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Welcome
Supporting our members

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The Chancellor of the Exchequer, Jeremy Hunt has now issued his second Autumn Statement and our technical teams will be working hard to respond to the briefings and consultations. The reshuffle also saw the arrival of a new Financial Secretary to the Treasury, Nigel Huddleston, who started life at Deloitte and Arthur Anderson before moving into politics. We wrote to him about MTD on 14 November and you can see our letter at www.tax.org.uk/ref1248.

We are fortunate at the CIOT and ATT to have some very talented people working for us and we were really pleased that the ATT Technical Team have again been recognised by picking up the silver award for 'Best Association Team' at the Association Excellence Awards. This builds on their success earlier this year when they won the Outstanding Contribution to Taxation in 2022-23 by a Not-for-profit Organisation in the Taxation Awards. The CIOT was shortlisted at the Association Excellence Awards for the launch of the Diploma in Tax Technology, and ATT and CIOT were shortlisted together for the *Tax Adviser* magazine.

One of the aims of our joint EDI committee was to publish information for people who are returning to work after a break. Recently, we added pages on both our websites which cover everything that a returner to work needs to know, from understanding their rights when returning to what their CPD requirements are. On these pages you will also find a couple of stories by people outlining their experiences. Georgiana Head writes about these issues on page xx of this issue of *Tax Adviser*. If you would like to share your personal story on our website, do get in touch with our Head of Member Services, Emma Barklamb.

Can we please encourage members to submit your Annual Return online along with your subscription payment before the deadline of 31 January 2024. Both CIOT and ATT members are required to meet high professional standards and this is essential to maintaining trust in the tax profession by the public, HMRC and others. The Annual Return is an important part of maintaining standards, as we ask you to confirm that a number of membership and legal requirements have been met.

Very few people have not been affected by the cost of living crisis engulfing our country and we try to help and support our members where we are able. Both CIOT and ATT have options to spread the cost of subscriptions by monthly Direct Debit and we also provide several low cost and free webinars and lectures through our branches network to help with CPD requirements. Visit our website for details of up-and-coming webinars at www.tax.org.uk/branch-webinars. ATT members also receive a copy of the Finance Act, *Tolley's Tax Guide*, *Whillans Tax Tables* and a mouse mat at relevant times throughout the year. This is in addition to *Tax Adviser* magazine and the weekly newsletter which all ATT and CIOT members receive.

We would like to wish all the Advanced Diploma in International Tax (ADIT) students the very best in their exams taking place between 12 and 14 December.

Thank you for your continued support and we are looking forward to 2024. With our best wishes for the Festive season and the New Year!

December 2023

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ONLINE PICKS OF THE MONTH

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SENGA PRIOR
DEPUTY PRESIDENT

The weird world of Budgets

> The longest continuous speech was given by Gladstone in 1853, lasting for four hours and 45 minutes.

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

I am submitting my article for print some time before the Autumn Statement takes place. I could make my own predictions as to what may be announced but so many conflicting stories in the press make it almost impossible to do so. Suggestions that the tax rates remain the same or increase appear one day then change to predictions that they will drop the next.

If I were forced to make one forecast, I would suggest that there will be an announcement on changes to inheritance tax. Further than that, I am not brave enough to commit.

I can, though, be absolutely sure that our technical officers and press officers will be working hard immediately after the statement to issue press statements and blogs on the changes announced, as well as considering the consultations announced by the government to decide on ATT's responses. In addition, they will be reading through any proposals and feeding back to our members the implications for them and their clients.

As I can't give you any wise words on the Autumn Statement, I thought I would share a few interesting and odd facts on UK annual statements and budgets.

1. The first reference to a 'budget' is thought to have taken place following the collapse of the South Sea Company in the early 1720s when Sir Robert Walpole was prime minister.
2. The word Budget is thought to come from the old French word 'bougette' meaning small leather bag such as a coin bag.
3. An early edition of the Oxford English Dictionary notes that the phrase 'to open one's budget' meant to reveal a secret – perhaps an unwelcome one. So things haven't changed much.
4. We are used to seeing the Chancellor of the day holding up the famous red box. The box doesn't hold the budget, usually only the Chancellor's speech and notes.
5. William Gladstone's red box was made in around 1860 and used by every chancellor except Jim Callaghan and Gordon Brown, until George Osborne used it for the last time in June 2010. Gladstone's box can now be seen in the Churchill War Rooms.
6. In 1868, George Ward Hunt left the red box at home in 11 Downing Street and held up parliament for some time while the speech was retrieved. This may explain the ritual of holding up the red box to the public to reassure us that all is in order.
7. The longest continuous speech was given by Gladstone in 1853, lasting for four hours and 45 minutes. Disraeli's speech in 1852 lasted five hours but did include a break. Disraeli also holds the record for the shortest speech at 45 minutes in 1876 – perhaps his colleagues persuaded him that brevity was the way forward.
8. By tradition, the Chancellor of the Exchequer is permitted to drink whatever they want while delivering the budget, including alcohol (which is otherwise banned in the House of Commons). Gladstone chose sherry with a beaten egg (probably to sustain him during his record speech!). Many, including Kenneth Clarke, had whisky as their tipple, and Churchill favoured brandy, while others like Rishi Sunak stuck to water.
9. When Norman Lamont was chancellor in the early 1990s he carried a bottle of whisky in the red box and William Hague who was his aide at the time carried the speech in a poly bag. Hague has been quoted as saying: 'It would have been a major disaster if the bag had fallen open.'
10. The first live televised budget was John Major's in 1990.
11. Traditionally, the Chairman of Ways and Means (Deputy Speaker of the House) chairs the budget rather than the Speaker. This is because in the past the speaker was thought to be too close to the monarch.
12. Sir Geffrey Howe, Chancellor from 1979 to 1983 must have really enjoyed the post as he named his dog Budget.

Whatever oddities this Autumn Statement brings up you can be sure that the ATT will be on hand to guide you through the changes.

In conclusion, in addition to wishing you and your families compliments of the festive season when it comes, I will leave you with these 'wise' words from George W Bush: 'It's clearly a budget. It has lots of numbers in it.'

Senga Prior
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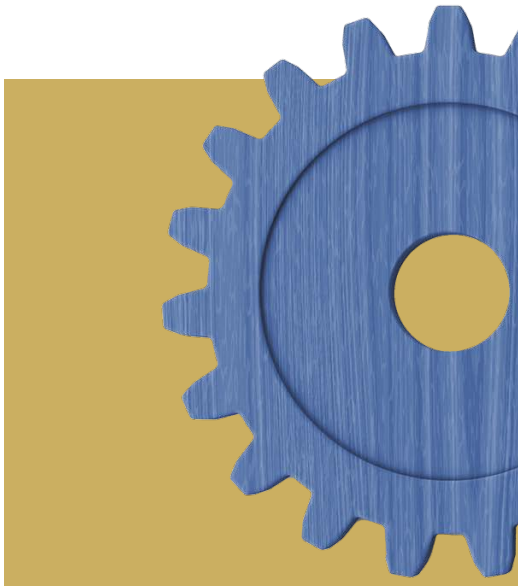
Three party transactions

Who is receiving a supply?

In the second article of a two-part series, we consider the challenges of three-party transactions as far as input tax is concerned.

by Neil Warren



When we think about the VAT implications of a three-party deal, we usually reflect on the output tax challenges, and I considered the practical issues of these supplies in my previous article for *Tax Adviser*. See 'Three-party transactions: a complicated web' (October 2023).

However, input tax problems can also arise when there are three parties in a transaction, and I have always enjoyed reading tribunal case reports on this subject. Predicting the decisions of the judges is like trying to guess the result of a football match between two finely balanced teams of equal standards, such as when Liverpool play Everton in the Merseyside derby. I will consider some historic cases in this article.

Landmark case: input tax on accountancy fees

Imagine the following scenario: a business has financial problems and its bank is getting fidgety about whether the business will be able to service its borrowings. The bank instructs a firm of accountants and tax advisers to do a major review/overhaul of the business finances and yes – you've guessed it – the borrower must pay the professionals for these fees rather than the bank.

In a nutshell, these were the facts of the long-running case of *Airtours Holidays Transport Ltd v HMRC* [2016] UKSC 21, which was finally heard in the Court of Appeal after a lengthy saga that ran for more episodes than a soap opera storyline. Needless to say, Airtours claimed input tax on the professional fees in the above scenario, which HMRC disallowed because the supply of services, the officer claimed, was between the professionals (PwC) and the bank and not Airtours. HMRC won the case.

Lesson one: Just because a business pays the bill for goods or services, this does not give it an automatic right to claim input tax, even if the invoice is also made out to the business making the payment.

For a practical example of a three-party challenge, see ***Input tax and connected parties***.

HMRC guidance

The Airtours dispute basically came down to the important question that we must consider in the world of VAT: 'Who is supplying what and to whom?' We know that PwC was the 'who' and its professional accountancy services was the 'what'. The key word in the case was 'whom'.

The HMRC VAT Input Tax manual gives extensive practical guidance and reflects the impact of historic case law at both UK and EU level. The question of considering who is the 'recipient of supply' for input tax purposes is helpfully analysed by policy note VIT13300 in the manual. I have extracted five important points. See ***HMRC VAT Input Tax manual: who is receiving a supply?***

Case law: landlord and tenant

Common sense prevailed in the case of *Ashtons Legal (A Partnership)* [2022]

> **The important question that we must consider in the world of VAT is: 'Who is supplying what and to whom?'**

Key Points

What is the issue?
The long-running tribunal case of *Airtours Holidays Transport Ltd* was lost by the taxpayer, with the judge agreeing with HMRC that supplies of accountancy services were made to the bank, even though Airtours had paid the bill. It is all about which party is being supplied with goods and services as far as input tax is concerned.

What does it mean for me?
Only a party that is receiving a supply of goods or services can claim input tax. A business cannot deflect a purchase to another business just by asking the supplier to address the invoice to that business, even if the other business pays the bill.

What can I take away?
It is common for property leases to be in the name of an individual director rather than the VAT registered trading company but HMRC will allow the trading company to claim input tax if certain conditions are met.

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INPUT TAX AND CONNECTED PARTIES

ABC Legal Ltd only has taxable income and is registered for VAT, whereas ABC Financial Services is an associated business and only has exempt income, so is not registered. The directors have arranged for all accountancy fees and telephone bills of ABC Financial Services to be invoiced to ABC Legal Ltd so that it can claim input tax.

This is incorrect; the supply of services is from the accountants and telephone supplier to ABC Financial Services. This cannot be changed by asking for invoices to be addressed to ABC Legal Ltd, even if that business pays the bill.

Note: See the commentary about the *Ashtons Legal* case, which involved rental invoices issued to a connected business by the landlord. This case was won by the taxpayer.

HMRC VAT INPUT TAX MANUAL: WHO IS RECEIVING A SUPPLY?

1. Only the person to whom a supply is made, for use in the furtherance of their taxable business, can make a valid input tax claim.
2. The above outcome overrides the question of who may have paid for the supply and also about which business holds the purchase invoice that is relevant to the supply.
3. It is therefore possible for a business to pay a supplier and receive a tax invoice addressed to it but still not be able to claim input tax.
4. The issues are more straightforward for goods because ownership is a requirement of claiming input tax – and ownership is a legal issue. However, the guidance highlights the fact that import VAT has been incorrectly claimed by third parties and agents in some cases (see Revenue and Customs Brief 2 (2019) issued in April 2019).
5. Agents can be given power to act on behalf of their client to enter into contracts with third parties, receiving and issuing invoices in their own name for imported goods. The agents can claim input tax but must treat the transactions as an onward supply by themselves to the customer and charge output tax (Value Added Tax Act 1994 s 47).

UKFTT 422), about whether a partnership could claim input tax on rental invoices issued to a separate limited company.

Ashtons is a partnership which trades as solicitors and legal advisers. Due to a problem with the Law of Property Act 1925, it could not enter into a lease agreement with the landlord for its trading premises because it had more than four partners.

The lease was therefore agreed with a dormant associated company Ashtons Legal Ltd, with the following outcome:

- The partnership would still pay all rent to the landlord.
- The premises were wholly used for the taxable business supplies of the partnership.
- The rental invoices were addressed to the limited company in accordance with the lease but sent directly to an employee of the partnership.

HMRC said that the partnership could not claim input tax on the rental invoices because the supply of land services was from the landlord to the company. The onward supply from the company to the firm would then be exempt from VAT because the company had not opted to tax the building or registered for VAT.

The taxpayer's view was that the commercial reality was that there was only one lease between the landlord and the partnership. The company's involvement was irrelevant and only necessary because of restrictions imposed by the 1925 Act.

The judge focused on the *Airtours* case that I considered above. She concluded that it supported the taxpayer's view that the 'commercial and economic reality' of the deal was that the partnership had received the supply of rent and could therefore claim input tax. She noted that the company was a 'mere cipher' and had been inserted into the lease because of the issues created by the 1925 Act. The appeal was allowed.

Lesson two: The commercial reality of an arrangement is important for input tax purposes.

Lease in director's name

HMRC's guidance in its policy note VAT Income Tax VIT13440 deals with the situation when a lease is recorded in the name of an individual director rather than a partnership or company – allowing input tax to be claimed by the partnership or company if certain conditions are met.

The guidance accepts that a relaxed approach to claiming input tax is necessary – as the motive of these arrangements is because 'it is easier for the landlord to take effective debt recovery action if the rent is not paid.' I always enjoy reading HMRC guidance that recognises a business-world challenge that needs a common-sense approach.

