become increasingly necessary to think about how these systems and processes should be developed, and to identify what functionality they need, and why. Recent experiences of stand-alone systems such as the CGT property reporting service and income record viewer, and interactive forms with limited functionality, have demonstrated that poor design can lead to significant implementation problems.

Minimum standards for the introduction of new HMRC digital systems

We identified what we believe are the minimum standards which should be applied by HMRC when developing new digital systems to be used by taxpayers and agents. In this regard, we focused on digital systems and processes by which taxpayers and agents interact with HMRC to fulfil their tax obligations.

We identified 14 relevant factors as follows:

1. Policy development should consider the extent of digitalisation required to deliver it.
2. Consultation and testing of the digital system before its use becomes mandatory.
3. The new digital system has at least the same level of functionality as the system it replaces.
4. Interaction with existing HMRC systems is maximised.
5. Guidance is available on how to use the new digital system before it goes live.
6. The digital system should keep pace with legislative and policy changes.
7. The new digital system should respect existing agent authorisations, and that a taxpayer may use different agents for different taxes/obligations.
8. Agent access should keep pace with that for taxpayers themselves.
9. Agent functionality should mirror that for taxpayers themselves.
10. HMRC staff are adequately trained and available to provide on-the-spot assistance.
11. HMRC, taxpayers and agents should see the same information.
12. New digital systems should work for all affected taxpayers.
13. Non-digital processes should be available for those who cannot interact digitally or find it difficult to do so.
14. Accessible versions or characteristics of digital systems should be available for those with particular needs.

The full document, which includes a narrative to explain the importance of each of the characteristics, can be found at: tinyurl.com/ymck9j62.

Minimum requirements for HMRC digital forms

Similar to the above, we identified what we believe are the minimum standards which should be applied by HMRC when developing new digital forms to be used by taxpayers and agents. Here, we mean forms that have to be completed and submitted online, rather than forms which are available online, but are printed off and submitted by post.

We identified 18 factors relevant to the development of the form, its completion, its submission, and suitable alternatives:

1. Consultation and testing with a range of potential users of the form.
2. Government Gateway status.
3. Allow time for familiarisation.
4. A list of information required to complete the form.
5. Clear instructions for completing the form.
6. The ability to save and return to a part-completed form.
7. The ability to amend an entry.
8. The ability to upload attachments or provide additional explanations.
9. Sufficient character spaces to meet the requirements of the form.
10. The ability for an authorised agent to complete the form on behalf of the taxpayer.
11. The ability to save a completed form.
12. The ability to print a completed form.
13. The ability for the digital form to correctly compute the tax due.
14. Clear messaging to explain what submission of the form means.
15. The ability to capture a copy of the submitted form.
16. A digital receipt or equivalent proof of submission.
17. Non-digital versions of forms for those who cannot interact digitally or find it difficult to do so.
18. Accessible versions of digital forms for those with particular needs.

Again, the full document includes a narrative to explain the importance of each of the characteristics, and can be found at: tinyurl.com/ye22zhtj.

We have shared these documents with HMRC as part of responses to consultations and ongoing engagement, and will continue to press for these minimum standards to be met. If you have any comments on particular forms or systems that would benefit from the application of these or any other standards, please send suggestions to technical@ciot.org.uk.

Richard Wild *rwild@ciot.org.uk*

INTERNATIONAL TAX LARGE CORPORATE

Amount B of Pillar One: OECD consultation

The CIOT responded to the OECD's consultation on Pillar One – Amount B.

The OECD published a consultation on Amount B of Pillar One in July 2023. Pillar One is part of the two-pillar solution to reform international tax agreed by the OECD/G20 Inclusive Framework on BEPS to deal with the challenges arising from the digitalisation of the global economy. The two-pillar solution aims to ensure that multinational enterprises (MNEs) pay a fair share of tax wherever they operate and generate profits.

'Pillar One' involves a partial reallocation of taxing rights over the profits of MNEs to the jurisdictions where consumers are located. In particular, Amount B's aim is to simplify and streamline the transfer pricing of baseline marketing and distribution activities in accordance with the arm's length principle.

'Pillar Two' intends to ensure that MNEs pay a minimum rate of 15% corporation tax (or their version of it) in every country they operate in. The UK has implemented Pillar Two, introducing the multinational top-up tax and domestic top-up tax in Finance Act 2023 that will have effect in respect of in-scope groups' accounting periods beginning on or after 31 December 2023.

In our response to the OECD's consultation on Amount B, we said that it is clear that there has been significant work by the OECD/G20 Inclusive Framework on this aspect of the pillars, and we understand that this work is ongoing. The CIOT supports the principles and the intentions of simplification for Amount B. We understand that the aim is also to increase tax certainty and reduce resource-intensive disputes between taxpayers and tax administrations in respect of the transactions that are within its scope. The framework for Amount B, including the scoping criteria and pricing

EMPLOYMENT TAX

Non-discretionary tax advantaged share schemes: Call for Evidence

In its response to a Call for Evidence on the usage of Save As You Earn and Share Incentive Plan arrangements, the CIOT has suggested simplifying their administration and improving access to wider groups of the workforce.

The CIOT has responded to a Call for Evidence seeking views and evidence on the current usage of Save As You Earn (SAYE) and Share Incentive Plan (SIP) arrangements, and whether they are effective in achieving their stated policy objectives.

In our response, we commented that both SAYE and SIP schemes generally fulfil their policy objectives of: aligning employee and shareholder interests; supporting recruitment and retention efforts; and encouraging financial planning. We felt that both schemes are effective and suitable, albeit they could be improved.

We commented that both schemes are popular amongst larger, listed companies and their employees and that the schemes do not present many barriers to participation, although we felt that the three and five years' holding periods may no longer be suited to a workforce that is much more mobile than it used to be.

We added that there is an overall complexity to the schemes that may be hindering wider take up (more so in respect of SIP schemes where the four different types of award can cause difficulties in understanding, albeit while providing flexibility). We suggested simplifying the rules, so they are more consistent across both schemes, reducing holding periods, widening access to different types of employees (such as gig workers and employees of private equity backed companies) and HMRC providing a full suite of draft documentation for each scheme.

Overall, we considered that SAYE awards and SIP schemes can be a powerful way of incentivising workforces as part of an overall remuneration package, which in addition to basic cash salary/wages, may include incentives such as cash bonuses, performance related pay and benefits in kind (taxable and exempt). We also said that these schemes create a connection between the workforce and the performance of the company, even where an employee simply cashes in their option at the end of the holding period, which can be a real incentive to perform well and so drive improved results for the company. We therefore felt that widening the availability of these schemes by simplifying their administration and improving access to wider groups of the workforce should be the next step.

The full CIOT response can be found here: www.tax.org.uk/ref1152

Matthew Brown *mbrown@ciot.org.uk*

methodology, set out in the consultation document is moving towards meeting these principles.

We welcomed the fact that the proposals in the consultation document are greatly simplified from those presented in the last public consultation at the start of 2023. In particular, we welcomed the work that has been done to arrive at the pricing matrix, noting that while a business will still need operational transfer pricing expertise, this will reduce the amount of functional analysis that has to be undertaken to identify and categorise transactions and seems sensible.

In taking the work on Amount B forward, we encouraged the Inclusive Framework to continue simplifying the proposals to the greatest extent possible in order to ensure that Amount B provides businesses and tax administrations with a tangible benefit and achieves its objectives. We said that to be of real benefit, Amount B needs to reduce the amount of transfer pricing work that must be undertaken by MNEs and remove a significant amount of activity from transfer pricing disputes.

