November 2023

TAXADVISER

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Chartered Institute of Taxation.

Party conferences report

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HELEN WHITEMAN
JANE ASHTON

Welcome
Working on your behalf

It was lovely to see so many of our volunteers at our Presidents' thank you reception at the Design Museum. We appreciate all the work that our volunteers do and the time they give, and we hope they enjoyed this event.

Back in July 2022, and in response to a joint professional bodies letter on their service levels, HMRC stated: 'We aim to answer all calls to the agent dedicated line (ADL) within 10 minutes and our data shows that we rarely exceed this.' However, you have been telling us that in recent months HMRC have rarely fulfilled this aim. It therefore did not come as a surprise (although it was still very disappointing to learn) that on 2 October HMRC dropped its commitment to the 10 minute waiting time.

HMRC stated that it would instead provide new call-waiting information which would be based on waiting times from the previous day. This should, in theory, provide agents with more realistic and accurate advance warning of waiting times when calling the ADL.

At the same time, HMRC said that it would be re-routing PAYE queries on the ADL to the main public helplines, and that it would like agents to use the Income Record Viewer service to obtain client information such as P45 and P60 details (see tinyurl.com/nh5snhm9).

We know how vital it is for agents to be able to speak to HMRC to discuss their clients' cases in a timely fashion, so we welcome your continued comments on how you find using the ADL, as this helps to inform our own feedback to HMRC. Please continue to send details of your experiences to atttechnical@att.org.uk or technical@ciot.org.uk. We have several meetings with HMRC's senior executives in the coming months and will continue to raise these matters on your behalf.

On 22 November, Jeremy Hunt is due to issue his second Autumn Statement, providing the country with an update on the government's plans for the economy based on the latest forecasts from the Office for Budget Responsibility (OBR). The CIOT and ATT have both made pre-Autumn Statement representations to government on areas as diverse as the tax treatment of crypto assets and requesting increases in the approved mileage allowance payments (AMAPs). You can find these on our websites.

The CIOT held debates at both the Labour and Conservative party conferences in October with our colleagues at the IFS (Institute for Fiscal Studies). Focusing on tax and public finance challenges facing Britain, there were some lively discussions and you can access the recordings on our YouTube page at tinyurl.com/2hz73ew5. There is also a report from this year's party conferences by George Crozier on page 10.

For those looking for training and development, there is still time to join the ATT/AAT Sharpen Your Tax Skills on 8 or 24 November where Makayla Combes and the ATT technical team will update us on recent topical tax changes, including plenty of practical and interactive examples. You can register for the event at tinyurl.com/jvstvtzz

Elsewhere, the Branch Network has some fabulous webinars coming up. On 29 November, there's a professional skills webinar on 'Networking ... (for people who don't like networking)' and on 7 December we have a more traditional webinar on 'Exemptions and reliefs for stamp duty land tax (SDLT)'.

The Branches Network is designed to provide high-quality yet affordable courses to help you develop your technical expertise and obtain CPD, as well as providing fantastic networking opportunities with like-minded professionals.

If you would like to get more actively involved in your local branch, you can contact your branch direct or let us know at branches@tax.org.uk.

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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

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GARY ASHFORD
PRESIDENT

Lively tax debates

> We aim to make sure that policy deliberations are informed by the knowledge and practical insight of the tax profession.

October is party conference season, and I was delighted to travel up to Manchester and Liverpool for our Conservative and Labour party conference debates.

We have been doing these events for 10 years now, almost always with the Institute for Fiscal Studies. It's a partnership that I think works really well. IFS opens the discussion, setting the scene and offering an economist's view on the issues facing us. Then, a CIOT representative provides a tax practitioner perspective. A party representative also sets out their take on the issue in hand and provides (hopefully) a steer on what they and their party want to do about it. Afterwards, we take questions.

This year, we put forward the following topic for debate: What are the tax and public finance challenges facing the nation at the moment? And what approach should the government – or a future Labour government – take in addressing them?

In my opening remarks as the CIOT representative in Manchester, I decided not to compete with the always insightful Paul Johnson in trying to redesign the tax system. Rather, I focused on the tax gap and how we might make some inroads into reducing it.

As many of you will be aware, avoidance is now actually a relatively small slice of the tax gap. Illegal activity (evasion, criminal attacks and the hidden economy) is a much larger share, but close to half of the gap is due to taxpayer error and carelessness, particularly relating to SMEs. Simplifying the tax system and resourcing HMRC so they can be more responsive to taxpayer needs and queries surely has to be part of tackling that?

It was great to renew acquaintance with Lord Leigh of Hurley and James Murray MP, the Conservative and Labour speakers respectively at our events. Both were also speakers at our parliamentary reception in the summer. Lord Leigh has once again been appointed to chair the House of Lords committee reviewing this year's draft Finance Bill legislation and making recommendations. It is great to have a CTA in this role and we look forward to this autumn's evidence sessions.

Lord Leigh's suggestion at our conference debate that higher rates of council tax could be levied on the most expensive properties was reported in the Telegraph. And Paul Johnson's analysis of the prospects for tax cuts (which he considered 'very remote', in case you were wondering) was featured in the Guardian.

James Murray didn't make the papers with his comments at the Liverpool event – and he'll probably be quite relieved not to have done so. With an election due next year and Labour holding a sizeable lead in the opinion polls, his job as Shadow Financial Secretary to the Treasury is to support Keir Starmer and Rachel Reeves, staying solidly on message and not creating any unexpected headlines. This he did impressively.

We have sometimes been able to livestream previous events so those not at the conferences can watch live and submit questions. Unfortunately, for reasons of cost and logistics (limited internet capacity) we weren't able to do so this year. But both events were recorded and you can watch them on the CIOT's YouTube channel (tinyurl.com/CIOT-YouTube).

CIOT holds these events and engages with politicians and their advisers more generally in pursuit of our objectives to promote debate on tax and inform the tax policy process. While formal government consultations and forums are obviously the main way in which we do this, we shouldn't lose sight of the fact that much tax policy formation takes place outside government, especially (though not only) by opposition parties and especially in the run up to an election. On most issues, it is well beyond our remit to try to tell them what to put in their manifestos, but we can at least aim to make sure that their deliberations are informed by the knowledge and practical insight of the tax profession.

On a personal level, I enjoyed my involvement at both events and found the cut and thrust of the political party conference season to be particularly interesting. I'd also like to thank everyone at CIOT head office who helped make the events a success, particularly George Crozier and, of course, Ellen Milner, who was our representative speaker at the Labour conference event, which I chaired.

Gary Ashford
President
president@ciot.org.uk

Chartered Institute of Taxation.

Upcoming 2023 Annual Return Submissions

From mid-November* your portal account will be open for submission of the 2023 Annual Return and payment of your 2024 subscription. Don't get caught out. Stay compliant.

All members (excluding those who are students or fully retired) are required to complete an Annual Return confirming their contact and work details are up to date and compliance with membership obligations such as:

- Continuing Professional Development
- Anti-Money Laundering supervision
- Professional Indemnity Insurance

You can submit your return by logging on to the Members' Portal **https://pilot-portal.tax.org.uk** then navigate to **Secure area/Members Area/ Compliance/Annual Return** where the 2023 form is located.

Questions on how to complete the form? Please see our FAQs. **www.tax.org.uk/annual-return-guidance** | **www.att.org.uk/annual-return-guidance**.

31 January 2024 is the deadline for submission. Failure to complete an Annual Return is contrary to membership obligations and will result in referral to the Taxation Disciplinary Board.

*Email and social media notifications will be sent out when the portal is open.

SENGA PRIOR
DEPUTY PRESIDENT

Decades of change

> Where do we go next? Artificial Intelligence is the next big change and is moving apace.

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

I have recently attended two events where there were displays covering decades of history.

The first was in my village, where we looked back over the past 100 years of the village's various clubs, societies, church and local school. It was really fascinating looking at all the changes that had taken place and spotting known faces from old photos.

Then there was the Joint Presidents' Reception held at the Design Museum. Simon Groom and Gary Ashford thanked ATT and CIOT volunteers for their work and presented certificates of appreciation. We were then invited to view the special exhibition celebrating 30 Years of London Fashion. We enjoyed being fashion critics and creating images of ourselves on the interactive screens.

This had me thinking about how working in tax and accountancy has changed over the last, say, 40 years – not so much the legislative changes but how we perform our tasks and the equipment we use.

Who can remember using manual ledger books, which would then be passed to the data processor to input the figures into a basic computer system from a terminal connected to a mainframe computer? Communication with clients would be by telephone or fax machine. There were mobile phones from the early 1980s – but as these were the size of bricks, mobile was probably a misnomer. Client files took up huge amounts of physical storage space.

It would be the mid-1980s or early 1990s before every worker had access to a PC. Spreadsheets were revolutionary and accounting software became more readily available. Dot matrix printers caused many a headache and would frequently spew out reams of paper with random symbols and characters for no discernible reason. Laptops were prohibitively expensive and space was required for the computer tower and large monitor. Software was uploaded from floppy discs – first 5¼ inch and then 3½ inch.

From the early 1990s, dial up internet became available. Most firms only had one email address – which was no problem as most clients did not use it. There was no constant pinging of the Outlook inbox.

By the late 1990s, we had mobile phones with basic games but we were still pretty safe from being available to clients at all hours. The onset of the year 2000 saw us all concerned about the 'Millennium Bug' and that planes would fall out of the sky! Computers became more compact, as we used CDs for storage and desk jet or laser jet printers became the norm.

The first income tax return was filed online on 3 July 2000. HMRC states that over 38,000 returns were filed online by 31 January 2001. (To put this in context, 11.7 million returns were filed online by 31 January 2023.)

The early 2000s brought the introduction of Wi-Fi – and along with that, the ability to be constantly online.

From then on, things move quickly: 3G networks in 2001; the first iPhone in 2007; and 4G in 2009. Computer towers become narrower as memory sticks replace storage discs. Software is downloaded as internet connections become faster. 5G arrives in 2019 and most storage is now cloud based, while offices are virtually paperless. Flat screen LCDs replace the chunky monitors and we now have two or three screens to work from at a time. Laptops are used in preference to desktops, enabling 'working from home' to become the norm. We hold online meetings and share data via portals.

So where do we go next? Artificial Intelligence (AI) is the next big change and is moving apace. Exam providers are rethinking their online exam offerings or changing their question format to restrict the effective use of AI chatbots. Plagiarism software is being enhanced.

There is some concern among the profession that AI will eventually lead to job losses. Throughout history, as technology advanced, this has always been a concern. However, there is currently a shortage of tax and accountancy staff and if AI could take away some of the repetitive and laborious tasks such as information gathering and data input, staff would be freed up to become more proactive advisors. While tax remains anything but simple there will continue to be the need for a thinking human interface to confirm that the correct amount of tax is being paid.

A final word of comfort. When ChatGPT was told that it takes three hours to dry three towels, and asked how long it would therefore take to dry nine towels, it declared that it would take nine hours! Those of us working in tax are used to change and adapting – and I think we are safe for a good few years yet!

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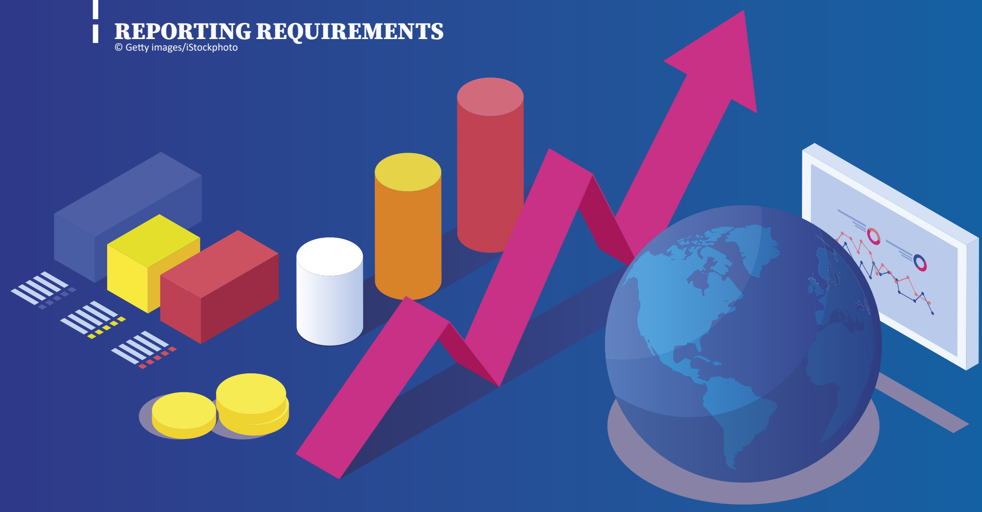

Global standards

International reporting

What impact will adopting global reporting standards have in the UK?

by Bill Dodwell

The next step on the international reporting road takes place on 1 January 2024, when platforms will be required to start keeping records of those selling goods or services and report details to tax authorities. The OECD worked with a number of countries to develop rules and a multilateral convention to enable sharing of information between participating countries. Twenty-eight countries have signed the multilateral convention, including the UK and 19 EU/EEA members (see tinyurl.com/bdej2xuf). Strangely, France and Germany have not joined so far – of course, no one thought the United States would step up.

Finance (No 2) Act 2023 s 349 allows the Treasury to issue regulations to enforce the scheme. The Platform Operators (Due Diligence and Reporting Requirements) Regulations 2023 have now been enacted, and tie into the OECD's Model Rules (se tinyurl.com/4kydy5sf). The EU has confirmed equivalence (see tinyurl.com/56sy8umh), which means that a platform need only report to a participating EU member state, or to the UK – but not both.

Model Rules

The benefit of following the due diligence and reporting requirements of the OECD's Model Rules is that necessary information will be collected in standard form, which minimises the burden on the platforms. The data is sufficient to enable tax authorities to match the taxpayers to their own domestic databases, being the name of sellers, address, Tax Identification Number and date of birth (or business registration number). The data must be regularly updated and verified. Bank account details must also be provided where such information is available to the platform operator. The Model Rules foresee an aggregate annual reporting of the transactions, by type and quarter. Data provided will include income, platform fees and taxes withheld (where relevant), together with standard characterisation of the service provided, including income by individual property, where property rentals are involved. The reports must be delivered for every calendar year and submitted by 31 January.

Relevant platforms include those which facilitate the provision of goods and services, such as taxi and private hire services, food delivery services, freelance work and the letting of short-term accommodation.

Reporting platforms will need to notify HMRC by 31 January 2025, as will excluded platforms (those which do not allow sellers to make a profit, or where there are no reportable sellers). There are a range of penalties for failure to notify, keep the necessary records or send inaccurate information – accompanied by the usual reasonable excuse provisions and the oversight of the tax tribunal.

HMRC issued a Tax Information Note with the regulations (see tinyurl.com/p87z8vwp), estimating that it will cost it £36.69 million to implement the reporting rules. It will take 24 full-time equivalent staff members to manage the system. No cost estimate has been made for platforms.

HMRC doesn't really know how many UK-based individuals and companies provide goods and services via platforms. It estimates that there are 2 million to 5 million businesses selling via digital platforms, meaning that the overall impact of the new reporting will be significant. Platforms will need to provide sellers with the same information they provide to HMRC, to enable sellers to reconcile their data. HMRC hopes: 'This should help them to declare the right income and may make complying with their tax obligations easier.'

The OECD notes that the relatively rapid platform reporting date of 31 January was chosen to enable tax authorities to pre-fill taxpayers' data in their systems to help with tax returns. However, this option won't be available to the UK, simply because we continue to maintain our uniquely useless tax year, ending on 5 April.

Time to change our tax year

One of the challenges for government, HM Treasury and HMRC is how to move the UK's tax administration into the digital age. HMRC operates a huge array of (mainly old) computer systems and probably has the largest volume of individual data of any government department. Our PAYE system benefited from the adoption of real time information a decade ago but using more third-party data to enhance accuracy and reduce taxpayer burdens stalled, at least until the launch of a consultation in April 2023 on Information and Data (see tinyurl.com/2w94xask).

Given that there is growing data exchange globally, it is preferable for the UK to fit into global standards. If it does not, then banks, financial institution and other bodies dealing with the UK end up with the additional costs of having to comply with UK, as well as global, standards. Additionally, if the UK is going to benefit from data received from overseas, it needs to fit in – and that means adopting a 31 December tax year for individuals. At present, the huge volumes of data received under the Common Reporting Standard can only be used to help with tax audits – and even then, many more questions need to be asked as calendar year data does not align with the UK's tax year.

Elections won't be won based on changing the UK's tax year – but our digital future depends on it.

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Reality bites
Party conferences report

Following a year of huge political turbulence, and with an election on the way, we report back from this year's party conferences.

by George Crozier

Was it really just a year ago that a Conservative government was trumpeting the biggest package of tax cuts in half a century? Was it really just four years ago that Labour were setting out wholesale nationalisation plans and proposing £83 billion a year of tax rises?

Both the largest parties have taken radical departures from the political mainstream in recent years, thrilling their bases but leaving the wider public and most of the business community distinctly unimpressed. This year's conferences were much more down to earth affairs, showing two parties bumping back down to the hard reality of stubbornly high inflation, stretched budgets and a watchful bond market.

What does this mean for tax? Mostly it means we are back to the politics of small – and often symbolic – differences. For all the rhetorical flourishes and crowd-pleasing statements of intent, the policy differences between the major parties – including the Liberal Democrats – are actually pretty limited (provided you're not a fund manager, non-dom or parent with school fees to pay).

The tax burden

The parties broadly agree about where we are, though not about how we got here.

The Conservatives have reluctantly put up taxes. They blame factors outside their control (the pandemic, the war in Ukraine) for the need to do this. Labour and the Lib Dems blame Conservative economic mismanagement – and especially the Truss-Kwarteng Mini-Budget.

Everyone agrees that in a cost of living crisis there is no scope to increase taxes on most households. Everyone agrees that, after last year's rollercoaster, stability is key. Everyone agrees, in the Chancellor's words, that there are 'no shortcuts to lower taxes'; they have to be earned by cutting inflation, generating growth and improving the public finances.

Well, perhaps not quite everyone. One notable difference between the parties is that while the Labour left are now mostly off the field and wield little influence, the free market right have not gone anywhere and are still a force to be reckoned with at all levels of the Conservative Party. Most visibly we saw 33 Tory MPs, including Liz Truss, sign a pledge ahead of the conference not to 'vote for or support any new taxes that increase the overall tax burden'. The 'Conservative Growth Group' pressure group of low tax-favouring Conservative MPs is now apparently 60 strong and members of the group made a number of calls for growth-stimulating tax cuts in Manchester.

Chancellor Jeremy Hunt and other senior ministers are at pains to explain how unhappy they are with the current level of taxes, and to emphasise their determination to bring them down as soon as circumstances allow.

Labour's language here is interesting. The party is emphasising that an incoming Labour government would not increase taxes on 'working people', instead generating additional revenue through economic growth. This appears to equate to a commitment not to raise rates of tax on work (i.e. income tax or national insurance) rather than a promise that a particular category of people will not face any tax increases!

Taxing income and gains

The most substantial tax announcement of conference season probably came from the Lib Dems – who announced in Bournemouth that they had dropped their policy of a 1p increase in income tax rates to raise additional revenue for health and social care. The party argues that it is no longer sustainable to raise personal taxes further at a time when the freezing of income tax and national insurance allowances and thresholds is already amounting to a tax rise equivalent to 4p on the basic rate.

The dropping of the policy became apparent in the party's 'pre-manifesto' – effectively the first draft of the manifesto for the general election expected next year. The pre-manifesto also confirmed that the Lib Dems remain committed to scrapping the separate capital gains tax allowance, though this is a less significant move when the exempt amount is £3,000 than when it was £12,300!

Labour had already ruled out increasing income tax rates ahead of the conference so attention in Liverpool focused on smaller taxes and more targeted personal tax measures.

Labour, like the Lib Dems, proposed to wrap capital gains tax into income tax back in 2019. It's unclear whether the Lib Dems still want to do this (a statement that they would 'treat income from wealth similarly to income from work' hints that they do) but Labour have confirmed that they don't. Shadow Chancellor Rachel Reeves told a fringe audience that 'preferential tax treatment' for wealth generators was an important element in growing the economy and that a 'wholesale equalisation' of income tax and capital gains tax could hurt investment in the UK.

> **For all the rhetorical flourishes, we are back to the politics of small – and often symbolic – differences.**

Labour approved a 'pre-manifesto' of their own in Liverpool. It contains few surprises, on the tax front at least. On the personal tax side, the only measures – aside from a vague promise to crack down on evasion and avoidance – are commitments to treat carried interest as earned income rather than as a capital gain (so presumably raising the headline rate from 28% to 47%, once you include national insurance) and to remove the tax benefits of 'non-doms', which party leader Sir Keir Starmer, in his conference address, described as 'a legal loophole that allows some of the richest people in the world to avoid paying tax in Britain'. Labour would replace it with 'a system for genuinely temporary residents' (no further details so far).

Fringe debate in Manchester highlighted that 'family friendly' tax policies are a key issue for many Conservatives. A group of MPs calling themselves the 'New Conservatives' set out a plan to reduce taxes on working families and small business, including abolishing the High Income Child Benefit Charge. The authors of the paper (MPs Miriam Cates and Nick Fletcher) also express support for the recent report by the Centre for Policy Studies and Ranil Jayawardena MP arguing for the personal allowance to be made fully transferable between spouses. 'In the long run,' the New Conservatives' paper states, 'we agree [with Jayawardena] that the UK should move to a system of household taxation.'

Taxing inheritance and property

Probably the best prospect of a tax policy punch-up at the next election is over inheritance tax, a levy which rouses strong feelings on both left and right. A media report in July suggested that the Conservatives might be considering an eye-catching plan to phase it out, while one in September claimed that Labour were considering scrapping – or at least reducing eligibility for – the tax's business and agricultural property reliefs.

Conservative activists in particular are excited by the prospect of getting rid of what they call the 'most hated tax in Britain'. But while former cabinet ministers (Priti Patel, Jacob Rees-Mogg, Andrea Leadsom…) lined up to champion its chucking, current ministers stayed mum on the prospect. It's worth noting that ditching inheritance tax is largely a southern Tory enthusiasm – northern MPs who offered a view seemed keener on cutting income tax.

Labour's shadow ministers were similarly unrevealing about their intentions, saying only that they had no plans to change inheritance tax. They were clearer on a wealth tax, ruling it out. Shadow Financial Secretary James Murray told a fringe meeting that a Labour government's focus would be on raising household incomes, going for growth and winning the trust of business. He said a wealth tax would not support these aims.

On property tax, Rachel Reeves confirmed a new Labour policy of raising the stamp duty land tax surcharge on overseas buyers. This would be used to pay for additional planning officers to help speed up planning decisions as part of the party's plans to transform the planning system. The surcharge is currently 2%. It is not clear what it would rise to.

The Lib Dems, meanwhile, have adopted a housing paper which proposes a 'locally led' approach to second homes, giving local authorities the right to decide whether to level much higher rates of council tax and impose a stamp duty land tax surcharge on second home purchases in their area.

At the SNP conference in Aberdeen, the big tax news was the announcement by First Minister Humza Yousaf of a council tax freeze across Scotland next year. The Scottish government recently consulted on raising council tax rates for higher band properties but this now appears to be off the table for the time being. Earlier in the year, Yousaf expressed support for proposals for a new income tax band between the higher and top Scottish rates of tax. He did not mention this in his speech, but it may be that we hear more in December's Scottish Budget.

At the CIOT/Institute for Fiscal Studies debate in Manchester, Conservative peer

Lord Leigh of Hurley, a CTA and chair of the House of Lords committee reviewing draft tax legislation, suggested the government should increase council tax on the most valuable properties. Elsewhere on the fringe, former Trade Secretary Ranil Jayawardena said stamp duty land tax on main homes should be scrapped.

Corporate taxes

The government's corporation tax increase – to levels close to those proposed by Labour at the last election – has rendered this area less contentious between the parties than in times past. However, the increase is highly unpopular with many Tories. 'Deeply un-Conservative', was the verdict of one veteran activist. Liz Truss called on the Chancellor to reverse the change at the Autumn Statement: 'Put corporation tax back down to 19%, and frankly, if we can get it lower, the better.'

Chancellor Jeremy Hunt did his best to show he understood the unhappiness, and more than once said that his first priority, when the money becomes available, would be to lower taxes on business in order to generate growth.

In Liverpool, James Murray said Labour would publish a new 'business tax road map' setting out policies for the whole of the Parliament in order to give businesses 'certainty and stability'. Rachel Reeves confirmed that Labour still want a higher energy profits levy (as do the Lib Dems). Labour's pre-manifesto emphasises its support for both pillars of the current OECD-led work on the 'fairer taxation of large multinationals'. Labour have said they would leave the bank surcharge at 3% but the Lib Dems want to put it back up to 8%.