There are three conditions that must be met:

- The individual director is not registered for VAT in their own name.
- The director must pass on the rental invoices to the trading business, so they can be processed and paid to the landlord.
- The whole of the premises is used by the business for the purposes of its business activities; i.e. not by the director.

Final case law

The key issue in the case of *Mpala Mufwankolo* [2021] UKFTT 388 was whether a publican could claim input tax on rent for his licensed premises. He traded as The Pride of Tottenham and the landlord had opted to tax his interest in the property.

HMRC identified three problems with the taxpayer's input tax claims:

- the lease for the premises was in his wife's name, or possibly a partnership between the two of them;
- no VAT invoices were available to support the claim; and
- there was no evidence that the business had made any payments for the rent.

> **The guidance accepts that a relaxed approach to claiming input tax is necessary.**

The judge noted that the input tax evidence was 'defective'. There were no VAT invoices for rent addressed to the appellant or evidence of any partnership agreement between him and his wife.

Lesson 3: A business must justify its input tax claims rather than treat them as an automatic right. A successful input tax claim has to overcome more hurdles than the winning horse in the Grand National at Aintree racecourse.

There was also no evidence of rent being paid in the business bank statements. The landlord's rent demands were addressed to the taxpayer's wife.

The taxpayer failed to persuade the tribunal that he could claim input tax and the appeal was dismissed.

Conclusion

There's an old saying which is very useful for all tax advisers: 'If something sounds too good to be true, it usually is.'

If any of your clients proudly pronounce that they have achieved the utopian outcome of claiming input tax on a supply of goods or services without accounting for output tax as part of an onward supply – other than on general overheads, of course – they might have a major problem lurking in the shark infested waters of the nation's favourite tax.

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The season of goodwill
Reducing tax liabilities

How much festive cheer can employers spread without incurring tax liabilities? And how can they support employees all year round?

by Joe Rowsell

During the festive season, employers will inevitably be thinking about rewarding their employees by way of Christmas presents and/or a Christmas party. Employers should be aware of a range of seasonal tax issues to ensure compliance and make the most tax-efficient decisions.

Christmas presents

Typically, giving an employee a gift of any sort would in theory be a taxable benefit. Thankfully, parliament has decided to be a little more generous, and it is possible for employers to rely on the 'trivial benefits' exemption.

For a benefit to be trivial it must meet the following criteria:

- the cost of providing the benefit does not exceed £50;
- the benefit is not cash or a cash voucher;
- the benefit is not provided under salary sacrifice arrangements or any other contractual obligation; and
- the benefit is not provided as a reward for services.

The trivial benefits exemption can apply to any other gifts provided to employees throughout the year where the conditions are met. This could apply to Easter eggs, wedding presents, new baby presents, and so on. They cannot apply to any thank you gifts, as these would be classed as a reward for service.

Care also needs to be taken, as HMRC can challenge anything provided regularly under the trivial benefit exemption, as it might create a 'legitimate expectation'. An example could be payday drinks. HMRC can argue that this expectation means that the trivial benefit exemption will not apply.

Where employers wish to provide any gifts above £50 in value, this can still be done without a taxable benefit arising for the employee. However, these would need to be included in a PAYE Settlement Agreement, where the employer would pay the tax due on the benefit, on a grossed-up basis, on the employee's behalf.

There are additional rules for directors and other office holders of close companies, who will be subject to an annual cap of £300. Where the benefit is provided to a member of the employee's family or household who is not an employee of the employer, this benefit will count towards the £300 exempt amount. Where the director or office holder's family or household member is also an employee of the company, they will also be subject to a £300 cap.

Key Points

What is the issue?
Employers should be aware of a range of seasonal tax issues to ensure compliance and make the most tax-efficient decisions.

What does it mean for me?
Alongside the provision of trivial benefits and making use of the annual events exemption, there are several other ways to reward employees while also making use of certain tax rules.

What can I take away?
It is possible to put together a package of tax efficient benefits to ease the financial burden for employees, including employee parking, employee assistance programmes, staff discounts, holiday buy back, birthday vouchers, Christmas gifts and additional homeworking costs.

Christmas parties (and other annual events)

The provision of a staff Christmas party would generally be considered as staff entertainment and therefore a taxable benefit. However, HMRC has an annual events exemption, meaning that if the annual event meets certain conditions, it is exempt from tax arising from the benefit provided. The conditions are: it is an annual event; it is open to all employees; and it costs less than £150 per head.

This exemption can be spread over different events, such as a summer barbecue and a Christmas party. However, the cost per head of both events combined must not be over £150. Where this is the case, only one event will be eligible for the exemption, and the other must be reported through a PAYE Settlement Agreement.

The cost per head is reached by considering every cost that goes into the event, such as the venue, food and drinks. It will also include any overnight accommodation and transport provided, and the amount must include VAT. The total cost is then divided by the total number of attendees, including any non-employees.

If the business has more than one location, an annual event that is open to all staff based at one location is still 'open to all'. Employers can put on separate parties for different departments if all of the employees can attend at least one of them.

Other tax-efficient rewards

The cost of living crisis has led many employers to think about how they can support their employees all year round, not just at Christmas. Alongside the provision of trivial benefits and making use of the annual events exemption, there are several other ways to reward employees while also making use of certain tax rules.

By thinking creatively, it is possible to put together a package of tax efficient benefits that may help to ease the financial burden for employees. This could include employee car parking, employee assistance programmes, staff discounts, holiday buy back, birthday vouchers, Christmas gifts and additional homeworking costs. However, the rules relating to tax efficient benefits can be complicated and employers must meet strict conditions for any benefit in kind charge to be avoided.

Provision of food at work

Something that is easy to introduce, and which may have a significant impact on employee wellbeing, is providing food at work. This provides more value for the financial investment involved than one-off cash payments, as money spent on food for employees is not subject to tax and NICs.

Various criteria must be met to avoid tax and NICs deductions on food at work. For every £100 pay given to an employee, it will be subject to tax and NICs. If £100 is spent on food for employees, it will not be subject to any such deductions if the relevant criteria are met.

The canteen exemption

Tax law permits that subsidised meals on the employer's premises or in a canteen can be provided for free, without any tax implications. That is provided the following conditions are met:

- All employees must have the option of a free meal (whether or not they choose to take up the offer).
- The meals must be available to all employees at a particular site (but do not have to be available at all the employer's sites).
- The meals must be provided in a canteen (could be off-site) or on-site (for example, the kitchen or at reception).
- Meals must be on a 'reasonable' scale.
- Meals cannot be provided in conjunction with a salary sacrifice arrangement or flexible remuneration arrangements.

This would not apply to any food provided that HMRC would deem to be 'staff entertaining' – for example, pizza and alcohol in the office after work – unless covered by the annual events exemption limit of £150. Nor can the exemption apply to reimbursements to employees for the cost of food brought into the office.

This still leaves a lot of scope for employers. Where there is a canteen, the employer can simply provide meals for free. If not, an employer could leave lunch bags on reception for employees if all are invited to take the meals.

Interest-free loans

Many businesses already provide loans to help employees spread the cost of annual travel season tickets. However, this approach could also be used to provide hardship loans to help employees pay for heating bills, for example. Considerations here include the employee's ability to repay the loan and the value of the loans being offered. Tax rules specify that employers can provide tax-free loans of up to £10,000, without incurring a benefit in kind.

Salary sacrifice

Salary sacrifice schemes allow employees to agree to a reduced salary in exchange for a benefit. The benefit is exempt from a benefit in kind charge if it is: payments into pension schemes; employer provided pensions advice; workplace nurseries; childcare vouchers and directly contracted employer provided childcare that started on or before 4 October 2018; or bicycles and cycling safety equipment. This can be a tax efficient approach offering significant tax and NICs savings. These savings result from the benefit being exempt from, or incurring lower, tax and NICs charges than the amount of salary given up.

Electric vehicle schemes are particularly popular now, offering employees a tax efficient benefit, reduced fuel costs and in some cases free installation of a charging point.

Other benefits are taxable based on the higher of the salary given up or the taxable amount under benefit in kind rules.

Employee suggestion schemes

Employee suggestion schemes are programmes designed to encourage employees to share their ideas, suggestions and solutions to enhance the operations, processes, products or services of a company. Cash rewards to employees are usually subject to tax and NICs; however, through an employee suggestion scheme, they may be exempt from tax and NICs.

There are two kinds of award under employee suggestion schemes, which must be open to all staff. The first are encouragement awards for good suggestions or to reward employees for special effort. To remain exempt, the value of this type of reward must not exceed £25. The other type are financial benefit awards for suggestions that will save or make the business money. If the suggestion results in a financial benefit for the company, then financial benefit awards are exempt from tax and NICs, with an upper limit of:

- 50% of the money the suggestion is expected to make or save the business the year after it is put into action; or
- 10% of the money it is expected to make or save in the first five years.

The exemption for financial benefit awards has a maximum limit of up to £5,000 regardless of the financial benefit for the company. However, not all types of rewards are eligible for tax exemptions. For instance, any rewards that are given as part of an employee's contract of employment or within the scope of their normal duties will be subject to income tax and NICs.

Employee suggestion schemes serve as a tool to unlock the potential of a company's workforce but it is essential to ensure compliance with tax and NICs regulations.

Rewards are not just for Christmas

Christmas gifts and Christmas parties are always welcomed by employees as an enjoyable way to end the calendar year, and as a show of appreciation by their employer. By thinking outside the box, employers can provide employees with a wide range of exempt or tax efficient benefits throughout the year. The ideas mentioned above can really help with staff rete

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Tax and legal status tests

Nothing to smile about

© Getty images/iStockphoto

The case of *Smile Care South* highlights the complexities of tax and employment legal status, and the impact of the difference between them.

by Susan Ball and Charlie Barnes

Under employment law, there are three status categories: employee, worker and self-employed. Employees and workers are entitled to rights such as the National Minimum Wage, holiday pay and pension auto-enrolment. Employees are also entitled not to be unfairly dismissed, and to statutory redundancy pay after two years' continuous service.

In contrast, tax only recognises two categories: employed and self-employed. There is no recognised definition of a worker. This can often create a diversion in outcomes of the assessments for tax and legal status.

The government consulted over the proposal to align the status tests, but in 2022 concluded that there was no need to introduce any changes at the present time. That was seen by many as a missed opportunity to bring some much needed simplification to the assessment for both employers/engagers and those working for them.

In a recent judicial ruling involving a dentist, the Employment Tribunal provided a stark reminder of the difference between the legal and tax assessments for employment status, and why it is important for employers and their professional advisers to consider both perspectives. In this article, we examine that case and revisit the critical factors in ascertaining an individual's employment status. We also explore the disparities that arise between the status assessments conducted by HMRC and the Employment Tribunal, and the broader implications for regulatory compliance.

Interestingly, the employment status of dental associates has specifically been discussed many times in recent years. Up until 6 April 2023, for tax purposes dentists had been covered by HMRC guidance that stated:

> 'It should be noted that there are standard forms of agreement for "associate" dentists which have been approved by the British Dental Association (BDA) and the Dental Practitioners Association (DPA). These agreements relate to dentists practising as associates in premises run by another dentist. Where these agreements are used and the terms are followed, the income of the associate dentist is assessable under trading income rules and not as employment income. In these circumstances the dentist is liable for Class 2/4 NICs and not Class 1 NICs.'

Key Points

What is the issue?
Under employment law, there are three status categories: employee, worker and self-employed. In contrast, tax only recognises two categories: employed and self-employed.

What does it mean for me?
A recent judicial ruling involving a dentist provided a stark reminder of the difference between the legal and tax assessments for employment status, and why it is important to consider both perspectives.

What can I take away?
The challenge for businesses is that status cases are based on an assessment of the facts of the particular case, and that means each arrangement should be considered on its own merits.

However, following a review, HMRC withdrew its guidance, so dental practices and associates will now be required to consider the tax status of all new dentists. They should also have assessed, ongoing dental associate agreements on a case-by-case basis in line with the HMRC Employment Status Manual ESM0500.

Self-employed dentist claims holiday pay and pension auto-enrolment

The case of *Dr M Henry v Smile Care South Ltd and others* (3200328/2023) concerned a dentist who was working as a self-

employed contractor with Smile Care South (Smile). The contract between the parties made it clear the dentist was self-employed and stated that 'nothing within it shall constitute a partnership or a contract of employment'.

The relationship became fractious, however, when Smile sought to relocate the dentist from London to Norwich, where a new dental practice had recently opened. The dentist voiced his opposition to this proposed relocation, and his contract was subsequently terminated by Smile.

In response, the dentist initiated an Employment Tribunal claim, alleging that he was a worker, and therefore was owed money for unpaid pension contributions and holiday pay which had accrued during his engagement. At the Employment Tribunal, he succeeded with his claim that he was a worker.

Employment status is a multifactorial assessment

Assessing an individual's employment status for both tax and legal rights requires a consideration of many factors, which include:

- the existence of a contract (whether or not it is in writing) between the individual and the employer to perform services;
- whether the individual is personally required to perform the services – the requirement for personal service is often analysed through the lens of whether the individual has the unfettered right to appoint a substitute;
- a minimum degree of commitment on both sides, stipulating an obligation on the business to provide work, and the individual to perform the work – commonly referred to as a 'mutuality of obligation';
- supervision, direction or control over how, where and when the work is performed;
- whether the individual operates independently and shares financial risk in the performance of the work;
- whether they are supplied with tools and equipment to do the work; and
- their integration into the business (for example, the requirement to wear branded uniform or have a company email address).

Both the terms of the contract and the reality of what happens in practice must be considered together when carrying out the assessment. It is worth noting that a conditional right to provide a substitute may or may not be consistent with personal service; it will depend on the precise contractual terms, and the degree to which the right is limited or occasional.