We noted our continuing concern about the resourcing burden for tax authorities. The pillars introduce a completely new level of complication over and above the various measures that have already been introduced or adopted in recent years because of the BEPS project. In our view, it is not practical to continue to place increased administrative burdens on tax authorities when many are already struggling to maintain service levels because of administering their own jurisdictions' tax rules.

Our full response can be read at: www.tax.org.uk/ref1183

Sacha Dalton *sdalton@ciot.org.uk*

LARGE CORPORATE INTERNATIONAL TAX

Reform of transfer pricing, permanent establishments and diverted profits tax

CIOT responded to a consultation on 'Reform of UK law in relation to transfer pricing, permanent establishments and diverted profits tax', broadly welcoming the proposals to align UK rules around the taxation of the profits of multinational corporations with those agreed internationally.

The government said in April 2023 that it would consult on updating the UK's legislation on transfer pricing, permanent establishments and diverted profits tax. A consultation was published in June 2023. The aim of the proposals is to ensure that the UK's tax rules in these areas are consistent with the 'underlying policy intention, international standards and the UK's bilateral treaties'. Representatives of the CIOT attended the consultation meetings held by HMRC at the end of June/early July and we also responded in writing.

Our written response welcomed the overarching theme of the proposed changes, which is to align the UK's domestic legislation with equivalent international OECD standards to ensure consistency of application. We said that differences from the agreed international guidelines complicate compliance for taxpayers and reduce the benefit of having reached a global consensus as to what the rules should be. Updated rules in the UK could provide greater certainty, assist in the settlement of mutual agreement procedures (MAP) and enhance the attractiveness of the UK. However, we also said that the areas under consideration are complicated and care will be required to ensure the objectives are met.

Broadly, we welcomed the proposed changes to the transfer pricing rules. We suggested that consideration is given to how the rules could be written so as to not inevitably include joint ventures, and automatically treat these as connected when developing the tests of connectedness. We strongly supported a change to the UK rules to align with international standards and to allow the consideration of implicit support and guarantees in determining the amount and terms of debt available at arm's length.

Our response said that we are undecided about the proposals to align the UK domestic definition of permanent establishment (PE) with Article 5 in the 2017 OECD Model. Although we agree that doing so would be a simplification for both taxpayers and tax administrators, and we support the principle of alignment with the OECD Model, the concerns expressed by businesses about the potential impact of the changes to Article 5 (that the changes would cause less certainty and potentially lead to a proliferation of PEs) remain valid. We said that insufficient time has passed to conclude that the changes to Article 5 are not giving rise to the problems foreseen.

We agreed that a closer alignment of a diverted profits charge assessment to the corporation tax enquiry framework would be a welcome simplification and that bringing diverted profits tax into corporation tax would be beneficial. In particular, it would bring diverted profits tax within the scope of double tax treaties, including access to MAP for resolving disputes.

Our full response can be read at: www.tax.org.uk/ref1160

Sacha Dalton sdalton@ciot.org.uk

EMPLOYMENT TAX

Tackling non-compliance in the umbrella company market

The CIOT and LITRG have responded to a recent consultation on umbrella companies which contained proposals to regulate them and sought views on options to tackle tax non-compliance which is causing harm to workers, compliant businesses and the Exchequer.

CIOT response

The CIOT's comments were mainly limited to the proposals in respect of tax compliance (Chapters 4 and 5 of the consultation document), although we also made some observations in respect of regulating umbrella companies (Chapter 3).

Overall, we agreed that the aim of the consultation should be to deliver improved outcomes for workers, to support a level playing field in the umbrella company market, and to protect taxpayers from the significant revenue losses that currently arise from non-compliance. This said, we recommended that any measures that may be introduced to achieve these aims should be focused and proportionate.

With regard to the tax proposals, these are:

- Option 1: Mandating due diligence;
- Option 2: Transfer of tax debt that cannot be collected from an umbrella company to another party in the supply chain; and
- Option 3: Deeming the employment business which supplies the worker to the end client to be the employer for tax purposes where the worker is employed by an umbrella company, moving the responsibility to operate PAYE.

In addition, the consultation proposes targeted changes to tax legislation to address the abuse of specific tax reliefs by some umbrella companies. These reliefs are the employment allowance and the VAT flat rate scheme.

We commented that first and foremost those facilitating non-compliance and fraud should be pursued by HMRC for taxes not correctly accounted for, including the owners and providers of the umbrella companies, rather than the worker or another party in the supply chain. We also thought that HMRC could do more to monitor umbrella company compliance, such as requiring the employment allowance to be claimed, rather than effectively being given automatically.

We considered that both Options 1 and 2 could place considerable administrative burdens on businesses. (Under Option 2 a business would effectively be required to conduct due diligence to manage the transfer of tax debt risk.) Hence, if either option is progressed, the due diligence requirements would need to be reasonable, proportionate and clear (and businesses should not be penalised if things inadvertently go awry). There would also need to be an appealable defence that the relevant party took reasonable care, plus mitigation for actions subsequently taken to address the failures, so that any penalties are fair and proportionate. In respect of Option 2, the bar would need to be set at a reasonable level before there is any transfer of tax debt away from an umbrella company.

With regard to Option 3, we commented that the responsibility to account for PAYE/NICs should, in the first instance, rest with the legal employer and not a third party. However, if this option is taken forward, we felt that the deemed employer should be the employment business closest to the umbrella company (as is the case under the off-payroll working rules) rather than the employment business closest to the end client (as applies under the agency workers legislation).

Our alternative proposal was for HMRC to instead maintain a list of registered umbrella companies who satisfy designated requirements around tax compliance, such that employment businesses and end clients can check that the umbrella company they propose engaging is on this list. This approach has worked in respect of the Construction Industry Scheme's gross payment status requirements to mitigate tax lost and drive up compliance and we felt could be applied to this sector too.

LITRG's response

LITRG have had longstanding and serious concerns about umbrella companies and, in particular, disguised remuneration. In 2021, when we wrote our report on umbrella companies, it was clear from our research that agencies are partly culpable for some of the issues. Currently, it seems that while they often outsource their HR/payroll function to umbrella companies, there is very little incentive for them to be concerned about what happens beyond that.

With the tax proposals in the consultation, HMRC are seeking to change incentives and behaviours throughout the entire supply chain, rather than continuing to allow all the risk to fall on workers and the Exchequer. LITRG very much welcome that HMRC are thinking more holistically about the issues and possible solutions.

LITRG's response focused on tax Option 1 (mandatory due diligence) and Option 2 (debt transfer). While allowing good umbrella companies to subsist, these would significantly reduce the chances of non-compliant umbrella companies entering labour supply chains in the first place, protecting workers from getting caught up in disguised remuneration. LITRG stressed that HMRC will need to *use*, and *be seen to use*, any new powers in order for them to have the desired effect. We used our response to highlight some practical implications of the options which we hope will help HMRC to shape the best, most workable, policy proposals possible.

We said we did not think Option 3 (deeming the agency to be the employer for tax purposes) was viable, as one of the likely reactions will be that agencies simply stop using umbrella companies. It occurs to us that if agencies start using unencumbered in-house PAYE for workers, the very same issues that arise with umbrella companies and distortive behaviour could simply shift to agency payroll.

With regards to regulation, we urged the authorities to think creatively and ambitiously, rather than simply trying to make umbrella companies fit within the existing architecture. Tweaking the existing Conduct of Employment Agencies and Employment Businesses Regulations 2003 (more commonly referred to as the Conduct Regulations) will, in our view, be too weak a response. Many of the regulations are irrelevant to umbrella companies, while those that could be relevant do not offer full coverage in terms of the nature and extent of the issues faced by umbrella company workers. Any new regulations would presumably have to fit the existing format and vocabulary, which seems restrictive.