Other business taxes and reliefs

Labour and the Lib Dems both want to replace business rates and the apprenticeship levy. But before getting too excited, it's worth looking more closely. It is unclear at this stage how different Labour's version of business rates would be from the current one. It would, it is clear, remain a business property tax – so far as we can tell, raising a similar amount to the current system. It would apparently ease the tax burden on bricks and mortar businesses (so presumably taxing online firms more). It would incentivise investment (especially the green kind), have more frequent revaluations and offer incentives for businesses to move into empty premises. Beyond this, it is unclear whether it would continue to be based on property rental values or – as with the Lib Dem alternative – underlying land values.

With the apprenticeship levy, Labour propose to reform it into a 'Growth and Skills Levy'. Under the new system, companies would have the freedom to use up to 50% of their total levy contributions on non-apprenticeship training. The Lib Dems have similar sounding plans for 'a broader and more flexible skills and training levy'. Support for change of this kind is remarkably broad. Centre-right think tank Policy Exchange – which once had Michael Gove as its chairman – held fringe events at both Manchester and Liverpool to promote its report pushing in the same direction.

Labour want to encourage business investment and innovation, but their focus seems to be on improving existing tax incentives rather than designing something new. A paper published last December (not official policy but commissioned and welcomed by the leadership) says a Labour government should 'maintain and build on the R&D tax credit system', including looking 'at whether there are ways to make the process less burdensome for firms, balancing that with the need to tackle fraud'. It encouraged Labour to commit to maintaining the SEIS, EIS and VCTs and to review whether their current scope and scale is sufficient. Labour has criticised the temporary nature of the full expensing regime but not so far committed to making it permanent.

As well as scrapping the child benefit charge, the backbench 'New Conservatives' Tax Plan' contains two measures aimed at small business – raising the VAT threshold to £250,000 and reversing the recent IR35 reforms. Treasury Committee member Danny Kruger was supportive of the VAT change, saying VAT is difficult to register for and the current threshold means many businesses 'bunch' below the limit. Financial Secretary Victoria Atkins, on the same fringe panel, responded that the current threshold is higher than anyone in the EU. She said she gets lobbied by people who want it to go up but also by people who want it to go down. When she hears this, she says: 'Crikey, at a time of cost of living crisis we don't want to increase pressure on prices further!'

Labour, of course, propose to put VAT on private school fees and make the schools pay business rates. Rachel Reeves praised the policy in her keynote speech and defended it on the fringe, saying that even with behavioural changes it could raise substantial revenues.

Green agenda

And finally, while climate change was all over the conference agendas, discussion of green taxes was almost non-existent. The Lib Dems were something of an exception – passing proposals to 'green' stamp duty land tax and letting homeowners offset spending on insulation and heat pumps against income tax, as well as backing a 1p levy on new clothes (proceeds ringfenced for recycling) as part of a plan for 'sustainable fashion'. However, the Conservatives are cooling on environmental policy, especially anything which will hit the public in their wallets, and while Labour have ambitious climate policies they too seem wary of anything which might be seen as adding to the cost of living for households or hindering the growth of businesses.

Towards the election

This was a conference season where tax did not dominate. HS2, Labour's housing plans and reaction to the Hamas attack on Israel, to name just three, all had a higher profile. But we saw enough to give us a pretty good idea how the parties will fight next year's general election.

The Conservatives are heavily dependent on the economy coming good in time to enable them to credibly offer tax cuts, either in the March Budget or in the election manifesto. Income tax and inheritance tax appear to be the two main taxes in the frame – and you'd have to be a brave person to bet against them offering something on both fronts.

Labour plan to fight the 2024 election like they fought 1997 – focusing attention on the Conservative record, projecting a message of reassurance and energising supporters with a small number of symbolic, but mostly modest, policies. Closing tax 'loopholes' to fund priorities is a key element of this. It would not be at all surprising to hear further announcements of this kind over the coming 12 months.

Ultimately, both strategies are less about detailed policies and more about the impression they give of the direction each party wants to take the country in. Both Sunak and Starmer think the voters want change and plan to present themselves as the change candidate. But they also want to project stability and reassurance. A tricky balancing act. Who will succeed? By this time next year we should have our answer.

Full reports on the party conferences can be found at www.tax.org.uk/blog/1

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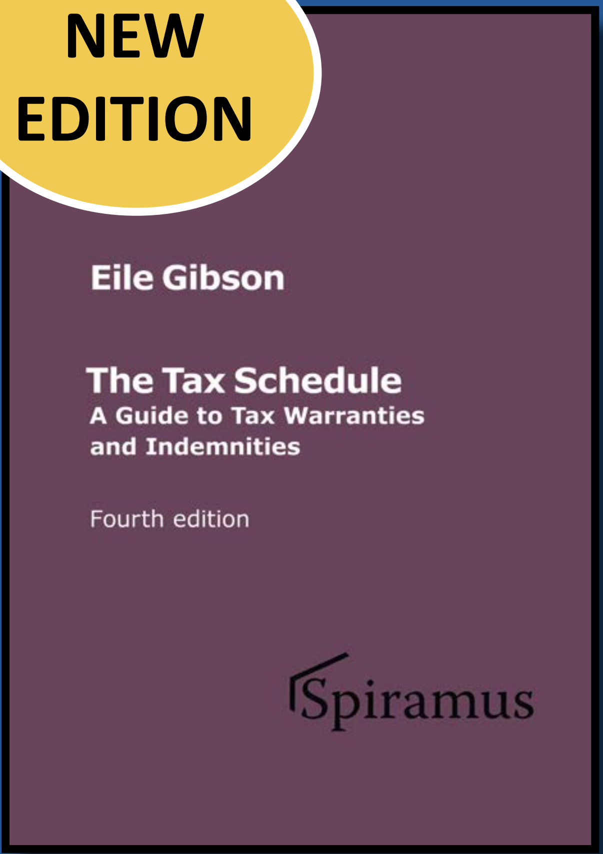

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Fourth Edition

by Eile Gibson

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Keeping transfer pricing records
Making a platinum hit

As the Transfer Pricing Records Regulations 2023 bring in mandatory documentation requirements, we examine the requirements of Local Files and Master Files.

by Phil Roper and Charles Havisham

The UK has long been something of an anomaly in the world of transfer pricing documentation. It was an early adopter of the arm's length principle for related party transactions, with a tax authority that is experienced and sophisticated in applying this. However, the UK has hitherto treated transfer pricing documentation as a matter of general 'record-keeping' under its normal corporation tax self-assessment rules.

Now, though, the Transfer Pricing Records Regulations 2023 have introduced mandatory transfer pricing documentation requirements. UK members of multinational groups which meet the country-by-country reporting threshold of at least €750 million revenues for the relevant period must now prepare transfer pricing documentation according to a prescribed format.

The new rules apply for corporation tax accounting periods beginning on or after 1 April 2023, and for income tax purposes from the fiscal year 2024/25. For each period, in-scope entities must prepare a Master File and Local File which contain the information described in Annexes I and II to Chapter V of the 2022 OECD Transfer Pricing Guidelines.

The documentation need not be filed with the tax return but must be provided to HMRC within 30 days of request. In practice, the documentation should exist at the time the relevant self-assessment return is made and be considered by the person making the statutory declaration that the return is, to the best of their knowledge, correct and complete.

The Master File contains high-level information on the multinational group's global business operations and its transfer pricing policies. The Local File sets out the economic characteristics of the related party transactions of the UK entity, the amounts involved, and the transfer pricing analysis demonstrating that the pricing applied to each class of transactions is arm's length. The Master File and Local File requirements are widely used around the world and provide the detail to complement the group's country-by-country reporting information.

Groups below the €750 million threshold remain subject to the old 'record keeping' requirements. Unless an exemption (such as that for some SMEs) applies, transfer pricing documentation commensurate with the scale and complexity of the related party transactions is required. In practice, for groups towards the larger end of the scale, the Master File/Local File approach is often recommended. The updated HMRC International Manual guidance at INTM450080 reinforces this as it states: 'HMRC is of the view that an appropriate way to demonstrate that provisions between related parties adhere to the arm's length principle is to prepare documentation in line with the OECD's recommended approach even where the MNE group test is not met.'

Living in a material world

Only material categories of controlled transactions need to be included in the Local File. Materiality is assessed category-by-category and is to be considered from the perspective of the individual UK entity that is the subject of the Local File (i.e. not, for instance, the whole group or UK sub-group).

HMRC has listed certain categories of transactions that are always treated as material regardless of value due to their nature and complexity. These include transactions involving intangible assets, 'leadership services' or business restructurings, or those priced via a profit split methodology or involving a cost contribution arrangement. For other categories of transactions, a £1 million *de minimis* threshold applies; materiality above this level is a question of taxpayer judgement with reasoning required to support categories not considered material.

Key Points

What is the issue?
The Transfer Pricing Records Regulations 2023 have introduced mandatory transfer pricing documentation requirements.

What does it mean to me?
UK members of multinational groups which have at least €750 million revenues for the relevant period must now prepare transfer pricing documentation according to a prescribed format. Large groups below this threshold are usually recommended to follow the same format.

What can I take away?
Ensuring that the analysis is up to date, and that the facts on which it is based are accurately explained and considered, will be increasingly important in managing transfer pricing risks.

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Related party transactions may be aggregated into a category when both:

- the economically relevant characteristics are materially the same; and
- the transfer pricing methodology and pricing are the same.

Although this will simplify the analysis, the Local File must still identify any different counterparties involved in the transactions and the amounts set out by counterparty jurisdiction. As a further simplification, 'low value-adding' intra-group services (as defined in the OECD Transfer Pricing Guidelines, typically priced on costs plus a mark-up of 5%) may be included as a single category of transaction, including where they are provided by or to multiple counterparties.

Leave intended omits alone

Certain transactions may be excluded from the UK Local File regardless of materiality:

- The UK applies a very wide definition of related parties for transfer pricing relating to financial transactions, covering those who 'act together' with shareholders in relation to an advance of funds. Where 'acting together' is the only connection, the financial transaction may be excluded.
- Domestic (UK-UK) transactions may be excluded except where one or both of the parties have elected into the patent box or operates an oil and gas ring fence trade. Other UK domestic transactions do still need to be priced at arm's length, even though not required to be included in the Local File (although HMRC is considering reintroducing a form of exemption for UK-UK transactions).
- Transactions covered by Advance Pricing Agreements (APAs) made with HMRC on or before 31 March 2023 do not need to be included. Later APAs must be documented but the information contained in the APAs application or annual reports can be leveraged to minimise the additional compliance burden.

If the result of the above is that the UK taxpayer would not be required to document any controlled transactions in the Local File, then it is not required to prepare Local File or Master File at all for the relevant period. (In practice, however, other countries will probably still require a Master File.) The reasoning underlying this conclusion should be documented.

The power of 'Gov'

A clear message from recent HMRC activity has been the need to close the 'information gap', ensuring that HMRC has access to the information it needs to conduct effective and targeted compliance activity. This is also explained as being a benefit to taxpayers by reducing unnecessary questions on matters that turn out to be low risk. The Regulations therefore also increase HMRC's powers to seek transfer pricing records, without launching a formal enquiry and including where they are held by other members of the group than the UK entity itself (e.g. a Master File held by the foreign ultimate parent entity).

The flip side is that if transfer pricing records are not provided within the 30 day deadline, there is a rebuttable presumption that any transfer pricing-related inaccuracies are careless (with a potential penalty of up to 30% of the lost tax or 10% of overstated losses). This can be rebutted by providing the records and showing that they were in place prior to submitting the self-assessment return, or by otherwise demonstrating reasonable care, which in the absence of documentation could be difficult.

The existing £3,000 penalty (previously rarely imposed) for failure to keep or preserve records is retained, and continues to apply to smaller groups. For groups subject to the mandatory Master File and Local File requirements, there is a new additional penalty of up to £300 and a further £60 per day where the 30 day time limit is breached.

Maintaining the specified transfer pricing records is within the Senior Accounting Officer responsibilities and HMRC points out that 'failure to keep the records may be an indication of not establishing and maintaining adequate accounting processes and arrangements'.

SATisfaction guaranteed

Also in the Regulations is a power for HMRC to introduce a requirement for businesses to prepare a Summary Audit Trail (SAT) explaining the steps taken in preparing the Local File.

The SAT has been under consultation and development for a couple of years and

HMRC has confirmed the intention to publish a further consultation later in 2023. The intent behind the SAT is to encourage sufficient work to support transfer pricing policies and to enable HMRC to undertake high level quality assurance on the transfer pricing documentation and therefore allow better focus on higher risk areas during enquiries. Achieving a form of record that delivers these goals while not creating a cottage industry has been the challenge, hence the delay.

Does the delay to the introduction of the SAT mean that evidence is not yet important? Definitely not. HMRC can be expected to view assertions in a functional analysis with professional scepticism, seeking verifiable evidence and concrete examples underlying the claims made. It may challenge the reliability of the transfer pricing implications where particular emphasis is placed on characterisation of the role of entities that is not borne out by the facts on examination. This may include interviewing UK-based senior management to hear at first-hand their understanding of decision making processes and responsibilities.

Right here, right now

In a sense, these 'new' rules are not all that novel. The Master File/Local File concept has been recommended by the OECD since 2015 and is progressively being adopted by groups worldwide. UK groups too have often adopted the approach as a matter of good practice. The mandatory rules now bring the UK requirements for large multinationals into line with many other jurisdictions and should help to transfer pricing and tax teams to articulate the importance of revisiting existing UK transfer pricing documentation.

What is becoming more apparent is HMRC's clear drive for evidence-based transfer pricing documentation. Ensuring that the analysis is up to date, and that the facts on which it is based are accurately explained and considered, will be increasingly important in managing transfer pricing risks.

Prompt action is recommended: although the transfer pricing documentation does not have to be prepared until the tax return is submitted, the 'one-way street' approach of the UK transfer pricing legislation prevents tax return adjustments on cross-border transactions which reduce taxable profits or increase allowable losses. The emphasis is on the taxpayer to get the pricing right in the accounts. Where a review determines that UK profits should be lower at arm's length, leaving any change until after year end may be too late.

I can see clearly now...

Considering the following questions should help businesses prepare for the new rules:

- Are we within scope?
- What are our material transactions that will need to be included in the Local File?
- What transfer pricing documentation already exists for these transactions and are there any gaps to the OECD Master File/Local File content requirements?
- Are there intercompany agreements which describe the terms and conditions under which those transactions take place?
- If there is an agreement, when was the most recent review undertaken of whether the conduct of the parties is consistent with the agreement terms?
- When was the last time that a two-sided functional analysis was performed which examines the contributions made by each party in terms of functions performed (including control of economically significant risks), assets employed and risks assumed?
- When was the last time a review of third party agreements was performed to determine if any internal comparables exist?
- Have any third party comparables been reviewed and updated in accordance with the OECD Transfer Pricing Guidelines comparability standards? For comparable company benchmarking (transaction net margin method), this typically means at least every three years (with an annual roll-forward of financial data).
- Has any sanity check been performed that the distribution of taxable profits appears commensurate with the parties' respective contributions to value creation?

We expect to see HMRC conduct stricter enforcement of the new requirements and to make use of its powers to impose penalties for non-compliance.

Any groups subject to the rules, and the larger ones below the threshold, should review the evidence and analysis supporting their related party pricing as a matter of priority, and develop a timely plan for closing any gaps. Make your transfer pricing records a platinum hit!

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Charitable giving and tax

Dispelling the myths

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We consider how to manage the tax implications of charitable giving and how to maximise the benefits to both donors and recipients.

by Mark Greer

Key Points

What is the issue?
Only a quarter (26%) of high net worth individuals (HNWIs) say that an adviser has raised the topic of charitable giving with them in the past, yet two in five believe it is important to discuss the topic with advisers.

What does it mean to me?
Tax advisers can bring a wealth of essential knowledge to a client's charitable giving that will directly impact the finances of both the charity and the taxpayer, making it very much their subject area.

What can I take away?
Donor advised funds are the UK's fastest growing philanthropic giving vehicles. Acting as a one-stop shop for a HNWI's giving needs, donor advised funds enable them to make charitable contributions and then recommend for the fund to be invested or make grants to organisations that they suggest over time.

Only a quarter (26%) of high net worth individuals (HNWIs) say that an adviser has raised the topic of charitable giving with them in the past, yet two in five believe it is important to discuss the topic with advisers. A similar number say they would like an adviser to suggest ways to help them make the most of their giving. The figures were obtained by a survey of 506 HNWIs with over £1 million of investable assets (conducted by Savanta on behalf of Charities Aid Foundation (CAF) in 2023).

So why aren't more advisers talking to their clients about charitable giving? *It's too personal. It's not my area. I need to be a philanthropy expert.* These are all reasons I've heard in conversations with a range of financial advisers, including tax specialists. But they are all myths.

Tax incentives for charitable giving have long played a crucial role in encouraging individuals and businesses to support charitable causes and also can ensure more money goes to charities. It should therefore be an imperative that tax advisers have this conversation with every one of their clients. Misconceptions often cloud the understanding of these incentives, as well as the role of the adviser, leading to missed opportunities for donors and their advisers alike.

As Christmas approaches – the time when donating to charity is at its peak – this article aims to debunk the most prevalent myths around charitable giving and tax in the UK, shedding light on how both advisers and donors can benefit from these conversations.

It's too personal

People donate to charity for all sorts of reasons but often it's sparked by someone they know or something they've experienced themselves; it can be an extremely personal act. Tax is never going to be the driving force in this decision but that doesn't mean it's not a tax adviser's place to discuss the topic. In the survey by Savanta on behalf of CAF, only 13% of HNWIs said it would not be appropriate for an adviser to raise a topic like charitable giving, so don't shy away from the topic thinking it is inappropriate.

Starting a conversation about charitable giving demonstrates to a client that you're interested in the bigger picture, presenting them with all the options, and provides an opportunity to get to know your client better and discover what really drives them.

Philanthropy is often a family affair, providing advisers with much more tangible access to the next generation or other family members. The much talked about Great Wealth Transfer is happening, with £5.5 trillion expected to be transferred over the next 30 years, and research by Cerulli suggests 87% of next generation HNWIs do not intend to retain their parents' advisers. A conversation around philanthropy provides an opportunity to change that.

It's not my area

Ultimately, every donor wants charities to be able to make the most of their donations. And where there are tax incentives and regulations, there's a role for tax advisers. Through knowledge of schemes such as Gift Aid, where charities can claim back a percentage of the tax paid on each donation, tax advisers can add financial value to charitable donations not just for the client, but for the charity as well.

Tax expertise also comes into play regarding the timing of a donation. HNWI giving is often, and should be, strategic. However, it can also be emotional and impulsive; for example, if a donor hears about a charity that needs urgent help or wants to respond to a major disaster. Without having had a conversation with their adviser about philanthropy in the past, they may not stop to consider that the timing and amount of the donation could have major tax implications.

I recall hearing a story from an adviser about a client who had recently made a capital gain on the sale of his business, which also meant he no longer had an income. When his wife passed away in the following year, he wanted to donate to a charity in her memory. He noted the amount on his draft tax return, but later changed his mind and doubled the donation, forgetting to update his tax return before submitting it. He immediately realised his mistake but the law does not accept amendments. None of the tax relief carried back to the previous year when he was still earning, so he ultimately had to pay an additional £200,000 to HMRC.

Tax advisers can bring a wealth of essential knowledge to a client's charitable giving that will directly impact the finances of both the charity and the client, making it very much their subject area.

I need to be a philanthropy expert

I often hear advisers say they don't discuss philanthropy with their clients because they are not philanthropy experts. As I have noted, a good adviser should know the tax regulations and benefits relating to charitable giving. I also believe that tax advisers should know the tax implications of different giving vehicles, though I'm not sure all do (which is why I've also included a useful guide). However, I wouldn't expect my tax adviser to be able to recommend the best homelessness charities or tell me if a particular charity is legitimate.

What I would expect is for an adviser to be able to signpost a client to a philanthropy expert who could. This is added value to the client that again deepens the client-adviser relationship. Giving money away on your own is difficult and time consuming. Philanthropy advisers – whether independent, in-house at a private bank or through an organisation such as the CAF – regularly work in partnership with a HNWI's team of advisers to provide the expertise needed for a giving strategy that achieves the desired impact. They are able to provide advice, as well as carrying out the administrative tasks such as due diligence and payment processing.

It is also worth noting that there is growing demand for philanthropy training for advisers to be introduced. In January 2023, the Law Family Commission on Civil Society recommended that training on philanthropy and impact investing should be included in FCA-approved curricula for advisers.

> **Tax advisers can bring a wealth of essential knowledge to a client's charitable giving.**

Guide to giving

Gift Aid

Gift Aid is a scheme available to UK charities and Community Amateur Sports Clubs (CASCs) which means that they can claim back basic rate income tax from HMRC on donations: an extra 25p for every £1 donated under Gift Aid. Each time an eligible taxpayer donates but forgets to tick the Gift Aid box, the charity misses out – collectively to the tune of £500 million each year.

A charity can claim Gift Aid when you make a monetary donation from your own funds and have paid UK income and/or capital gains tax during that tax year. The amount of tax you pay needs to be at least equal to the value of Gift Aid that the charity or community amateur sports clubs (CASC) will claim on your donation(s).

Tax relief at higher and additional rate must be claimed by the donor, usually on the self assessment tax return.

Helping donors understand the arithmetic is a valuable exercise. An additional rate taxpayer can give £100 to a charity with a net cost to the donor of £55. However, the donor needs to transfer £80 to the charity, which reclaims £20 in basic rate income tax. The donor claims the balance of £25 on the self assessment tax return. Not everyone understands that both the donor and the charity claim tax refunds. Donors who do understand the arithmetic will realise that they can afford to give a larger amount, as they will receive a personal refund.

If circumstances change and the taxpayer no longer pays enough tax, it's important to tell all the charities supported. If you don't and they continue claiming Gift Aid, the donor will need to pay any difference back to HMRC.

Non-cash donations

In the UK, you can donate cash, shares or property to charity and all three have different tax implications. For example, donating shares might be most tax-effective for the client, but the charity won't be able to claim the Gift Aid and could ultimately receive less money.

Again, helping donors understand that they receive both income tax and capital gains tax relief might mean that they would wish to supplement the gift of shares with a cash gift to pass on part of the tax benefit to the charity. HMRC's guidance is helpful (see tinyurl.com/bdfwcfww).

Executors or trustees of a will sometimes transfer property to a charity where there is a built-in capital gain arising in the holding period after the death. The charity then sells the property and uses the proceeds for its charitable purposes. The Charities Act 2022 ss 117-121 requires that the charity obtains a valuer's report before selling the property, so it is important to build this into any disposal timetable.

It is important to consider a client's personal circumstances and motivations before recommending which method is not only best for them, but also most practical for the charity.

Donor advised funds

Donor advised funds are the UK's fastest growing philanthropic giving vehicles. The fund is a registered charity, which gives money to other charities, rather than spending directly on charitable purposes. Acting as a one-stop shop for a HNWI's giving needs, donor advised funds enable them to make charitable contributions and then recommend for the fund to be invested or make grants to organisations that they suggest over time. Donor advised funds offer several advantages over setting up your own charitable foundation: namely, cost savings, flexibility and ease of administrative, fiduciary and reporting requirements.

When an individual gives a donation into a donor advised fund, it goes across the charitable threshold. The fund is not a bank account; the individual can't withdraw money from it as it has now been given away; and tax relief has been received on that money. Therefore, it is subject to charitable regulation and can now only be used for charitable purposes.

Gift Aid should be applicable on cash gifts to a donor advised fund. As considered above, individuals who pay tax above the basic rate can reclaim the difference between the rate they pay and the basic rate of tax via their personal tax returns.

One other possible advantage of some donor advised funds is that they can give money to overseas charities which are not registered in the UK. An individual cannot get tax relief on donations overseas, whereas a fund can spend money outside the UK, provided it qualifies under the UK's charitable rules.

Legacy giving

Tax advantages can make a significant difference to the beneficiaries of an estate. A gift to a UK charity in a will is free from inheritance tax, meaning that the money is 'removed' from the value of a donor's estate before tax is calculated. In addition to the donation being tax free, charitable gifts can reduce the amount of inheritance tax paid on the rest of the estate. If 10% or more of the estate is gifted to charity, then the rate of inheritance tax paid on the rest of the estate is reduced from 40% to 36%.

Gifts in wills can therefore make a significant difference to the causes that donors care about the most, whilst having a positive impact on the remainder of their estate. Donors should take legal advice on how best to build charitable donations into their will; the options are direct gifts or using trustees to make donations from a fund allocated under the will.

Payroll giving

With payroll giving, donations are taken from gross pay before income tax is deducted. The charities you care about get a regular income and it costs you less. The result is that all the tax relief is given to the individual through the PAYE system – and not to the charity through Gift Aid.