Employers have the option to include a 'substitution' clause in the contract, stipulating that the individual has the right to designate a substitute to perform the work. However, for this clause to carry weight in the eyes of the tribunal, it must be convincingly demonstrated as a bona fide provision, and the individual must have the practical ability to appoint a substitute when necessary.

The assessments differ, however, as the starting point for employment legal rights is to consider the purpose of the legislation, which is the protection of individuals subordinate to another party. They are about ensuring that potentially vulnerable workers, who are subordinates and lack bargaining power, can't have rights withheld.

This route is not available in tax cases, as confirmed in *HMRC v Atholl House Productions Ltd* [2022] EWCA Civ 501 in April 2022. The Court of Appeal established important points of principle for tax, drawn from *Ready Mixed Concrete (South-East) Ltd v Minister for Pensions* [1968] 2 QB 497 ('*RMC*'). *RMC* describes key areas to be considered, including personal service, mutuality of obligation, control and then 'other factors'. Other factors help to establish whether there is anything that might differ from the conclusion drawn after personal service, mutuality and control are considered, such as being 'in business on own account'.

Assessing an individual's employment status for both tax and legal rights requires a consideration of many factors.

Control and subordinate relationship

The contrast in outcomes is evident in the case of *Smile Care South*. HMRC had already concluded that Dr Henry was self-employed for tax purposes; however, the Employment Tribunal concluded the dentist was a worker.

When considering both the terms of the contract and the reality of the relationship, and looking at the purpose of the legislation, the tribunal concluded the dentist was under the control and in a subordinate relationship to Smile. Key factors it relied on when reaching this conclusion are set out below:

1. **Direction, control and supervision:** The dentist, Dr Henry, was under the direction, control and supervision of Smile. He was obliged under the contract for the dentist to undergo a supervised training period to practice dentistry with Smile. He could only offer services when the Smile practice was open. He had no power to remove a mobility clause in his contract, despite being unhappy with it.
2. **Service:** In practice, the dentist was unable to provide a service thereby necessitating personal service.
3. **Integration:** The dentist was deeply integrated into and reliant on Smile's operations. All administrative aspects related to patient treatments were managed by Smile. Access to patients was entirely facilitated by Smile, which presented Dr Henry to patients as an integral member of their team. Any correspondence between the dentist and the patients was headed 'Smile Dental Care' and his business cards carried the Smile logo. Whilst the uniform he wore to work was not branded, it was near identical to the uniform worn by Smile employees.
4. **Mutuality of obligation:** There was a degree of mutuality of obligation – the dentist did not refuse assignments from Smile.
5. **Status:** The dentist was not in business on his own account, as he did not retain patients after the engagement with Smile concluded.

As a consequence, the tribunal found that the dentist should be entitled to compensation for any unpaid holiday pay and employer pension contributions that he should have been entitled to during his engagement with Smile.

Regulatory implications

The challenge for businesses is that status cases are based on an assessment of the facts of the particular case, and that means each arrangement should be considered on its own merits. Added to this complexity is the different outcomes which can be reached by HMRC and the Employment Tribunal, as demonstrated in this case.

Historically, businesses might have worried more about a HMRC challenge, as this can often impact more than one individual and result in outstanding tax and NICs assessments covering up to six years. This was often seen as the highest cost of getting the wrong answer (despite perhaps a set off of any tax already paid due to the NICs costs).

This resulted in some businesses stopping at a conclusion that an individual is self-employed for tax purposes, and not worrying about the employment legal position (as this was more likely to be challenged by one individual). However, businesses should undertake a separate

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employment legal rights assessment, given the different principles that apply to the test, and the fact that that the Unions and Pensions Regulator have this within their sights. This is particularly the case where the assessment has included pointers towards employment and self-employment, as worker status can be said to be the middle ground. Alongside the tax and NICs risk, businesses should consider the exposure to the costs of litigation as was the case in *Smile Care South*.

Secondly, there will be the liability for unpaid holiday pay, which the Supreme Court has recently confirmed can go back up to two years (and further in Northern Ireland).

Finally, there is also regulatory enforcement from the likes of the Pensions Regulator, which enforces compliance with pension auto-enrolment. The misclassification of an individual as self-employed has ramifications regarding pension contributions. When individuals are wrongly classified as self-employed, they are not auto-enrolled into qualifying pension schemes. Consequently, the Pensions Regulator has the power to mandate employers to auto-enrol such individuals into a qualifying pension scheme and backdate the missed employer pension contributions to the point at which the individual should have originally been auto-enrolled. In some cases, the Pensions Regulator can also enforce employers to reimburse the missed employee pension contributions too.

Conclusion

The *Smile Care South* case serves as a notable example of the differing outcomes which can emerge between legal and tax assessments of status categorisation.

The far-reaching implications of an incorrect assessment underscores the necessity for employers to diligently assess the employment status of their workforce. Regulators are increasingly vigilant in enforcing compliance with pension auto-enrolment regulations and holding employers accountable for misclassifications.

One can't help but think the government has missed an opportunity to simplify this issue and create more certainty for business and individuals over their obligations and entitlements.

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Wales and devolved tax powers

Scope to do more?

We ask what the future holds for taxation in Wales following the 2014 devolution of local taxes and land taxes.

by Ritchie Tout and Kate Willis

Following the Wales Act 2014, the Senedd Cymru (the Welsh parliament) has control of local taxes (business rates and council tax), land transaction tax (the devolved equivalent to stamp duty land tax) and landfill disposals tax (replacing landfill tax in Wales).

Welsh Rates of Income Tax

The Senedd has the power to vary income tax rates in Wales, although its scope in this area is far more restricted than in Scotland. For example, the Senedd cannot change the income tax bands. It cannot therefore reduce the basic rate band and increase the higher rate bands. Preventing the Senedd from reducing the top rate band to encourage higher earners to move to Wales may have been the motive for the restriction, since the Welsh-English border is porous with many people living in Wales and working in England (as in the Bristol area) and many living in England and working in Wales (the Wrexham area).

If the Welsh income tax is lower than equivalent English rates, the reduction in revenue raised is deducted from the Block Grant – so really the only decision for the Senedd is whether to increase the rates. Taking such a step requires a full understanding of Welsh taxpayer attitudes to paying more tax in return for greater social funding. Higher taxes in Wales may also impact migration across the Welsh-English border.

Currently, Welsh income tax rates are the same as England and Northern Ireland. For taxpayers, there is no obvious change apart from a 'C' (standing for Cymru) at the start of their tax code to denote a Welsh taxpayer.

Land transaction tax

The land transaction tax threshold (LTT) is £225,000 (£25,000 lower than for stamp duty land tax (SDLT)) and the LTT rates and bands for more expensive or additional residential properties are higher than for SDLT. Apart from variations in rates and bands designed to take account of Welsh circumstances and priorities, there are relatively few substantive differences between LTT and SDLT, reflecting the policy aims of stability and consistency for taxpayers.

However, Wales is considering providing discretion for local authorities to impose additional land transaction tax charges for second homes and short-term holiday lets. Their aim is to impact the affordability and availability of permanent housing in some areas of Wales where second homes and short term holiday lets continue to proliferate.

Housing has been a political issue in Wales for many years. With a shortage in social housing dating back 40 years, second homes and holiday lets have an adverse impact on the local population, pushing house prices out of reach for many in popular areas.

Council tax

Councils in Wales have the power to charge up to 300% council tax on second homes and long-term empty properties. This has, however, allowed some second home owners to claim discrimination in having to pay a council tax premium, while owners of holiday lets previously registered for business rates can claim

discrimination in having to pay any rates of council tax at all.

More widely, an upcoming Local Government Finance Bill will provide for a council tax revaluation of all 1.5 million residential properties in Wales with a new system of bands and rates. In conjunction with revaluation, adding more bands covering the entire property value scale and re-evaluating the bands to align them more closely to property values should help make the system less regressive, although much will depend upon the distribution of housing wealth in Wales. The last revaluation was in 2003 – more recently than in England or Scotland.

The revaluation and re-banding are set to be delivered from April 2025, with more frequent valuations in the future, though timings will be important to avoid short-term economic distortions. Taking periodic revaluations out of the five year political cycle (avoiding election years) may also be helpful.

However, council tax has to raise a specific level of revenue, so revaluation only serves to move the burden between different types of property with no link to property occupation or use.

A local income tax has been mooted as a replacement; however, this would shift the burden of local taxation to people who are still working and disproportionately benefit pensioners and wealthier individuals living off capital.

Business rates

The Welsh government is pursuing a similar range of reforms to England, including more frequent valuations, improving the flow of information between government and ratepayers, digitalising services, reviewing reliefs and exemptions, and introducing a new improvement relief.

More radically, the Welsh government commissioned Bangor University to carry out an initial appraisal of the practical viability of a local land value tax in Wales to replace council tax and business rates. It found that the tax could raise sufficient revenues but the data requirements for implementing a local land value tax in Wales were not currently met. There are also constitutional obstacles.

Although local taxes and local government finance are devolved, the Welsh government must seek permission from Westminster to change the valuation function in any significant way and Wales also has no control over land registration. This work is part of a longer term workstream that will extend beyond a single five-year Senedd term.

Visitor levy

The Senedd is formulating the final proposals to allow local authorities to introduce a visitor levy on overnight stays in their area. The overall objective is to offset some of the costs associated with congestion, traffic and the environmental costs of tourism (refuse collection, sewerage, toilets, etc).

A visitor levy is a common tax throughout the EU and more widely. It has been picked up in other parts of the UK, including the introduction of the Visitor Levy (Scotland) Bill and the adoption of a £1 per night tourist tax in Manchester.

Nevertheless, the idea of a discretionary visitor levy has proved to be controversial in Wales. It has to be balanced by the need not to disproportionately disadvantage Welsh hotels, guesthouses, campsites and other accommodation providers. Depending in part on the level of the levy, critics point to competition issues both with providers across the border in England or within Wales where another local authority is not applying a levy. However, the serious criticism is the extra administrative burden that will be placed on accommodation providers to collect and account for the tax and what it will cost local authorities to administer the scheme.

The future for the Welsh devolved tax powers

It is no surprise that the existing devolved powers relate largely to land and property. It is much easier to identify revenue streams derived from real property in a geographical location where it is largely impossible to move the assets out of scope. But there is room to be more radical, especially as the Welsh policy framework includes the need to consider the Wellbeing of Future Generations Act 2015 that imposes legally binding obligations on public bodies in Wales to improve the economic, social, environmental and cultural wellbeing of Wales.

The ability to change the Welsh rates of income tax has been the focus of criticism, mainly from the perspective that the Senedd would use it as an easy revenue raising measure. In practice, the Senedd has not opted for short term, easy measures but has actively sought to investigate innovative ways to use the devolved powers it has.

The Wales Act 2014 provides a route for the Welsh government to develop new taxes. The Senedd tested this process through a formal request to devolve further tax powers for a vacant land tax. This was to address the problem of land that has been identified as suitable for new housing and regeneration but where the developer has chosen to delay development. (The Republic of Ireland has implemented something similar in the form of a vacant site levy on vacant and under-utilised sites in urban areas at a rate of 7% of market value.)

The Welsh government reports that the process has been protracted and challenging. The Westminster-reliant consent processes do not seem to have been designed with new taxes in mind and the impression is that the process has stalled since 2018 and will not be resolved before the 2024 general election. The inability to progress tax changes through Westminster means that the Senedd has used the devolved powers they have, which means measures that can be enacted through the local authorities.

This is not to say that the Senedd is powerless. There are many measures which can be implemented by way of this workaround: council tax discounts for energy saving enhancements; workplace skills support via business rates relief; and lifelong learning grants for individuals. Alongside devolved taxes, Welsh universities punch well above their weight but links with local businesses, particularly in the SME space, are intermittent. Joint research projects, sector-specific courses and student placements would benefit both business and universities.

In summary, devolution is accepted to be a progressive process and is clearly fraught with the risk of unintended consequences. However, to be meaningful, it is essential that there are effective and timely mechanisms for the evolution of devolved taxes and powers to introduce new Welsh taxes. If the UK's devolved governments are being tasked with developing economic strategy, doesn't this need to be matched by giving them the tools they need to implement those strategies?

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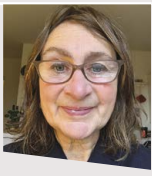

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Employment-related securities

I'm deeming of the right answer

We examine how the Supreme Court decided a deeming provision operated in the context of the employment-related securities rules.

by Keith Gordon

Key Points

What is the issue?
The employment-related securities rules provide a prescriptive code governing the taxation of shares, securities and similar in an employment context. The rules are found in Part 7 of ITEPA 2003, with 14 chapters concerning different scenarios.

What does it mean to me?
It can be difficult to determine whether, on the particular facts of any case, the right or opportunity to acquire an option is made available by reason of an individual's employment.

What can I take away?
Deeming provisions effectively pretend that X is Y. Therefore, if a scenario applies only if one is in situation Y, a deeming provision can ensure that the scenario also arises if one is in situation X. However, there can be some limits.

The employment-related securities rules caused a lot of controversy when they were first announced in April 2003, just a few days after the Income Tax (Earnings and Pensions) Act (ITEPA) 2003, containing the previous version of the rules, came into force. They provide a prescriptive code governing the taxation of shares, securities and similar in an employment context.

The rules are found in Part 7 of ITEPA 2003, with 14 chapters concerning different scenarios. The Supreme Court has recently considered the rules in Chapter 5, which deals with employment-related share options, in the case of *HMRC v Vermilion Holdings Ltd* [2023] UKSC 37.