We also highlight that if Key Information Documents (KIDs) were fulfilling the role that was intended, the need for regulation becomes slightly less urgent, and so could allow time to research and design the most effective and efficient framework. For example, the KID should easily respond to several of the issues that have been highlighted in relation to umbrella companies: a lack of transparency over pay rates; and confusion over who the legal employer is. Yet many workers do not receive KIDs and even where they do, we have seen some very poor KIDs, with lots of 'example' information and non-indicative round sum numbers used by default. To this end, we said the Employment Agency Standards Inspectorate need to take a much stronger approach to enforcing KIDs.

The CIOT's response can be found at: www.tax.org.uk/ref1151

LITRG's response can be found at: www.litrg.org.uk/ref2792

Meredith McCammond mmccammond@litrg.org.uk
Matthew Brown mbrown@ciot.org.uk

EMPLOYMENT TAX PERSONAL TAXES

How to deal with pension tax relief errors: an update

In July 2021, we posted an article about pensions tax relief entitled 'Net payment arrangements v relief at source payroll mistakes: how common are they?' (tinyurl.com/574fcrer). We received a number of responses, indicating that these errors are indeed quite common.

The apparent 'misnaming' of the two types of relief do not help employers to get things right: a 'net pay arrangement' (NPA) sees contributions being deducted from *gross* income; and a 'relief at source' (RAS) arrangement sees tax relief reclaimed by the pension provider, *not* in fact at the source of the contribution – that is the employer!

Since writing our original article, we noticed that in 2018, HMRC and The Pensions Regulator placed a joint article in the Pensions schemes newsletter (no 105) (tinyurl.com/yvbbwxfv). This article acknowledged the problem, provided a link to guidance on tax relief in the Pensions Tax manual, and provided an email address through which pension scheme providers could report and correct issues.

There was, however, no obvious guidance directed at employers who have uncovered a problem with pensions tax relief given via their payroll.

Some guidance has now been published in HMRC's August 2023 Employer Bulletin (tinyurl.com/f4ju43t8), with some examples of common mistakes. This new guidance says that errors should be corrected immediately in terms of future payroll, and that past mistakes should be reported via HMRC's digital disclosure facility.

We are pleased to see HMRC finally publishing some information. However, in order to properly identify the nature and extent of any errors and to set things straight, it may still be necessary for employers to take the following steps:

1. Check what type of tax relief their pension is set up to operate and whether this matches what is being done for payroll purposes.
2. Try to identify if the errors are NPA to RAS (where tax relief is given twice) or RAS to NPA (where tax relief is not given at all).
3. Contact their pension scheme provider and explain the problem so that they can confirm the nature and scale of the issue. There may not be an issue, for instance, if the employer is confused about the type of scheme they have. Equally, the issue may be larger or smaller than first thought, depending on whether the employer is using qualifying earnings or total earnings, for instance, or paying more than the minimum percentage required.

The required action can then be taken by the pension scheme and/or the employer.

Meredith McCammond mmccamond@litrg.org.uk

INDIRECT TAX

Agent letters: VAT penalties or penalty points for late submission of a VAT return

When a VAT registered person incurs a penalty or penalty points for the late submission of a VAT return, HMRC also notifies their authorised VAT agent, if one is appointed, by letter. Currently, the only client identification details provided to the agent is the client's VAT number. If several of the agent's clients have received penalties in a period, they are provided with a collated list of client VAT numbers.

HMRC contacted the CIOT and other stakeholders to request feedback on how the letters with limited client identification details were working in practice. Below is a summary of the main points that we fed back to HMRC.

Tracing the VAT number

The letter may be received by administrative support staff before reaching the agent. This can cause some initial confusion about who the letters were for. This is particularly the case if there is a lack of awareness of the VAT number checker database on the 'Check a UK VAT number' page on gov.uk (tinyurl.com/5barzkf4), which provides the name and address of the business that the VAT number is registered to.

Agent address

Where the agent is from a firm with multiple offices, the letter will be sent to the firm's main postal address, meaning that additional steps must be taken before the letter is copied to agents in different offices. These additional administrative steps have caused delays and confusion.

A small number of agents raised that they had received letters to their home address, as well as/rather than work addresses. HMRC are aware of a system issue with a small number of Agent Services Accounts, which may be the cause of this problem.

Letter format

As the client VAT number is placed on the upper right-hand side of the letter in the usual position where the agent's personal VAT number (or tax reference) might be placed, some agents had thought that the penalty letter was for their own VAT account, causing confusion and incurring time to clarify the position with HMRC. We suggested in our feedback to HMRC that the information stating that you may be receiving the letter as an agent is given a paragraph title to make it stand out and also include it earlier in the letter. We said that it may also be better if the VAT numbers are placed in the body of the letter.

Administrative time

Where VAT agents receive the letters for only one or two client VAT numbers, it was not too onerous to trace the client. However, letters that included lists of ten, twenty or more VAT numbers take considerable time to resolve, and in some cases it is difficult for agents to charge for the time this takes.

Next steps

The current format of an agent letter is under review with HMRC, who are considering all of the stakeholder feedback. We anticipate an update at a future Penalty Reform Forum meeting.

Jayne Simpson jsimpson@ciot.org.uk

INDIRECT TAX

Voluntary standards for customs intermediaries

In Spring Budget 2023, the government announced that it would consult on introducing voluntary standards for customs intermediaries, with the aim of improving the overall quality of service provided across the sector.

HMRC published its call for evidence 'Introducing a voluntary standard for customs intermediaries' (tinyurl.com/255z2nvr) on 5 June 2023 and the consultation period ran over the summer. HMRC offered to meet with interested stakeholders. In July, representatives from the CIOT's professional standards and technical teams, along with similar representatives from the ICAEW, met with HMRC's Head of Customs Intermediary Policy to discuss perspectives from two professional bodies that already have members adhering to obligatory Professional Conduct in Relation to Taxation (PCRT) rules.

We discussed that each professional body has members that advise on customs issues exclusively, while others provide customs advisory work as part of a broader project (for example, indirect tax specialists that provide cross border supply chain advice). Other members will be working in-house at customs intermediary businesses and freight forwarding businesses.

Our main concern was that any new standards could cause more work for those members who are already adhering to the PCRT rules and HMRC's standards for agents. In an ideal world, being a member of a PCRT body should provide sufficient confidence that an agent will provide a trusted service.

CIOT views

In our consultation response (www.tax.org.uk/ref1150), we noted that much of the detail on existing problems in the broader tax market relates to recalcitrant promoters of egregious tax avoidance. However, in this consultation on customs intermediaries, avoidance is not the principal focus. Instead, from the consultation document itself and from our experience, the priority concerns are issues such as:

- incorrectly completed documents;
- poor knowledge and experience; and
- customer service issues (timeliness, communications and paperwork).

The CIOT's preference on the introduction of any voluntary standards for customs intermediaries is that any new standards should complement the PCRT rules, as well as HMRC's standards for agents. We would seek either an automatic verification or a fast-track process for members of CIOT and other PCRT bodies that may become subject to any new voluntary standards. We would like the voluntary standards to promote quality and consistency amongst customs agents, rather than to purely inform and educate. If membership of bodies such as CIOT meant that verification was automatic by virtue of the high professional standards already required, then there would be an early 'critical mass' of firms receiving verification which could set the precedent for others in the industry to seek verification.

Next steps

A decision has not been taken on whether the proposals will be taken forward. HMRC are currently considering the submissions and will publish the outcomes later this year. The CIOT will continue to take an interest in any proposed changes for customs intermediaries.