To donate £1, you pay 80p if you're a basic rate taxpayer, 60p if you're a higher rate taxpayer or 55p if you're an additional rate taxpayer. The tax relief you get is different if you live in Scotland.

CAF Give As You Earn, the UK's biggest payroll scheme, facilitates over £63 million of donations to charities each year, giving charities a regular income and reducing administration and fundraising costs. Donations made to charity through payroll giving aren't eligible for Gift Aid because they're taken from your wages before tax.

Dual UK and US taxpayers

Dual citizenship can complicate charitable giving and an adviser with knowledge of this area can be incredibly attractive to many HNWIs. Twenty years ago, CAF launched the CAF American Donor Fund (CADF), a DAF specifically for dual UK and US taxpayers, enabling donors to claim eligible dual tax relief on their global giving.

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SME and RDEC schemes
Getting ready to merge

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With plans announced to merge the SME and RDEC R&D schemes from April 2024, we consider the draft legislation released so far and the potential design problems.

by Carrie Rutland

Key Points

What is the issue?
The January 2023 consultation on merging the SME and RDEC R&D schemes makes clear that simplification and improving the competitiveness of the scheme are key objectives.

What does it mean to me?
Relief for 'R&D intensive' companies will remain higher than the current SME scheme and, as things stand, this means it is likely to be carved out from the merged scheme.

What can I take away?
The concept of the UK having a single above-the-line R&D tax relief is attractive because of the clarity and prominence in the accounts that it brings.

Following a consultation in 2021 (on wider research and development relief reforms) and more specifically in January 2023 on merging the current schemes, the government published updated proposals and draft legislation on 18 July 2023. Although the July policy document describes this as a 'potential merger', the government has been working towards this for several years and it seems fairly certain to be achieved.

Why is this happening? Let's be in no doubt that ensuring 'taxpayers' money is spent as effectively as possible to support innovation' is an important consideration. However, the January 2023 consultation makes it clear that simplification and improving 'the competitiveness of the R&D expenditure credit (RDEC) scheme' are also key objectives.

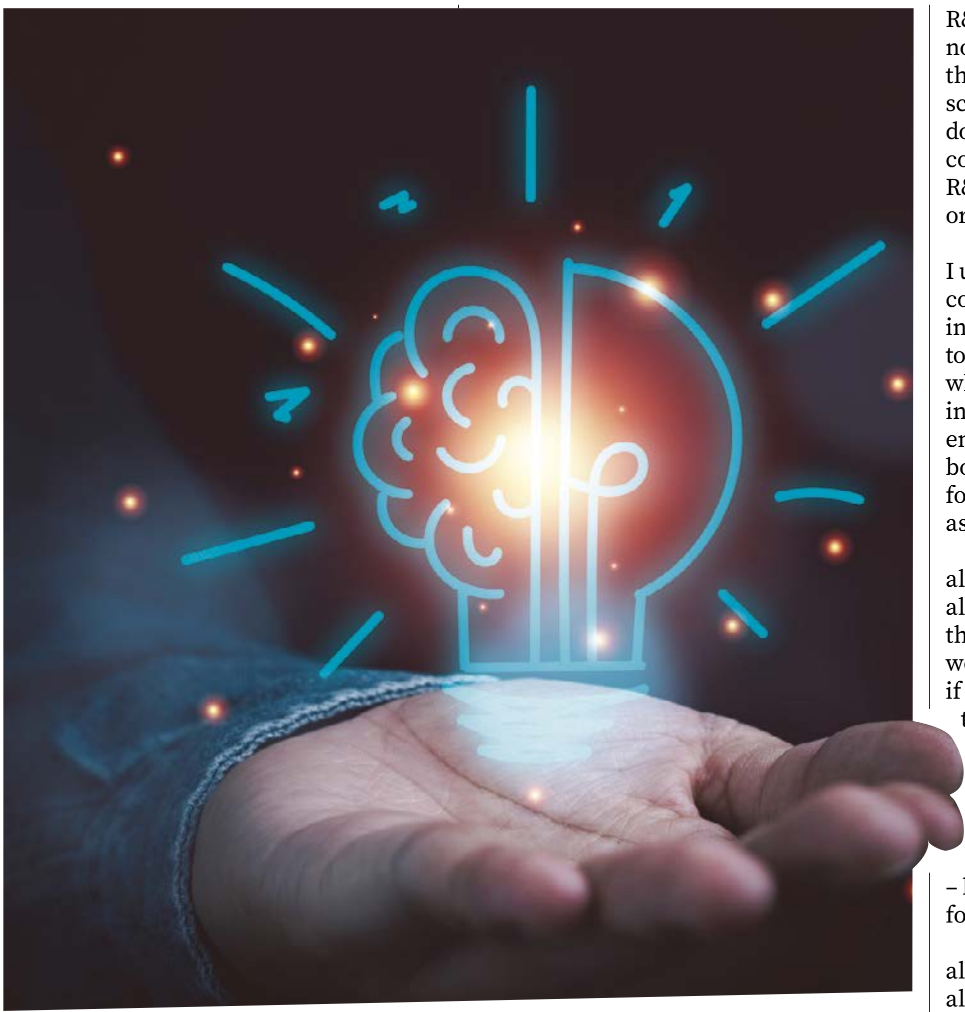
From the earliest stages of this reform process, businesses were concerned that merging the schemes was simply a pretext for reducing the rate of relief under the SME scheme. However, the government chose to address this issue head on by reducing the headline rates of relief under the SME scheme and raising the rates of relief under RDEC. Claiming that it has 'broadly aligned the generosity of the two schemes' (see the Comparison Table on page 23), the government now feels it can press ahead with merging the schemes from April 2024.

Of course, as with all tax legislation, there is a caveat. Relief for 'R&D intensive' companies will remain higher than the current SME scheme and, as things stand, this means it is likely to be carved out from the merged scheme. How this can be squared with the simplification objective remains to be seen: I will consider some of the practical problems that could arise from this approach below.

I should make clear from the outset that there is no suggestion that the core definition of what constitutes R&D for tax purposes (under the Department for Science, Innovation and Technology (DSIT) guidelines) will change for the merged scheme: claimants will still need to prove that their project sought to achieve an advance in science or technology.

RDEC plus

From the earliest stages, it has been clear that the combined scheme would principally be based on the current RDEC rules, and the current rate of relief will apply to all claimants. This should help to



raise the prominence of the R&D function within a business by recognising the R&D incentive in a company's pre-tax income – the 'above the line credit'. It will also make it easier for larger businesses to make the transition, but SMEs will need to start planning for the change and another drop in tax relief soon.

While it is positive that the above the line credit will make the impact of R&D relief more obvious in company accounts, it is rather disappointing that the seven step process for calculating RDEC relief (currently Corporation Tax Act 2009 s 104N) is to be retained. One wonders how smaller SMEs will manage to apply this accurately in practice, as it can already cause complexities for large businesses with significant accounting resources.

However, in other areas legislators are taking the 'best bits' from the SME scheme to simplify the merged scheme rules. For example, both the current schemes include rules that limit the amount of relief that can be claimed when a company is loss-making, but the SME scheme rules are the more generous of the two. Broadly, it caps the refund that a loss-making company can claim to £20,000 plus three times its PAYE and NICs liability for the period of the claim. There are also specific exemptions from it for companies investing heavily in developing their own intellectual property. It is proposed that the merged scheme will adopt the SME scheme loss cap rules – these tick the boxes on both simplicity and competitiveness grounds.

Subcontracting R&D work

Here there is another positive development for large companies already claiming the RDEC. At present, companies claiming under RDEC can only claim for the costs of outsourcing their R&D when the work is subcontracted to a limited number of qualifying bodies (e.g. universities and other not for profit organisations) or to individuals. This would expand significantly under the merged scheme, which it is suggested would adopt the current SME rules allowing costs for most outsourced R&D to be claimed – apart from overseas costs (see below). However, the current 65% restriction on outsourced costs that can be claimed by SMEs would continue.

Of course, where project work is subcontracted to a third party, there will always be the question of who claims the R&D relief. Under the SME rules, it is normally the principal, so importing these rules wholesale into the merged scheme (as the draft legislation currently does) would have considerable consequences for certain parts of the UK's R&D base – especially contract research organisations operating in the UK.

From engagement with HMRC, I understand that legislators are concerned about this issue and are investigating ways to draft the legislation to allow commercial flexibility over which party can claim the R&D relief in subcontracting situations, whilst ensuring that relief cannot be claimed by both parties. So hopefully we can look forward to further proposals in this area as the legislative process continues.

What does seem to be finalised already is that the merged scheme will also reflect HMRC's recent concern over the costs claimed for externally provided workers. Such costs will only be claimable if they relate to UK workers and where the worker is part of (and paid through) a PAYE scheme. This means that costs for outsourcing work to self-employed individuals or those working through a personal service company could not be claimed under the merged scheme – building in an anti-avoidance measure for contract workers.

Of course, the government has already proposed a ban on claiming for all overseas outsourcing costs (apart from a few limited exceptions) and, after a one-year delay, this is also now due to take effect for costs incurred on or after 1 April 2024. This ban would be a feature of the new merged scheme, although the exceptions would also apply.

Subsidised R&D

To quote the current Corporate Intangibles Research and Development Manual (CIRD89760): 'There is no provision preventing subsidised expenditure from qualifying for R&D Expenditure Credit', but there are restrictions under the SME scheme.

In recent years, HMRC has pursued a number of tax cases where it claimed that the cost of the R&D work was effectively subsidised and so cannot be claimed under the SME scheme. For example, in *Hadee Engineering Co and others v HMRC* [2022] UKUT 84, HMRC successfully claimed that R&D work carried out to develop a product for a customer was effectively subsidised by that customer.

This trend would continue within the merged scheme, as the proposed rules would not allow an R&D claim to be made where any form of subsidy or grant is received in respect of the R&D project. The proposed new s 1042C would impose this block on large companies for the

R&D RELIEF RATES: COMPARISON TABLE

	Up to 31 March 2023		From 1 April 2023 – 31 March 2024			1 April 2024 onwards	
	SME	**RDEC**	**SME**	**RDEC**	**R&D Intensive**	**Merged scheme**	**R&D Intensive**
Profitable company	130% uplift on costs = **24.7% net benefit**	Headline rate 13% = **10.5% post tax**	86% uplift on costs = **21.5% net benefit**	Headline rate 20% = **15% post tax**	NA	Headline rate 20% = **15% post tax**	NA
Loss making company	Costs plus 130% uplift = 230 x 14.5% repayable credit = **33.4% subsidy**	**10.5%** subsidy	Costs plus 86% uplift = 186 x 10% repayable credit = **18.6% subsidy**	**15%** subsidy	Costs plus 86% uplift = 186 x 14.5% repayable credit = **26.97% subsidy**	**15%** subsidy	Costs plus 86% uplift = 186 x 14.5% repayable credit = **26.97% subsidy**

first time. However, sharp-eyed readers of the draft legislation will have noticed that this new section is shown in square brackets. It is my understanding that this is because legislators are considering ways to make this part of the proposals redundant. There has always been a friction between receiving a grant and claiming R&D relief on a project, so on the grounds of simplicity and competitiveness that would be a very positive development.

R&D intensive companies

At the Spring Budget, the Chancellor made a commitment to preserve a higher rate of R&D relief for 'R&D intensive' companies. Draft legislation to implement this higher rate was introduced alongside the proposals for the merged scheme (see the table ***R&D relief rates: comparison table*** above).

Why not simply include the R&D intensive relief as an option within the merged scheme? I understand that HMRC is trying to align component elements of the rules of the R&D intensive scheme and the merged scheme as far as possible, but it has cost concerns about including the R&D intensive relief directly within the merged scheme.

What is R&D intensive?

The draft legislation defines R&D intensive companies as those whose qualifying R&D expenditure constitutes at least 40% of their total expenditure. Total expenditure for this purpose will be calculated from the total expenses figure in the profit and loss account, adjusted by adding any amount of expenditure used under Corporation Tax Act 2009 s 1308 and by subtracting any amount not deductible for corporation tax purposes. This threshold is unlikely to be met by many companies. I'd expect only a small number of technology start-ups and university spin-out businesses to qualify.

The difficulty with this definition is that it will offer a financial incentive for companies to manage their accounting policies to ensure that their R&D spend exceeds 40% of total expenditure. Perhaps considerable amounts of complex anti-avoidance legislation could be created to prevent this, but we must hope the risk is simply designed out.

While it has potential difficulties in its own right, it is the interaction of this new relief with the merged scheme that could present the most practical problems.

In this year, out the next?

As I have already explained, the relief for R&D intensive companies will be much higher than for companies claiming under the merged scheme. But what if your R&D costs for differing years genuinely vary between say 33% and 45% of your total costs? The company will have to switch between the intensive scheme and the merged scheme with significant impacts on their cashflow.

Worse still, the R&D intensive scheme will operate its relief in the same way as the current SME scheme – refunds to the company. So for a year when a company does not quite reach the 40% threshold, not only will it get less tax relief, but it will also have to show the relief in its accounts in a totally different way. This may have consequences far beyond cashflow – with potential knock-on effects for shareholders' agreements, borrowing covenants, bonus schemes, etc.

Adding some form of averaging clause to the R&D intensive scheme to protect companies whose total R&D costs slip from 42% to 39% from one year to another may reduce this risk. However, there will always be some who fall outside these and have to face the consequences of switching schemes. Therefore, I hope that the government can find some form of compromise so that the higher rates of relief for R&D intensive companies can be included within the merged scheme before it is launched to avoid this practical problem.

Looking ahead

Having worked on R&D claims for many years, the concept of the UK having a single above-the-line R&D tax relief is attractive because of the clarity and prominence in the accounts that it brings. Legislators have made a strong start in designing a merged scheme but much is still to be decided and finessed to achieve their simplicity and competitiveness objectives. We must hope that these two aims are not sacrificed for a blinkered view of 'cost effectiveness' when the final design is approved by Parliament.

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Three party transactions
A complicated web

In the first of a two-part series, we analyse the output tax issues of three-party deals. The second part will consider input tax challenges.

by Neil Warren

Key Points

What is the issue?
The recent FTT case of *All Answers Ltd* was lost by the taxpayer, with the judge agreeing with HMRC that the company was acting as principal rather than agent when selling completed essays to students that had been written by self-employed authors.

What does it mean for me?
The increase in the number of website businesses that link suppliers and customers means that VAT should be considered as soon as a new venture is started to decide whether the host is making a supply of goods or services or only receiving a commission.

What can I take away?
In deciding the agent vs principal issue, you must consider the terms of written contracts between the various parties and the commercial reality of a deal. The absence of a contract between the authors and students in the *All Answers* case was significant.

Party 'A' sells standard rated goods or services to 'B'. 'B' makes a profit and sells to 'C'. 'B' is registered for VAT and 'A' is not. 'C' is a private individual or any party which cannot claim input tax.

When you have digested the VAT issues of the previous sentence, and thought of the main way of reducing the tax payable on this deal, you will appreciate why three-party transactions have always produced so many VAT headaches, controversial tribunal decisions and – in some cases – bankrupt businesses. Bankruptcy could happen if HMRC uses its power to assess underpaid output tax for the previous four years by issuing a 'best judgment' assessment in accordance with Value Added Tax Act 1994 s 73(1).

The multi-million-pound VAT saving question – in some cases – is as follows:

- Can the deal be restructured so that 'A' directly sells to 'C' (no output tax); and then 'B' charges a commission to 'A'? (Some output tax will be charged by 'B' but on its profit margin rather than the full selling price.)

The potential VAT savings can be massive, as shown by the recent First-tier Tribunal case of *All Answers Ltd*, which I will consider in this article.

Agent vs principal

An important VAT challenge is to always consider the question: who is supplying what and to whom? If this answer is clearcut, the VAT outcomes are usually straightforward. There are two important issues to consider for all three-party deals:

- **Commercial reality:** Which business does the final customer think they are dealing with? For example, if goods or services are faulty or sub-standard, who will the customer complain to for

HIRE OF GOODS: WHO IS THE PRINCIPAL?

Oscar is VAT registered and owns a website which links theatre groups looking to hire props with other groups who have a stock of props. Oscar retains 25% of the fee charged by the groups that own the props.

The terms and conditions on the website clearly state: 'If you are unable to resolve any complaint with the owner of the goods, then contact us and we will raise it on your behalf.' The phrase 'on your behalf' is an indicator that Oscar is acting as an agent.

Note: It is irrelevant for VAT purposes whether a commission is earned from a buyer or seller. The key factor is the service carried out by the website, which – in Oscar's case – is to act as an intermediary in bringing together two theatre groups.

TRIANGULATION POST BREXIT

Mike is VAT registered in the UK. He buys steel for £20,000 per month from a Polish supplier and sells it to a German manufacturer for £30,000. The goods are shipped directly from Poland to Germany.

Until 31 December 2020, the invoices from the Polish supplier to Mike were zero-rated, as were Mike's invoices to the German manufacturer. The latter business accounted for acquisition tax – and claimed input tax – on its German VAT returns, based on the VAT rate for steel in Germany.

Since 1 January 2021, Mike has three options:

- Mike could register for VAT in Poland or Germany, depending on where he legally takes ownership of the goods. This could prove costly because many EU countries require a non-EU business to appoint an EU based accountant or agent to act as their representative with the tax authorities. There can also be lengthy delays getting a VAT number in some countries.
- He could change the nature of the contract so that the Polish business directly supplies goods to the German manufacturer for £30,000 and Mike issues a commission invoice to the Polish supplier for £10,000. There is no need for Mike to register for VAT in Poland because the supplier will deal with the VAT on their own return by doing a reverse charge calculation.
- Mike could rent premises in another EU country (creating a fixed or business establishment there) and register for VAT so that triangulation is again an option for three-party deals. Ireland and the Netherlands are the natural choices.

Note: The problem with the second option is that Mike will be disclosing his profit margin and the two parties might seek to exclude him from future deals.

compensation or a replacement?

- **Contracts:** The contractual reality of a deal will usually establish who is acting as, say, the principal and who is the agent. A contract can be a simple one-page agreement; it does not need to match the word count of Tolstoy's *War and Peace*.

In most cases, the commercial reality of a deal and the written terms of a contract will produce the same VAT outcome. However, in cases where there is a difference – hopefully very few – it is the commercial reality that will take priority. For example, if I issue a letter of engagement which states that I will supply hairdressing services to a firm of accountants but I actually provide tax consultancy work, it is the VAT rate for tax consultancy services that will be relevant.

Essays for students

The recent case of *All Answers Ltd* [2023] UKFTT 00737 considered whether the company was supplying online essays and written coursework to students and other customers for a fee, rather than the self-employed writers used by All Answers to produce the work. The agent vs principal issue for All Answers was considered by both the First-tier Tribunal and Upper Tribunal in 2018 and 2020 respectively, and both courts ruled in favour of HMRC, concluding that All Answers was the principal.

In summary, All Answers retains two-thirds of the fees paid by students, with the writers keeping one third. All Answers argued in its earlier appeals that the writers were supplying services to the students and it provided an agency service to the writers. The tax at stake was a massive £904,168.

So, what made the third run of the litigation process in 2023 different to the previous two failed attempts? The answer is that All Answers revised the contracts with the writers which, it claimed, completely changed the legal relationship of the arrangement and also the commercial reality of the deal.

All Answers argued that the revised contract clearly stated that the writer retained the copyright of all work supplied to students and therefore All Answers could only be acting as agent. In other words, output tax was payable by All Answers on two-thirds of the fee. The contract included a specific paragraph stating that it was the job of the writer 'to provide the work to the customer'.

The tribunal agreed with HMRC that the contractual change did not affect the commercial reality; namely, that All Answers supplied essays to the students and the writers provided essays to All Answers. Job done.

An important factor was the absence of any contract between the writers and the students. Even though All Answers implied that a contract existed because of clauses in the contract between the writer and All Answers, these clauses were not sufficient to change the VAT position: 'All Answers delivered the academic works and not the writer.' The appeal was dismissed.

In summary, the most important learning point is that contracts are needed between all parties involved in a three-party arrangement.

Website trading

The All Answers decision is a timely reminder of the need to regularly review the VAT position for all website arrangements where a site links a supplier and a customer. In many cases, the website host is making direct supplies as a principal rather than an agent.

I previously wrote an article for *Tax Adviser* ('Shark infested waters', October 2017) about three-party transactions – and shared a VAT tale from my private practice about a website that linked owners of expensive handbags with people who wanted to hire – yes, you've guessed it – an expensive handbag. Have a look at the article for more analysis of the VAT dilemmas (see tinyurl.com/mr2v52hu).

It is important to consider VAT as soon as a new website is launched, to avoid doubt about which party is liable to account for output tax. If HMRC decides that the host has been selling goods or services – rather than earning a commission – this could mean either a backdated registration or a big output tax assessment. See ***Hire of goods: who is the principal?***

Brexit: the end of 'triangulation'

An outcome of the UK's departure from the EU on 31 December 2020 was the loss of a concession known in VAT speak as 'triangulation', which is relevant when 'A' sells goods to 'B' and 'B' sells them to 'C'. Each party in the supply chain is VAT registered but in different EU countries and the goods are shipped directly from 'A' to 'C'. The outcome of this EU simplification measure is that it avoids the need for intermediary 'B' having to register for VAT in the state of either the supplier or customer. See ***Triangulation post-Brexit***.

Backdated registration

In the First-tier Tribunal case of *Bryn Williams* [2019] UKFTT 79, the taxpayer traded as a taxi control business and was not VAT registered because his net commission from account customers meant that his income was below the threshold. However, the tribunal and HMRC agreed that Mr Williams was acting as principal for the rides, rather than the self-employed drivers he used to do the work. He should have registered in 2009. Don't forget that HMRC has the power to correct a late registration by going back up to 20 years.

It is worth noting the reasons why HMRC decided that Mr Williams was acting as the principal:

- He negotiated contracts with the customers as his own deal.
- The cars bore his business logo.
- He received money directly from the customers and paid the drivers.
- There was a shared risk with bad debts, rather than the driver taking all of the bad debt.
- At the time of the customer booking a ride, Mr Williams did not know which driver would carry it out.

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Employee ownership

A state of readiness

As more companies elect to transition to employee ownership, how can employee ownership trusts best prepare themselves for potential changes in the pipeline.

by Fiona Bell

Key Points

What is the issue?
Employee ownership is a growth sector in the UK. The Employee Ownership Association identifies over 1,400 employee-owned businesses.

What does it mean to me?
Once a company has satisfied the requirements of the specific EOT legislation, there are other tax provisions for companies, selling shareholders and their advisers.

What can I take away?
The recent consultation states that the government is committed to supporting employee-owned companies across the wider economy and encouraging companies to transition to employee ownership but some changes might be on the way.

Employee ownership is a growth sector in the UK. The Employee Ownership Association identifies over 1,400 employee-owned businesses. Many of these are likely to have adopted the employee ownership trust (EOT) model created in 2014. The relevant legislation is now found in the Taxation of Chargeable Gains Act (TCGA) 1992 ss 236H to 236U and Income Tax (Earnings and Pensions) Act 2003 ss 312A to 312I.

This article considers two aspects of the taxation of this form of employee ownership. First, nearly 10 years on, is the current EOT legislation sustainable or does it need some changes? HMRC has been consulting on possible changes in 'Taxation of employee ownership trusts and employee benefit trusts' (see tinyurl.com/2sk6jbxn).

Secondly, you might be forgiven for thinking that once a company has satisfied the requirements of the specific EOT legislation, the tax issues are sorted. Unfortunately, there are other tax provisions to be navigated for companies, selling shareholders and their advisers.

The legislation and the future

The potential tax incentives for EOTs are:

- a capital gains tax exemption for individual shareholders who make a qualifying sale to an EOT;
- an income tax (but not NICs) exemption on bonuses of up to £3,600 per annum per employee;
- corporation tax relief on those bonuses; and
- an inheritance tax exemption on eligible gifts or sales at undervalue to EOTs.

The company that becomes employee owned receives no special reliefs but must comply with five key conditions for the shareholder and employee reliefs to apply.

Five key conditions for EOTs

1. Trading requirement
The shares placed in the EOT need to be in either a sole trading company or the principal company in a trading group. Additionally, the group's activities must not include to a substantial extent activities other than trading activities.

2. Controlling interest requirement
The trustees of the EOT must:

- own more than 50% of the shares in the company;
- have a majority of the votes;
- be entitled to more than 50% of the profits available for distribution (trustees can waive dividends if the trust deed allows);
- be entitled to more than 50% of assets available for distribution to shareholders on a winding up.

There must be no provisions in an agreement or instrument affecting the company's constitution which allow these conditions to cease to be satisfied in the future without the consent of the trustees.