The facts of the case

At the heart of the case was a business adviser and investor, Mr Noble, who in 2006 invested in Vermilion Holdings Ltd (Vermilion). As part of the investment process, Vermilion issued Mr Noble (through his company) an option over shares in Vermilion. During the course of 2006, however, Vermilion's business was underperforming and this led to an emergency restructuring, involving the effective dilution of existing investors' interests in the company and the

appointment of Mr Noble as Vermilion's executive chairman.

Although the original proposal was for a reduction of the rights from the 2006 option, in the end a clean slate approach was adopted and a new option was granted in 2007, at which point the 2006 option lapsed.

Nine years later, Vermilion was sold, with Mr Noble exercising his option (i.e. the 2007 option) shortly beforehand. That gave rise to a gain in excess of £600,000, which Mr Noble considered to be subject to capital gains tax. HMRC argued, however, that the gain was employment income (under the rules in Chapter 5) and therefore should have been subject to the PAYE provisions. Accordingly, HMRC issued a determination under regulation 80 of the PAYE regulations (SI 2003/2682), demanding that the PAYE that should have been deducted (approximately £285,000) be paid by Vermilion.

The dispute between the parties

The dispute between the parties focused on the single question as to whether the option fell within the scope of Chapter 5. That itself turns on the provisions in ITEPA 2003 s 471. Section 471(1) provides that the Chapter applies if 'the right or opportunity to acquire the securities option is available by reason of an employment of that person or any other person'.

It was common ground that the issue is ultimately a question of fact. What is the reason that led to the option being made available: was it because of someone's employment?

However, sub-section (1) is supplemented by sub-section (3), which is a deeming provision. Sub-section (3) is made up of two parts. The first part provides the general rule:

> 'A right or opportunity to acquire a securities option made available by a person's employer, or a person connected with a person's employer, is to be regarded for the purposes of sub-section (1) as available by reason of an employment of that person…'

The second part of the deeming provision is an exception which applies if:

a) the person who makes the right or opportunity available is an individual; and
b) that right or opportunity is made available in the normal course of that person's domestic, family or personal relationships of that person.

This wording is similar to a number of provisions in the benefits code and ensures, for example, that a married couple does not unwittingly face a car benefit charge simply because one spouse employs the other in a business and also provides a car to the spouse in the course of normal family arrangements.

Deeming provisions effectively pretend that X is Y. Therefore, if a scenario applies only if one is in situation Y, a deeming provision can ensure that the scenario also arises if one is in situation X. However, there can be some limits on what is sometimes known as the fiction created by a deeming provision.

The apparent purpose of the deeming provision in sub-section (3) is to provide a rule that deems the existence of an actual employment relationship to be determinative of the question posed by sub-section (1) (except in cases covered by the proviso found at the end of the sub-section). However, the question as to whether that was the correct approach to take to sub-section (3) was the focus of the arguments as this case progressed through the tribunals and the courts.

The dispute focused on the single question as to whether the option fell within the scope of Chapter 5.

In the First-tier Tribunal (and later in the Court of Session, by a majority), it was held that the circumstances of the acquisition of the 2007 option were such that the deeming provision was considered not to be applicable. The Upper Tribunal had disagreed with the First-tier Tribunal. As HMRC lost in the Court of Session, it was their appeal which was heard by the Supreme Court.

The Supreme Court's decision

The single judgment was given by Lord Hodge, with whom Lords Lloyd-Jones, Leggatt and Burrows and Lady Rose agreed. He endorsed a five-step approach to deeming provisions:

1. 'The extent of the fiction created by a deeming provision is primarily a matter of construction of the statute in which it appears.
2. 'For that purpose the court should ascertain, if it can, the purposes for which and the persons between whom the statutory fiction is to be resorted to, and then apply the deeming provision that far, but not where it would produce effects clearly outside those purposes.
3. 'But those purposes may be difficult to ascertain, and Parliament may not find it easy to prescribe with precision the intended limits of the artificial assumption which the deeming provision requires to be made.
4. 'A deeming provision should not be applied so far as to produce unjust, absurd or anomalous results, unless the court is compelled to do so by clear language.
5. 'But the court should not shrink from applying the fiction created by the deeming provision to the consequences which would inevitably flow from the fiction being real.'

With those principles in mind, Lord Hodge then proceeded to ascertain the purpose of the deeming provision in s 471(3). He considered that not to be particularly difficult.

As the *Vermilion* case itself had demonstrated, it can be difficult to determine whether, on the particular facts of any case, the right or opportunity to acquire an option is made available by reason of an individual's employment – the alternative possibility being that it was provided for another reason and irrespective of the fact of the parallel employment.

Lord Hodge considered that sub-section (3) was intended to cut across this difficult factual enquiry and provide a definitive answer, being that the fact of an employment is in most cases conclusive. Indeed, the carve out for family relationships (where, factually, it will often be clear that something is being provided for reasons other than the employment) emphasises the broad nature of the deeming provision.

The First-tier Tribunal and the majority in the Court of Session had erred by trying to reverse engineer the scope of the deeming provision by deciding whether, as a matter of policy, this was the kind of arrangement that ought to be caught by the rules in Chapter 5.

Commentary

I must admit that I was somewhat surprised when I read the First-tier Tribunal's decision. Although I could fully understand that this was the kind of commercial arrangement that, when looking at the circumstances in the round, could be said to fall beyond the target of the rules in Chapter 5, the deeming provision seemed to be unavoidable.

I admired the First-tier Tribunal's ingenuity but was unsure how it could be justified from the perspective of the legislation. The Supreme Court's decision reassures me that my instinctive reaction was not misplaced.

One of the arguments relied upon by Vermilion was how the broader

interpretation of the deeming provision could affect other commercial scenarios. For example, the Supreme Court was asked to consider the situation where a bank offered its customers a securities option. In the situation where the customer was also an employee of the bank, the broad reading of the deeming provision would mean that the two classes of customer (employees and non-employees of the bank) would be taxed differently. That is clearly a somewhat surprising outcome but the case law (confirmed in *Vermilion*) confirms that this is what the legislation means – perhaps with the unfairness in some cases being a price to pay for the relative simplicity that the deeming provision provides.

Of course, Parliament can consider whether, going forward, it wishes to relieve individuals in Mr Noble's position (or the position of the hypothetical employees of the bank) from the tax rates applicable to employment income and subject their gains only to capital gains tax. To be honest, however, I do not expect these rules to change any time soon (at least in this regard).

However, I have long been conscious of a similar rule governing the provision of accommodation by employers. Section 97(2) of ITEPA 2003 contains a deeming provision which is materially identical to that in s 471(3), with a similar carve-out for personal relationships in cases where the employer is an individual. However, s 98 then provides a further exception. It exempts from the rules situations where the employer is a local authority and the employee is provided with accommodation by the local authority on terms that are no more favourable than would be offered to non-employees. In other words, occupants of council housing should not be subjected to a tax charge simply because they are employed by the council that owns their home.

It is hard to see any policy objection to that additional exception and I would be surprised if it were ever to be repealed. But given that so much social housing is now provided by housing authorities, rather than the councils direct, I have long wondered why there is not a similar carve-out for employees of housing authorities. Perhaps that is an area where legislative reform is not only overdue but might be less controversial.

What to do next

It must be remembered that one of the arguments being advanced on behalf of Vermilion was that the 2007 option was, in effect, a restatement (with reduced rights) of the 2006 option, which fell outside the scope of Chapter 5. Indeed it was a late change of plan to prepare a new option agreement rather than modify the existing option.

However, this is simply a more attractive way of saying, 'Please don't tax me on my transaction because I could have entered into it in a more tax efficient way.' As a general rule, taxpayers will be taxed by reference to the facts as they are and not how they might have been.

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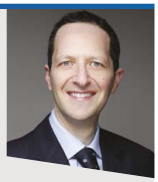

Salaried members rules
Deemed employee status

We consider the 'significant influence' of *HMRC v BlueCrest Capital Management* on salaried members rules.

by Charlotte Sallabank and Christy Wilson

Key Points

What is the issue?
Three conditions have to be met in order for deemed employee status under the salaried member rules to apply, so a member need only fail one of the conditions to escape the PAYE regime.

What does it mean for me?
LLPs should revisit their agreements and profit share computations to assess how they interact with the salaried member conditions, particularly Condition A, in the light of the First-tier Tribunal and Upper Tribunal decisions.

What can I take away?
It is now evident that allocations must be variable by reference to the profits of the LLP, not just constrained by its profits.

The Upper Tribunal has affirmed the First-tier Tribunal's ruling in *HMRC v BlueCrest Capital Management (UK) LLP* [2023] UKUT 232 regarding the application of the salaried members rules. Notably, it dismissed HMRC's request for a limited interpretation of 'significant influence', recognising that the application is not subject to the confines of 'find, mind, grind' but instead involves an 'acutely fact sensitive exercise'. Moreover, the influence can be financial, not just managerial; and over only some, not necessarily all, of the affairs of the partnership.

Background

BlueCrest Capital Management (UK) LLP ('BlueCrest') is an investment firm with multiple members broadly divided into the following functions:

- senior portfolio managers: members with control of a capital allocation of at least $100 million and/or desk-heads who oversee other portfolio managers;
- portfolio managers: responsible for providing investment services; and
- non-portfolio members: involving front-office services such as research or back-office services such as compliance.

BlueCrest appealed to the First-tier Tribunal against an HMRC determination that BlueCrest was liable to pay income tax and NICs under Pay as You Earn (PAYE) in respect of most of its members as the necessary conditions under the salaried members rules were met for all but four members.

The salaried members rules pertain to the circumstances in which a member of a limited liability partnership (LLP) is treated as an employee for income tax and NICs purposes; and consequently the LLP, as a deemed employer, has to collect and account to HMRC for income tax and Class 1 NICs under the PAYE regime with respect to that member's partnership drawings.

Three conditions have to be met in order for deemed employee status under the salaried member rules to apply, so a member need only fail one of the conditions to escape the PAYE regime:

- **Condition A:** This is met when, at the beginning of the relevant tax year, it is reasonable to expect that at least 80% of the total amount payable by the LLP to the individual is 'disguised salary'; i.e. an amount that is fixed or variable without reference to the overall profitability of the LLP.
- **Condition B:** This is met when the mutual rights and duties of a member do not give that member significant influence over the affairs of the LLP.
- **Condition C:** This is met when the member has a capital contribution less than 25% of the 'disguised salary' expected to be paid in the relevant year.

The relevant conditions in dispute were Condition A and Condition B. It was accepted by BlueCrest that Condition C was met.

The First-tier Tribunal partially allowed BlueCrest's appeal, finding that some members – specifically, the senior portfolio managers – failed to meet Condition B. From the facts, as extensively examined by the First-tier Tribunal, it was evident that the senior portfolio managers exerted significant influence by virtue of their roles within the partnership.

However, the judge held that all members met Condition A on the basis that their discretionary allocations were contingent on the performance of the individual members as opposed to the overall profitability of the LLP.

HMRC appealed the decision on the basis that the First-tier Tribunal erred in its construction of the legislation, contending that no member (other than the four members that sat on the executive committee) had significant influence over BlueCrest; and therefore that Condition B was met. by all members.

BlueCrest, on the other hand, cross-appealed, arguing that none of its members met Condition A as at least 20% of the members' pay varied by reference to BlueCrest's profitability.

'Significant influence' can be over one or more of the affairs of the partnership, not just the affairs of the partnership as a whole.

What did the Upper Tribunal determine?

The Upper Tribunal held that the First-tier Tribunal interpreted and applied the salaried members rules correctly, so it remained that:

1. Condition A was satisfied by all BlueCrest members, as their compensation was not tied to the partnerships' profitability due to an 'insufficient link with discretionary allocations'.
2. Condition B was not met by the desk heads and portfolio managers with capital allocations of at least $100 million, as they wielded significant influence over the partnership through their roles.
3. Condition B was met by the other portfolio managers and non-portfolio managers, as they lacked substantial influence over the partnership's operations.

On significant influence

One of the key points in this case is that, especially with regards to Condition B, a partnership assessing whether it meets the conditions should undertake 'careful analysis of all aspects of the workings of the relevant partnership'. This involves considering the varying degrees of responsibility and impact that a member may have – including what 'clout' may look like within a specific business.

It is welcome news for partnerships that 'there is no one-size fits all approach to answering Condition B', for it indicates that the scope to fail the condition is wider than once thought. This means that with sufficient evidence, a partnership can prove the various ways that 'significant influence' manifests in a manner that is not necessarily in line with the traditional functions of a partnership.

The Upper Tribunal emphasised that to consider 'significant influence' is an exploration into what the members do in the partnership. While the backdrop of the traditional partnership is helpful to note, it is not determinative of the 'significant influence' question.

The position taken by both the First-tier Tribunal and the Upper Tribunal is promising in that it is reflective of the reality of specialisation and current partnerships structures – in that significant influence over 'affairs' is unlikely to be general in nature. The Upper Tribunal noted that 'it is a bar set too high' if, to fail Condition B, a member must have significant influence over the entirety of the affairs of the relevant partnership.

It follows from this that what 'influence' may mean, and how it presents itself, is also considered broadly under the condition and depends upon the facts of the case. However, both the First-tier Tribunal and Upper Tribunal were comfortable that 'influence' was not restricted to management influence; and that 'significant influence' can be over one or more aspects of the affairs of the partnership, not just over the affairs of the partnership as a whole, as contended by HMRC.