Marc Leach mleach@ciot.org.uk
Jayne Simpson jsimpson@ciot.org.uk

CIOT	Date sent
Reform of UK law in relation to transfer pricing, permanent establishment and diverted profits tax www.tax.org.uk/ref1160	10/08/2023
Non-discretionary tax-advantaged share schemes: Call for Evidence www.tax.org.uk/ref1152	29/08/2023
Pillar One: Amount B (July 2023) www.tax.org.uk/ref1183	31/08/2023
Introducing a voluntary standard for customs intermediaries www.tax.org.uk/ref1150	31/08/2023
Tackling non-compliance in the umbrella company market www.tax.org.uk/ref1151	05/09/2023
ATT	
Draft Finance Bill legislation: R&D tax relief www.att.org.uk/ref433	01/09/2023
Change to data HMRC collects from customers www.att.org.uk/ref434	06/09/2023
LITRG	
Tackling non-compliance in the umbrella company market www.litrg.org.uk/ref2792	25/08/2023

Survey

Poor HMRC service levels harming business, survey finds

A CIOT survey has found dissatisfaction with HMRC service levels among both tax agents and taxpayers.

A majority of respondents to a survey conducted by CIOT said that poor service levels make it harder to do business, and that they doubt improvements will be made in the coming year.

The online survey was conducted in July and August 2023 to understand perceptions of HMRC service levels. 760 responses were received.

Among the findings were:

- 94% of respondents were either 'somewhat' or 'extremely' dissatisfied with HMRC's service levels.
- 96% were 'not very' or 'not at all' confident that these will significantly improve over the next 12 months.
- 95% said that poor service levels have a 'moderate' or 'significant' negative impact on the ability to do business.

CIOT President Gary Ashford said: 'These results speak for themselves. Tax advisers and taxpayers have told us of their deep dissatisfaction with HMRC's service levels. Poor service levels can have a significant impact on their ability to do business. Worryingly, they have little confidence that things will improve any time soon.

'Poor HMRC performance, such as delays in processing registration for taxes and the inability to quickly resolve matters doesn't just harm the tax system, but has an impact on the wider economic climate too. Businesses are left unable to trade properly, individuals are without much needed repayments, and costs spiral as they repeatedly chase HMRC for progress updates.'

The survey indicated an appetite among the profession to make greater use of HMRC's online services, though in most instances telephone contact was a necessity. 89% of respondents said the reason for their contact could not have been resolved digitally, while 80% said they would make use of online resources if it would resolve their issue.

Respondents also indicated that they were experiencing long wait times to be connected to an HMRC adviser. 58% of respondents said they had waited for more than half an hour to speak with HMRC's dedicated helpline for agents, a figure that increased to 85% for other HMRC helplines.

> **'If it was possible to solve the issue online, I would. Nobody wants to waste their life trying to phone HMRC.'**
>
> **'It's very hard to charge a client for chasing HMRC for a response monthly for a year!'**
>
> **'It is not the actual staff, they are doing their best, it is the lack of staff.'**

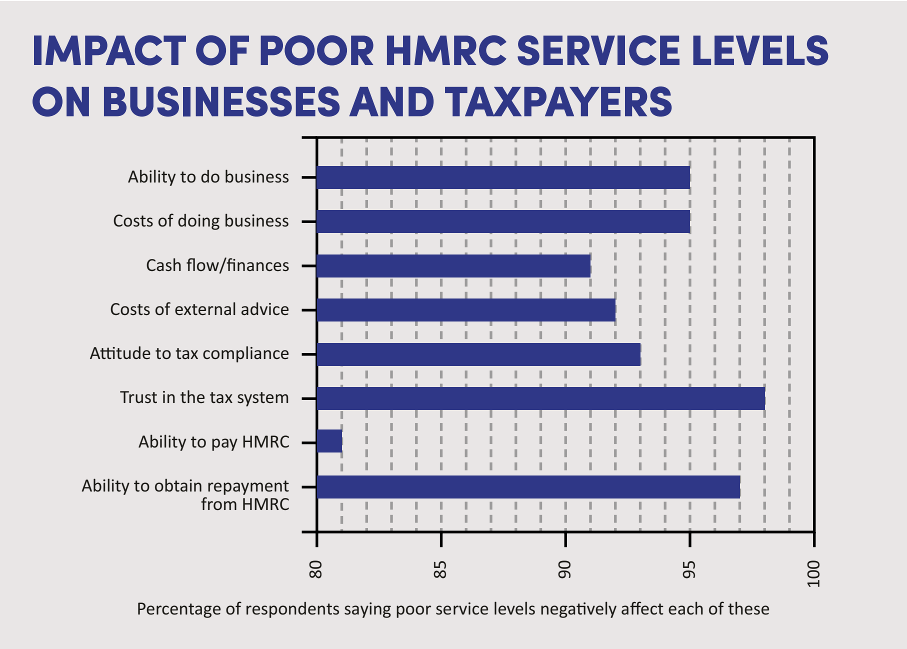
Respondents indicated they were more likely to receive an 'extremely good' or 'good service' from the Agent Dedicated Line (27%), compared to other HMRC helplines (13%). Conversely, 34% of respondents rated the dedicated agent service as 'poor' or 'extremely poor', compared to 55% for other helplines.

Webchat, the facility currently being promoted by HMRC as an alternative to phoning, received even worse ratings, with 65% rating it 'poor' or 'extremely poor'. Similarly, HMRC's 'mainstream' guidance on GOV.UK was not considered helpful, with 32% of respondents rating it 'poor' or 'extremely poor', but in the results of those who responded in their capacity as a taxpayer that number increased to 57%.

While respondents said the quality of most HMRC products was 'adequate', over 40% rated HMRC's online forms as 'poor' or 'extremely poor'.

Worryingly, 20% of respondents said they would 'give up' if they were unable to get through to speak with an HMRC adviser.

The full findings of the survey can be read at: www.tax.org.uk/ciot-survey-into-hmrc-s-service-levels



Legislation

Institute welcomes closure of nominees loophole

The government has plugged a gap in the Register of Overseas Entities originally identified by CIOT.

CIOT has praised a cross-party effort which resulted in the closure of a loophole highlighted by the Institute during the passage of last year's Economic Crime (Transparency and Enforcement) Act.

The loophole is that the original legislation for the Register of Overseas Entities holding land or property in the UK required the identification only of the beneficial owners of the entity in question, which might not be those of the land or property itself; for example, in a situation where an overseas company holds property as nominee on behalf of large numbers of different clients. This ran counter to the government's stated intention that the register would 'require anonymous foreign owners of UK property to reveal their real identities'.

During the passage of last year's Act, Lord Clement-Jones, with cross-party support, moved an amendment drafted by CIOT to close the loophole. However, the minister Lord Callanan, in reply, said that while he could see the good intent behind the amendment, the government felt that the Bill 'would not be the appropriate vehicle' for this.

But during House of Lords debate on the Economic Crime and Corporate Transparency Bill, which is set to gain Royal Assent this month, the government acknowledged that there was a gap in the register's information requirements relating to overseas entities acting as nominees. It introduced an amendment to address this by inserting a new definition of beneficial ownership into the 2022 Act.

George Crozier, CIOT Head of External Relations, and one of the drafters of last year's amendment, commented: 'The legislation setting up the Register of Overseas Entities was flawed and it is welcome that the government has gone back to rectify this. They deserve credit, as do the parliamentarians of all parties, and organisations such as Transparency International, who encouraged them to do so.

'If, as the government has maintained throughout, the aim is a fully public register revealing the real identities of the ultimate beneficial owners of all UK property held by overseas entities, this amendment takes a significant step towards that – although gaps still remain, especially where the land was acquired prior to October 2020.'

CIOT party conferences debates:

Tax and public finance challenges facing Britain

The economy is struggling with sluggish growth, high debt and rising taxes. What are the challenges of and choices for reforming taxes in a way that is pro-growth and fair? What should the government's – or the next government's – priorities be?