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3. All-employee benefit principle
With limited exceptions, all the company's employees must be potential beneficiaries of the EOT; and if benefits are paid out, it must be on the 'same terms' (see below). Employees with less than one year's service can be excluded.

The major exception from the all-employee principle is for employees and directors who, with 'connected' persons (including close family members), have or have had an interest in 5% or more of the shares, or any class of shares, during the previous ten years. This typically excludes former owners but could also exclude an employee who has held an option over 5% or more shares. This can prevent key managers from receiving a benefit from an EOT.

4. Equality requirement
The equality requirement is that distributions from the trust fund, or payments under a bonus scheme, must be for the benefit of all eligible employees of a company or group on the 'same terms' to qualify for the relief. 'Same terms' does not necessarily mean that all employees get equal amounts. It is possible to determine the size of awards by reference to remuneration, length of service and hours worked as long as the same method applies to all.

5. Limited participation requirement
This condition is that if a shareholder claiming relief had or was entitled to acquire 5% or more of the shares, or any class of shares, in the company (or its assets on a winding-up) – i.e. they were a 5% participator – at any time in the 12 months ending immediately after the disposal of shares to the EOT, the participator fraction must not be more than 2/5.

The participator fraction is:

- the number of people who are both 5% participators in the company **and** employees or officeholders of a company in the group **plus** the number of people who are employees or officeholders of a company in the group who are connected with another employee or officeholder who is a 5% participator;
- divided by the total number of employees in the group.

This can be a hard stop for small companies with few employees, many of whom are family members, or where employees have previously held shares obtained under an EMI or other share option plan.

These conditions are fiddly yet in most cases can be navigated. Even so, there are changes and simplifications that could be beneficial, and some have been put forward by HMRC in its consultation that closed on 25 September 2023.

Who will be entrusted to be the trustee?

HMRC's consultation focused in particular on who should be a trustee of an EOT. This could be an employee; however, often employees are not brought into the circle of confidence at the time of the sale of the shares and the vendor might be uncomfortable sharing the financial terms of the transaction with employees.

As a result, even where greater employee participation is proposed in the long run, in the short term typically this will be a corporate trustee with directors of the trustee company being thought of as the trustees.

HMRC has some concerns regarding the nature and identity of trustees.

The first is that the previous owners (the vendors), if they are sole trustees, will continue to effectively control and run the business by remaining the trustees or the trustee directors. HMRC is not asserting that this would be contrary to the controlling interest requirement in TCGA 1992 s 236M. Instead, it is suggested that it does not align with the policy objectives of transferring control of the company. Presumably, this is a situation that HMRC has seen arise in practice.

Those who have created and grown a business over many years may be justifiably anxious about handing it over to unknown custodians, particularly if a large part of the consideration is deferred. Even so, losing control is not the same as losing influence. The previous owners can be protected by a seat on the board, a consultancy role, suitable financial protections in the share purchase agreement or even by setting out guiding principles. These can be substantial arguments for convincing the vendors that they do not need to be the sole trustees.

HMRC's consultation raised the question of whether there should be a fixed categories of persons who can act as trustees, such as employees or independent trustees. The author's personal view is that the board of trustees should include an independent trustee, as well as employees or senior management to outvote a previous owner. However, to impose such a rule regarding the make-up of a board of trustees may be challenging, would require compliance with that rule to be monitored and is likely to increase the running costs of an EOT.

Imposing a statutory obligation would, however, raise the concern that an accidental breach – such as an employee resigning or dying, combined with difficulties in finding a replacement (not all employees embrace such responsibilities) – could cause a disqualifying event, a deemed disposal and a significant capital gains tax liability for the trustees. Triggering a capital gains tax liability in this way also creates funding issues, as the EOT trust fund usually only holds the shares. The only solution to this could ultimately be to sell or liquidate the trading company to fund the tax liability.

HMRC's second concern about trustees is whether they should have to be UK resident only. Currently, if the trustees are UK resident from the outset, they may take any capital gain the trustees make outside the UK tax net. This might be considered a loophole in the original legislation. Some current EOT trustees are resident offshore. New EOTs should consider this potential change when making trustee choices.

If the prohibition on offshore trustees was to be embodied in legislation, monitoring the residence of trustees or directors of trustee companies will be essential. With more flexible and remote working arrangements available to employees, and with more businesses trading internationally, appointing an employee from, say, a US subsidiary onto the trustee board, or appointing an employee working from their home in, say, Bulgaria, could trigger a disqualifying event with similar implications to those noted above.

Distributions, funding and clearances

The 2014 legislation for EOTs was limited in its scope, and the interaction with pre-existing legislation has led to uncertainties or inconsistencies, often relating to funding methods with which to establish an EOT.

An EOT trustee will hold shares as part of the trust fund but rarely does the EOT have cash reserves. Initially, all funds introduced into the EOT will be used to buy the shares. As a majority shareholder, the trustee could receive dividends but these would be taxable so dividends are usually waived. Such waiver does not breach the control requirement to be entitled to 50% of the profits available for distribution (TCGA 1992 s 236T(3)). When EOT trustees need funds, the underlying trading company usually makes gifts or cash contributions.

A concern has been that these contributions fall within the broad statutory meaning of distributions in CTA 2010 s 1000. HMRC has tended to give clearances on this point. In the consultation, it is proposed to clarify in the employee ownership legislation that contributions made to pay deferred consideration to former owners will not be a distribution. This would be extended to include contributions to fund any associated stamp duty and interest liabilities. Such a change is welcome but it would remain the case that further contributions – for example, to pay trustee expenses, running costs such as preparation of accounts, annual tax returns or even tax due – could still be treated as distributions.

> **Imposing a statutory obligation would raise the concern that an accidental breach could cause a disqualifying event.**

An alternative to cash gifts or contributions might be for the trading company to make a loan to the EOT trustees. However, this has the practical problem that unless there is a future sale of the shares, the EOT trustees would have no means to repay the loan. In addition, as the EOT trustee will be a participator in a close company by virtue of holding over 50% of the issued share capital (CTA 2010 s 454), such a loan would invoke the familiar liability for the underlying company under CTA 2010 s 455. That legislation seems inappropriate when it is applied to EOT arrangements.

Even if there is no loan, there have been concerns that the targeted anti-avoidance legislation in CTA 2010 s 464A might apply to contributions as being arrangements conferring a benefit on the EOT trustees as a participator. In the consultation, HMRC has made it clear that this targeted anti-avoidance rule will not apply if there is no tax avoidance purpose. However, it has confirmed, in particular, that it will no longer provide clearances on the application of s 464A.

HMRC was completely silent on the other key clearance for establishing an EOT, being clearance under Income Tax Act 2007 s 701 that the sale did not have a main purpose of obtaining an income tax advantage. This remains an area where participants in the EOT transaction can seek comfort from clearance in advance that HMRC will not issue a counteraction notice.

Funding the EOT could also create a theoretical inheritance tax liability. Section 13 of the Inheritance Tax Act 1984 seeks to prevent 5% participators in a close company from avoiding inheritance tax by making transfers of value via the employee trust. Broadly, those participators must be excluded from benefiting under the trust deed unless they are fully liable to income tax on any benefit. If not, the transfer of value can be attributed to the shareholders in the company and, as a result, a specific exclusion is usually found in the employee trust documentation.

This is one area where legislation was amended in 2014 to accommodate EOTs, so that IHTA 1984 s 13A provides that funding a trust meeting the trading requirement, the all-employee requirement and the controlling interest requirement will not be a transfer of value. However, trusts can last a long time and the company's trading status might change or control might be lost during the trust period. As a result, the exclusion of 5% participators from benefiting under the trust to ensure the conditions of s 13 are met is still needed for an EOT.

Looking forwards

HMRC and the Treasury have published two calls for evidence and a consultation in respect of employee ownership plans and trusts, backed up with some round table meetings, gathering plenty of responses. The consultation states that the government is committed to support employee-owned companies across the wider economy and encouraging companies to transition to employee ownership, suggesting that no major revision of the legislation is proposed.

All simplification or clarification of the legislative burdens for companies would help EOT trustees, companies and employees to navigate the rules, though it seems likely that it would result in additional legislation and, meanwhile, many technical concerns remain unresolved.

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Careless whispers Employee benefit trusts

We examine how the First-tier Tribunal viewed HMRC's allegations of careless and deliberate conduct in the context of an employee benefit trust arrangement.

by Keith Gordon

The attempts of employees (typically, directors) to extract funds from their companies in a tax-efficient fashion and the attempts of the authorities to thwart such arrangements are likely to provide plenty of material for PhD theses for many years to come. The fact that such arrangements were then industrialised and (mis)marketed to contractors leading to, amongst other matters, the loan charge – and the catastrophic impact which that had on the contractors involved – only adds to the potential material in this area.

A further area worthy of examination at some future date will be an analysis of judicial attitudes in the context of such arrangements. This article considers one recent case which might well feature in any such further study, *Delphi Derivatives Ltd v HMRC* [2023] UKFTT 722 (TC).

The facts of the case

Delphi Derivatives Ltd (Delphi) was a successful company trading in futures and options on the London Metal Exchange.

During the years ended 5 April 2009 and 2010, the company entered into arrangements which had the purpose of transferring bonuses to its directors. The arrangements were entered into on four occasions: three tranches in the 2008/09 tax year and one in the 2009/10 tax year.

Under the arrangements, a Jersey-based human resources consultancy ('the consultant') would prepare a report for Delphi recommending that it should make a payment of bonuses to its directors, and also suggesting an amount to be paid. On the same day, the consultant would issue Delphi with an invoice for preparing the report, which would be for the same amount as the suggested bonus.

Following Delphi's settlement of the invoice, the consultant would then settle a substantial proportion of its fee (i.e. net of its own profit element) into an employee benefit trust for the benefit of the directors. The trust would then advance funds to the directors in the form of loans. The purpose of making loans to the directors, rather than outright payments, was to ensure that the sums advanced would not be subject to PAYE and NICs. Instead, the sums advanced would attract, at most, the income tax rates for employment-related loans, albeit on an annual basis.

The form of the arrangement was to ensure that, as well as giving the funds to the directors in a tax-efficient form, Delphi would get the benefit of a corporation tax deduction in relation to the calculation of its trading profits.

Ordinarily, the Corporation Tax Act 2009 s 1290 (previously, the Finance Act

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Key Points

What is the issue?
Delphi Derivatives Ltd was a successful company trading in futures and options on the London Metal Exchange which entered into a series of arrangements with the purpose of transferring bonuses to its directors.

What does it mean to me?
The adviser's letter to his clients before they chose to proceed was carefully scrutinised to determine to what extent the directors had acted carelessly or deliberately. A key argument they were putting forward was that they had reasonably taken professional advice.

What can I take away?
The case provides a good reminder of how the paperwork trail leading to (and following) any one-off arrangement could be closely examined in a tribunal many years down the line.

2003 Sch 24) precludes such a deduction unless the funds are then applied in the payment of taxable income. In other words, a company could get an allowable expense but only if tax was payable by the directors in relation to any payment. However, this restriction on the corporation tax deduction is disapplied if the funds are 'consideration for goods or services provided in the course of a trade or profession'.

The logic underlying the scheme, therefore, was that the payment by Delphi represented a fee for the consultant's services, even though in reality the fee retained by the consultant was substantially less and the majority of the payment would find its way into the trust.

> **The purpose of making loans to the directors was to ensure that the sums advanced would not be subject to PAYE and NICs.**

Before entering into the arrangements, Delphi's tax adviser was consulted. He was allowed to view the QC's opinions that the scheme promoters had obtained, which supported the efficacy of the arrangements.

The adviser duly wrote to the company's directors. In his letter, the adviser pointed out that:

- the scheme has the merit of simplicity;
- the scheme uses an express exemption within the employee benefit trust rules;
- ordinarily, the payment by the company directly into a trust would not allow a corporation tax deduction to be obtained but paying for subcontracted services 'appears to circumvent the rules'; and
- the effectiveness of the scheme represents the opinion of 'a well respected QC'.

The letter also contained a number of warnings:

- There was a risk of the arrangements being tackled via retrospective legislation.
- There was a risk that prospective legislation would be introduced to block such arrangements, meaning that the company might have had only a limited time to act.
- There was a risk of an inheritance tax charge because of the use of a trust.
- It was necessary to ensure that the company's VAT position did not mean that VAT payable on the fees to the consultant would not be fully recoverable.

Within those warnings, it was also noted that, if HMRC were successful in challenging the corporation tax deduction, the tax-free nature of the income in the directors' hands would make the tax savings of the scheme 'only marginal'.

The adviser also noted that, in cases such as this, he would usually recommend that his client obtain independent counsel's opinion. Although he was of the view that this arrangement had 'a stronger chance of success than many more convoluted schemes', this remained his advice 'considering the amount you may wish to place in these arrangements'.

Finally, the letter concluded by stating that the adviser could 'not formally recommend such a scheme ... as there is certainly a risk in entering such arrangements'. However, it then went on to warn the directors that if they wished to proceed having taken a commercial view, he would assist them in ensuring that the arrangements were properly implemented.

At approximately the same time, the former Special Commissioners (one of the predecessor tribunals to the First-tier Tribunal) was considering the case of *Sempra Metals*, which also considered the payment of bonuses in the form of loans from an employee benefit trust. In that case, HMRC was successful in denying the employing company a deduction from its trading profits. However, the promoters of the arrangements provided Delphi with an email to suggest that this should not be taken as a bad sign because there were a number of major differences between Sempra's facts and those of Delphi.

As a result, Delphi claimed a corporation tax deduction for the fees it paid its consultant. Unsurprisingly, however, HMRC opened enquiries into Delphi's corporation tax returns for the two years covered by the contributions.

In due course, HMRC also issued PAYE and NIC determinations in relation to the amounts paid. Over the next couple of years, there was a suggestion that the matters would be resolved via the Employee Benefit Trust Settlement Opportunity or, later, the Liechtenstein Disclosure Facility. In the end, those opportunities were not taken up.

However, following HMRC's 2015 success in the *Rangers* case (then at the Court of Session, after two defeats in the tribunals), it newly became clear that the payments made by the companies should have been subject to PAYE and NICs.

In other words, the focus of HMRC's attack now became the obligation to account for PAYE and NICs, rather than the previous worry being the corporation tax deduction. This led the company to reach a settlement with HMRC but such settlement did not cover the question of possible penalties.

Subsequently, HMRC issued penalty assessments against the company for the submission of erroneous P35s (i.e. omitting reference to the payments which were made to the consultant and which were then advanced to the trust). The penalties were issued under the provisions in Schedule 24 to the Finance Act 2007. In respect of the first three tranches (i.e. the 2008/09 P35), HMRC alleged that the errors in the P35 had been due to carelessness; for the fourth occasion that the company entered into the arrangements, HMRC alleged that the errors had been due to deliberate conduct.

Delphi appealed and the case was duly notified to the First-tier Tribunal.

The First-tier Tribunal's decision

The case came before Judge Heidi Poon and Member Mohammed Farooq.

The essence of the company's case was that the directors had taken advice before entering into the arrangements, that they were right to do so and that

> **The tribunal considered that the statutory words 'due to' should not be interpreted in the sense of causation.**

advice was not obviously wrong. Accordingly, when the company submitted its P35s for the two years, it had taken reasonable care to make correct returns; and therefore any errors in the returns were not due to careless conduct. Furthermore, the company had certainly not submitted the second P35 knowing it to be wrong.

However, the tribunal considered that the statutory words 'due to' should not be interpreted in the sense of causation (i.e. the tribunal decided that the errors in the return did not need to be caused by any specific carelessness). Instead, it held that 'the nexus required to be established is one of attribution in the sense that the inaccuracy can be accounted for by a mode of behaviour which is characterised as a failure to take reasonable care'.

Furthermore, the tribunal put a lot of attention on the agency rules in Schedule 24 para 18. That provides that the penalty rules can operate not just when the taxpayer submits an erroneous document but also when that document is submitted on the taxpayer's behalf by a third party. In such situations, a penalty can be avoided if the taxpayer can show that it took reasonable care to avoid a penalty. The P35s, as a matter of fact, were submitted on the company's behalf. Although the directors could arguably show that they had taken reasonable care to establish the effectiveness of the arrangements, they had not provided any further evidence to show that they had taken reasonable care to ensure that the subsequent P35s were accurate.

The tribunal also focused on the fact that the company did not take up the suggestion that it obtain a second opinion from independent counsel. The company sought to argue that, had they sought a second opinion, it would at the time have agreed with the scheme promoters because until 2015 all the case law suggested that the use of the arrangements would not trigger any PAYE liabilities. The purpose of this argument was to show that the lack of second opinion was not the cause of any subsequent error in the P35s. Instead, the cause would have been the widespread failure (before 2015) to appreciate the need to operate PAYE in such cases. However, the tribunal appears to have likened this defence to a 'prevailing practice' defence, which is occasionally deployed in the context of discovery assessments. The tribunal said that the defence could not be made out because HMRC's objection to these arrangements meant that there was no prevailing practice concerning them. As a result, the company's arguments on this point were also unsuccessful.

In relation to the allegation of deliberate conduct, the tribunal pointed to the fact that the directors knew that the arrangement was tax-motivated rather than a genuine attempt to obtain independent advice on the appropriate level of remuneration. Indeed, in respect of the fourth tranche, the paperwork made it clear that the amount being paid into the scheme was determined more by the company's directors than the consultant.

As a result the company's appeal was dismissed.

Commentary

The decision is not short – amounting to 269 paragraphs over 78 pages. However, it is clearly written, which makes the reading process significantly easier. Nevertheless, there were a number of aspects that led to a raising of the eyebrows. In short, the decision ought not to survive any appeal and, in the meantime, it would be surprising if other constitutions of the First-tier Tribunal readily adopted the approach taken by the tribunal in this case.

First, the tribunal's interpretation of the words 'due to' seems to deviate from the clear meaning of those words – and, perhaps more relevantly, binding case law authority from the Upper Tribunal (for example, see my article 'Perils of an unauthorised payment' (*Tax Adviser*, July 2020) on the decision in *Bella Figura Ltd* [2020] UKUT 120).

What made the First-tier Tribunal's approach even more surprising is that its analysis started by looking at the rules that pre-dated the Finance Act 2007. Under that previous legislation, there was clear case law showing that there had to be a causal link between the conduct complained of and the error in the relevant tax return. The tribunal proceeded to say that the new statutory wording meant there should be no assumption that the previous case law held good. (Of course, it did not mean that the previous case law was no longer relevant.)

Interestingly, however, the old legislation used the words 'attributable to' and it was precisely that wording that required there to be a causal link. Yet when trying to apply a definition to the more modern words 'due to', the First-tier Tribunal went and gave it the meaning of 'attribution'. It is hard to understand why that did not then lead the tribunal to conclude that, after all, the words 'due to' should be interpreted in a similar way to the previous words 'attributable to'.

Secondly, the tribunal seems to have given the agency rules in para 18 a new meaning. On the tribunal's approach, the normal rule that it is for HMRC to establish careless conduct is turned on its head in any case where a document is submitted to HMRC by a third party. In such cases, according to the tribunal, it is for the taxpayer to prove that reasonable care had been taken. In previous cases, para 18 has been interpreted merely to ensure that a penalty may be charged in instances of careless conduct, irrespective of whether it is the taxpayer or an agent who submits the relevant document.

Thirdly, I cannot see any reason why the tribunal applied the case law on prevailing practice which is a specific defence in discovery assessment cases. In the law of professional negligence, it is usually a defence by a professional to show that they have followed a practice that is widespread within the profession, as long as that practice is not obviously flawed. Had the First-tier Tribunal not applied the case law on 'prevailing practice', it would not have been fatal to the company's case that HMRC did not approve of these arrangements and that HMRC believed that PAYE should have operated. The correct question that should have been asked is whether, had the company taken a second opinion, it was inevitable that the advice would have been that PAYE should have been operated on the payments. In the light of the case law before 2015, such an outcome would have been far from inevitable.

The best evidence as to what that advice constituted was the letter itself and not the witnesses' recollections 14 years after the event.

In addition, the tribunal further dismissed the company's arguments by pointing out that it had not in any event acted in accordance with prevailing practice because, as well as not applying PAYE, it had claimed a corporation tax deduction. However, even if the prevailing practice line of argument were relevant (which it was not), the only issue should have been whether the P35s were in line with the prevailing practice and not whether the corporation tax returns (completely different documents which would be submitted at different times) also adhered to the industry norms.

Fourthly, the question of deliberate conduct seemed to focus on the fact that the directors knew that they were participating in an avoidance scheme and were consciously taking their part in the various steps. In all other tax cases, the courts and tribunals have insisted that this is not the key issue because the important point is whether the taxpayer knew that the return was incorrect when it was submitted. But in this case, the tribunal had already decoupled the question of the inaccuracy of the return from the conduct being impugned. With that novel interpretation of the statutory tests, HMRC's allegation of deliberate conduct was more likely to be met.

There was a further point that might be somewhat 'niche' but which stood out for me in the tribunal's decision. For entirely sensible reasons, a lot of focus was put on the adviser's letter to his clients before they chose to proceed with the arrangements. It is entirely right that the letter should have been carefully scrutinised to determine to what extent the directors had acted carelessly or deliberately when a key argument they were putting forward was that they had reasonably taken professional advice. As the tribunal also correctly pointed out, the best evidence as to what that advice constituted was the letter itself and not the witnesses' recollections some 14 years after the event.

What is surprising, however, is that the tax adviser was subjected to considerable questions whilst in the witness box as to how that letter should be interpreted. That is not a question for a witness but a matter that the barristers should have addressed when making their submissions to the tribunal.

What is even more surprising is that the tribunal itself seems to have asked (as it itself acknowledged in the decision) 'follow up questions of some length to try to get close to the meanings of the advice letter ... as an attempt to ascertain the exact nature of the advice'. Particularly in a case being argued by experienced counsel on both sides, it is not normally appropriate for members of a tribunal to 'enter the arena' and start asking detailed questions of a witness. As to what actually happened here and whether that impacted upon the fairness of the proceedings is unclear. However, that is perhaps something that might emerge if the case proceeds on appeal.

What to do next

Although I hope this case goes to appeal and the novel approach to the statutory rules is carefully reviewed, the case does also provide a good reminder how the paperwork trail leading to (and following) any one-off arrangement could be closely examined in a tribunal many years down the line.

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Negotiating the CBAM

A tangle of carbon

The EU's Carbon Border Adjustment Mechanism will impact many exporters to EU member states. We consider the practical implications.

by Mark Feldman and George Riddell

A previous article in this series, 'A sustainable future: the role of environmental tax strategies' (September 2023), made the case for the prominent role that tax – and tax professionals – should play in driving a sustainable future.

It pointed out that to be able to play this role, tax departments will need to learn a new sustainability lexicon, rife with alien acronyms and confusing concepts. It also introduced the concept of carbon pricing and the EU's Carbon Border Adjustment Mechanism (CBAM). The EU CBAM has implications for all exporters to EU member states, including those based in the UK.

With that regime now in force, we thought it would be useful to examine the practical implications for businesses of the EU CBAM.

A quick recap

The CBAM entered into force on 1 October 2023. It represents one of the biggest shifts in the EU's trade regime for more than 30 years and places extensive new compliance and reporting requirements on businesses supplying and importing certain products into the EU.

Aiming to be the first 'green continent', the EU has been imposing ever more regulation on EU business to encourage them to decarbonise. This puts the EU at risk of 'carbon leakage', which occurs when carbon-intensive production moves away from the EU to countries where less stringent climate policies are in place; or when EU products are replaced by more carbon-intensive imports.

Even if EU businesses don't leave, the need to be held to higher, cleaner standards means that EU-produced inputs to the economy are likely to be more expensive than those being imported (steel being one example). To help even up the playing field, the EU is imposing an adjustment – a tariff – at its border for certain high carbon intensity products that enter the EU.

The EU maintains that its CBAM is consistent with international trade law set at the World Trade Organisation. Several countries have already voiced their objections to CBAM, notably India and China. However, if any country were to formally challenge the regime, any trade dispute would take years to settle.

In the meantime, importers into the EU now have to track all imports of iron and steel, aluminium, fertiliser, concrete, hydrogen and electricity with their first CBAM declaration due by 31 January 2024, and quarterly thereafter. The regime will apply to any importer of covered goods with a consignment value of over €150, meaning there is essentially no *de minimis* level.

These reporting requirements require a mix of product data, customs-related data and calculated embedded carbon emissions data. The latter will only be available upstream in the supply chain itself. This will be a significant compliance challenge for any affected businesses (particularly those with December year ends, which have to gather this data in the midst of their annual reporting cycle).

Key Points

What is the issue?
The concept of carbon pricing and the EU's Carbon Border Adjustment Mechanism (CBAM) has implications for all exporters to EU member states, including those who are based in the UK.