On disguised salary

BlueCrest put forward that the First-tier Tribunal erred in its construction of and approach to Condition A on the grounds that the judge 'set the bar too high in terms of the link required between remuneration paid to each member' and the profitability of the business.

BlueCrest argued that discretionary allocations were variable and subject to limitation should the partnership face any losses. While it was recognised by both tribunals that the allocations were variable, the allocation was tied to personal performance as opposed to profits or losses of the partnership and thus missed the necessary link. Had the discretionary allocation mechanism entitled the members to share in a proportion of the overall profits, in a manner that went beyond mere computation of an individual bonus, Condition A would likely have been failed.

The Upper Tribunal noted that even if a link were established, it is necessary to consider whether it is reasonable to expect

that the discretionary allocations for the relevant year would be affected by BlueCrest's profits or losses, which in turn depends upon what is reasonable to expect for the relevant year. In this instance, the discretionary allocations were set without reference to overall profits and losses, meaning that they were not in practice affected by those profits and losses. Therefore, while the profitability of the partnership determines whether there are sufficient funds to pay the discretionary allocations, this is a separate question to the one presented by Condition A.

What is next?

Given the widening of the scope of significant influence and considering HMRC's adamance that the legislation be interpreted strictly, it will be interesting to see whether HMRC pursues a further appeal, especially in light of the steadfast support that the Upper Tribunal decision gave to the First-tier Tribunal's rigorous investigation of the evidence before it.

Irrespective of whether HMRC appeals this Upper Tribunal decision, LLPs should remain wary of becoming complacent by resting on the Upper Tribunal confirmation that Condition B is broad in scope. Whilst the judgment helpfully breaks down the significance of each term within Condition B, it is clear that any determinations to be made by LLPs in respect of the salaried members rules still involve a fact specific evaluation. In turn, this creates uncertainty as to whether HMRC, or eventually the higher courts, will reach the same conclusion. LLPs should ensure that careful assessment takes place in deciding who may have significant influence, with sufficient evidence to support that decision.

And the question arises: will the more generous interpretation of 'significant influence' withstand the courts' scrutiny in the years to come?

LLPs should also revisit their agreements and profit share computations to assess how they interact with the salaried member conditions, particularly Condition A, in the light of the First-tier and Upper Tribunal decisions. It is now evident that allocations must be variable by reference to the profits of the LLP, not just constrained by its profits. This means a link is required between the profits of the partnership and remuneration paid to each member – though it remains unclear how substantial the link needs to be.

We would like to thank Hayley Rabet, Trainee Solicitor at Katten Munchin Rosenman, for her assistance with this article.

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Private residence relief
A matter of construction

The case of *HMRC v Lee* tackles the question of when the period of ownership of the main residence begins, and how this impacts capital gains tax.

by Sam Dewes, Simon McKie and Sharon McKie

Key Points

What is the issue?
When calculating the private residence relief available on a capital gain, does the period of ownership of the main residence start when the interest in the land is acquired or when the construction of the main residence is completed?

What does it mean for me?
This issue affects individuals who have built a property for themselves to live in, either by demolishing a property on the same site, or by building on bare land.

What can I take away?
In the recent case of *HMRC v Lee* [2023] UKUT 00242 (TCC), the Upper Tribunal held that the period of ownership starts when the construction of the dwelling-house is completed. One wonders whether the government will respond by amending the legislation.

Private residence relief has been a feature of capital gains tax since the charge was introduced in the Finance Act 1965. Nearly 60 years on, common situations continue to raise difficult questions about the operation of the relief. The recent case of *HMRC v Lee* [2023] UKUT 242 (TCC) considered a fundamental feature of the calculation – the period of ownership.

Under the Taxation of Chargeable Gains Act (TCGA) 1992 s 222(1)(a), private residence relief exempts from capital gains tax a capital gain arising on a disposal of, or of an interest in:

> 'a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence'.

The relief is calculated by reference to the period during which the dwelling-house has been, or has been treated as being, the disponer's main residence divided by the period of ownership.

The period of ownership

In *Higgins v HMRC* [2019] EWCA Civ 1860, it was held that the period of ownership begins and ends when contracts are completed, rather than when they are exchanged.

In *Lee*, a separate question was posed to the Upper Tribunal: does the period of ownership start when the interest in land is

acquired (the 'land approach') or on the physical completion of the structure which becomes the individual's main residence (the 'dwelling-house approach')?

This is relevant where, for example:

- Type 1 scenario: an individual acquires bare land and builds a house on it to live in; or
- Type 2 scenario: an individual acquires a house, demolishes it, and then builds a new house to live in, as was the case in *Lee*.

In *Lee*, it was noted that these scenarios are 'not obviously catered for' by the legislation. Nevertheless, 'the question remains: how do the words of the legislation, construed in accordance with established principles of statutory construction, apply to the given facts?'

The position of the parties in *Lee*

HMRC adopted the land approach. If correct, Mr and Mrs Lee's period of ownership would have started in October 2010 when they acquired their original house. This would leave 29 months exposed to capital gains tax up to March 2013, when they moved into the new house that was built on the site of the demolished original house, thus starting their period of occupation. HMRC had, in their favour, the Special Commissioner's decision in *Henke v HMRC* (2006) SpC 550 (a Type 2 scenario) accepted the land approach.

The decision in *Gibson v HMRC* [2013] UKFTT 636 might also be regarded as supporting the land approach. In that case, the First-tier Tribunal held that the period of ownership in a Type 1 scenario cannot include the occupation of the house which has been demolished. The issue only arises if it is assumed that the period of ownership starts when the original land interest is acquired. Neither party in *Gibson* advanced argument on the issue, however, and the tribunal did not consider the issue expressly.

Interestingly, in neither *Gibson* nor *Lee* did the taxpayer consider triggering a deemed disposal under TCGA 1992 s 24(3) to reset the period of ownership and create a capital loss, as discussed in 'Demolition Job' by Sam Dewes (*Tax Adviser*, September 2021).

Returning to the *Lee case*, the taxpayers adopted the dwelling-house approach – arguing that the period of ownership started in March 2013 when construction of the new house was completed. On this basis, the house was their main residence for the full period of ownership, and no capital gains tax was due.

The First-tier Tribunal found in favour of the taxpayers and HMRC appealed.

The Upper Tribunal decision

The Upper Tribunal approached the issue in two stages.

1. Straightforward textual interpretation

First, the Upper Tribunal considered what it called the 'matter of straightforward textual interpretation'. On this, it concluded that 'the answer is clear: the taxpayers' interpretation … is the correct one'.

In the extract from s 222(1)(a), quoted above, where the phrase 'period of ownership' is first used, it refers only to one asset – the dwelling-house.

In the absence of any specific definition, it is difficult to see how the period of ownership could be by reference to any other asset. Indeed, the Upper Tribunal said: '[S]ometimes drafting is silent for the simple reason that its meaning is considered obvious… HMRC's interpretation requires not only reading in words, but reading in words which are not to be found in the section, nor indeed relevantly in any of the other provisions relating to private residence relief.'

2. Should the legislation be read differently?

Secondly, the Upper Tribunal considered HMRC's wider arguments that the legislation ought to be read differently from the straightforward textual interpretation.

> **HMRC's main contention was that the dwelling house is not capable of being owned separately from the ground on which it stands.**

HMRC's main contention, fundamental to the land approach, was that the dwelling-house is not capable of being owned separately from the ground on which it stands. Therefore, the period of ownership must refer to the asset acquired, being the interest in land itself.

There is, though, no difficulty in determining the period of ownership of a leasehold interest in a flat, which does not include an interest in the land on which the block of flat stands. The relief applies to an interest in a dwelling-house, which is itself 'land' under English land law, and so that is what the period of ownership must also relate to.

What is more, Mr and Mrs Lee did not suggest that their interests in the dwelling-house were separate from their interests in the land. They merely suggested that their interests in the land did not include interests in the dwelling-house until the dwelling-house existed – a position which one might have thought was a simple truism.

Further arguments raised by HMRC relied on other parts of the legislation. For example, TCGA 1992 s 222(8) specifically qualifies the period of ownership in the context of that subsection as being 'of a dwelling-house'; and, according to HMRC, 'if Parliament had intended that "period of ownership" in s 223(1) to similarly refer to a dwelling-house it would have said so'.

Far from supporting HMRC's land approach, the Upper Tribunal found these other legislative references to favour the dwelling-house approach. Section 222(8) did not introduce a new concept of the period of ownership; instead, it served as a reminder of the correct interpretation of the phrase elsewhere.

HMRC also argued that the dwelling-house approach meant that a taxpayer could benefit from private residence relief in respect of two properties at the same time (so called 'double relief') by living in another residence whilst the building works are carried out on the land and that Parliament could not have intended this result. Yet private residence relief has always allowed for some double relief because of the (now) nine months of deemed occupation at the end of the period of ownership. The Upper Tribunal found that 'HMRC's submissions in relation to double relief make assumptions about the nature of the relief which are not reflected in the operation of the legislation' and 'push past the limits of purposive interpretation'.

Policy implications

In a similar vein, the Upper Tribunal rejected HMRC's arguments about the policy implications of adopting the dwelling-house approach and in doing so raised some significant issues.

The start of period of ownership

The First-tier Tribunal held that the period of ownership under the dwelling-house approach begins when the house is completed. HMRC argued that this would lead to complex and subjective questions, such as 'when is the house completed?' and 'when is a renovation of a property substantial enough to start a new period of ownership?'

The Upper Tribunal was unimpressed by HMRC's objection. As it said, 'the application of a term to a particular set of facts is a task courts and tribunals are well versed in'. The comments on TCGA 1992 s 223ZA made by the Upper Tribunal also provide some guidance on this point.

Potential for abuse

HMRC expressed the greatest concern at the potential for taxpayers to abuse the dwelling-house approach. For example, an individual who has owned bare land for many years which has grown significantly in value might decide to build a very modest

property on the land. Having lived in that property as his main residence, the individual might then sell the property and the land together and the whole capital gain would be exempt from capital gains tax.

Aside from the most basic requirement that a property becomes an individual's residence (which entails a degree of permanence), it is likely that the private residence relief anti-avoidance provisions and the GAAR would prevent abuse of the dwelling-house approach.

Since the case was heard, a number of articles have been published highlighting the supposed planning opportunities arising from the decision. Not every planning opportunity promoted in the press, however, is really practical.

One can construct potential situations which might be regarded as anomalous. A wealthy individual, for example, might buy a plot of land, or a relatively small house in a prestigious location, with the hope of acquiring planning permission to build a large house. The uplift in the value of the site, at least in the short term, is often almost entirely the result of the grant of planning permission. Even if the process of obtaining planning permission, demolishing the old property and building the property took many years, if the individual lived in the new property as his main residence on its completion up to the point of sale, the whole capital gain would be exempt.

> **Many individuals will now be in a position to reclaim capital gains tax from previous years.**

Such an example is not necessarily an abuse of the rules, but the government may decide that full exemption in these circumstances is unfair, or leads to sufficient loss to the Exchequer that a change in the law is required. It would not be a surprise, therefore, to see the private residence relief legislation amended in the future and the land approach enacted.

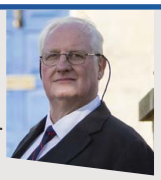
Comment

Clearly, the *Lee* case is a significant victory for the taxpayers. We understand that HMRC will not appeal against it.

Many individuals will now be in a position to reclaim capital gains tax from previous years where the land approach had been adopted. Others may be sitting on a large capital gain which could now be considered fully exempt on sale – although they should note the possibility of a change in legislation.

Some will wonder why HMRC took this case to the Upper Tribunal at all, given that the straightforward textual interpretation was clear.

Finally, the *Lee* case shows again that one should not place too much reliance on HMRC's guidance – the meaning of legislation is always a matter of construction.

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Tread carefully
Second opinions on tax planning

Three recent First-tier Tribunal cases have shed light upon the concept of 'carelessness', which governs historic assessments by HMRC and the penalties that can be applied.

by Morag Ofili

The complicated world of tax planning is shaped not only by evolving legislation but evolving perceptions, creating challenges and opportunities for both taxpayer and agent alike. Central to these challenges is the concept of care which governs not only how far back HMRC can look into a taxpayer's affairs, but the level of penalties that can be applied.

'Careless' enquiries

Under Tax Management Act (TMA) 1970 s 9A, HMRC holds the right to make a formal 'enquiry' into every tax return submitted. The time limit for commencing an enquiry is 12 months after the day on which the return is carried out. If HMRC makes no enquiries within the period allowed, or if it has completed an enquiry, the return becomes final unless:

- the taxpayer is still within time to amend their return;
- the taxpayer has carelessly or deliberately caused a loss of tax; or
- HMRC discovers that the return was incorrect and the taxpayer had not disclosed enough information, meaning HMRC can then make a discovery assessment.

The legislation that gives the power to HMRC to make a discovery assessment is TMA 1970 s 29. HMRC cannot generally raise a discovery assessment if the taxpayer has filed a tax return unless HMRC has evidence to suggest that there is a loss of tax due to careless or deliberate errors (TMA 1970 s 29(4)). Therefore, establishing that a taxpayer is careless is often the means by which HMRC opens enquiries into historic planning.

Key Points

What is the issue?
Establishing that a taxpayer is careless is often the means by which HMRC opens enquiries into historic planning. HMRC will sometimes argue that carelessness arises when individuals fail to seek a second opinion.

What does it mean for me?
The legal landscape regarding what is required to satisfy the tribunal that a taxpayer has been careless has been the topic of discussion in three recent cases, involving failure to refresh, engage with, and act upon professional advice.