CIOT is once again holding debates at the two main political party conferences this year, joining with the Institute for Fiscal Studies and party representatives to debate the tax and public finance challenges facing Britain.

If you will be attending either of the conferences, or are in the Manchester area, why not join us? Alternatively, we will be recording the events and making them available to view on CIOT's YouTube channel shortly afterwards, hopefully within a couple of hours of them taking place.

Conservative Party Conference
Monday 2 October, 10-11.15am
Room 19-20, Radisson Edwardian Hotel, Manchester
Speakers include IFS Director Paul Johnson and CIOT President Gary Ashford, plus a party representative to be confirmed. (This event is being held outside the conference secure zone so is open for members and others with an interest in the topic to attend.)

Labour Party Conference
Monday 9 October, 2.30-3.45pm
Hall 2D, ACC, Liverpool
Speakers are Shadow Financial Secretary James Murray MP, IFS Director Paul Johnson and CIOT Director of Public Policy Ellen Milner. CIOT President Gary Ashford chairs. (This event is being held inside the conference secure zone so is only open to those with a conference pass.)

Recordings will be online shortly after the events at tinyurl.com/CIOT-YouTube

In the news

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

'There remain concerns around HMRC's data-gathering powers. Margaret Curran, of the Chartered Institute of Taxation, said: "We do not agree that the increasing use of data is a reason to broaden HMRC's information powers as a whole."
Ms Curran added that while a more flexible approach may be easier for the bulk collection of third-party data, a "more prescriptive approach" would be best to maintain sufficient parliamentary oversight and safeguarding for taxpayers.'
Daily Telegraph, 21 July

'It is important that HMRC has the ability to fully test new systems and processes in order to produce a tax system which is effective and efficient for taxpayers, their agents and HMRC. The systems developed to implement a number of recent policy changes have caused problems for all three groups.'
Jon Stride, vice chair, ATT Technical Steering Group, Scottish Financial News, 24 July

'A letter to the Chancellor from leading industry figures, including the chief executive of the Chartered Institute of Taxation, said "a major underlying problem is insufficient resourcing and underinvestment in HMRC's systems".'
Daily Mail / This Is Money on HMRC service levels, 1 August

'HMRC is going to have to be on hand for all kinds of support and you wonder where that support is coming from if they are trying to reduce calls by 30%.'
Richard Wild, CIOT head of tax technical, on HMRC phone services, Financial Times, 3 August

'The Chartered Institute of Taxation released a report on Friday with its members' concerns about … Making Tax Digital, an approach to reduce the tax gap by requiring businesses and individuals to keep digital records and submit quarterly reports. The Institute surveyed members in June and July to find that 95% are not confident about the tax office's ability to oversee the next step of introducing the digital project.'
Bloomberg Tax, 4 August

WCoTA
The Worshipful Company of Tax Advisers

New Master Mike Gibbons gives an update on the activities and events provided by WCoTA, its charitable aims and its ambitions to support those in the tax community.

After the uncertainties and limitations resulting from the pandemic, we began 2022 with high hopes that life in the City of London and amongst the Livery Companies and Guilds could resume – and, in many respects, it has. Through our work and events, we continue to foster fellowship amongst our members. We collaborate with a wide range of organisations to deliver on common goals and support a number of organisations with which we are affiliated. We have also been able to re-establish our work with the charities and youth organisations that we support. At the same time we recognise that, in many respects, life and patterns of work have changed forever and will continue to do so.

Accordingly, 2022/2023 was a year to review the way in which our Livery Company operates. In particular, we reviewed the services that we supply to our members to identify ways in which we could strengthen the company to meet the needs of today's tax professionals and the charities we support and to strengthen our contribution to the development of London as a commercial centre. Our strategic objectives are to:

- sustain WCoTA so that it remains relevant and viable today and in the future;
- deliver events and activities that satisfy the wishes of as many members as possible, particularly those who are still working and with a focus on those who are building their careers;
- collaborate with selected other organisations to engage with members of the tax profession and the wider City; and
- support others to meet our charitable aims.

We see increased collaboration with other companies, especially those who are members of the Financial Services Group of Livery Companies (International Bankers, Insurers, Actuaries, Chartered Accountants, etc.) as an important aspect of our strategy that will benefit each company, their members, the wider professional community and the Lord Mayor.

We also value a close a working relationship with the Chartered Institute of Taxation and the Association of Tax Technicians, as we can leverage off each other to contribute towards the exciting


Mike Gibbons

range of activities that the Lord Mayor Elect, Alderman Michael Mainelli, plans for his year to bring together the Livery Companies and other City-based institutions to strengthen and promote London as an international business centre. Events currently planned include:

- a Gresham Society Lecture on 'Land value tax';
- Coffee Colloquies: reducing inequalities in the tax system; and
- organising a debate with the Worshipful Company of IT professionals and HMRC on the potential for the digitisation of tax.

Membership remains the key to our success and we would encourage anyone who is working or who has worked in the tax arena to apply to join us. The benefits are innumerable and include fellowship, leading edge tax thinking, being custodians of historic tax information and being actively involved in collaborations to make London a better place in which to live, work and play.

More information and the application process can be found on our website: www.taxadvisers.org.uk

Mike Gibbons, Master,
Worshipful Company of Tax Advisers

Obituaries

Colin Langley CTA (Fellow)

Colin Edward Langley was born on 6 October 1943 in Wimbledon. A single child to Cecil and Mary Langley, he spent his childhood years in New Malden, Surrey and was educated at school in Morden.

At 16, he became a civil servant, working for the Inland Revenue. He then began working for Barclays Bank, moving jobs to get a better interest rate on his mortgage!

At Barclays, he passed his ATII tax exams, and this led to a move to accountants Arthur Andersen, where he continued his career until retiring in 1999. Colin was a founding member of the tax team at Arthur Andersen, which built the International Executive Services practice in London serving expatriate clients. A kind man, he brought drive and common sense with good humour to the leadership of a team which he helped grow to over 100 professionals.

Colin had many interests and accomplishments. He was a member of the CIOT for over 50 years and chairman of the Chelmsford Branch (now Essex) for approximately 15 years. In later retirement, he published several research books on Daphne du Maurier.

He leaves behind a loving wife, Margery, to whom he was married for 56 years and two children, Kim and Ian.

Barbara Harewood CTA

The East Midlands Branch of the Chartered Institute of Taxation is indebted to Barbara Harewood for her service as a committee member. She became Chairman of the Branch in 1997 after many years as a diligent and very efficient Secretary.

In 1994, the Branch held a Celebration Dinner in Nottingham to commemorate the Institute's Grant of its Royal Charter. The keynote speaker was Sir Anthony Battishill, then Chairman of the Board of Inland Revenue. Barbara had met him at a cocktail party held after a Branches Forum earlier that year. She contacted his office and made all the arrangements.

One consequence of Sir Anthony's attendance was that our top table was filled with Section Heads from HMRC. Our dinner was heralded as a great success.

We were very sorry to learn of Barbara's death last month and contacted members in the East Midlands with the sad news. We are pleased to include here this tribute from Past Chair Andrew Tiplady.

Qualifications
Calling Tax Pathway Students!

How to make the most of your Tax Pathway qualifications, when you have passed the first three stages.

Have you passed stages 1 to 3 on your Tax Pathway journey? Eligibility to join ATT is a milestone in your career in tax – not just a stepping-stone to becoming a chartered tax adviser.

Are you one of over 3,500 students on the Tax Pathway route to qualify for membership of the Association of Taxation Technicians (ATT) and the Chartered Institute of Taxation (CIOT)? You already know that this route is a fast-track way of gaining both qualifications and giving your career in the tax profession some rocket fuelled propulsion. However, you may not have paused to consider celebrating and marking the milestone of having passed stages 1 to 3 and applying for membership of the ATT.