What does it mean to me?
Importers into the EU now have to track all imports of iron and steel, aluminium, fertiliser, concrete, hydrogen and electricity with their first CBAM declaration due by 31 January 2024, and quarterly thereafter. The regime will apply to any importer of covered goods with a consignment value of over €150.

What can I take away?
Whether or not tax departments take the lead on CBAM, they need to play a full role as some tax authorities in the EU will be administering it.

Then from 2026, when the 'transition period' ends, businesses will need to buy CBAM certificates to offset the cost of the embedded carbon and other greenhouse gas emissions based on the weekly price of the EU's Emissions Trading Scheme (ETS). Credit will be given (within certain parameters) for carbon prices/taxes already paid in the country of origin. In addition, the CBAM reports will need to be independently verified by an accredited verification body.

The new regime introduces enforcement obligations. Businesses will have their CBAM-covered goods stopped at the EU border if they have not registered to be an Authorised CBAM Declarant by 31 December 2024.

There are penalties for non-compliance of €10 to €50 per tonne of unreported emissions during the transition period and higher penalties will apply for two or more incomplete or incorrect CBAM declarations. Separately, an additional penalty regime for failing to purchase and/or surrender the correct amounts of CBAM certificates will also be introduced.

Practical organisational challenges

CBAM is a regime that blends aspects of supply chain (embedded emissions), customs duties (the covered products are identified by HS customs codes) and tax – or at least a 'pseudo-tax' – where payments are made to a central authority (by way of the purchase and surrender of CBAM certificates).

In practice, the data needed to comply with the rules is likely to be spread across multiple enterprise resource planning (ERP) or accounting systems, in the hands of group/local finance, procurement or operations teams, as well as external upstream suppliers and customs brokers or agents.

This data soup, with so many ingredients, means that tax, finance, sustainability, procurement, supply chain, operations, legal (and eventually Treasury) functions may all have a role to play in setting policies, agreeing processes and gathering data. This lack of clarity often creates a void where departments are slow to assume accountability, may be overlooking strategic decisions that need to be made and are introducing avoidable inefficiencies. Even for those businesses which are clear on allocating responsibilities, identifying the data and establishing the processes for compliance is already creating a significant amount of work.

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Assigning ownership of CBAM in complex businesses is a challenge. The question for tax departments is whether they should drive the effort or be a part of the larger team? We are often asked: who *should* be accountable? The answer, as so often it is in tax, is: it depends.

It depends on the particular organisation, including its culture and C-suite strategy; the complexity of the supply chain; the relative capability and capacity of the different functions; and, last but not least, the willingness of particular individuals to step up.

There are likely to be lots of right – or at least pragmatically workable – answers for any given organisation. In nearly all cases, it will require a high degree of cross-functional collaboration.

> **From 2026, businesses will need to buy CBAM certificates to offset the cost of embedded carbon and other greenhouse gas emissions.**

Practical implementation challenges

As well as allocating accountability, the implementation challenges of CBAM can also vary widely based on a business's structure, import profile and supplier relationships. Below, we set out some of the common challenges we are seeing as clients ready themselves for CBAM.

Tracking imports of CBAM products into the EU

The first challenge for businesses is to set up a process for tracking imports of CBAM products into the EU from 1 October 2023 for the first reporting period. Many will have had consignments shipped prior to 1 October but clearing customs in the EU after that date. It is important to ensure that these imports are captured as part of the first CBAM declaration. This also applies to goods that are currently stored in bonded warehouses in the EU but are customs cleared after 1 October.

Data collection for embedded emissions

Data collection has been, and is likely to continue to be, one of the main challenges for businesses. For the first two quarterly CBAM declarations, the use of default values for embedded greenhouse gas emissions will be allowed by the EU. However, from 31 July 2024 the use of the approved EU framework for reporting emissions will be required, which is based on actual emissions data.

For many businesses, there is a mismatch between the emissions data that they may already collect as part of emissions trading schemes (which require reporting on an annual basis) and the per consignment basis which is needed for CBAM. Also, the methodology for calculating embedded carbon emissions is far more involved than businesses will be used to for Scope 3 reporting purposes under Task Force on Climate-Related Financial Disclosures (TCFD) rules. Those calculations are often done on a 'spend basis', rather than detailed embedded emissions data. Prioritising the identification of any data gaps should be a priority.

Engaging with suppliers

Where businesses are not the producer of products, but instead are trading entities or distributors, engaging with suppliers is essential to obtain the necessary emissions data. The EU has provided standard data requests for installation operators for importers to use which will need to be updated on a quarterly basis and incorporated into the CBAM declarations; however, this does not cover all participants in the supply chain.

Businesses should be looking to actively engage with their suppliers to understand the data collection requirements and address any existing data gaps. Where multiple suppliers are used across supply chains, keeping track of different emissions intensities embedded in CBAM products will be needed.

Amending contracts and INCOTERMS

Existing supply chain contracts may not be adequate for the additional requirements under the CBAM regime. The inclusion of embedded emissions data requirements, agreeing the balance of risks, allocating liability for incorrect or incomplete data, and Internationally Commercial Terms (Incoterms) may all need to be examined to ensure compliance with CBAM.

We are seeing some businesses perform a wholesale audit to compare their supplier contract terms with their actual customs data (often with some surprises) to ensure they know for which consignments they are in fact importer of record.

Northern Ireland: liability for an EU tax *within* the UK?

Whilst a little more niche, the position for businesses with operations in Northern Ireland is currently unclear.

The Windsor Framework (which replaced the Northern Ireland Protocol) is introducing a 'green lane' with streamlined customs procedures for some products going from Great Britain to Northern Ireland; and a 'red lane' with full customs procedures products at high risk of entering the EU's Single Market.

Additional talks will be needed between the UK and EU to resolve how CBAM will apply to trade between Great Britain and Northern Ireland.

Considerations in the run-up to the first reporting period

There is wide variation in the approach that businesses are taking towards CBAM. Many companies are focused on being able to ensure compliance, whereas others are looking to make strategic decisions to reduce the embedded emissions within their supply chain. After all, one of the regime's key aims is to accelerate the decarbonisation of supply chains.

Cost implications

From 2026, CBAM certificates will need to be bought and surrendered to offset the embedded emissions contained within imported products into the EU. Businesses will need to ensure that they have accurate forecasts of trading activity each year to financially plan for these additional costs and to buy the right number of certificates. Companies are likely to need new mechanisms to manage this new task. Will this be the responsibility of the Treasury team, or local finance teams, or others?

Whatever the outcome, as the costs of CBAM phase in gradually over time – from 2026 to 2035 – the implications are likely to become more significant. We have seen some estimates based on a prudent cost of carbon in 2035 that suggest CBAM could add around 40% to the cost of steel over today's prices. 40% inflation on the cost of a key component could have huge margin implications, heightening the need for CFOs to take an interest.

Registering the right legal entity as the Authorised CBAM Declarant

Some businesses have dozens of entities across Europe, necessitating multiple reporting. CBAM may prompt discussions around restructuring, procurement, importation and supply chain activities. Ensuring that the right entity is registered as the Authorised CBAM Declarant should be a key consideration when looking at legal entity rationalisation.

If UK companies import directly into the EU, they will need an EU presence or indirect representative who is authorised to do so on their behalf.

Supply chain restructuring

To accelerate decarbonisation efforts (while simultaneously mitigating CBAM costs), businesses should be looking to move supply chains toward less emission-intensive products or processes. This may involve changing product components, suppliers or supply routes. The R&D or procurement functions may become more valuable and, if so, tax departments will need to consider the impact on transfer prices. Supply chains may reorganise – EU for EU, non-EU for non-EU – with all the international tax implications that follow.

Streamlining compliance processes across multiple regulations

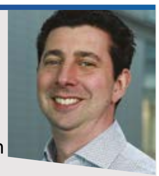
For businesses operating in the EU, there are several new supply chain regulations being implemented over the coming years, not just CBAM. Other regulations to take account of include plastic packaging taxes, extended producer responsibility, deforestation, supply chain due diligence and forced labour.

Taking a holistic approach should be a priority for businesses, ensuring that internal processes, procedures and technology can integrate the right data and generate the necessary compliance reports across the entire regulatory landscape.

Final thoughts

CBAM is an opportunity to proactively shape sustainability strategies and work towards a sustainable future. Businesses in the vanguard of ESG change are approaching CBAM not merely as a compliance burden but rather as an opportunity to reduce their carbon footprint and support their wider ESG objectives. Tax departments may or may not take the lead on CBAM, but come what may it is essential they play a full role in meeting the strategic objectives – another way in which tax professionals can, and should, help drive a sustainable future.

The authors' views are their own and not necessarily representative of those of EY.



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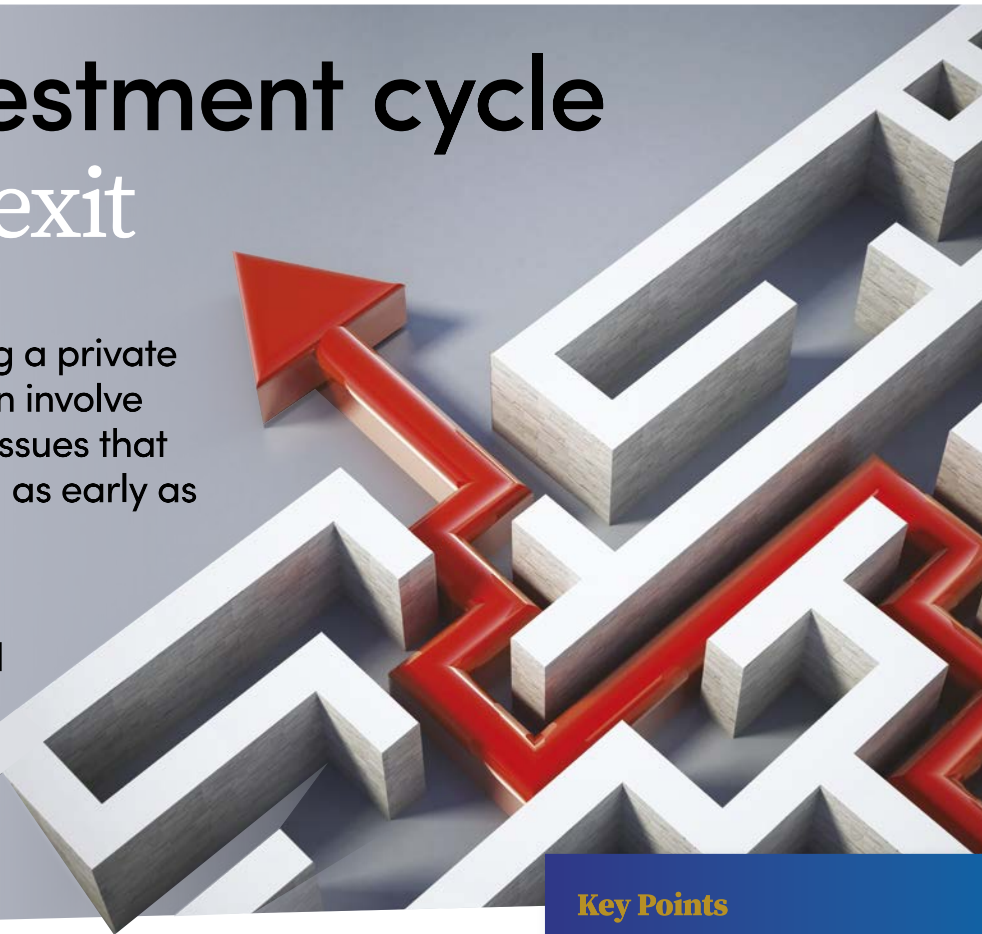
The investment cycle
Taxes at exit

The process of exiting a private equity investment can involve some important tax issues that should be addressed as early as possible.

by Alistair Haley and Refilwe Nkosi



> **Key Points**
>
> **What is the issue?**
> The process of exit positioning – readying an investment for exit while balancing competing exit strategies – is a critical stage in a private equity investment's life cycle.
>
> **What does it mean to me?**
> Whilst investment cycles can vary, a fund may start to consider an exit around the third or fourth year of holding an investment. This could involve an outright exit, an initial public offering or a dividend recapitalisation.
>
> **What can I take away?**
> Investors in private equity funds are encouraged to consider the potential implications of exiting their investments well ahead in the fund investment cycle.

This article discusses certain tax considerations arising at the exit stage of an investment undertaken by a private equity fund on behalf of their investors. The process of exit positioning – readying an investment for exit while balancing competing exit strategies – is a critical stage in a private equity investment's life cycle.

The final stage of an investment cycle may present limited options in planning the most efficient tax outcome on exit by the fund. It is imperative that the tax implications of exit are considered as early as practicable in the investment cycle.

This article assumes a basic understanding of UK corporation tax principles, and is based on a pattern where the investment and investor are based in the same jurisdiction; i.e. in the UK.

Overview of a typical private equity acquisition investment

In a typical private equity investment scenario, investors may be investing through funds that are treated as transparent for tax purposes (e.g. in the UK, this could be an English limited partnership). In this case, the fund would act ultimately as a conduit (and where required, as the withholding agent) when exit occurs for the tax cost of the divestment for its various investors (the limited partners).

However, in jurisdictions where funds are or may elect to be treated as opaque, the tax cost of the divestment would be realised within the fund itself. For example, a US limited liability company may be treated as opaque for UK investors, whereas US investors in the same vehicle may treat the same company as transparent (unless a US 'check-the-box' election is made in the alternative). (It is noted that this classification for tax purposes is not definitive. In *Anson v HMRC*, the Supreme Court considered evidence regarding Delaware law in terms of which members in an LLC automatically became entitled to their share of the profits allocated to them, rather than receiving a transfer of profits previously vested in the company.)

The discussion below proceeds on the basis of a transparent fund.

In private equity transactions, a leveraged buyout is a standard acquisition mechanism used by funds to manage the financial exposure towards the committed capital provided by investors to the fund vehicle at the time of acquiring the 'Target'.

As shown in the diagram ***Private equity structure: acquisition***, a stack of three holding companies (TopCo, MidCo and BidCo) are incorporated by the fund using a mix of debt and equity instruments to make the acquisition. Where external debt is sought, it is typically obtained at the level of the BidCo, while any subordinated instruments may be issued at the level of the MidCo. At the level of TopCo, the ordinary share capital is issued to shareholders, including existing and new management who may be incentivised through sweet equity arrangements.

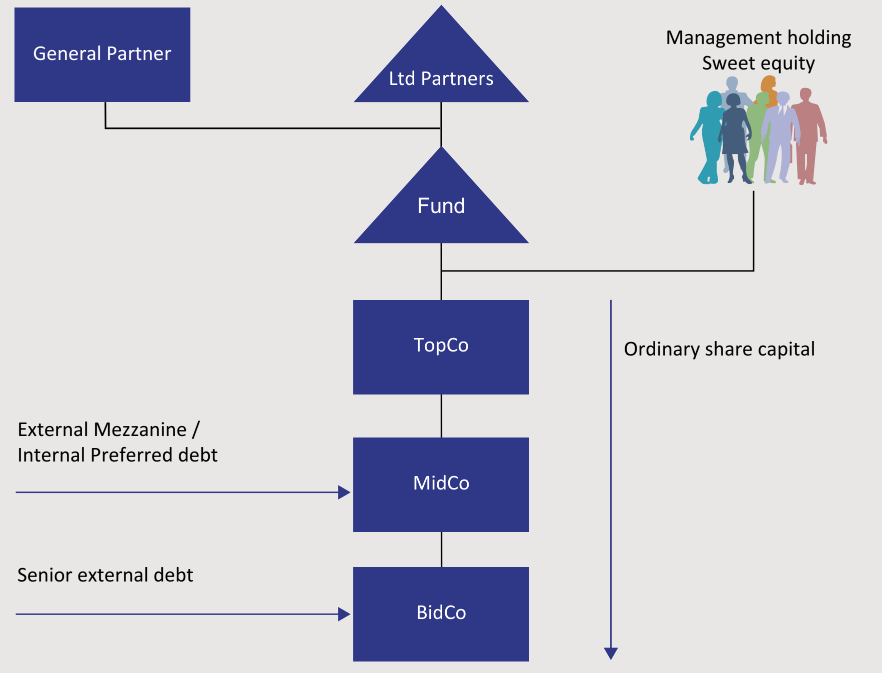
Considerations for existing management

Where management owns shares in the existing Target structure, a rollover mechanism is generally employed (where available) to allow management to reinvest. A rollover can be undertaken while partially crystallising any value sought upfront. Alternatively, where the sale proceeds received by management are fully reinvested in the new structure, this should mitigate the risk of dry tax charges arising for the management investors.

In certain situations, it may be more suitable for management to invest at the level of BidCo; for example, where the fund intends to incorporate a platform vehicle within the holding stack to hold several more portfolio acquisitions, to be made in future as part of an investment mandate.

Management may choose to invest in their capacity as individuals, or through their own corporate vehicles, especially for UK purposes where a cumulative shareholding of at least 10% is offered to management as part of the acquisition deal. This could enable management's investment vehicle to benefit from the substantial shareholding exemption (SSE) (discussed in further detail below).

PRIVATE EQUITY STRUCTURE: ACQUISITION



Alternative options available at exit

Whilst investment cycles can vary (depending on different investment considerations), a fund may start to consider an exit around the third or fourth year of holding an investment. The usual manner of exit revolves around the following options, as discussed in further detail below:

1. Outright exit: A sale to an external third party, at the level of TopCo or BidCo
2. Full or partial exit: This could occur by way of an initial public offering in capital markets
3. Realisation of value, without exit: A dividend recapitalisation

1. Sale to an external third party

This exit route is the least complex and generally permits the most flexibility in achieving an efficient exit.

As a starting point, the outright sale of a UK tax-resident investment to an external third party can be expected to result in capital gains or loss treatment for the seller (vendor), and (absent specific exemptions) stamp duty at a rate of 0.5% on the value of the consideration for an acquirer.

In relation to the seller, the UK's SSE may be able to provide some relief (Taxation of Chargeable Gains Act (TGCA) 1992 Sch 7AC). The SSE has three main requirements:

1. The investing company must have held a substantial shareholding in the company invested in; i.e. at least 10% of ordinary share capital, beneficial entitlement to profits available for distribution and assets available for distribution upon a winding up of the business.
2. The investing company must have held a substantial shareholding throughout a 12 month period beginning not more than six years before the day on which the disposal takes place.
3. The investee company must also be a 'qualifying company'; i.e. a trading company or the holding company of a trading group or a trading subgroup throughout the period beginning with the start of the latest 12 month period of the substantial shareholding requirement being met, and ending with the time of disposal.

In relation to the investors in a fund, the SSE applies to each investor on their interest in the substantial shareholding in the investee (i.e. the Target). The SSE is, however, only available to the corporate entities subject to UK corporation tax, which have invested through the fund or (in the case of management) where management's investment vehicle is a corporate vehicle.

Management investing in their capacity as individuals may be able to make use of business asset disposal relief, subject to the £1 million lifetime limit. Broadly, business asset disposal relief is available to company directors and employees who dispose of their shares or securities in the personal trading company (i.e. the Target) that they work for; and company directors and employees who acquired shares in the Target under an enterprise management incentive option scheme. The conditions for business asset disposal relief will need to be assessed at the time of disposal.

It should also be considered at which level management has invested (i.e. at TopCo or BidCo level), as this will ultimately determine at which level exit should occur for all investors.

A sale to an external party generally provides greater control and flexibility over the sales process for the fund.

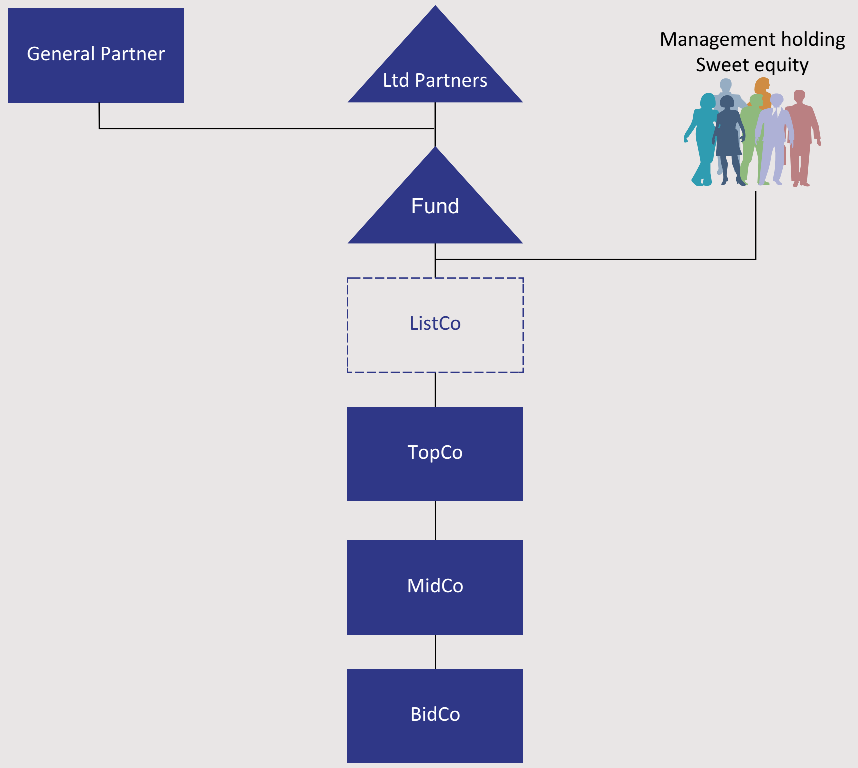
2. An initial public offering

An initial public offering, where terms are mainly predetermined by external forces such as security laws, exchange rules and underwriters, typically results in a more strenuous, complex and therefore costly exit process. Ultimately, the decision should take into account other strategic and market factors which could favour an initial public offering exit.

An exit via an initial public offering will typically involve using a new corporate vehicle within the investment holding stack; i.e. a new ListCo (as shown in the diagram ***Private equity structure: initial public offering***). Using a new ListCo provides a 'clean' corporate vehicle to undertake the initial public offering, with no corporate history, thereby removing the risk of carrying legacy historical matters for new investors.

ListCo will initially be incorporated by the fund into the holding stack as a sister company, sitting alongside TopCo. Thereafter, the shares of TopCo can be

PRIVATE EQUITY STRUCTURE: IPO



transferred by the fund, management and/or co-investors, in exchange for additional shares in ListCo via a share for share exchange.

A share for share exchange can be undertaken in accordance with TGCA 1992 s 135, and applies in three scenarios:

1. A shareholding of at least 25% will be exchanged as a result of the transaction, such that ListCo holds at least 25% in TopCo.
2. A general offer is made to shareholders of TopCo holding any class of shares and through such exchange, existing shareholders in TopCo will achieve the result that ListCo controls TopCo.
3. Where ListCo holds the greater part of the voting power of TopCo as a consequence of the exchange.

For the shareholder in TopCo, the share for share relief allows TopCo and ListCo to be treated as one and the same company, conducting a reorganisation of its shares. While more stringent requirements apply, share for share relief is also available in relation to stamp taxes (Finance Act 1986 s 77).

Similar to the relief provided through the SSE as discussed above, the share for share rules will apply to the investors in the fund, in relation to their interest in the shares of TopCo as held by the fund. Whether the requirements of any of the three share for share scenarios will be met will additionally need to be considered in light of the transparent/opaque entities investing in TopCo, and subsequently ListCo, through the fund or through other vehicles.

The outcome of the share for share step is for the investors to be holding shares in ListCo, which will then list and at which point the investors will then dispose of their shares. As a result of the sale of part of the shares in ListCo to the public, a partial disposal event will occur at the time of listing, crystallising the value extracted by the fund. Consequently, capital gains tax treatment will follow for the taxpayer investors in the fund in relation to this portion of their investment.

The SSE will once again be of relevance to provide any relief in this regard. While the SSE provides relief for the taxation of any chargeable gains made, it denies tax relief for capital losses which would otherwise have been available for offset against current year and future capital gains in line with the loss relief rules.

In relation to investors who previously incurred capital gains tax and stamp duty under the share for share exchange, provided that the shares in ListCo are disposed of soon after such pre-transaction step, any gains or losses generated at the time of listing should be nominal.

3. A dividend recapitalisation

This ‘exit’ alternative involves the realisation by the fund and management investors of the value in the investment through the receipt of dividends, which may need to be financed, depending on the cash position of the entity. While value is ultimately extracted from the investment under this approach, this alternative does not involve a disposal of the underlying share investment from a legal perspective.

To effect the dividend payment to shareholders, the Target could: (i) use cash reserves on hand; (ii) fund the dividend using (additional) debt; or (iii) use a combination of both methods.

Where the Target is subject to UK corporation tax, the deductibility of interest expense in the hands of the Target should be considered in light of the UK’s interest deductibility rules, such as the corporate interest restriction rules.