What can I take away?
Should taxpayers invest in a second opinion as added protection against assessments and penalties? The crucial factor is evaluating whether an alternative viewpoint can uncover unexplored insights or nuances.

In this context, HMRC may argue that carelessness arises when individuals fail to seek a second opinion. The legal landscape regarding what is required to satisfy the tribunal that a taxpayer has been careless has been the topic of discussion in three recent cases.

Strachan: failure to refresh professional advice

In *Strachan v HMRC* [2023] UKFTT 617 (TC), a case regarding domicile, Mr Strachan had not taken professional advice on his domicile situation since 1987. The First-tier Tribunal considered this to be careless, as the reasonable taxpayer would have refreshed the advice, especially given the significant changes to his position over the 25 year period.

It was argued on behalf of Mr Strachan that advice obtained in 2018 confirmed his domicile position; and that, had he taken similar advice prior to the submission of his 2011/2012 and 2012/2013 tax returns, it would have been the same. On that basis, the failure to obtain advice in the relevant years did not cause the loss of tax as the advice would have led to the same filing position.

The First-tier Tribunal disagreed on the basis that there was no evidence to support this position. However, it also noted that HMRC was unable to prove that the contrary was true and that the loss would have been avoided if advice had been taken.

HMRC asserted that once there had been a finding of carelessness, the burden of proof shifted to the taxpayer who then had to prove that the carelessness did not cause the loss of tax. Therefore, it was the lack of evidence presented by Mr Strachan that it should consider when making its decision.

The First-tier Tribunal disagreed, holding that the case law was clear that the burden rested with HMRC throughout, and that HMRC has been unable to establish a sufficient link between the carelessness and the loss. As a result, HMRC was out of time to raise assessments on the basis of carelessness and the taxpayer's appeal was allowed.

Magic Carpets: failure to engage with professional advice or seek a second opinion

The case of *Magic Carpets (Commercial) Ltd v HMRC* [2023] UKFTT 700 provides a useful reminder that carelessness is not a given when dealing with tax planning arrangements which have lost favour with HMRC.

Magic Carpets (Commercial) Ltd (Magic Carpets) had entered into a tax planning arrangement which involved the use of an employee benefit trust. The First-tier Tribunal held that although Magic Carpets acted carelessly in implementing the employee benefit trust, HMRC had not satisfied the tribunal that this carelessness had brought about a loss of tax. There was no dispute that the employee benefit trust arrangement:

- was ineffective;
- did not achieve the tax savings anticipated; and
- led to a loss of tax.

In order to determine whether Magic Carpets' behaviour in entering into the arrangement was careless, the onus was on HMRC to establish, on the balance of probabilities, that when judged against the standard of the reasonable and prudent taxpayer in the same position, Magic Carpets failed to take care.

In deciding to enter into the arrangement, Magic Carpets took advice from an independent firm of accountants. The First-tier Tribunal accepted that it is reasonable for a taxpayer to rely on the advice of a professional advisor, especially where matters are complex and the taxpayer is not sophisticated. However, the tribunal was critical of the fact that the directors had not taken any steps to properly understand the detail of the arrangement and failed to engage with the documents – signing documents that referred to meetings that had not taken place.

The First-tier Tribunal also felt that given that the accountants whom Magic Carpets relied upon for advice were also using the arrangement, as well as the deficiencies in the documentation, Magic Carpets was careless in not seeking a second opinion.

Whilst HMRC was successful in establishing a lack of care, the First-tier Tribunal reminded HMRC that carelessness is a two-stage test. The second stage requires HMRC to prove that there was a causal link between the carelessness and the error/loss of tax.

Whilst not expressly stated within the judgment, the tribunal here approached causation in a similar manner as one would when looking at a claim in tort.

Causation in tort looks at the relationship between an act and the consequences it produces. Factual causation is often assessed by reference to the 'but for' test, which in this instance required the tribunal to ask whether the loss would have occurred but for Magic Carpets' carelessness (namely, its failure to seek a second opinion). If the answer to that question is no, then there is a causal link between the carelessness and the loss. As recognised by the First-tier Tribunal at paragraph 92 of its judgment:

> 'That point is, if anything, clearer under the legislation in Finance Act 2007 Schedule 24. The definition of "carelessness" in paragraph 3 Schedule 24 requires the inaccuracy in the return to be "due to" a failure to take reasonable care.'

This approach therefore required the tribunal to consider what the substance of any second opinion would have been.

The lead case in respect of employee benefit trusts arrangements is *RFC 2012 Plc (in liquidation) (formerly the Rangers Football Club Plc) v Advocate General for Scotland* [2017] UKSC 45. In this case, the Supreme Court held that payments made by a company to an employee benefit trust for the purpose of providing remuneration in the form of loans to employees should be treated as earnings of the relevant employees, such that PAYE income tax and NICs became due immediately.

However, before that decision, the position was not clear cut and different courts and tribunals (and indeed even HMRC) had differing opinions on the status of employee benefit trust arrangements.

The First-tier Tribunal concluded that based upon the case law and the prevailing market conditions at the time at which the arrangement was entered into, it was likely that any advice obtained from a second opinion would have been the same; i.e. that the amounts would not attract PAYE income tax. Accordingly, there was no link between Magic Carpets' carelessness in not seeking a second opinion and the loss.

The upshot of the First-tier Tribunal's ruling on this point meant that the determinations were out of time, as HMRC could not rely upon the six-year carelessness time limit and it was not correct to impose penalties on the basis of careless behaviour.

HMRC's alternative argument (which relied on the accountants as agent being careless on similar grounds) was also rejected.

Delphi Derivatives: failure to act upon professional advice

In the case of *Delphi Derivatives Ltd v HMRC* [2023] UKFTT 722 (TC), which involved a similar employee benefit trust arrangement to that in *Magic Carpets*, the company was held not to have taken reasonable care as they failed to act upon the advice of their accountants (who had expressed concerns about the arrangement).

Causation was again an issue. However, the First-tier Tribunal on this occasion held at paragraph 166 that:

> 'In our judgment, "due to" in para 3(1) of Sch 24 does not equate to the kind of nexus of causation apposite to tort liability.'

The First-tier Tribunal thereby posed a different question; namely, can the inaccuracy in question be explained by a failure to take care?

The taxpayer tried to argue that the second opinion would not have differed from that provided by the scheme promoters. However, causation is a question of fact and there was no information before the First-tier Tribunal that would have allowed them to make such a finding – especially given that the arrangements in that case departed from the standard employee benefit trust arrangement.

Conclusion

Should taxpayers invest in a second opinion as added protection against assessments and penalties? Like all good tax questions, the answer is it depends.

If the planning is perceived as legitimate at the time, seeking an identical second opinion may yield little benefit. The crucial factor is evaluating whether an alternative viewpoint can uncover unexplored insights or nuances in the ever-evolving tax landscape.

All the judgments discussed in this piece are First-tier Tribunal decisions and so not binding. It will be interesting to see if (or when) the issue of causation reaches the Upper Tribunal.

Until then, there is a glimmer of hope for taxpayers within a changing tax landscape who can evidence that a second opinion would have no impact on the filing position, particularly in cases of once seemingly legitimate tax planning.

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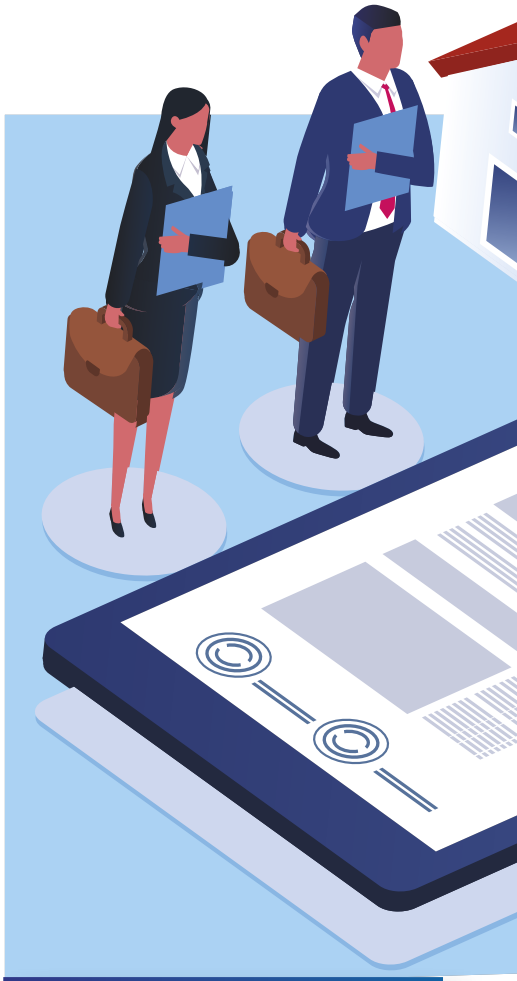
The hidden potential
Navigating section 198/199 elections

How to avoid common traps when providing guidance on capital allowances in property transactions.

by Eileen Smith and Lampros Fragkoulis



In the intricate realm of tax advice, one often overlooked facet is the section 198/199 election – a critical element in dealing with capital allowances within commercial property transactions. It is the kind of detail that can easily slip through the cracks, but the consequences of mishandling it can be substantial. Such oversights create knowledge gaps among involved parties. Advisors must acquaint themselves with these changes promptly; otherwise, their input may be deemed invalid.

This article delves into the nuances of section 198/199 elections, sheds light on the common pitfalls faced by taxpayers and tax advisors during commercial property transactions and underscores the substantial tax relief potential they bring.

The significance of valid section 198/199 elections

Many tax advisors underestimate the importance of valid section 198/199 elections when providing guidance on capital allowances in property transactions. When ownership shifts from one entity/individual to another, it is crucial for both parties to remember that a fixtures election can only encompass items for which the previous owner (vendor) has incurred qualifying expenditure (capital expenditure on plant and machinery provision).

Under the Capital Allowances Act (CAA) 2001, a section 198/199 election applies specifically when 'the disposal value of a fixture is required to be considered' for capital allowances purposes. Moreover, the vendor must have included the expenditure on plant and machinery provision in their tax computations, fulfilling the pooling requirement. Furthermore, for the new owner to make any capital allowances claim, they must jointly determine a transmission value for all embedded fixtures in the premises included in the vendor's capital allowances calculations.

Essentially, section 198/199 elections are conducted to ascertain the capital allowance disposal value for the previous owner and the acquisition value for the new owner. In some cases, both parties may lose out on tax relief due to significant changes in the value of the fixtures specified in the election. The vendor can either retain the full value and claim allowances by setting a £2 value in the election or pass on the new value to the new owner, still complying with the pooling requirement.

In summary, failing to meet the fixed value and mandatory pooling requirements (under CAA 2001 s 187A and Finance Act 2012 Sch 10 para 13) and providing inadequate evidence will prevent capital allowance claims, underscoring the importance of a robust section 198/199 election.

The costly ramifications of invalid elections

The gravity of this matter cannot be overstated. An invalid section 198/199 election can have dire financial consequences for taxpayers. Such oversights can lead to the loss of valuable tax relief opportunities and, in some cases, trigger the dreaded clawback of previously claimed allowances. The stakes are high, and there is little room for error.

If the joint agreement by both parties does not result in an amount included in the fixtures election, resorting to a tribunal becomes unavoidable. Additionally, the tribunal assesses the apportionable sum based on a request made by one of the concerned individuals within the two-year period. Going to tribunal can be exceedingly costly in terms of expert advice and yields an unpredictable outcome. Therefore, any issues or disagreements should be promptly resolved before finalising the property sale and purchase.

Nonetheless, HMRC has provided specific legislation for consultants and tax advisors who wish to take additional precautions before advising their clients.

Key Points

What is the issue?
This article delves into the nuances of section 198/199 elections, sheds light on the common pitfalls faced by taxpayers and tax advisors during commercial property transactions and underscores the substantial tax relief potential they bring.

What does it mean for me?
Essentially, section 198/199 elections are conducted to ascertain the capital allowance disposal value for the previous owner and the acquisition value for the new owner.

What can I take away?
It is a well-known fact that section 198/199 elections do get rejected by HMRC. This is predominantly due to five factors which we will look at in detail in the article.

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The government was keen to make it clear that the proposal to make section 198/199 elections the norm should not be seen as detracting, in any way, from the right of either the seller or the purchaser to insist upon a just and reasonable apportionment of the sale value of a property to its fixtures.

Taxpayers or non-taxpayers: a longstanding debate

A debate that has persisted since April 2012 concerns whether section 198/199 elections are applicable only to taxpayers or non-taxpayers. This has undoubtedly caused confusion for HMRC.

Due to strong arguments suggesting that non-taxpayers, such as charities and pension funds, were ineligible to sign an election, HMRC definitively clarified that both parties are eligible for this specific election but under one condition. The non-taxpayer (charity) should only act as the purchaser (buyer) after the property changes hands. Up until this point, tax consultants speculated that section 198/199 elections were only for taxpayers, which was undoubtedly incorrect.

In conclusion, HMRC unequivocally clarified this matter, making it evident that both parties can sign an election, with necessary distinctions made based on whether the non-taxpayer is a seller or buyer.

The claim validity period: a two-year window or unlimited timeframe?

The standard timeframe for making the election is no later than two years after the purchaser's acquisition or recognition on the lease. However, if one of the parties has applied for a tribunal judgment to meet the 'fixed value requirement' in CAA 2001 ss 200-201, the timeline is extended, allowing the election to be finalised by any date. A copy of the election must be included in each person's tax return following the purchase date, which is often overlooked.