I hope you are one of the 1,700 strong number of students who have reached this milestone, because this article is principally for you!

You are now eligible to apply to join the ATT, and once accepted as a member, you can use the designatory letters 'ATT' after your name, gain the extra recognition at work that this qualification brings and start to enjoy the benefits of being an ATT member. See tinyurl.com/3ufkmx6t for more details.

But don't take my word for it...

'Passing my ATT qualification and joining ATT, as part of my Tax Pathway journey, gives partners of the firm greater confidence in the services I provide as a member of our tax department.'

Lillie Hopkins ATT, Partnership Tax Assistant, Slaughter & May

'I qualified as an ATT member in January 2022 after completing stages 1 to 3 on the Tax Pathway. The qualification has allowed me to develop my skills professionally, whilst also allowing me to go on and complete my CTA qualification as part of the Tax Pathway.'

Alexander Philpott ATT CTA, Tax Assistant Manager, M&A Partners LLP

'After embarking on the ATT/CIOT pathway, I could not pass up the opportunity to join the ATT once I was eligible. For me, joining was not just about the qualification but also the opportunity to be part of a community that supports my growth as a tax professional and enables me to meet, through the branch network, those that I can share ideas and experiences with. That said, the qualification certainly enables me to demonstrate my tax knowledge and commitment to professional standards to both my internal and external stakeholders which inspires confidence in both.'

Tom Wallace TEP ATT, Director of Tax Investigations, WTT Group

'Becoming a member of ATT after completing the first three stages of the Tax Pathway route will demonstrate the pride you feel in your achievement to date, as well as your knowledge and professionalism. The ATT is a well-recognised professional body and members are highly regarded by both employers and the public, your likely clients. I strongly recommend you join ATT as soon as you can.'

John Kimmer FTII ATT (Fellow), Past President of the ATT

If you are eligible to join the ATT, apply now at www.att.org.uk/members/apply-membership

Technical Spotlight
Spotlight on the Welsh Technical Committee

The CIOT's Welsh Technical Committee was launched in 2018 with Lakshmi Narain and Ritchie Tout as Chair and Vice-chair respectively. Lakshmi has recently stood down as Chair, although remains an active member of the Committee. Ritchie has taken over as Chair.

The remit of the Welsh Technical Committee covers all aspects of Welsh taxation and taxes devolved to Wales, including land transaction tax (LTT) and landfill disposals tax (LDT) and their management and administration. LTT and LDT replaced stamp duty land tax and landfill tax in Wales from April 2018.


Ritchie Tout, Chair of the CIOT's Welsh Technical Committee

Income tax is partially devolved to Wales, which means that the Welsh government is able to vary the three income tax rates (basic, higher and additional) for Welsh taxpayers.

Particularly interesting right now is the Welsh government's programme for the extensive phased reform of council tax and business rates, with a Local Government Finance Bill to be introduced to the Welsh Parliament (Senedd Cymru) this autumn.

New Welsh taxes potentially on the horizon include the introduction of a discretionary visitor levy (the subject of a recent Welsh government consultation to which the Committee responded) and a potential vacant land tax. The purpose of a vacant land tax would be to help bring about the development of land which already has permissions or is within the local development plan, but is not currently being developed. The Welsh government is testing the process for devolving new taxes using the vacant land tax proposal; however, the process has proved challenging to date.

The Committee benefits from positive engagement with both the Welsh Revenue Authority (WRA) and the Welsh Treasury. WRA officials often attend our meetings to discuss developments and consider issues in practice for LTT. Ritchie is also a member of the Welsh government's Tax Engagement Group.

Committee members are drawn from tax policy specialists, tax practitioners from law and accounting firms in Wales and academics from Cardiff, Swansea and Bangor universities. The Welsh Technical Committee works alongside the CIOT's Scottish Technical Committee on devolved issues, particularly where similar measures are proposed, such as the discretionary visitor levy.

Meeting two or three times a year – usually in person in Wales – and engaging outside formal meetings by email or other discussion, the Committee offers an opportunity to contribute to the challenges and benefits of tax devolution within the CIOT's overall objective of a better, more efficient tax system for all. One of the potential benefits is the scope for changes made to one regime to drive positive changes to equivalent taxes in England or Scotland and vice versa.

Kate Willis
kwillis@ciot.org.uk

CIOT Council

Opportunity to be a trustee serving on CIOT Council

The CIOT is seeking applications from CTAs or CTA (Fellows) to join the Institute's Council. This is a meaningful opportunity to contribute to an influential charity and to enhance your governance and leadership experience.

As an educational charity, CIOT's Council members are trustees who work as a team to ensure that the CIOT fulfils its charitable purposes.

To be effective as a Council member, you must be able to see things from a broad perspective, rather than solely your own area of the profession. You must also be skilled in building good working relationships with fellow trustees and the senior management team and be capable of challenging colleagues in a productive manner.

Diversity is important to the CIOT. Our Nominations Committee encourages CTAs with a diverse range of lived experiences, viewpoints and professional expertise to consider this role and put themselves forward. Those with specific expertise in any of the following areas are encouraged to mention this in their application:

- external relations, public affairs, marketing or public policy;
- education (measuring, delivering and evaluating the effectiveness of education products and services);
- charity law/administration;
- information technology and cyber security;
- human resources and diversity, equality and inclusion.

The great thing about trusteeship is that it's a team effort and everyone's individual experience counts. Do not underestimate what you can distinctively bring if you care about the CIOT's charitable purposes.

In addition to their regular duties, Council members also take part in other activities, including chairing or serving on standing committees. Council is currently looking to appoint new Council members to the Education, Finance and Professional Standards committees.

There are five Council meetings per year – four of them lasting approximately three hours, and one lasting around half that. There is also an annual half-day Strategy meeting. Council members are expected to have prepared for each meeting by reading the pack circulated in advance. Council members are also expected to participate in annual training on trustee responsibilities and new members must complete an induction programme.

Council members are not remunerated for their services acting as a charity trustee. Further information is available at: www.tax.org.uk/join-the-ciot-council.

If you would like to apply then please send a covering letter, your CV, the Equality and Diversity monitoring form (optional) and confirmation of eligibility to be a Council member to Sarah Tempany at stempany@ciot.org.uk by 3 November 2023.

The application process will run until February 2024. Your application will be acknowledged within five working days; all applicants will receive a response by 21 November 2023 indicating whether your application will be progressed.

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

Professional Standards

AML Supervision: Review of 2023/24 renewal process

It is a legal requirement for firms and sole practitioners providing tax or accountancy services to be supervised for anti-money laundering (AML) and meet the requirements of the Money Laundering Regulations and associated legislation. Approximately 850 CIOT firms and 550 ATT firms are registered with CIOT or ATT for supervision.

The AML supervision renewal takes place in May each year and members registered are required to renew by the deadline of 31 May. Members receive at least one email request, and the renewal is advertised in in *Tax Adviser*, on social media and on our websites. Members have an entire month to submit their forms and fee payments (both are required) or to let us know if they no longer need supervision.

No excuses: Key reminders for members

Most members complied with the requirement to renew by 31 May but in 2023 a small number replied after 31 May indicating that they did not receive the renewal emails or see any other reminders.

We recommend that members ensure the correct email and postal addresses are listed on their portal account and that they add aml@tax.org.uk to their contact lists and adjust inbox settings. Members should diarise the AML renewal deadline as non-receipt of the renewal email is not a valid excuse for missing the deadline.

Other points to note include:

- Notification is required within 14 days of any changes to the business or prompt notification is required through the renewal process. Not responding to the renewal emails is not a notification of cessation.
- New business owners, officers and managers require a criminality check certificate which must be forwarded to us. Firms often forget to do this.
- Care must be taken when completing the form to ensure it is accurate.
- A small number of members indicate non-compliance with the following AML requirements: no written practice wide risk assessment; no written policies and procedures; and no AML training undertaken.