Conclusion

Investors in private equity funds are encouraged to consider the potential implications of exiting their investments well ahead of time in the fund investment cycle. The potential tax implications arising on exit for investors can be more readily understood and prepared for, the earlier such planning takes place.

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WELCOME

November Technical newsdesk

As reported later in this month's Technical Newsdesk, from 13 November the downloadable form VAT1 (application for registration for VAT) will be removed from GOV.UK and applications should be made through the online VAT registration service. Where it is not possible for businesses to use the online service, it will be necessary to phone the VAT helpline to obtain a hard copy form VAT1, and then register for VAT by post.

Moving people away from hard copy forms and onto HMRC's digital services is a key part of their strategy to improve the efficiency of the tax system and reduce the impact on their resources. It does raise some questions, however. How far should HMRC go to 'encourage' the use of their digital services? And should those services be comprehensive?

On the first question, digital services are the preferred form of interaction for many people, not only with HMRC but more widely. In our recent survey regarding HMRC's service levels, the vast majority of respondents preferred digital interaction to telephone or post. If the digital journey is more efficient than the 'analogue' one, most people will naturally gravitate to digital.

It is no surprise that over 96% of self-assessment returns are voluntarily filed online, because the digital experience is easier than the analogue. We know that HMRC are seeking to push that figure even higher, by not sending paper self-assessment returns to some of the taxpayers who had previously filed on paper, and by discouraging use of the downloadable form.

Conversely, to help those struggling with the digital handshake, earlier this year HMRC made the paper version of the capital gains tax on UK property return, with accompanying notes, available to download on a trial basis. The downloadable form will remain available while HMRC evaluate this trial. It is pleasing they recognise it is important to achieve a balance between encouraging digital interactions and their Charter promises around making things easy.

On the second question, there remain many 'gaps' in HMRC's digital services. Returning to VAT registration, several types of organisations cannot use the digital VAT registration service because the system does not have the requisite functionality to recognise their status. And perhaps more acutely at the moment, the requirement for a Unique Taxpayer Reference prevents some businesses from using the digital service. Elsewhere, we know that HMRC's rules for coding out an income tax liability do not fully reflect the underlying legislation, but HMRC do not intend to amend them because they consider it would not be cost effective to do so.

So, we seemingly find ourselves encouraged towards adopting digital processes, but only if our circumstances are sufficiently mainstream for it to be worthwhile for HMRC to digitise it. Perhaps that is the right answer. As a taxpayer, I am not sure I would be particularly happy if HMRC spent (say) £100,000 digitising a process that could be adequately undertaken manually by the (say) 20 taxpayers it affects. What is important, though, is to have clear guidance to explain which taxpayers and circumstances are not accommodated by the digital process, and what should be done instead. Of course, if HMRC followed our minimum standards for the introduction of new HMRC digital systems (tinyurl.com/ymck9j62), everyone's journey would be a little bit easier!

NEWSDESK ARTICLES

Contact

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MANAGEMENT OF TAXES OMB
LARGE CORPORATE

HMRC's temporary Customer Compliance Manager Service for mid-sized businesses

HMRC have recently been trialling a temporary Customer Compliance Manager model for mid-sized businesses. The model provides time-limited one-to-one support to mid-sized businesses going through significant growth or key life events or those which have multiple interactions with HMRC.

Following completion of an evaluation of the model earlier this year, HMRC have confirmed that they will continue with the temporary Customer Compliance Manager (tCCM) model as part of their overall compliance approach to mid-sized businesses (MSBs).

External research by Ipsos Mori, which was conducted as part of the evaluation, was published on 21 September 2023 (see tinyurl.com/mud6svfp). The research was conducted between November 2022 and February 2023 and consisted of 27 in-depth interviews with MSBs and tax agents.

The MSB Customer Survey 2021 had highlighted that there was particular interest in improving the experiences of MSBs interacting with HMRC. For this purpose, a tCCM model was developed to support this customer group. The research assessed the impact of the model on customer experience, the model's impact on businesses' perceptions of HMRC, and the scope for improvement to the model. The key findings were:

- Businesses generally had poor experiences of HMRC interaction before the tCCM model.
- Businesses' needs from the tCCM model varied considerably.
- Participation in the tCCM model helped businesses manage their immediate tax issues and improved perceptions of HMRC.
- Suggestions for improvement centred on some level of permanence for the tCCM model, or flexible access after the tCCM model.

HMRC have shared a factsheet about the tCCM model with the CIOT which contains more information about the types of businesses that may be suitable for a tCCM. The factsheet can be found on the CIOT website (see tinyurl.com/mphntew8).

A business can apply for a tCCM through the MSB Customer Support Team portal (see tinyurl.com/3deeh42m).

If you have used HMRC's tCCM service and are willing to share your experience with us, please get in touch with us by emailing technical@ciot.org.uk.

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MANAGEMENT OF TAXES GENERAL FEATURE

Draft Finance Bill legislation: new criminal offence for promoters of tax avoidance

The CIOT has met with and written to HMRC to express concerns about the draft Finance Bill legislation (tinyurl.com/zmm6jurz) which introduces a new strict liability criminal offence for a person who, without reasonable excuse, fails to comply with a stop notice issued by HMRC requiring them to stop promoting a tax avoidance scheme.

The CIOT strongly supports taking a robust approach to those who continue to promote tax avoidance schemes but this needs to be done in a way that has due process with adequate safeguards and appropriate governance. In our view, the proposed new criminal offence fails this test because an important constitutional line is being crossed; namely, that (in principle at least) something can potentially be a crime on HMRC's say-so, given that a decision to issue a stop notice will rest entirely with HMRC with no external oversight. We had previously set out these concerns in our response to HMRC's recent consultation document (see www.tax.org.uk/ref1127).

The proposal as it stands places a very high level of reliance on HMRC's internal governance working effectively. We would support HMRC publishing the steps involved in the decision to issue a stop notice so external stakeholders can have a clearer understanding of HMRC's governance process. However, in our view this is not enough. The lack of external scrutiny prior to the issue of the notice presents a risk that it could be incorrectly issued and/or inappropriately targeted with significant consequences for the promoter concerned. Using the existing safeguards which were designed for a regime attracting civil financial penalties, rather than criminal sanctions, will not be adequate.

The position is exacerbated by the following facts:

a) If, on appeal against the stop notice, the tribunal determines that the stop notice shall 'cease to have effect' *ab initio,* it is unclear that this rescinds the criminal offence which has already been committed.

b) Even if such a decision by the tribunal does rescind the criminal offence, this puts pressure on a tribunal in deciding from what date the stop notice should cease to have effect. If the tribunal chooses that the cessation should be prospective only, then it will be confirming the criminal offence.

c) Even if the avoidance scheme is ultimately found to work by the courts, the criminal offence of failure to comply with the stop notice will still have been committed.

We have therefore suggested to HMRC that they should have to make an ex parte application to the Upper Tribunal (Tax and Chancery Chamber) for 'judicial' approval before a criminal stop notice can be issued. We do not believe that adding this additional step would significantly slow down the process of issuing a notice. However, it would provide an extra level of assurance for all the parties involved, including HMRC, that a stop notice that carried with it serious consequences if ignored had been appropriately issued. We also make some suggestions about how the exact question for the Upper Tribunal could be framed.

Given that the likely number of such notices will remain limited, we do not think that this places an undue resource demand on the Upper Tribunal.

In terms of how effective the criminal offence will be, we think this will largely depend on how realistic promoters believe the prospect of a criminal conviction is. There may be a higher deterrent effect on promoters based in the UK than on those overseas. We ask if HMRC would explain how the offence will affect promoters situated outside the UK, particularly those with no assets here. For example, we would welcome accessing mutual assistance legal treaties to help enforce the measure as a positive step. We agree with HMRC that prosecution should be reserved for the most serious cases, where they need to send a strong deterrent message or where civil investigations are ineffective.

Finally, we express some surprise that the draft legislation was published so quickly after the consultation closed. We recognise that there is ministerial appetite to introduce the offence, and it was helpful to hear HMRC's assurances as to the consideration given to the consultation responses received. However, in our view the speed at which it is being brought in and the failure to address the concerns that were raised by consultees undermine the consultation process.

The CIOT's letter can be found here: www.tax.org.uk/ref1198.

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GENERAL FEATURE

Tax simplification

CIOT, ATT and LITRG have, along with other professional bodies, written a further letter to the Financial Secretary to the Treasury regarding tax simplification.

As reported in the May edition of Technical Newsdesk ('Tax simplification', tinyurl.com/5464kktw), the CIOT, ATT and LITRG, along with ICAEW and ICAS, wrote to the Financial Secretary to the Treasury (FST) Victoria Atkins MP proposing a series of actions that ministers and HMRC should take if they are serious about delivering a simpler tax system. In the July edition ('Tax simplification', tinyurl.com/7a2shnab), we provided a summary of matters discussed at our meeting with the FST on 10 May.

In early August, we again met with some of the HMRC and HMT team who have been tasked with embedding tax simplification. We have been working on some simplification business case templates to help identify and evaluate simplification ideas in a consistent manner.

We are still at the early stages of what is likely to be a long 'journey', and so in September the professional bodies wrote to the FST again (www.tax.org.uk/ref1221). We referenced our recent meetings with HMRC and HMT, and welcomed the Minister's commitment to the Treasury Select Committee to provide an annual report of progress on simplification. We reiterated our belief that simplification should be added as a discrete category in Tax Information and Impact Notes (TIINs) to recognise its importance and demonstrate the government's commitment to tax simplification. We stressed that simplification goes further than proposals to simplify the tax system; it also includes the prevention of measures which add future complexity.

Looking ahead, we will continue our engagement with HMRC and HMT, forming a regular group to discuss progress and lessons learned, etc. We suggested that the government should publish a plan or roadmap to help signal its intentions and its commitment to tax simplification.

We will publish the Minister's response once we have received it.

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MANAGEMENT OF TAXES PERSONAL TAX EMPLOYMENT TAX

Draft Finance Bill legislation: changes to data HMRC collects from customers

The CIOT and ATT have submitted comments to HMRC about the draft Finance Bill legislation (tinyurl.com/4yzxf6df) which will enable regulations to be created specifying additional data that HMRC will be able to collect through existing returns from the tax year 2025/26 onwards.

The draft regulations themselves have not yet been published, but HMRC's policy paper published at the same time as the draft legislation indicates that the government will require businesses to provide the following additional information to HMRC:

- Employers will be required to provide more detailed information on employee hours worked using Real Time Information (RTI) PAYE reporting.
- Shareholders in owner managed businesses will need to provide the following additional information on their Self Assessment (SA) tax return:
  - the amount of dividend income received from their own companies separately to other dividend income; and
  - the percentage of share capital that they hold in their own companies.
- Self-employed taxpayers will need to provide information on the start and end dates of their self-employment on their SA tax return.

In its response, the CIOT is pleased to note that following a consultation last year, HMRC have decided, for now at least, to take forward only the above three options for additional data collection. We had been concerned that the original proposals (which had identified six broad areas where HMRC believed their data could be improved) would place significant extra administrative burdens on employers and businesses, for little or no direct benefit to them (see www.tax.org.uk/ref989).

Whilst the reduction in scope helps address our concerns, particularly around increased administrative burdens and complexity, we note the following points:

- The estimated one-off impact on transitional businesses costs (£44 million) and continuing impact on administrative burdens (£9.6 million), as calculated by HMRC, are not insignificant. However, they seem to be hugely underestimated, particularly in relation to the impact on businesses of providing data on employee hours worked. We would welcome sight of the calculations, as we expect real-life costs to be significantly higher.
- The draft legislation includes powers to enable HMRC Commissioners to make regulations to specify the information they consider relevant to be collected via returns. The details of what information is to be collected are not contained in the primary legislation. We are concerned that this would appear to leave open the possibility that HMRC may in future widen the data they collect beyond the three options they have decided to take forward at this stage by making further regulations under the powers granted to the Commissioners by this draft legislation, without proper Parliamentary scrutiny.

We also said that it is difficult to provide any meaningful comment on the data collection measures themselves when the regulations have not been published. In our response, we urge HMRC to publish draft regulations before the enabling legislation has been enacted.

Although the amendments will not have effect until the tax year 2025/26, this does not provide much time for businesses and employers to budget for, investigate, develop and implement any software upgrades and new internal data collection processes that may be needed to comply with their new data collection and submission obligations.

With regard to the draft legislation itself, our principal concern is whether the legislation will work as intended, which we think will depend on what HMRC intend to use the additional data for. However, it is not at all certain from the information that has been published so far what HMRC will do with the data. For example, it is not clear if they intend to share it with other parts of government, or use it only for their own compliance purposes, or both.

We also make some comments on the three specific areas that businesses will be required to provide additional information about to HMRC. In terms of employee hours worked, for example, employers not already capturing this information on their payroll systems will have to set up new systems to do so. In terms of the dividends paid to shareholders in owner managed businesses, we note that there is the potential for complexity on percentage of share ownership.

The ATT's main concern with this primary 'enabling legislation' is that the crucial details of exactly what additional information will be requested are relegated to regulations which will, by their nature, receive much less scrutiny. Given the importance of this detail to how workable the plans for supplying this additional information are, the ATT would have preferred this content to be included in the primary Finance Bill legislation.

The ATT also note that the only limitation placed on the issue of any subsequent regulation is that the information being sought has to be 'relevant for the collection and management of taxes referred to in Taxes Management Act 1970 s 1 (i.e. income tax, capital gains tax and corporation tax)'. The ATT therefore have concerns that the interpretation and breadth of 'collection and management of taxes' provides potentially unlimited scope for extra data and information to be required in relation to direct taxes via regulations.

The CIOT's response can be found here: www.tax.org.uk/ref1197.

The ATT's response can be found here: www.att.org.uk/ref434.

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LARGE CORPORATE OMB

Draft Finance Bill legislation: additional tax relief for R&D intensive SMEs and potential merged R&D scheme

Both the CIOT and ATT submitted comments on the draft Finance Bill legislation for a single scheme for research and development (R&D) and additional tax relief for R&D intensive SMEs (tinyurl.com/33peasmb). Both responses said that the suggested commencement date of April 2024 for the new single scheme is too soon and that the additional support for 'R&D intensive' SMEs should be incorporated into any future single scheme, and not operated as a standalone scheme as is currently proposed.

On 'L-day' in July, the government published policy papers and draft legislation for technical consultation on a single scheme for R&D and additional tax relief for R&D intensive SMEs. These were published in order to keep open the option of implementing a merged scheme from April 2024, although a final decision on whether or not to merge the R&D schemes will be made a future fiscal event.

In their responses, both the CIOT and ATT said that the proposed implementation date of April 2024 is over ambitious. It will present practical difficulties for HMRC and taxpayers, and will result in unintended consequences. The CIOT said that the current uncertainty and rushed implementation is undermining the policy intention of supporting and encouraging R&D in the UK. The ATT said that more time should be taken for consultation to ensure that the new scheme can be delivered successfully.

Saying that there has been insufficient opportunity to consider and consult on many important aspects of the new merged scheme, both responses discussed the complications around the rules for subcontracted R&D. The CIOT noted that this area was still under consideration by the government, with meetings held over the summer, and the position was not settled in the draft legislation that had been published. Both the CIOT and ATT said that further clarity in the legislation was required in this difficult area, while welcoming the overall policy approach that the focus of relief should be on the company which decides whether to undertake R&D or not.

Both responses also commented on the fact that an important opportunity to simplify the UK tax system is being missed because the time is not being taken to incorporate the additional relief for R&D intensive SMEs into the new scheme. As the new rules are proposed, the UK will continue to have two R&D schemes, and not a single scheme as had been envisaged and previously consulted on.

The CIOT and ATT both said that the additional support for 'R&D intensive' SMEs should be incorporated into any future single scheme, and not operated as a standalone scheme as is currently proposed. The CIOT noted that the current proposals fly in the face of overall policy objectives to embed tax simplification within the tax policy making process and the tax system.

Incorporating the additional relief into a single scheme would minimise the complications that would otherwise arise as a result of SMEs moving from one scheme to another from year to year. The proposed definition of R&D intensive SME means that whether a SME is an R&D intensive SME will depend on its activities, expenditure and/or profitability within any particular accounting period. The ATT cited concerns around boundary pushing that may arise as a result of the proposed definition. The CIOT noted that it is likely that the status of a large number of SMEs in this regard may change on a period by period basis. The ATT suggested that the rules around additional support for R&D intensive SMEs should be amended such that two consecutive years of failing to meet the R&D intensive test are required before companies cease to qualify.

The ATT's response also included some specific comments on the draft legislation.

The full responses can be read at:
ATT response: www.att.org.uk/ref433
CIOT response: www.tax.org.uk/ref1187

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PERSONAL TAX

Draft Finance Bill legislation: abolishing the pensions lifetime allowance

The CIOT has responded to draft legislation published on 18 July 2023 abolishing the pensions lifetime allowance from 6 April 2024 and making changes to the tax treatment of amounts of tax-free cash and lump sums an individual can receive, subject to lifetime allowance or lump sum protection (tinyurl.com/nhzeauv8).

Our response, which can be read in full at www.tax.org.uk/ref1185, covered the following matters:

- considerations for crystallised lump sum death benefits in order to apply consistency to their treatment;
- the proposal to begin testing payments in respect of small pension pots against the new allowances;
- the timetable for implementation of the new rules by 6 April 2024 – since the abolition of the lifetime allowance charges has already taken place, we do not think there is any urgency for the subsequent legislative tidy up;
- the (previously unannounced) proposal to begin taxing drawdown and annuity proceeds of uncrystallised defined contribution funds followings deaths before age 75; and
- transitioning from the old to the new regime.

With regard to lump sums, the draft legislation is intended to limit the total amount of tax-free cash an individual can receive to a maximum of £268,275 unless they hold a valid lifetime allowance or lump sum protection. It will also limit the total amount of lump sums an individual can receive before marginal rate taxation applies to £1,073,100 unless they hold a valid lifetime allowance protection.

Additionally, at the Spring Budget 2023 it was announced that tax-free lump sums would be limited to £268,275 'and frozen thereafter', save for cases where protections applied. While the policy paper published alongside the draft legislation was silent on the matter, it is assumed that the government's intention remains for allowances to be frozen.

In our response we also suggested rounding-up the allowance and/or periodically reviewing the allowance and indexing it.

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OMB PERSONAL TAX EMPLOYMENT TAX

Employee Ownership Trust and Employee Benefit Trust consultation

The CIOT has responded to a consultation on proposed reforms to Employee Ownership Trusts and Employee Benefit Trusts, which was launched as part of the 'L-Day' proposals.

On 18 July 2023, several consultations were launched as part of 'Legislation Day' (or 'L-Day'); one of these concerned the tax treatment of Employee Ownership Trusts (EOTs) and Employee Benefit Trusts (EBTs). The aims behind the proposals are to ensure that the regimes remain focused on the targeted objectives of rewarding employees and encouraging employee engagement, whilst preventing tax advantages being obtained through the use of these trusts outside of these intended purposes. Several of the proposals were in line with recommendations that the CIOT made in a Budget representation in 2021 (tinyurl.com/3wyaz79s).

The current consultation addresses several issues.

The first is that of companies' former owners (and connected parties) becoming trustees of the EOT and, therefore, effectively retaining control of the company. The consultation considered restrictions on them being the sole trustees. Issues around the residency of trustees were also considered by the consultation, noting the implications from a capital gains tax perspective of the EOT being UK or non-UK resident. The response from the CIOT was that whilst restrictions on the control of former owners and connected parties were welcome, new rules should not be over-prescriptive as to who should control the trust. Furthermore, whilst acknowledging that offshore EOTs still serve a valuable purpose, the CGT restriction was in line with the aim to tackle potential abuses.

The next issue discussed in the consultation document is around funding of the EOT. As per the consultation document, newly established EOTs do not typically have any funds of their own to pay upfront for shares from the departing owners. It is therefore common for all or part of the consideration due to the departing owners to remain outstanding at the point of sale. Any such balance owed is typically paid to the departing owners over a period of time, and is commonly funded through distributions of profits paid to the trustees. Clearances are usually advisable to confirm that such payments are not treated as distributions under Corporation Tax Act (CTA) 2010 s 1000. The proposals are for this treatment to be enshrined in statute, thus avoiding the need to request a clearance. This would also apply to clearances under CTA 2010 s 464A (the targeted anti-avoidance rule). The CIOT welcomed these proposals.

The £3,600 income tax-free bonus payable to employees was also raised. There are strict rules governing the payment of the bonus, as set out at Income Tax (Earnings and Pensions) Act 2003 s 321B. The consultation suggested that the participation condition is amended so that directors do not necessarily have to be included. We did not raise any objection to this suggested change. However, we said that the £3,600 figure should be raised (to take into account inflation since 2014 at the very least). Another point made was that the bonus would ideally also be exempt from National Insurance contributions, for the sake of both consistency with the income tax treatment and as a further benefit to employees.

With respect to EBTs, the inability for participators and their connected parties to benefit for the lifetime of the EBT was proposed, and this was broadly welcomed in our response. However, we were less keen on the proposal to restrict inheritance tax relief for those participators who have owned shares for at least two years prior to settlement into an EBT; instead, we suggested that a 'motive defence' test might be fairer than a blanket restriction.

The full CIOT response can be found here: www.tax.org.uk/ref1179.

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PROPERTY TAX

Business rates avoidance and evasion

The CIOT responded to the recent consultation on business rates avoidance and evasion.

The CIOT responded to the joint HM Treasury and Department of Levelling Up, Housing and Communities consultation on tackling business rates avoidance and evasion. Our response focuses on the proposals to reform empty property relief in order to address known avoidance schemes and the wider questions on countering other avoidance and evasion practices within the business rates system.

Our overarching comment was to note the lack of published data on existing mitigation schemes and tax leakage. Business rates are not included in the tax gap. Therefore we suggested that regular formal and robust evaluation of the business rates tax gap is required in the same way as HMRC estimates the tax gap for taxes they administer. Once that data is available, what measures may be needed can be considered in that context and evaluated accordingly through further consultation. A wider consultation could also consider the efficacy of anti-avoidance measures introduced in Scotland and the proposals in Wales.

We observed that currently there are no penalties or interest imposed on failed business rates avoidance schemes and the general anti-abuse rule (GAAR) does not cover business rates abuse. However, there would be challenges in extending the GAAR to business rates because of the lack of supporting infrastructure around it. The interaction between the billing authorities and the Valuation Office Agency does not make it easy to have a dedicated team to challenge avoidance.

In terms of empty property relief, although there are good reasons for having a reset period, we agree that six weeks is too short. We suggest that the Welsh experience should help to inform any decision in England about the length of the reset period. Alignment of the reset period between England and Wales would offer the benefit of consistency for businesses operating in both countries.

There are further concerns about abusive arrangements for empty properties where the ratepayer is a charity or a community amateur sports club. In the case of genuine charities, the Charity Commission has issued guidance to trustees that they will be in breach of their duties if they enter into arrangements with owners of empty properties to avoid empty rates. We suggest that consideration might be given to re-issuing this guidance and considering ways for giving it greater prominence and publicity.

The full CIOT response can be found here: www.tax.org.uk/ref1176.

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INDIRECT TAX

VAT registration: current issues

The CIOT and ATT are represented on HMRC's Joint VAT Consultative Committee's VAT Registration sub-group, a forum that engages with stakeholders to identify issues and potential improvements for VAT registration applicants and their agents.

VAT registrations registering company directors as sole proprietors

The CIOT raised issues that have been encountered by our members around how VAT registration applications involving non-established taxable persons (NETPs) have resulted in unexpected outcomes.

A NETP is any person (using the legal meaning of this word including all legal and natural persons) who makes taxable supplies in the UK, but does not have a physical presence here. Thus, it is any person who is not normally resident in the UK, does not have a UK establishment and, in the case of a company, is not incorporated in the UK. The CIOT has received feedback that some VAT registration applications made for companies that are NETPs are resulting in VAT registrations where company directors have been registered as sole proprietors. We understand that this is happening with both online and paper VAT registration applications.

At the forum, we suggested to HMRC that one of the questions and the answer options in the online VAT registration application could be causing confusion. This question and answer reads:

What type of business do you want to register for VAT?

- **Non-established taxable person (NETP)**
  A NETP is any person who is not normally resident in the UK or does not have a UK establishment.
- **Non-UK Company**

The response options given suggest that the term 'NETP' in the first option may be intended to mean only a natural person, with a separate second option for a non-UK company. We discussed at the meeting that this is not technically correct.

As set out above, the word 'person' in relation to tax rules, means 'legal or natural person', and thus includes a company. Therefore, a VAT registration application on behalf of a non-UK company could properly choose the first option, as the company is an NETP, overlooking the second option of 'Non-UK company'.