Unfortunately, the issue arises because the two-year window is sometimes missed in exceptional cases. Vendors must recognise plant and machinery no more than two years after relinquishing ownership, a fact not always known to them, resulting in losses for anything unclaimed within this window. Mistakes and breaches have prompted vendors to become more aware of the necessary actions to prevent their elections from being withdrawn or invalidated.

Assets and associated value allocations: amalgamation or asset-by-asset basis?

The rules for assets apply on an asset-by-asset basis. In some cases, parties may need to combine assets if it does not impact tax calculations. However, with the introduction of 'embedded fixtures' for compatible expenditure incurred on or after 1 April 2008 (companies) or 6 April 2008 (individuals), it is essential to distinguish between:

a) embedded fixtures qualifying for writing down allowances in the special rate pool at 6%; and
b) embedded fixtures qualifying for writing down allowances in the main pool at 18%.

Corresponding to the Finance Act 2008 modifications, for the time being it is less feasible for the parties to be able to recognise an election including all the embedded fixtures in a specific property without expecting some allocation of value between the two categories being demonstrated above. In fact, it has never been recognised as acceptable to acknowledge an election enclosing all the fixtures for more than three properties simultaneously.

The buyer's stronger position: the impact on the signed election

The vendor desires the property to be sold, and capital allowances can be part of the transaction. The purchaser, on the other hand, may have the power to enforce a significant value in the capital allowance election.

The vendor must weigh whether losing allowances is worthwhile to proceed with the deal. In fact, if the vendor has carried forward losses, they might voluntarily offer a significantly higher value in the election as a way of attempting to bargain a higher sale transaction to accurately display the fact that the buyer will acquire an invaluable tax relief. In this case, additional consideration should be taken before signing the election. Therefore, both parties should reconsider their negotiating position and any losses made so far in case the new owner wants to jointly experience an incomparably higher tax relief.

If the vendor has carried forward losses, they may willingly offer a higher value in the election to negotiate a higher sale price, highlighting the buyer's valuable tax relief. In such cases, both parties should reevaluate their negotiation position and any incurred losses, especially if the new owner seeks significantly higher tax relief jointly.

The perils of common errors

It is a well-known fact that section 198/199 elections do get rejected by HMRC. This is predominantly due to five factors which we will look at in more detail below. These details are easily mistaken and will

catch out almost everyone – therefore we hope that the list below will save you both time and money.

1. Incomplete party information

Frequently these crucial details are absent from the elections. HMRC expects comprehensive information about both the seller and the buyer, including their Unique Taxpayer Reference (UTR) numbers. Neglecting to provide this data can render the entire election invalid.

2. Property identity crisis

Another leading cause for election rejections is the misidentification of the property itself. Mistakes in addresses, title numbers or the type of interest (leasehold or freehold) can cause confusion at HMRC. Indeed, section 198 primarily deals with freehold properties, while section 199 focuses on leaseholds. Although these may seem like standard legal distinctions, not understanding the difference between them can result in tribulations which will cost taxpayers thousands of pounds in lost tax relief.

3. Missing plant and machinery details

The devil, as they say, is in the detail. Unfortunately, many elections fall short in providing sufficient information to identify the plant or machinery within the property. Moreover, they often fail to specify the amount fixed by the election, making it impossible for HMRC to process them. In fact, failing to differentiate between main rate pool and special rate pool might cause perplexity to the purchaser.

4. Wrong information given in relation to the value of the market

Elections are rendered invalid if the transaction of the premises does not exceed the current market's value. Anything less than that can easily give HMRC the opportunity to decline the elections.

5. Negligence and carelessness relating to the qualifying activity being in place

Attention should be given in case the invariable discontinuance of the qualifying activity corresponds to the demolition or displacement of the fixture being in place. In this case, HMRC will surely reject the election, as there is no proof to confirm the fixtures' verification. Therefore, attention should be taken to those fixtures being in place if the qualifying activity is no longer in use.

To avoid these pitfalls, aspiring tax advisors and experienced professionals alike must remember that s 201 mandates the inclusion of all these critical details in a valid section 198/199 election. Diligence in gathering and presenting this information can make the difference between a successful claim and a missed opportunity.

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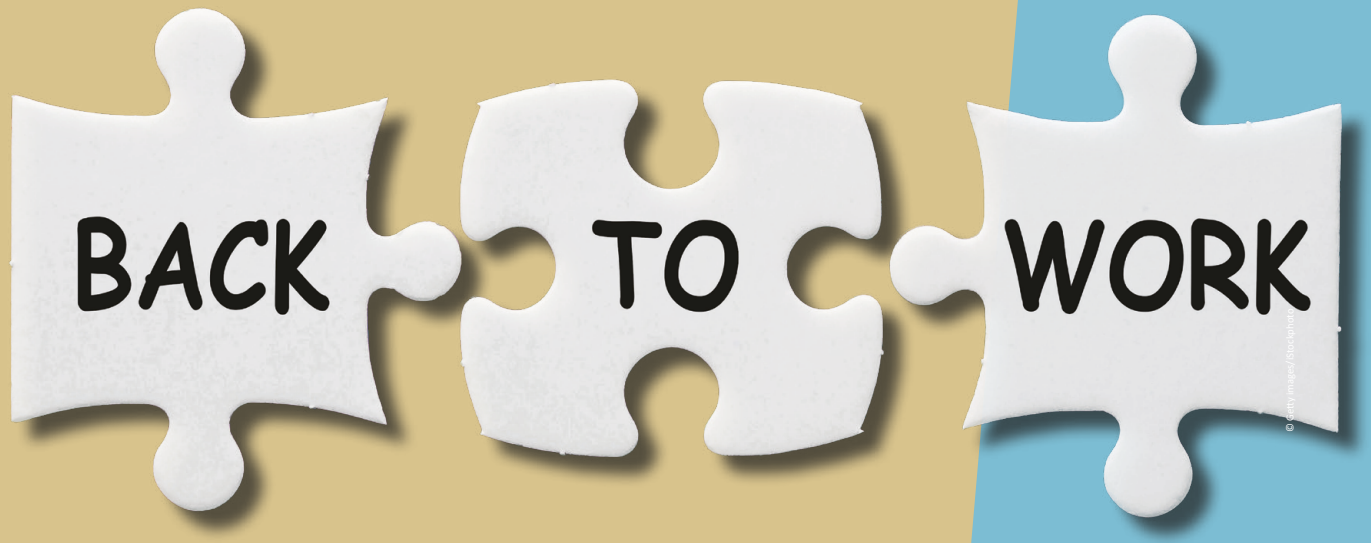

Returning to work

A marathon not a sprint

If you are thinking about your next step after a career break or parental leave, what practical steps can you take to ease your return to work?

by Georgiana Head

It is very unlikely that the new graduates and school leavers of 2023 will have an unbroken, linear career in taxation. As the UK population is living longer, working life is also becoming longer and people's careers are becoming more multi-stage.

It is now common for tax professionals to take a career break at some point in their working lives. A wide range of reasons factor into this decision: maternity or paternity leave, childcare issues, taking care of elderly or ill relatives, a period of illness, shielding in a pandemic, following a spouse overseas – or even to pursuing another career or interest. Some professionals will retire from a tax role and later return to tax on a part-time or flexible basis. Some will unfortunately face a period of unemployment following a redundancy.

Gender imbalance

There is a still a disproportionate number of women having to take a career break in the midst of their careers, as they often reach management level around the same time that they have children. The prohibitive cost of childcare and the bulk of caring responsibilities still fall to women, meaning that many women find themselves unable to go back to work after a period of maternity leave.

The impact of a gap in working women's lives on the British economy can be seen in the gender pay gap statistics, despite the number of female graduates being roughly equal to male graduates since the 1960s. It can also be seen in the representation of women at board level in the UK. This is improving, though, as figures from 2022 show that for the first time women hold 40% of board seats in the top 350 biggest companies in the UK (see tinyurl.com/2p8rnypw).

Inclusion and diversity make good business sense. McKinsey's 2020 report 'Diversity wins: how inclusion matters' (see tinyurl.com/y9nme43v) shows that companies with a gender diverse make-up are more likely to outperform their competition. In fact, businesses with the most gender diversity will outperform by as much as 48%, while ethically and racially diverse businesses are 36% more likely to outperform their competition.

A one-stop shop

Thinking about how to return to work is something that tax professionals at all stages of their careers should consider – whether it is because they want to help returners in their own teams or because they themselves may find they have a period of time when they are unable to work. In reality, it can happen to anyone.

The CIOT and ATT want to help their members through all stages of their careers and are creating a 'one-stop shop' for work returners, where they will be able to refresh their tax knowledge with up to date CPD and get advice on how to return to the tax jobs market.

What helps you return to work? First of all, you need to dust off your professional qualifications. The ATT and the CIOT are a great resource for anyone wanting to get back into tax. By getting involved with your local branch, you can attend seminars, undertake CPD both online and in person, and update your network and your tax knowledge. You could even consider a further qualification – the ATT's 'Transfer Pricing Foundation Paper' or the CIOT's 'Diploma in Tax Technology' – both of which can be completed online and can help you gain new skills.

The power of networks

In 'She's back: your guide to returning to work', Lisa Unwin found that women returning to work after a career break were most likely to find a new job through their networks. It makes perfect sense to me that you are likely to be referred to a role by someone who has seen you at your best in a work situation in the past. Any work returner needs to think about who their network is, reaching out to former colleagues and friends in tax. Tell them that you are looking for a new role.

You also need to think about expanding your network. Volunteering for CIOT and ATT is a great way to do this. The CIOT and ATT branch network and Women in Tax are also great places to find a mentor who can help you transition back in to work. Another great resource is the Women on Boards group which helps women to gain non-executive and board roles (see https://wbdirectors.co.uk for further details), and you can see all the board and trustee vacancies UK wide.

However, the network that anyone wanting a role in tax needs to be on is LinkedIn. Make sure that you have a great LinkedIn profile, which tells everyone that you are actively looking for work and which emphasises your previous work experience. Select a professional photograph (no holiday snaps) – and remember that those with a smiling face are 25% more likely to get views! Think of all the key words that will help you be 'found' by LinkedIn algorithms (such as #tax #taxcompliance #corporatetax #VAT #Taxmanager #headoftax).

It is important to use LinkedIn properly, linking with former colleagues and your friends to expand your network. You should aim to have over 50 contacts to be 'seen' on LinkedIn, and ideally hundreds of contacts. Use LinkedIn to join networks for your area of specialism such as in-house or indirect tax. And make sure you click the 'Open to Work' button.

Definitely join the alumni network of your previous employers. The Big 4 are particularly good at keeping in touch with Alumni and welcoming them back into their firms. Most Alumni groups also have an associated job board.

The power of your CV

It is sensible to also consider getting a career coach who can help you with the focus of your CV. It should be two pages long and the executive summary or profile has to accentuate your previous work experience. Think about the key words of interest to the applicant tracking software used by many large accountancy firms, law firms and recruitment agencies. This software is used to do a first sift of CVs, so you must include your tax experience and qualifications on the first page of your CV.

Make it clear that you are an experienced tax manager or director. If you are looking for a role at management level, include key words such as controlled, chaired, organised, headed, led and operated. Include anything you have done during your career break that has given you relevant skills; for example, experience of governance such as being a school governor or a trustee. Also include anything non-tax related but which still shows abilities such as managing staff, finances, dealing with clients and working to deadlines. Once your CPD is up to date, also include that on your CV.

And finally...

Remember not to focus on why you have had a period away from work. Focus instead on what you have done in the past that is relevant to the role that you are looking at.

In recent years the Big 4 and Top 20 accountancy firms have run 'return to work' programmes for individuals looking to get back into professional services. These programmes run from anywhere from 12 weeks to a year are often paid and can result in a permanent role in the firm. Most importantly they help you to refresh your skill set.

Some of these programmes also lead to interim roles at the accountancy firm's clients. Interim roles can be a great way of getting your knowledge back up to date while keeping some flexibility.

Find out more about returning to work after a career break on the ATT website (see tinyurl.com/2nuynnuf) and the LITRG website (see tinyurl.com/yzb6dt2z).

WOMEN IN TAX: BUILD YOUR VILLAGE

'When we talk about raising children, we always hear that it takes a village. I definitely agree with this. However, for the most part we assume that village will be family and friends. Actually, what I have found is that your 'work village' is as valuable as the social support of your family and friends.

This is the group of people who support you as you juggle working with being a parent and being a person in your own right. I have definitely found that support in the Women in Tax community – a group of people who have grown to be friends and provide support to each other. They will celebrate in your wins (at work and at home) and are there when things aren't going as well.

So when you are looking to build a village, don't forget that includes your work village too. If there isn't one where you are, create one. You will be surprised how many others also need one!

Kate Rothwell, Head of Tax, Pebble Group

MAKING THINGS EASIER FOR MEMBERS

Remember before you take a career break that ATT and CIOT members who are not working – for example, through taking a career break or maternity leave or due to long term sick leave – are eligible for reduced membership rates. In addition, members earning less than £17,375 are also eligible for reduced membership rates (which could benefit those working reduced hours).

The CIOT Reduced rate for all eligible members in 2023 is £80. The ATT Reduced rate for members not working is £75 and for members on the low income rate is £135.

As Chris Taylor, member manager at CIOT and ATT, says: 'It is not possible to put your membership on hold. However, it is possible for a member to resign and then to rejoin several years later. They would not need to retake any examinations but would need to complete a new application, provide an up-to-date CV and details of 12 months' CPD. In addition, they would have to pay a rejoining fee, as well as membership fees.'

For more details on the rejoining fees, see tinyurl.com/4dtzyue8 ATT details and tinyurl.com/2mjwmm5d for CIOT details.