Incorrect answers and non-compliance leave members at risk of referral for disciplinary action and the Professional Standards team are in the process of contacting these members.

Disciplinary action

Members who were late in completing their 2023/24 renewal have been referred to the Taxation Disciplinary Board (TDB) for disciplinary action. Seven ATT and thirteen CIOT members received a written warning of potential referral to the TDB. Three ATT and three CIOT members were subsequently referred.

The CIOT and ATT are required to ensure that 'effective, proportionate and dissuasive disciplinary measures' are taken to enforce the AML requirements. Members referred for late submission can expect at the very least to receive a fine of £300 but other sanctions are also available.

Members should review their submissions and contact us at aml@tax.org.uk for guidance and support where you are unclear on any of the requirements.

Disciplinary reports

NOTIFICATION

Mr Dee Shah

At a hearing on 30 May 2023, the Disciplinary Tribunal of the Taxation Disciplinary Board determined that Mr Dee Shah of London, a member of the Association of Taxation Technicians, was guilty on his own admission of the following charges, namely:

1) (a) having engaged in or been party to illegal behaviour contrary to rule 2.2.2 of the PRPG 2018;
(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 2018 by reason of having been convicted on or around 17 January 2021 of one charge of driving a motor vehicle after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeded the prescribed limit.
2) Having breached rule 2.14.1 of the PRPG, 2018 as amended on 1 January 2021, by failing to inform the Head of Professional Standards at the ATT in writing of his criminal conviction within two months of 17 January 2021.

The Tribunal made an Order that Mr Shah receive a censure. It also ordered that Mr Shah pay costs of £2,724.

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

A MEMBER'S VIEW

Nigel Greenway

Assistant Tax Manager, Post Office

This month's member spotlight is on Nigel Greenway, Assistant Tax Manager at Post Office and member of ATT.

How did you find out about a career in tax?

Serendipity, really. I had worked in a few roles at Post Office when the internal vacancy arose. They wanted a qualified accountant who was willing to study tax, and I thought the job looked really interesting.

Why is the ATT qualification important?

I can honestly say it's the most relevant and useful qualification that I hold. Tax is a consequence of virtually every transaction that a business undertakes, so it touches almost every part of the business. I refer back to my study materials on a regular basis to complete day-to-day tasks and to respond to queries from colleagues.

Why did you pursue a career in tax?

It was a new challenge after over 20 years in management accountancy and I think the rules based nature of tax suits the way my brain works. I didn't think I'd be a student again in my late forties, but it shows you can never stop learning.

How would you describe yourself in three words?

Logical, diligent, curious.

Who has influenced you in your career so far?

Without naming specific individuals, every organisation I've worked at has definitely had someone very good to emulate, and someone very bad as a shining example to avoid at all costs.

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

There will always be tax, so there will always be a need for tax accountants. Therefore, it's a qualification that will always be in demand. If you put the hours into studying, the exams will hold no fears for you.

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

AI will automate the input, analysis and reporting side of the job (in line with MTD objectives/requirements), leaving the planning, advice and judgement calls to the humans. Tax law will remain ever-changing and we'll see continued efforts to unify tax legislation on a global basis.

The ATT qualification will always be in demand. If you put the hours into studying, the exams will hold no fear for you.

What advice would you give to your younger self?

It would be to have the courage of your convictions. Also, you'll be so glad you didn't get those tattoos – they wouldn't have aged well!

Tell me something that others may not know about you.

My first proper job after graduation was working in Europe's largest aerosol can manufacturing factory (it was a 29 acre site).

Some of my non-accounting responsibilities included counting barrels of printing ink every morning, loading bills of material into the production system for things like Pantene hairspray and Gillette shaving gel, and providing holiday cover in the production scheduling office. Happy days. It also had a fantastic canteen.

Contact

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

ADIT

From Mongolia to Montenegro, ADIT candidates enjoy exam success

More than 450 tax students are celebrating after passing the CIOT's ADIT (Advanced Diploma in International Taxation) exam, including the first ever cohorts from Israel and Mongolia. A total of 777 students sat 833 online exams in June across 68 different countries, with 453 of those passing at least one exam and 147 successfully completing their third ADIT module and achieving the full qualification. Of the new ADIT holders, 11 also achieved the distinction grade for excellence in their exams.

The ADIT qualification is now held by 1,908 tax practitioners in 91 countries and territories around the world, including the first ADIT holders in Lesotho and Montenegro, and more than 350 who have chosen to subscribe with the CIOT as International Tax Affiliates.

CIOT President Gary Ashford said: 'Congratulations to ADIT students around the world who have successfully passed their latest exams. At the CIOT, we continue to be impressed by the calibre of students undertaking the qualification, and their intellectual and professional development is something to be truly proud of. It will be a privilege to applaud the hard work at the forthcoming ADIT Awards Ceremony.

'ADIT graduates will understand more than anyone the rigorous demands of this prestigious qualification, which is why it is held in such esteem by employers throughout the international tax community. I look forward to welcoming many graduates who will join us as International Tax Affiliates, as you will be upholding the highest professional and ethical standards throughout your careers in international tax.

'For those students with exams remaining, I wish you continued success in your studies and encourage you to gain recognition for your ADIT achievements thus far, through a range of standalone and modular certificates designed to mark progression through the qualification.'

The following candidates will receive awards for their achievements in June's exams:

- Ben Campbell of Chislehurst, United Kingdom, who is employed by HMRC, is awarded the Heather Self Medal for the best overall performance in Module 1 Principles of International Taxation.
- Sarah Lancaster of Bristol, United Kingdom, who is employed by Deloitte, is awarded the Raymond Kelly Medal for the best overall performance in Module 2.09 United Kingdom option.
- Hanna Holubnycha of Leeds, United Kingdom, who is employed by EY, is awarded the Tom O'Shea Prize for the best overall performance in Module 3.01 EU Direct Tax option.
- Maciej Bonk of Aberdeen, United Kingdom, who is employed by EY, is awarded the Croner-i Prize for the best overall performance in Module 3.03 Transfer Pricing option.
- Tracy Judith Akello of Kampala, Uganda, who is employed by the Uganda Revenue Authority, is awarded the Wood Mackenzie Prize for the best overall performance in Module 3.04 Energy Resources option.
- Kerry Smith of London, United Kingdom, who is employed by HMRC and sat Module 3.02 EU VAT option, is awarded the Worshipful Company of Tax Advisers Prize for the highest mark in Module 3 (All other options).

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:

AS AN INDEPENDENT ACCOUNTANCY FIRM WE EMPOWER OUR PEOPLE TO USE THEIR VOICES TO AFFECT CHANGE.

FOR THEIR FUTURE FOR OUR FUTURE AND FOR *THE* FUTURE.

We answer to our people, our clients, and the planet.

We are currently looking for impactful taxation talent at all levels.

Certified B Corporation

AG

albertgoodman.co.uk/careers

A leading government authority in the UAE specializing in taxation offers several jobs in the tax field.

A dynamic and innovative organization authority that is shaping the future of taxes.

Our organization believe in pushing boundaries, fostering creativity, and empowering our employees to reach their full potential. We are committed to creating an inclusive and diverse workplace where your unique talents and perspectives are not only valued but celebrated.

Our team comprises some of the most brilliant minds in the industry, and you'll have the opportunity to work alongside them, learn from them, and contribute your expertise. We are dedicated to your professional growth and development and invest in your success.

To learn more about the positions, please scan the QR codes below.