However, the VAT registration system recognises the first option as being for individuals or firms only (that is natural persons). As a result, if a non-UK company ticks the NETP option, HMRC will register the directors as sole proprietors for VAT, and not the company itself. As this issue is being experienced for paper VAT registration applications too, we suggested that some HMRC staff entering the information from the paper applications into the system must have also been choosing the NETP option for companies, which is understandable as NETP is a long established term understood to refer to all non-UK applicants, including companies.

We suggested that the online question should be amended to reflect the question in the paper VAT1 application, which simply asks if the applicant is either a non-UK business, or not an established business. HMRC will consider our request.

End of paper VAT registration application route (with exceptions)

HMRC announced in Agent Update 112 (tinyurl.com/3j8v9wb5) that the paper application route will be withdrawn on 13 November 2023 and the downloadable VAT1 will be removed from GOV.UK. However, persons who are exempt from digital services for reasons such as age, disability, beliefs, etc are still able to request a paper application from the VAT helpline and specific types of applicants must also continue to use the paper route including:

- district and parish councils;
- LLP led VAT groups; and
- VAT only 'quasi' partnerships for shared property ownership.

Guidance will be updated to reflect the limited list of applications that should still use the paper application route.

The most common reason we hear about applicants using a paper application is that there is a delay in obtaining a Unique Taxpayer Reference (UTR) and this interacts with a time critical VAT deadline, such as an option to tax or a transfer of a going concern. This has been fed back to HMRC.

The CIOT and ATT are interested in hearing of situations (other than highlighted above) that currently force an application onto the paper application route. These can be forwarded to technical@ciot.org.uk.

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Emma Rawson erawson@att.org.uk

PERSONAL TAX

Interaction of basis period reform rules and student finance

Following a request from LITRG, HMRC and the Department for Education have confirmed how the new basis period reform rules will interact with student finance applications and repayment of student loans through self assessment.

Basis period reform will start from the 2024/25 tax year, with 2023/24 being a transitional tax year so that all unincorporated businesses move to reporting their business profits on a tax year basis.

Unincorporated businesses which currently do not have an accounting period ending between 31 March and 5 April will need to make transitional changes during 2023/24, which may result in including profits from a period longer than 12 months. The basis period reform rules and calculations are covered in HMRC's Business Income manual (tinyurl.com/3ryz73nz). If there is an overall profit after deducting overlap relief and any 'standard part' losses, then this profit (known as 'transition profit') will be automatically spread evenly over five tax years (2023/24, 2024/25, 2025/26, 2026/27 and 2027/28).

LITRG sought confirmation on how the inclusion of 'transition profit' over five tax years in the self-employment or partnership pages of tax returns would affect applying for student finance and repaying student loans.

Student finance

Some students may be eligible for additional maintenance loans, depending on criteria such as where they live and their household income (including parents' income if they are not an independent student). As the amount of maintenance loan is based on household income, this could be affected by changes under basis period reform.

GENERAL FEATURE PROPERTY TAX

A fairer council tax for Scotland

LITRG submitted a response to the Scottish government and Convention of Scottish Local Authorities consultation on a fairer council tax.

The Scottish government teamed up with the Convention of Scottish Local Authorities (COSLA – on behalf of local government) to consult on a fairer council tax system. The consultation (tinyurl.com/3rkjn6tt), published in July 2023, concerned the multipliers for properties in council tax bands E, F, G and H. The proposal is to increase the council tax charges on properties in bands E, F, G and H by 7.5%, 12.5%, 17.5% and 22.5% respectively. The consultation also considers the timing of the proposal and whether the council tax reduction scheme should be expanded to protect those on lower incomes who would be affected by the rises.

LITRG agrees that the current schedule of rates is regressive, as the consultation points out. This is because the rates on lower value properties are effectively higher than those on higher value properties. The proposals would go some way to addressing the regressive nature of council tax.

As the consultation specifically refers to making council tax fairer, LITRG comments on the topic of fairness, noting that what is 'fair' is subjective. Nevertheless, there are certain necessities for a tax to be fair, however one wishes to define fairness. For example, it seems to us that for a tax to be fair, it must tax the base that it is meant to tax, and the tax base must be accurately assessed or valued.

While the consultation acknowledges the fact that council tax is currently regressive in nature, it is extremely disappointing that it ignores another fundamental problem with council tax – the fact that it is based on 1 April 1991 property values. We note some of the discrepancies that result from the use of outdated values, including the fact that properties that were not built in 1991 are assigned a wholly hypothetical value.

There is evidence that shows that properties are in the wrong bands, so the proposals in the consultation are likely to affect some properties they should not, while not applying to some that they should.

As a result, we think that a full revaluation of all properties in Scotland is a prerequisite for changes to council tax such as those proposed. It is not possible to address the regressive nature of council tax in a meaningful and fair way without first ensuring that the values are correct. Conducting a full revaluation first and then making other changes to council tax would ensure that any other changes, such as those proposed in this consultation, affect the appropriate and/or intended properties. In addition, we call for a commitment to update valuations on a regular basis going forward.

The full LITRG response can be found here: www.litrg.org.uk/ref2799.

Joanne Walker *jwalker@litrg.org.uk*

HMRC have confirmed that any 'transition profit' should be included in student finance applications which could affect up to five years because of the spreading rules. These additional profits could potentially reduce the amount of maintenance loans that family members are eligible to borrow. We understand that student award bodies such as Student Finance England will be amending their guidance for this.

Student loan repayments

Student loan borrowers who are self-employed or partners will usually repay their loans through self assessment; the exception being directly paying the Student Loans Company when nearing the end of loan repayments. HMRC have confirmed that student loan repayments will be affected by basis period reform as the 'transition profit' will be included alongside the 'standard 12-month profit' when looking at whether earnings are above the loan repayment threshold. This means that student loan repayment calculations will also be affected by the spreading rules for potentially five tax years.

An election can be made to accelerate spreading but it is not possible to postpone spreading to a later tax year. Following an election, if there is any remaining 'transition profit' left this will be spread proportionally over the remaining tax years up to 2027/28.

Using the election to decide whether to accelerate the inclusion of 'transition profits' could be a potential planning tool when considering the impact on student finance applications and loan repayments. LITRG will be writing an article for a future edition of *Tax Adviser* on these interactions and how electing to change spreading may be beneficial in some circumstances.

Claire Thackaberry *cthackaberry@litrg.org.uk*

GENERAL FEATURE

Scottish visitors' levy

The CIOT has responded to a call for views allowing local authorities in Scotland to impose a transient visitors' levy on the cost of overnight accommodation.

On 26 June 2023, the Scottish Parliament launched a call for views on the introduction of a discretionary local levy to be added onto the cost of overnight accommodation, to support their local infrastructure affected by tourism. This change would allow local authorities to impose a levy on accommodation providers, and at their own rate.

The proposal is to add a certain percentage of the accommodation cost to a visitor's bill when occupation is taken for six or more hours within a 24 hour window from noon. The accommodation provider would be responsible for making quarterly returns and collecting/paying the levy to their local authority. There would be enforcement powers and penalties for the late submission of returns and payment of the levy, though reasonable excuse would be available as potential defence for both offences. The draft legislation also obliges those local authorities choosing to implement the levy to publicise the fact, and addresses requirements surrounding: the keeping of records, separate accounts and making annual reports, the authorities' power of inspection, the need to ringfence the levy proceeds in accordance with specific local purposes, and the need for three-yearly reviews.

Whilst largely praising the proposed legislation in respect of administration and enforcement of the levy, our response expressed some concern about the potentially haphazard results that a discretionary levy might lead to. Some local authorities may choose to implement the charge, whilst others may demur; likewise, having chosen to implement the levy, relevant authorities could charge vastly different rates.

We called for parameters to be embedded within the legislation to set the extent and limitations of authorities' powers with respect to levy application, rates and exemptions to ensure that disparities across the country are kept to a minimum. The issuing of a clear, consistent, uniform set of guidance to supplement the legislation would also be advisable, not only to assist accommodation providers with the administration behind such a big change, but also for the authorities, and for helping them to decide whether or not to impose a levy in the first place.

The full CIOT response can be found here: www.tax.org.uk/ref1162.

Chris Thorpe cthorpe@ciot.org.uk

GENERAL FEATURE

Reforming anti-money laundering and counter-terrorism financing supervision consultation response

Members in practice, and particularly those we supervise for anti-money laundering, will be interested in the CIOT and ATT responses to the HM Treasury consultation on the reform to the AML and counter-terrorism financing supervisory regime. The consultation sets out four potential models for supervision and sought views on the supervision of sanctions.

In June 2023, HM Treasury consulted on the future of anti-money laundering (AML) supervision in the UK, setting out four potential models for future supervision (tinyurl.com/muc7ef5w):

1. Office for Professional Body AML Supervision (OPBAS)+;
2. Professional Body Supervisor Consolidation;
3. Single Professional Services Supervisor; and
4. Single Anti-Money Laundering Supervisor.

CIOT and ATT responded favouring the OPBAS+ model, whereby existing supervisors would retain our AML supervision, with greater powers for OPBAS. It is the most feasible and robust option. Also, since its conception in 2017, OPBAS has driven considerable steps forward in supervisory effectiveness, especially on intelligence and information sharing, and the OPBAS+ model gives more time for this work to come to fruition.

The other models may give the opportunity for greater consistency, and easier liaison with law enforcement, but this is outweighed by the following potential downsides:

- short to medium-term risk of decreasing supervisory effectiveness;
- increased costs to both government and firms;
- logistical challenges of transferring many firms/associated data between supervisors; and
- loss of expertise and time/costs of training new staff as experienced AML staff may not move to the new supervisor.

CIOT and ATT requested that AML supervision is not considered in isolation from discussions on raising standards in the tax advice market and regulation of the tax profession.

The full consultation responses are on the CIOT and ATT websites:
www.tax.org.uk/ref1229
www.att.org.uk/ref438

HM Treasury expect to have considered all the responses by March 2024.

Jane Mellor jmellor@ciot.org.uk

CIOT		Date sent
Draft Finance Bill 2023-24 legislation: additional tax reliefs for research and development (R&D) intensive SMEs and potential merged R&D scheme	www.tax.org.uk/ref1187	12/09/2023
Draft guidance: multinational top-up tax and domestic top-up tax	www.tax.org.uk/ref1168	12/09/2023
Draft Finance Bill 2023-24 legislation: change to data HMRC collects from customers	www.tax.org.uk/ref1197	12/09/2023
Draft Finance Bill 2023-24 legislation: dealing with promoters of tax avoidance	www.tax.org.uk/ref1198	12/09/2023
Tax simplification joint professional bodies letter to the Financial Secretary to the Treasury	www.tax.org.uk/ref1221	15/09/2023
Draft Finance Bill legislation: abolishing the pensions lifetime allowance	www.tax.org.uk/ref1185	15/09/2023
Visitor Levy Bill	www.tax.org.uk/ref1162	19/09/2023
Business rates avoidance and evasion	www.tax.org.uk/ref1176	20/09/2023
Taxation of Employee Ownership Trusts and Employee Benefit Trusts	www.tax.org.uk/ref1179	27/09/2023
Reforming anti-money laundering and counter-terrorism financing supervision	www.tax.org.uk/ref1229	29/09/2023
Draft regulations: proposed amendments in respect of salary advances	www.tax.org.uk/ref1220	06/10/2023
Removal of 1.5% charge on issues and certain related transfers	www.tax.org.uk/ref1223	12/10/2023
Cryptoassets and their treatment for tax purposes	www.tax.org.uk/ref1228	12/10/2023

ATT		
Reforming anti-money laundering and counter-terrorism financing supervision	www.att.org.uk/ref438	29/09/2023
Tax incentives for occupational health	www.att.org.uk/ref436	09/10/2023

LITRG		
Labour Market Enforcement Strategy 2024 to 2025: call for evidence	www.litrg.org.uk/ref2796	08/09/2023
Consultation on a fairer council tax	www.litrg.org.uk/ref2799	23/09/2023

Debates

Party conference debates: Growth needed before tax cuts, say panels

The Chartered Institute of Taxation and Institute for Fiscal Studies once again held panel events at both the Conservative and Labour party conferences this autumn, focusing on the tax and public finance challenges facing Britain.

Conservative debate panel: Lord Leigh of Hurley, Gary Ashford, Paul Johnson, Rhiannon Kinghall Were

Labour debate panel: James Murray, Paul Johnson, Gary Ashford, Ellen Milner

Our debate at the Conservative Party Conference in Manchester was chaired by Rhiannon Kinghall Were, Head of Tax Policy at law firm Macfarlanes. The panellists were CIOT president Gary Ashford, IFS director Paul Johnson and Lord Leigh of Hurley, Conservative Party senior treasurer and chair of the House of Lords Finance Bill Sub-Committee.

Johnson did not see much opportunity for tax cuts without 'some pretty radical changes to the way we are spending money' – but if he had the money, he would make the temporary rules around expensing permanent and abolish stamp duty land tax. He emphasised the need for long-term stability to allow taxpayers and businesses to plan ahead.

Lord Leigh backed the government's approach on tax cuts, saying the state of public finances means they are currently unfeasible. He suggested that higher rates of council tax could be levied on luxury properties such as mansions and penthouses. Johnson agreed that some properties in the UK pay very little in property taxes compared to other countries like the US.

Gary Ashford said future tax cuts could come from closing the tax gap, with as much as 56% of that coming from small business. He added that the continued rise of technology will transform the way taxes are implemented and paid but could also give rise to greater avoidance and evasion.

At the Labour conference in Liverpool, Ashford chaired a panel which also included Paul Johnson, Ellen Milner, the CIOT's Director of Public Policy, and James Murray MP, the Shadow Financial Secretary to the Treasury.

The shadow minister said growth is 'front and centre' of Labour's plans if it wins the next general election, with the party also looking to replace business rates with a system which would support high street shops and ensure that multinational giants 'pay their fair share'.

Johnson agreed that business rates 'need reform' and suggested instead a land value tax paid by the owner rather than the occupant of the property.

He said for 'big changes' to be made, the government may need to look at the three biggest revenue raisers – income tax, National Insurance and VAT. However, Ellen Milner warned that any substantial changes to these taxes would need 'a really solid foundation' as they bring in such a large proportion of the overall tax take. She added that almost half of the tax gap comes from 'failure to take reasonable care and error – failing to get things right' and said that addressing problems around complexity, digitalisation and HMRC service levels could help in this area.

As usual, audience questions were a key part of both events.

At the Conservatives debate, questioned on the potential abolition of non-dom tax advantages, Johnson said around a third of the highest-income people in the country were born abroad and they contribute a lot to the public purse, meaning any changes would be 'risky'. Ashford agreed that the debate around abolishing non-dom status 'needs to be a bit more nuanced', as without a replacement, the UK would risk losing investment to other countries.

Lord Leigh told the audience that his committee has had 'a good, hard look' at R&D tax credits, while he also backed the digital services tax, OECD Inclusive Framework and the 'tightening-up' of VAT on goods.

At the Labour debate, Johnson criticised the 'crazy' system of personal tax rates and thresholds, adding that the UK is an 'unusually unequal country in terms of income'. He said some of that is to do with the fact that our out-of-work benefits system is 'pretty mean', while a lot of it is to do with how the labour market works.

You can also read our full reports on the conference debates, and watch our recordings, at:

tinyurl.com/LabTax23
tinyurl.com/ConTax23

Legislation

R&D changes go against simplification remit

Proposed changes to research and development tax relief are too ambitious and will make things more complicated for businesses, ATT and CIOT have warned.

While the proposals seek to consolidate the two current, separate reliefs into a single scheme, they also include a new enhanced relief for 'R&D intensive' small and medium sized enterprises (SMEs) which will operate as a standalone scheme.

The ATT says this will defeat the object of combining the schemes and work against the government's ambitions to simplify the tax system, instead creating more complexity and confusion for businesses.

Senga Prior, chair of the ATT Technical Steering Group, said: 'The proposals are extremely disappointing given that the simplification was a key advantage identified during the consultation process on the new single scheme.

'We would recommend that, once the new "single scheme" is launched, any enhanced support for R&D intensive SMEs be included within that, rather than operating on a standalone basis.'

The government is keeping open the option of implementing the new scheme in April, with a final decision to be made at a future fiscal event (assumed to be the Autumn Statement on 22 November).

The CIOT says this short timescale means the policy will not be properly scrutinised, and opportunities will be missed to simplify the relief system, despite tax simplification being a key government target. It has called for the timetable to be slowed down to allow proper consultation.

David O'Keeffe, chair of the CIOT's R&D working group, said: 'It is disappointing that the proposal to move to a new scheme, a concept that we support in principle, is being rushed in this way. The government should take extra time to consult fully on and properly consider the areas of complexity and difficulty. We should remember "more haste, less speed" to ensure a set of rules that are "fit-for purpose" and deliver on the policy aims of supporting and encouraging R&D in the UK.'


Senga Prior

HMRC response

Meanwhile, CIOT has welcomed an acknowledgement from HMRC that their handling of some R&D tax relief claims has not met their Charter standards, but remains concerned that HMRC's 'volume approach' to managing R&D enquiries means that legitimate claims will continue to be rejected.

HMRC was replying to a letter CIOT wrote to them in July, sharing members' concerns around the conduct of R&D enquiries into claims by SMEs.

Ellen Milner, CIOT director of public policy, said: 'We welcome HMRC's response to our letter, which acknowledges the issues that we raised and sets out how HMRC are going to address them. Abuse of R&D relief is a significant problem, and HMRC are right to be prioritising action to tackle it. But HMRC must lead by example and be in accordance with their professional standards and Charter commitments, as well as, of course, the law.'

Letters can be read at: tax.org.uk/ref1166

In the news

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

'Separated parents claiming child benefit are being advised to check they are not at risk of a hefty bill. The Low Incomes Tax Reform Group (LITRG) is urging couples whose circumstances may have changed to check their original claim.'

The Sun, 31 August

'Any [Scottish] wealth tax would need to be introduced as a local tax, because the Scottish Parliament does not have the power to introduce new national taxes on its own. Holyrood would need Westminster's agreement, and that is not a given. Even if a locally focused wealth tax was considered, this in itself could be costly and complex and would not offer a quick-fix solution.'

Christopher Thorpe, CIOT technical officer, Daily Telegraph, 10 September

'We do not support the introduction of a single, merged R&D scheme, as it will not take into account the very real differences between the activities and needs of smaller and larger companies. We acknowledge that it could be a significant simplification to the existing system. Unfortunately, what is currently being proposed does not represent any simplification.'

Senga Prior, chair of the ATT's technical steering group, Accountancy Daily, 18 September

'The fact that council tax remains based on house prices from over 30 years ago means there are lots of inconsistencies in the way homes are valued. There will be a significant proportion of homes that are allocated to the wrong council tax band, meaning that these proposals will not affect all the properties they are intended to, and others that they should not. In that sense, it is hard to think of another tax so detached from reality.'

Joanne Walker, LITRG technical officer, The Herald, 24 September

'A survey by the Chartered Institute of Taxation found that 94% of its members asked were "somewhat" or "extremely" dissatisfied with HMRC's service levels, with 95% also claiming that the tax office's poor service had at least moderately impacted their ability to do business. More than half of the tax agents surveyed said that they have waited for more than thirty minutes for a response from HMRC's specialist agent helpline, a figure that increased to 85% for other HMRC helplines.'

Daily Telegraph, 25 September

Event

Joint Presidents' Reception 2023

CIOT and ATT presidents Gary Ashford and Simon Groom thanked members, staff and volunteers of both organisations at the Joint Presidents' Reception, held at the Design Museum in London on 28 September.

Those who attended included guests from HMRC and senior representatives from other professional bodies, as well as leading individuals from the tax profession. Following speeches, guests were invited to see the museum's new exhibition: 'REBEL: 30 years of London fashion'.

Addressing the reception, Gary said: 'Whether you are a staff member, a volunteer or from one of our partner organisations, you are part of the CIOT-ATT family and part of our success. Working together, we've had another great year. The Institute has continued to develop and grow. We're now on the brink of 20,000 members, so watch this space!'

Simon Groom added: 'The last 12 months have been another year of growth and achievement for ATT. Top of the list has to be picking up the prestigious award for Outstanding Contribution to Taxation by a Not-for-profit Organisation at this year's Taxation Awards.

'We've also developed lesson plans and videos which volunteers can use in schools to both promote tax as a career, and educate children as to why tax is important.'

Simon Groom

Gary Ashford

Simon Groom, Gary Ashford, Susan Ball, with all this year's CIOT and ATT award winners

Whether you are a staff member or a volunteer, you are part of the CIOT-ATT family and of our success.

Institute President Gary Ashford handed out three Certificates of Merit at the reception. CIOT grants these in recognition of exceptional service to the Institute. They were awarded to:

- Jo Routier, for service to the Joint Branches Sub Committee, Jersey Branch committee and the Branch Network;
- Zoe Roberts, for service to the Joint Branches Sub Committee, Sheffield Branch and the Branch Network; and
- Shan Sun, for her work developing the new Diploma in Tax Technology.

Gary also presented a commemorative scroll to predecessor Susan Ball, who served as President in 2022/23.

Association President Simon Groom presented Certificates of Appreciation to:

- Becky Foley, for service to the Bristol Branch;
- Stuart Jessop, for service to the Sussex Branch;
- Harry Ross, for service to the Harrow and North London Branch;
- Divya Malde, for service to the Harrow and North London Branch; and
- Anne Clark, for service to the Harrow and North London Branch.

Member

New ATT council member

Jamie Hooper joined Council in 2023. He became a member of the Association in 2000 before qualifying as a Chartered Tax Adviser in 2008. He serves on the Finance Steering Group and chairs the CIOT/ATT Essex Branch Committee.

Jamie has experience in personal, corporate and international taxes and in 2009 took over management of his family firm, providing taxation and accounting services to SMEs and high net worth families.

Technical Spotlight

Spotlight on the Corporate Tax Committee

The remit of the Corporate Tax Committee is all aspects of UK corporation tax insofar as that tax applies in respect of companies resident in the UK, and the taxation of UK companies generally. Adrian Rudd, who is a Tax Director at PwC, chairs the committee. Committee members come from accountancy firms and law firms, as well as industry, giving us a broad spectrum of input. Further details can be found at: www.tax.org.uk/our_tcs.

In recent months, we have been largely focused on the HMRC's 'volume approach' to managing research and development (R&D) enquiries. We have been highlighting concerns around the impact on legitimate claims and how this approach is undermining the underlying objectives of investment in innovation and economic growth, as businesses are put off claiming relief to which they are entitled.

We have welcomed the large amount of feedback from our members, which has reinforced our position that the problems we have highlighted are widely experienced and the views we have expressed are widely held. We are engaged in constructive conversation with HMRC but also continue to receive large numbers of reports from our members about the difficulties being encountered (see www.tax.org.uk/ref1166).

Staying in the area of R&D, we have also commented on the draft legislation for the proposal still under consideration by the government for the introduction of a new merged R&D tax relief scheme. We have urged the government, if they decide to merge the R&D schemes, to slow down the timetable. An implementation date of April 2024 is overambitious; it will present practical difficulties for HMRC and taxpayers, and will result in unintended consequences. In our view, the current uncertainty and rushed implementation is undermining the policy intention of supporting and encouraging R&D in the UK (see www.tax.org.uk/ref1187).

In addition, an important opportunity to simplify the UK tax system is being missed because the time is not being taken to incorporate the additional relief for R&D intensive SMEs into the new scheme. As a result, the UK will continue to have two R&D schemes, an outcome inconsistent with the objective of embedding tax simplification within the tax policy making process and the tax system. More generally, simplification remains an important issue for the committee, as it is across all of our technical committees.

A feature of much of the work of the committee is the amount of overlap there is with other CIOT technical committees. As a result, we liaise closely with many of our other committees, including the International Tax Committee, where there is overlap with their work for larger corporates and groups; the Property Taxes Committee in relation to capital allowances; and the Owner Managed Business Committee in respect of smaller companies.

All of our responses and submissions can be found on the usual technical pages of our website (see tax.org.uk/submissions/1).

Sacha Dalton
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Notice

Upcoming Annual Return Submissions

Please note the important membership requirements to submit your 2023 Annual Return 2023 and pay your 2024 subscription.

From mid-November, the CIOT and ATT 2023 Annual Return submissions will be available on the member portal and requests will be coming out to members requesting completion of the return and the payment of subscriptions.

All members (except for students and those who have updated their membership status to fully retired) are required to submit an Annual Return. Those who are employed must provide details of their employer. Members who are in practice (whether self-employed, in partnership or a company director) must provide these details as well and provide confirmation of: their AML supervisor; compliance with PII requirements; and their PII provider. All members are required to answer a number of conduct questions and indicate compliance with the continuing professional development (CPD) regulations (or provide a reason why they have not met the requirements).