Tax Policy Expert	Taxpayer Services Expert	Senior Tax Audit Lead

GEORGIANA HEAD

Taxation Recruitment

GEORGIANA HEAD

Director

Tel: 0113 426 6672
Mob: 07957 842 402

georgiana@ghrtax.com

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. **Georgiana Ref: 3392**

Private Client Director or Partner
Manchester
£excellent

Our client is a Top 20 accountancy firm. They seek a private client director partner to help further develop their offering. You will need a background in dealing with OMB clients and an understanding of both their corporate affairs and their personal tax. You will be actively tasked with work winning and developing more junior people and will be instrumental in helping build a larger practice. The client base is weighted towards advice for private business, private equity and entrepreneurs. Great offices and hybrid working available. **Call Georgiana Ref: 3382**

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 OMBs, 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 Senior
Cumbria
£market rate

Large independent accountancy firm seeks a personal tax senior to help manage 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. Opportunity to get involved in mentoring new joiners. Classic all-round private client 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**

Mixed Tax Role
Cleckheaton (M62 Junc 26)
£excellent

This is a great mixed tax role, ideal for someone with broad ranging tax experience including business, personal tax, and VAT etc. Working as the right hand to the Tax Director, this firm is looking for someone bright, able to problem solve and willing to research and pick up new areas of tax relatively quickly. This might mean you are a newly qualified in a Big 4/large firm, looking for wider tax experience (or nicer hours!), or that you might be a more experienced tax senior from a smaller firm, looking for interesting clients and more advisory work. It can be hybrid worked but you will need several days a week in the office. **Call Georgiana Ref:3388**

www.georgianaheadrecruitment.com

Head of Tax
Central London
To £100,000 + bonus + benefits

Efficio is a leading global procurement and supply chain consultancy. Our experts work with clients to identify, deliver, and sustain improvement opportunities in procurement. Our international team works across all industries and regions, combining unrivalled procurement expertise and industry experience with a unique blend of intellectual capital and technology – a powerful mix that delivers outstanding results. Efficio was formed in 2000, with headquarters in London, offices across Europe, the US and the Middle East, a team of c.1,000 and continuous revenue growth since inception.

Efficio's rapid growth and international complexity requires the tax function to be constantly evolving and maturing to meet the needs of the business. Efficio needs an ambitious, driven individual to lead this change and ensure the function is fit for purpose.

The role will report directly to the Finance Director.

Key responsibilities

- Ownership of all corporate tax matters for the group including compliance (ie corporation tax, VAT) for both UK and overseas entities, liaising with the wider Finance team as appropriate
- Effectively manage the activities and relationship of the group's external tax advisors as they relate to corporate tax arrangements
- Recommend actions to improve the efficiency of tax processes
- Recommend actions to optimise the group's effective tax rate according to the policy and strategy established by the Board
- Assess the risk of tax liabilities on an on-going basis,
- Ownership of the group's transfer pricing arrangements,
- Business partnering with HR team, General Counsel and wider business to manage and advise on:
  - guidance on tax implications of globally mobile employee group
  - personal tax arrangements in respect of the group's share schemes and assist in the processing of share issues, transfers and sales etc
  - permanent establishment risks
- Maintain appropriate forecasts for upcoming tax payments
- Recommend appropriate amendments to the corporate tax structure, especially at the time of corporate transactions
- Work closely with the wider Finance team to oversee tax compliance.

The ideal candidate

The ideal candidate will be a qualified tax professional (ACA, ICAS, ACCA or CTA or equivalent) with proven experience of large group corporate tax (SAO level and above). You will need to have dealt with tax efficient corporate structuring (e.g. on refinancings, restructuring of shareholdings etc) and the Gravitas/experience to develop the group's tax strategy. The ideal candidate will have the ability to manage a growing tax function and to manage external advisers, as well as being the first port of call to the business on all tax matters. Candidates from practice and industry backgrounds considered.

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

WE'RE HERE TO BE YOUR MATCHMAKER

Whether you are chasing your tail with tax recruitment or sniffing out the perfect career.

Crowe

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.

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.

MAGNETIC NORTH

GUIDING YOU TO THE BEST TAX JOBS IN THE NORTH OF ENGLAND

REWARD AND SHARE SCHEMES SPECIALIST

MANCHESTER / BIRMINGHAM To £80,000

Exciting opportunity for a reward and share scheme specialist to join this fast growing independent firm of tax advisers. You will be joining a team of high calibre tax specialists and will take the lead on share scheme and reward work, supported by the tax partners. Would suit a share scheme specialist looking for a change of environment outside of the large accounting firms but without compromising on the quality of work. **REF: A3485**

CORPORATE TAX PARTNER

NEWCASTLE £six figures

Our client is one of the North East's leading accountancy firms with an exceptional team and high quality client base. As part of its growth, and to meet the high demand for tax services, it is looking to recruit either an established tax partner or partner designate who will progress to partner in a very short timeframe. You will have excellent corporate tax technical knowledge and be an experienced leader with strong client facing skills. A career defining opportunity for the right individual. **REF: A3362**

PRIVATE CLIENT MANAGER

SOUTH MANCHESTER £dep on exp

We are currently searching for Private Client Advisors at either Manager or Senior Manager for an established and impressive Tax Consultancy in Greater Manchester. You will be involved in complex, challenging and unique advisory projects for UHNW clients, large complex families and landed estates. You should be CTA qualified with a mix of advisory and complex compliance experience. Fantastic, supportive environment, with clear pathways for promotion/personal development. **REF: C3495**

INDIRECT TAX MANAGER

MANCHESTER To £55,000

You will be providing expert advice and guidance with respect to VAT matters across the group and will also be the first point of contact for all international tax issues. You will need sound UK VAT experience ideally within a partial exemption environment or Not For Profit sector. Our client operates hybrid working and can support part time. Great first move in house. **REF: R3493**

CORPORATE TAX COMPLIANCE MANAGER

NATIONWIDE / REMOTE To £60,000 plus bens

Specialist corporate tax compliance role with a large international firm to be based in one of its UK offices or remotely (or a mix). You will work on a variety of different clients ranging from large multinationals to SMEs. Our client offers a high degree of flexibility in its working environment and an excellent benefits package adds to the attraction of this role. Applicants wishing to work part time are also welcomed. **REF: A3155**

IN HOUSE TAX ACCOUNTANT

SOUTH MANCHESTER To £50,000

An interesting in-house role has arisen to work in a small tax team for a large multinational group. You will be CTA/ACA qualified and have a good level of experience in the preparation and submission of corporate tax returns. As well as managing the corporate tax compliance work there will also be the opportunity to assist the Head of Tax in various ad-hoc projects. Good first move in house with lots of opportunity to grow and develop. **REF: R3489**

CORPORATE TAX SENIOR/AM

NEWCASTLE To £40,000

Opportunity for a part-qualified CTA to join a leading and expanding firm in Newcastle. You would be working as part of a high-quality corporate tax team providing a supportive and fantastic learning environment for your career development. You will be managing a compliance portfolio of varied and impressive clients and providing ad hoc advisory support to the Partners. This is an excellent move to ensure you are on track to become a highly experienced Tax Advisory Manager. **REF: C3494**

TRUST MANAGER

MANCHESTER To £60,000

This large regional firm is seeking a Trust Manager to join an established and growing specialist team. Managing a mixed complexity portfolio you will have experience dealing with a variety of trusts, including preparation of annual trust and inheritance tax accounts; property trusts and pre-2008 IIP trusts. Ideally STEP qualified your communication skills must be excellent, and you must have a passion for building long term relationships as its client base includes a high proportion of high-net-worth individuals with complex financial arrangement that need pro-actively managing. **REF: C3496**

longman tax recruitment

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

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

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+44(0)20 3926 7603

international@andrewvinell.com

www.andrewvinell.com

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