The returns must be completed accurately and members need to provide all details requested. For example, if you are a sole trader as well as an employee, you must provide full details of both. We are aware members can find certain questions more difficult to answer (for example, those on CPD or PII), so we have provided guidance on how to complete the form in our Annual Return FAQs available on the CIOT website www.tax.org.uk/annual-return-guidance and the ATT website www.att.org.uk/annual-return-guidance.

The annual return must be submitted and the subscriptions paid by the deadline of **31 January 2024**. Members failing to submit their returns are failing to meet membership obligations and will be subject to a fine. Recent fines issued have been in the region of £350.

Non-payment of the fine and continuing non-compliance with the requirement to submit a form will result in a referral to the Taxation Disciplinary Board (TDB) (www.tax-board.org.uk), which has the power to impose a wide range of sanctions.

We will be sending emails (and reminders via social media) to all members from mid-November onwards to notify you that submissions are open. At this point, you can submit your return by logging on to the Members Portal (**https://pilot-portal.tax.org.uk**) and navigating to 'Secure area/Members Area/Compliance/Annual Return' where the 2023 form will be located. Reminders are sometimes caught in junk folders. Even if you do not receive the notification email you must still complete your return by the deadline so please check the portal and ensure you submit your form on time. If you have any difficulty accessing your portal account or completing your return, member services will be happy to help (membership@tax.org.uk)

Event

CIOT at Tax Advisers Europe

Member bodies of Tax Advisers Europe (CFE) met in late September to discuss a range of current and emerging topics from transfer pricing to artificial intelligence (AI). CIOT joined colleagues from the ICAEW's Tax Faculty in conference and committee discussions held over two days. This article provides a summary of the different sessions we attended. If you would like to know more, visit the CFE website at: www.taxadviserseurope.org. Members who receive the CIOT's fortnightly e-newsletter will also have access to the Top 5 Tax from CFE.

Professional Affairs Conference (afternoon session)

The afternoon session focused on the implications of the December 2020 OECD Report, Tax Administration 3.0. The vision set out in that report is of a world in which the focus is on high quality, real-time data rather than on forms and periodic data; a world where compliance by design becomes the default, with compliance built into taxpayers' natural systems; where artificial intelligence (AI) is used extensively both to identify cases for enquiry and to improve taxpayers' experience of tax administration; and where new systems are designed through a process of 'co-creation' involving a range of stakeholders.

The panellists were Sami Koskinen from the Finnish Tax Authority, Virpi Pasanen (a partner with Deloitte in Helsinki), Petra Pospisilova from the Czech Republic and Piergiorgio Valente, the chair of the CFE Technology Committee. The panel was moderated by CIOT Council member Paul Aplin.

Issues that emerged from the discussion included the importance of robust and reliable taxpayer identifiers to ensure that data would be associated with the right taxpayer; the practicalities of co-creation; and the fact that tax authorities have to work within the framework set by legislators. Sami's presentation explored the challenges – particularly those of digital identity, digital business documents and the transfer of digital financial data – in the context of the Finnish Real Time Economy Project. Virpi expanded on this, adding insight on the need for high quality data, the need to address tax simplification, the need to think globally and the need to consider costs (which inevitably fall on taxpayers either directly or indirectly). Petra described how existing bank IDs had been used in the Czech Republic to address the digital ID issue. Piergiorgio explored some of the challenges surrounding the use of AI by tax authorities and by tax practitioners.

The session raised some key issues and some critical challenges for the tax profession. Where, for example, do we cross the line from uncontentious tax rules being built into software to more contentious rules being built in? How do we ensure the visibility of this process? How far should we rely on the output from generative AI and how should we test and challenge the output? What is the future for automated decision making in tax administration and how transparent should automated processes be? The word that came up more than any other in this discussion was 'transparency'.

Tax Administration 3.0 will involve transformational change and will offer many new opportunities; it will also pose enormous challenges. The panel concluded that we have to be ready for both.

Technology Committee

The committee discussed the current and likely future impact of generative AI on the tax profession. Over recent months, members of the committee had experimented with ChatGPT, asking questions that might be put by a lay person without the involvement of a professional adviser; questions that might be asked by a general practitioner with broad tax knowledge; and questions that might be asked by a subject expert. Using an agreed methodology, the chosen questions were put in English and then repeated in each participant's own language.

Initial findings suggest that while Chat GPT is capable of producing readable, technically correct answers to relatively straightforward questions, its ability to deal with more complex issues is inconsistent. Cases of 'hallucination' were identified where answers were entirely inaccurate (although in one instance, when asked for its source, the response was an apology for giving a completely incorrect answer). Other generative AI options are, of course, available and

Professional Affairs Conference, including Paul Aplin


Tax Technology Committee, including Ellen Milner and Paul Aplin

several committee members have been using generative AI in their daily work for some months.

Professional Affairs Committee

The focus of the committee was the discussion of a series of updates on EU initiatives relevant to the professional standards of practitioners, including anti-money laundering (AML) legislation and the delayed release of the 'SAFE Proposal' – Securing the Activity Framework of Enablers. Through SAFE, the EU is seeking remedies to address perceived aggressive tax planning involving EU taxpayers.

With the ongoing International Ethics Standards Board for Accountants (IESBA) project to update its code of ethics to respond to public interest concerns about tax avoidance and the role played by consultants, not all of whom are professional tax advisers, professional standards remain high on the agenda. Many organisations look at our own standards, Professional Conduct in Relation to Taxation (PCRT), as a well-established code that provides leading guidance in this area, and all CIOT and ATT members should be familiar with its content and related guidance.

The meeting listened to a message from Paul Tang MEP about the importance of the fight against financial crime in the EU. There followed a discussion about plans to establish a pan European AML and counter financing of terrorism (CFT) authority (AMLA). This authority will provide a single integrated system of AML/CFT supervision across the EU, based on common supervisory methods and consistency of high supervisory standards. AMLA will not replace national authorities and instead will act as a coordinator providing a framework for consistency across Europe.

We were able to share some of our experiences of dealing with the Office for Professional Body AML supervision (OPBAS) in the UK, which works to bring consistency between the professional body AML supervisors here.

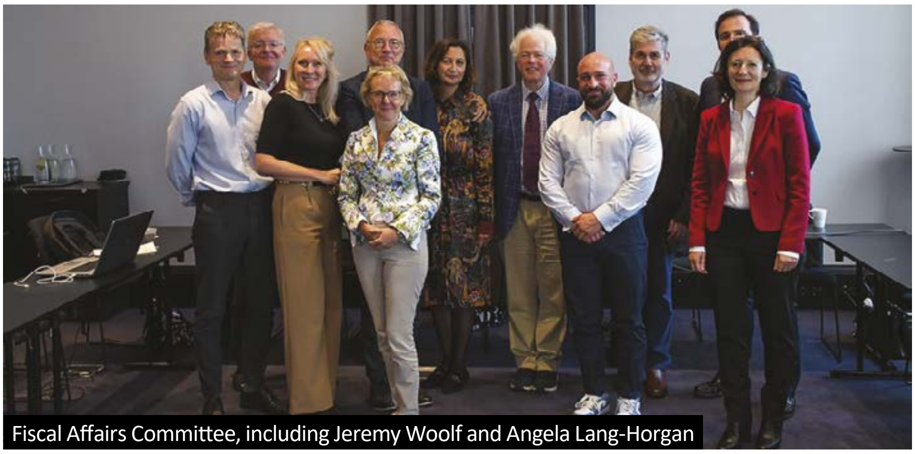
Fiscal Committee

The committee focused on a number of discussion papers, including VAT on chain transactions where goods are imported into the EU; and chain transactions with regards to when a person should be considered to be arranging transport on behalf of the supplier or person acquiring goods. Each member organisation shared their differing experiences from their jurisdiction. It was noted that the Commission had taken no action to clarify the position and further guidance on possible changes to the law to clarify the legal position would be helpful.

One issue that arose out of the discussions was problems in recovering import VAT as input tax. Jeremy Woolf, chair of the committee and CIOT member, is preparing a paper that would seek to suggest that not too strict an approach should be taken to requiring ownership of the goods at the time of import, so that it should extend to cases where a person becomes owner after import. It would also make the point that it would be desirable if changes were made to the law so that the right is explicitly extended to other common situations where the current rules cause problems – for example, in leasing transactions.

This was followed by discussions about digital reporting and also the general progress of VAT in the digital age (ViDA). The feedback was that member states that have already introduced digital reporting were hostile to the ViDA proposals and the proposals were therefore unlikely to be introduced quickly.


Professional Affairs Conference, Alistair Cliff and Jane Mellor


Fiscal Affairs Committee, including Jeremy Woolf and Angela Lang-Horgan

General Assembly Consultation, Ellen Milner and Ian Hayes

International

Leading by example: the ADIT Academic Board

At the CIOT, we celebrate the diversity of our near 6,000 strong ADIT community, made up of Affiliates, graduates and students from many different walks of life and located in 120 countries. Reflecting such diversity is the ADIT Academic Board, all of whose members are eminent international tax experts and thought leaders from around the world.

The Board is responsible for overseeing the technical content and rigour of our exams, ensuring that ADIT maintains the highest standards in international tax. Board members have taught at many leading universities, published countless articles textbooks, and advised individual taxpayers, corporations, governments and transnational institutions on an enormous range of cross-border tax subjects. Their contributions have motivated students from China, India, the USA and beyond.

We welcome three new members to the Board, who are sure to be an inspiration to many students in their regions.

In Australia, Chloe Burnett is a Senior Counsel specialising in tax and revenue law at Selborne Wentworth Chambers. She also serves as VP of the Australian Branch of the International Fiscal Association (IFA) and teaches at the Sydney School of Law.

In India, KR Girish works at the International Tax Research and Analysis Foundation and runs his own practice, KR Girish and Associates in Bangalore. He was previously President of the Bangalore Chamber of Industry and Commerce.

Professor Jennifer Roeleveld is an Emeritus Professor and Director of the Tax Unit for Fiscal Research at the University of Cape Town, and President of the South African Branch of the IFA. Her appointment as the inaugural Academic Board member in South Africa promises to help us serve our growing community in southern Africa.

Our newest members join Prof Philip Baker KC, Prof Rita de la Feria, Malcolm Gammie KC, Prof Ruth Mason, Prof Zhu Qing, Prof Diane Ring, Prof Luis Eduardo Schoueri, Prof Kees Van Raad, Jefferson VanderWolk and Chairman Jim Robertson on the Board. To learn more about the ADIT Academic Board members and their work, visit www.tax.org.uk/adit/academic-board.

Committee

CIOT Examination Committee: volunteers sought!

The CIOT Examination Committee is looking for two volunteers – who will be CIOT members, at least three years post qualified and with a specialism of inheritance tax or corporate tax – to join the committee and play an active part in its work.

The primary function of the committee (acting under the delegated authority of Council) is the supervision of the administration arrangements for the CTA exams, including the exam format and the results. Please note that you are precluded from joining if you are employed by a tuition provider.

The committee meets four times a year with three of those meetings held virtually and the other in London at the CIOT offices. The two meetings that review the May or November exam results can take up to three hours (and require close reading of the papers circulated beforehand); the other two will take less time. There will be occasional emails in between meetings. The total time commitment amounts to an estimate of around 21 hours a year.

By volunteering with the Examination Committee, your knowledge of the CTA exam process will significantly increase. You will be part of the group that sets the standards for admitting new members and gain experience of governing an examination and qualification process, standard setting and making judgement calls on difficult decisions.

Volunteering on a committee can grow your skills in diplomacy, delegation, communication and meeting management and governance generally. You will build relationships with others in the profession with a shared interest. You will be invited to attend the President's Reception each year, normally held in a prestigious venue in London in the Autumn with other committee and Council members.

All reasonable travel expenses are claimable under our volunteer expenses policy for the one or two in-person meetings. You will be joining a network of CIOT volunteers that numbers nearly 700 tax professionals across education, technical policy, the branch network, LITRG, membership and Council.

You are very welcome to contact Jude Maidment (jmaidment@ciot.org.uk) or Roz Baxter (rbaxter@ciot.org.uk) to discuss the role if you are interested, before submitting a brief CV to Jude.

A MEMBER'S VIEW

Claire Galineau

Tax Policy Associate Director, Deloitte LLP

This month's member spotlight is on Claire Galineau CTA, Tax Policy Associate Director at Deloitte and member of ADIT.

How did you find out about a career in tax?

After a Bachelor of Business Law at the University of Nancy, France, I completed a Master of Laws with Queen Mary University of London, focusing on European and International taxation. So I guess you could say I had an early interest in the topic. I started working in Luxembourg a few months after the LuxLeaks came out and shortly before the State Aid investigations were opened by the European Commission. In hindsight, that was a lucky time to start a career in tax as it allowed me to work with very senior people, putting my skills in competition and tax law into good use straight away.

Why is the CIOT qualification important?

When I moved back to the UK after two years working in Luxembourg, I wanted to demonstrate that I could provide advice on UK tax matters, as well as international tax issues. I did this by becoming a Chartered Tax Adviser and also finishing the Advanced Diploma in International Taxation (ADIT), which I had started during my Master's with the CIOT. I fondly remember Bill Dodwell, then President of the CIOT, delivering both certificates at the same admission ceremony back in 2017.

Why did you pursue a career in tax?

I like the challenging environment: no two days are ever the same in tax! In the last couple of years, I've pivoted to tax policy with a sustainability and climate angle. This is my ikigai: I've always been passionate about climate, so I find working on solutions to use the tax system more efficiently to help achieve net zero goals really rewarding. Last June, I joined the CIOT Climate Change Working Group, which considers the implications of climate change for UK tax policy.

How would you describe yourself in three words?

Curious, collaborative and unrelentingly challenging the status quo.

Who has influenced you in your career so far?

For me, having a coach, a mentor and a sponsor (or several!) very early on in my career helped me to seek new opportunities. Now, I'm at a stage where I can nurture new talents, pass on the baton if you will, and I'm really enjoying doing this.

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

It will be hard, but you can do hard things! I think people underestimate the time and dedication needed but it's also only a phase in your career: it's worth pushing yourself.

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

Sustainability will become increasingly important for businesses, individuals and the economy at large. It might feel overwhelming at first but you can upskill yourself relatively fast.

What advice would you give to your future self?

You're exactly where you need to be.

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

I love pop culture and always try to insert references in blogs and articles. That's anything from Troye Sivan and Heartstopper to movies starring Timothée Chalamet. If I weren't a tax adviser, I would love to work in the music or cinema industry.

Contact

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

GROSVENOR

Head of Tax Grosvenor Family Office

Chester
£excellent + benefits

This is an exciting opportunity for a senior private client professional to work in-house.

Head of Tax is a key role in the Grosvenor Family Office which supports the shareholders of a privately owned international organisation whose activities span urban property, food and agtech investment, rural estate management, social enterprise and support for philanthropic initiatives. In this role, you will provide tax advice on private client trusts and related tax matters. You will lead a team of tax professionals and work closely with other senior finance leaders as well as a property tax team (based in London).

The role requires a minimum of three days a week on site and some travel to London. Day to day, this will include:

- Managing all aspects of taxation and structuring for the Grosvenor Family Office and associated businesses, including managing external advisors.
- Ensuring an effective tax compliance and advisory service is delivered to all Grosvenor Family Office clients/Trustees/family members and businesses.
- Managing the Grosvenor Family Office relationship with HMRC, agreeing IHT charges and seeking clearances as necessary.
- Considering and identifying tax planning and structuring opportunities and requirements.
- Supporting businesses and other teams in the Grosvenor Family Office on trading matters, investment structuring and supporting the Property Tax team on trust aspects of tax advice.
- Management and development of a team of tax staff.

This role would suit an experienced private client professional who has dealt with ultra-high-net-worth families and their complex tax affairs, or an owner managed business specialist who has experience of considering trust taxation matters. You may currently work in practice or within a family office. Candidates looking to relocate will also be considered.

About Grosvenor Family Office & Rural Estates

The Grosvenor Family Office is responsible for the management of operational and advisory support services, including activities focused on heritage and conservation. Part of the Family Office, the Grosvenor Rural Estates teams are responsible for the long-term stewardship of three rural estates in the United Kingdom.

Working to protect, enhance, and restore sensitive environmental habitats within these unique locations and improving local property and places, our aim is to be a leading example of sustainability within the rural economy - contributing to the economic, social, and environmental wellbeing of the communities we are part of.

We are a values-led organisation which represents the Grosvenor family. Our work in rural estate management alongside Grosvenor's other activities in international urban property, food and agtech and support for philanthropic initiatives, shares a common purpose – to deliver lasting commercial, social and environmental benefit – addressing today's needs while taking responsibility for those of future generations.

Opportunities like this do not come around very often so get in touch today for a confidential discussion to find out more.

Contact
Alison Riordan
07711006780
alison@taxrecruit.co.uk.

All direct applications, and those by third party recruitment agencies, will be forwarded to Longman Tax Recruitment.

longman
tax recruitment

www.taxrecruit.co.uk

Indirect Tax Manager

Salford – Peel Park Campus

Salary: £45,585 – £54,395

We are looking for an experienced financial professional to provide expert advice and guidance with respect to indirect taxes (primarily VAT) and to act as the first point of contact for all international tax issues within our organisation.

Reporting directly to the Head of Financial Accounting, you will be responsible for the completion and submission of the group VAT return, ensuring University compliance with relevant tax legislation including imports and exports.

You will be a proactive team player with knowledge of VAT within a partial exemption environment. As a strong communicator, you will be able to build good relationships and explain complex tax matters to a range of colleagues across our organisation.

Key responsibilities

- Submission of VAT returns in line with statutory deadlines.
- Providing advice on finance systems and processes to ensure that indirect taxes are properly accounted for.
- Advising and supporting colleagues to utilise available VAT reliefs keeping colleagues abreast of legislation changes.
- Improving VAT Knowledge across the organisation through training.
- Ensuring compliance with international activity tax requirements.

About our department

The University of Salford Finance Department is responsible for the overall financial management of the institution and its subsidiaries. The department is made up of a team of 70 staff and provides a full range of financial services to the University, including: payroll, financial systems, management and financial accounting services and a travel office. We operate a devolved system of planning and budgeting and the Finance team works closely with Academic Units and Professional Services to maximize opportunities and ensure financial sustainability.

If you have any questions regarding the role, please contact Ian Dempsey at **i.m.dempsey@salford.ac.uk**

What's in it for you?

- At Salford, you'll find a career that works for you, with flexible working, great benefits, generous annual leave and continuous professional development.
- We have a range of services dedicated to your mental and physical wellbeing from an Employee Assistance Programme to discounted gym membership.
- We value diversity – in backgrounds and in experiences. Our difference makes us stronger, and together we share a passion for improving students' lives.
- We have a commitment to be Net Zero by 2038 and embed sustainability in all aspects of university life.
- And, most importantly, we offer you a rewarding career. A career where everything you do will make a difference – to the students, our local community and the world around you.
- At the University of Salford you'll join a place to be inspired, connect and thrive.

Sound like the role for you?
Apply now.

Director, Private Client Tax
Thames Valley (Reading)

About the role…

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

We are searching for a driven, ambitious and credible Director to lead our successful Reading Private Client team into a new era.

Our Crowe team in the Thames Valley is fab and is going from strength to strength. Our client numbers, fee income and headcount have grown year-on-year. Tax has been a crucial part of this performance and remains a key pillar of our future business strategy. Our tax team headcount has increased 66% since March 2020 and is a testament to this. So, leading this team will give the holder a golden opportunity to build something special.

About you…

We would love to hear from you if you can demonstrate excellent leadership qualities as well as strong **technical experience and knowledge**. 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 be 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 to develop new and existing business, leading to the growth and success of your team and the Private Client business.

About us…

Crowe is a leading tax, audit, 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.

If this opportunity appeals or you'd like to find out more, contact Jonathon Sheppard (**jon.sheppard@crowe.co.uk**) for further details or an informal discussion.

GHR

GEORGIANA HEAD

Taxation Recruitment

GEORGIANA HEAD

Director

Tel: 0113 426 6672
Mob: 07957 842 402

georgiana@ghrtax.com

In-house Tax Manager
Cardiff
£60,000 to £85,000 full or part time

Our client is a major UK retailer. The business seeks an experienced tax professional to manage all aspects of tax. This role would suit a qualified tax specialist (ICAS, ACA, CTA or equivalent) with proven experience of dealing with large UK corporate groups. It is likely that you will have had some previous in-house experience. This is an all-round, classic in-house tax role which would suit an experienced senior manager who has a background in corporate tax and who has developed broader experience of other taxes such as VAT. There is scope for development in the position, and the group is expanding and is at an exciting time in its development. **Call Georgiana Ref: 3405**

In-house VAT Manager
Part time – remote working with some travel to Carlisle or Wakefield

Our client is a major retail group. They seek an experienced indirect tax specialist to join their in-house tax function. In this role, you will be expected to: take ownership of VAT controls and assist with compliance tasks; identify process improvement opportunities for existing process and controls; and drive positive change across the organisation. You will also assist with VAT registrations across various jurisdictions and will manage the relationship with HMRC and advisors for all indirect tax issues. This role can be hybrid worked – part from home with some travel to Carlisle or Wakefield. Will consider 3- or 4-day week. Experience of Customs an advantage. **Call Georgiana Ref: 3404**

Audit of Tax
Manchester or London
£excellent

Top 10 firm seeks a qualified corporate tax professional (at Manager or Associate Director level) for key new role. You will work in a national team on tax audit work for clients. Working across an advisory and audit portfolio, this would suit someone who can evaluate judgements on complex tax risks and structures. The nature of the audit work within the tax line of service includes consideration of technically complex areas and review of third-party advisory reports. **Call Georgiana Ref: 3392**

Private Client Director or Partner
Manchester
£excellent

Our client is a Top 20 accountancy firm. They seek a private client director or 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**

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**

In-house Tax Manager
London, Peterborough or Manchester
£excellent

Financial Services group seeks a qualified Tax Manager (or Senior Manager). In this role, you will ensure all reporting requirements in respect of direct and indirect taxes across all jurisdictions are met for all the group of entities. The role also requires an understanding of employment tax requirements so as to be able to advise Payroll/Reward on any related queries. This includes preparation, review and submission of corporation tax and VAT returns and related ancillary reporting. A great opportunity in a new in-house team. This role reports to a Head of Tax. Excellent pay and benefits. Can be based in London, Peterborough or Manchester (hybrid 2 days in office). **Call Georgiana Ref: 3401**

www.georgianaheadrecruitment.com

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**

Tax Investigations – Senior Managers
Midlands and North
£excellent

Growing Tax Investigations team in a large independent firm is looking for experienced tax disputes experts at Associate Director level. They have slots in the Midlands (Leicester or Birmingham) and in the North (Leeds or Manchester). It's likely that you will be a former Inspector of Taxes who has made the transition into practice. This business covers the whole gamut from aspect enquiries to COP8 and COP9, and court work. Great quality work in a team full of ex-HMRC and Chartered Tax Advisors. Plenty of scope for personal and professional development. **Call Georgiana Ref: 3407**

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**

Group Tax Manager or Director
In-house – Manchester
£65,000 to £85,000 + benefits

This is a really exciting opportunity to be the first person in within a totally new in-house tax function. This highly profitable business seeks a qualified tax professional ACA, ICAS or CTA to join their finance team. You will help oversee, including dealing with external advisers. You will help with a wide range of projects such as overseas expansion. Could be full time or a 4 day week. Likely 2 days a week in the office. This is a great in-house role with plenty of scope for development. Good benefits package too. Reports directly to the FD. **Call Georgiana Ref:3398**

Landed Estates Role
Harrogate
£excellent

This is an opportunity for a tax specialist with experience of landed estates to really make their mark in a growing Harrogate office. Would suit someone from a business that specialises in HNW families and their estates, someone who has experience of agricultural tax issues, property, land, capital taxes and trusts. Our client will consider a hire from Assistant Manager up to Senior Manager level. You will be part of a national team, and will work with the Head of Landed Estates in the UK. Could suit someone from a family office team who is looking for a role in Yorkshire. Harrogate is a lovely location and has easy access to beautiful countryside. **Call Georgiana Ref:3361**

Tax Trainer and Risk Review Manager
Manchester
£excellent

Brand new role in a rapidly growing multi-office firm. They seek a tax training manager who can also do some file review work for risk management checks. You will help develop an academy of new tax professionals, helping them study for ATT and CTA. Would suit someone who enjoys developing and mentoring more junior staff and who ideally already has experience of preparing study material and lecturing and training tax folk. This role will be fundamental to the next stage of development of this practice. Based from Manchester this role can be hybrid worked. Full time or 4-day week considered. **Call Georgiana Ref: 3408**

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

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 Audit Expert	Senior Tax Policy Specialist	Senior Tax Audit Lead