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WELCOME

December Technical newsdesk

In my introduction to October's Technical Newsdesk, I wrote about HMRC's estimate of the average additional annual cost of compliance for companies affected by the changes to research and development relief for SMEs. I compared it to the cost of a jar of sliced beetroot (57 pence). I provided a link to the Tax Information and Impact Note (TIIN) (tinyurl.com/yc47bsjr).

Fast-forward a month and we are preparing notes for the appearance of the CIOT's Director of Public Policy Ellen Milner before the House of Lords Finance Bill Sub-Committee, where she will give evidence to their inquiry into the draft Finance Bill 2023-24. Reminding ourselves of the source of the 57 pence, we looked again at the TIIN, to see that the published figure is £0.57 million. Our first response was mild panic – how did we get to the figure of 57 pence, when the TIIN states £0.57 million? Did we somehow calculate this from the number of businesses affected? The answer was clearly 'no', as that would need a million businesses to be in scope. So what happened?

It seems the answer is to be found in the national archives, and the snapshot of pages retained, in this case at tinyurl.com/yfv9d6pc. There are 13 'instances' of that page in the archive, each of which – the latest being dated 23 September – reports the average annual cost at 57 pence. After our collective sigh of relief, we then started to ask ourselves other questions, such as 'What, then, is the average annual cost of compliance?' (The TIIN estimates that 20,000 businesses will incur continuing costs, so presumably even if the overall cost is £0.57 million that means it's still just £28.50 per business?) Other questions included 'How could such an error have been allowed to slip through?' (a failure to take reasonable care, perhaps?) and 'What other things in HMRC publications change without being signposted?'

On that final question, many GOV.UK pages allow you to see when they were last updated by clicking the link 'see all updates'. This takes you to a summary of the various changes at the bottom of the page. But those web pages which are a snapshot in time often do not have this functionality.

My attention was recently drawn to HMRC's news story in which it announced the temporary closure of the self-assessment helpline on 8 June. The story can be found on GOV.UK ('HMRC to trial seasonal Self Assessment helpline' at tinyurl.com/4hh6detu). However, this version seems to differ from the original one, in which it is stated that 'only 1% of HMRC customers are digitally excluded' ('HMRC to trial seasonal Self Assessment helpline' at tinyurl.com/4ersyvza). That statement appears to have since been removed, although there is nothing to indicate that the page has been changed, and the published date remains as 8 June.

Making unannounced changes can be problematic. In the case of the TIIN, there is likely to be some embarrassment that 57 pence was included in the first place, and was changed 'under the radar' so to speak. But more widely, when HMRC publish news and updates, they are captured and shared by the media on the day. Most media outlets will not monitor the original announcement for any changes, and so those who rely on non-HMRC sources could be misled. We will be discussing these things with HMRC so we can understand why such changes are made and whether better signposting is needed.

NEWSDESK ARTICLES

Contact

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GENERAL FEATURE

Public Accounts Committee: inquiry into the performance of HMRC in 2022-23

CIOT, ATT and LITRG report on the evidence they provided to the Committee's inquiry.

The inquiry (see tinyurl.com/ycku35e4) is addressing the following areas:

- HMRC's performance in collecting revenue and managing compliance;
- the main components of the £814 billion raised by HMRC in 2022-23; and
- HMRC's customer service and debt management performance.

A summary of our evidence is set out below.

CIOT comments

Our response focused on HMRC's service levels, which have been – and remain – the single greatest concern expressed by our members for at least the previous 18 months.

We drew upon the results of our survey into HMRC's service levels (tinyurl.com/37xtn69u). These demonstrate that service levels are not just having a significant detrimental impact on tax matters, but also on the wider economy, such as the ability and costs of doing business, and cash flow/finances. They are also having a negative impact on the tax system as a whole, such as attitudes to tax compliance and trust in the tax system.

We expressed concern that in order to save resources HMRC are adopting radical strategies, such as the closure of telephone lines, removal of paper processes and diverting callers to online resources, without fully understanding the impact on taxpayers and their compliance.

While recognising that increased digital interaction may be desirable for all parties, we said that any compulsion to use digital services should be undertaken in a managed way, extending practices more widely only when reliable evidence demonstrates its effectiveness. We also expressed concern that there is a lack of understanding as to why people are not using available digital services.

We said that the fact that HMRC report that nearly 45% of the tax gap is arising from 'mistakes' is a damning indictment on the complexity of the tax system. Following the abolition of the Office of Tax Simplification, we remain concerned that HMRC and HM Treasury will be unable to achieve real simplification of the tax system, particularly if governments continue to introduce complexity at each fiscal event through new measures. In the meantime, we said that HMRC need to ensure that their customer service offering, including their guidance and digital services, better enable taxpayers to understand and comply with their obligations and claim their entitlements. Otherwise, we are concerned that these elements of the tax gap will increase.

We also expressed concern that HMRC's resource constraints are fuelling unsatisfactory compliance approaches. While we recognise and do not condone the abuse of research and development (R&D) relief, HMRC's volume compliance approach is causing significant problems, including discouraging genuine R&D activity and claims. Similarly, HMRC's 'one to many' letters may reduce costs for HMRC, but can increase costs for taxpayers and agents, while their effectiveness is still to be determined.

ATT comments

Overall, our members are very frustrated with HMRC's current performance and our response similarly focused on this area. HMRC's current performance is patchy at best. When systems and processes work, they can work well and quickly. But when things do not work, taxpayers can experience significant issues and it is very difficult to find someone within HMRC to take ownership and resolve the issue. System problems can be particularly frustrating. If the computer says no, then taxpayers and their agents are left going in circles around different helplines trying to find a solution.

We are struggling to see that significant improvement in performance is achievable in the short to medium term with HMRC's current resources. We support HMRC's longer term digital ambitions, but there is a big gap between where we are now and the promised, sunlit digital uplands of the future. It is difficult to see how HMRC can bridge that gap.

We would like to see more targets for the processing of post, beyond the current focus on 15/40 working days, to deal with post backlogs. We think that there need to be more digital services for agents, specifically the ability to amend or update PAYE codes online and direct access by phone or email to the Agent Maintainer Team.

Finally, we suggested that more testing of new or updated services by agents and tax professionals – in addition to the testing that HMRC carry out with the general public – might help to improve the design of digital services.

LITRG comments

The LITRG submission focused on HMRC's digital services, the attempts to move people from phone and post channels to digital, and service levels – all from the perspective of low-income, unrepresented taxpayers.

We acknowledged the benefits that digital services can offer people when done right, but we also highlighted the problems for those unable to use digital channels and the need for HMRC to support those individuals.

We said that some of HMRC's digital services (which includes online guidance) are not yet at the standard required in order to facilitate a significant channel shift, and that HMRC should focus on building and improving digital services rather than forcing people to move before they, or the services, are ready. We also highlighted the potential impacts of forcing a channel shift too early.

We expressed concern about some of the decisions taken by HMRC in order to move people from using post and phone channels to digital and encouraged HMRC to think about other steps they could take to free up capacity in the phone and post channels.

We said that some of the decisions appeared to be made without a sufficient understanding of people's behaviour and why they use the phone and post instead of existing digital channels.

We also highlighted our concerns about the evidence base used to make some of the decisions and about the extension of initiatives without full evaluation. We concluded that in the shorter term, HMRC need additional resources with the right skills to meet the current demand while they work to improve and develop digital services.

At the time of going to print, the Committee had not yet published our evidence, and we are unable to publish it ourselves until they do so. But keep a look out on the submissions pages on our websites, and in the weekly email newsletter.

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CORPORATE TAX OMB
MANAGEMENT OF TAXES

House of Lords inquiry on draft Finance Bill measures

Representatives from CIOT and ATT gave evidence to a House of Lords committee in October on the measures to tackle promoters of tax avoidance, additional HMRC data requirements and research and development tax reliefs.

Representatives from the CIOT and ATT gave evidence to the House of Lords Finance Bill Sub-Committee's inquiry into the draft Finance Bill 2023-24 (see tinyurl.com/yadcnb97). The Finance Bill Sub-Committee is appointed annually by the Economic Affairs Committee to consider the draft Finance Bill from a tax administration, clarification and simplification point of view. This year, the Sub-Committee has decided to focus on the proposed new criminal offence for promoters of tax avoidance, the disqualification of directors of promoter companies, additional HMRC data requirements and the reforms to research and development (R&D) tax relief in the draft Bill.

The inquiry will produce a report containing conclusions and recommendations. Based on previous inquiries, we anticipate that this report will be published in December or January.

In the oral evidence sessions, the discussions covered how effective the new criminal offence is likely to be, which 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 those overseas.

The CIOT and ATT reiterated that we strongly support the raising of standards in the tax advice market and driving out those people who continue to promote tax avoidance schemes. But we said that the proposed criminal offence needs to be introduced in a way that has due process with adequate safeguards and appropriate governance, and that in our view it currently fails this test. We provided more detail about this to the committee in our written evidence, including a suggestion for how the safeguards could be improved. The ATT also outlined that measures such as these should be looked at in the context of the wider issue of raising standards, including regulation of the tax advice market.

Regarding the power to seek disqualification of directors of promoter companies, we added that this may not be effective in deterring the promotion of tax avoidance if the real controlling minds behind the company hide behind so-called 'stooge' directors, who are often recruited on social media and based outside the UK. Like the criminal offence, its effectiveness will also depend on directors' awareness of the measure, the role they are playing and the risks of disqualification, which in turn will depend on how much HMRC publicise the new rules.

The Lords asked how onerous the proposed employee hours worked data collection measure is likely to be for employers and how accurate the data provided will be. We said that it is currently unclear what HMRC will use the data for and whether they will share it with other government departments, and if so whether the legal powers are in place for doing so. There is a question mark about whether the requirement to provide the data and the associated costs to business of doing so are proportionate to the expected benefits.

Regarding R&D tax relief, the ATT and CIOT both reiterated that April 2024 is too soon to launch the proposed new merged above the line credit scheme, expressing concern that consultation to date has been rushed and that there remain a number of outstanding questions. We also highlighted the problems caused by uncertainty about the future direction of the relief.

The ATT also discussed potential problems with the proposed additional relief for R&D intensive SMEs, and the CIOT outlined their ongoing concerns about HMRC's volume approach to compliance.

A recording of the evidence session is available at: tinyurl.com/yxbut5h7. The CIOT and ATT also provided written evidence to the sub-committee, which can be found at: www.tax.org.uk/ref1224 and www.att.org.uk/ref445.

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PERSONAL TAX EMPLOYMENT TAX
INHERITANCE TAX AND TRUSTS

ATT Autumn Statement representations

The ATT submitted five representations to HM Treasury in advance of the Autumn Statement. These addressed areas of concern with tax policy identified by our Technical Team based on feedback from members and our dealings with HMRC. Our submissions are summarised below, with full details available on our website. By the time you read this, it will be known whether the government has picked up any of our suggestions.

Trivial benefits

Our first Autumn Statement representation dealt with two aspects of the trivial benefits exemption in the Income Tax (Earnings and Pension) Act 2003 s 323A: revising the £50 limit to reflect inflation, and widening the exemption to cover qualifying expenses which are not paid for directly by employers.

Our representation suggested that benefits which would be within the rules if paid for by the employer should also be exempt if the employee pays and reclaims the cost. An employee could then pay for their flu vaccination, for instance, and submit an expense claim to their employer without triggering a tax charge.

Jointly owned property

The ATT's second representation concerned jointly owned property and the need for Form 17. Our suggestion was to abolish the deeming provisions in Income Tax Act 2007 s 836, which result in income from property held jointly by married couples or civil partners being split equally regardless of the underlying beneficial ownership. This rule does not apply to other joint owners and is relevant for income tax purposes only. This causes unnecessary complexity and confusion, and we have suggested that the taxation of joint property income should be simplified to reflect beneficial ownership, regardless of the marital/civil partnership status of the owners.

Mileage allowances

We have repeated our call for the government to increase the amount that drivers can be paid tax-free for using their own car for work. The current rates have been unchanged for over 12 years, during which time the cost of running a car has increased substantially.

We think that all of the mileage rates set out in legislation should be increased to better reflect the current costs of running and maintaining a personal vehicle.

Inheritance tax simplification

The residence nil rate band is a complex relief that is available to some

GENERAL FEATURE PERSONAL TAX OMB

CIOT's Autumn Statement representation: cryptoassets and their treatment for tax purposes

The CIOT submitted a representation prior to the Autumn Statement calling for greater recognition for cryptoassets within tax legislation.

The CIOT took the November Autumn Statement as a further opportunity to call for greater recognition within tax legislation for cryptoassets. We are concerned that the legislation currently being applied to cryptoassets does not acknowledge their unique nature, as it was written with more conventional assets in mind. For example, cryptoassets are treated akin to company shares when pooling the base costs for capital gains tax purposes, despite the potentially huge number of crypto transactions which can take place in a short space of time; nor is there even a uniform definition of cryptoassets within tax legislation.

Whether returns on cryptoassets are taxed as income or capital gains is another grey area, which could be addressed by legislation. The recent proposed changes to decentralised finance (DeFi) transactions will have them taxed as income (although the CIOT had recommended capital treatment), but it is still often unclear whether returns from holdings outside DeFi are regarded as a trade or investment. HMRC and the courts use the long-established 'badges of trade' cases as a gauge, but many of those cases are over a hundred years old and concern traditional (often tangible) investments. There needs to be legislative change which recognises cryptoassets for the unique assets they are, rather than applying existing legislation which simply does not cater for them.

As well as income tax and capital gains tax, elements of the inheritance tax legislation should recognise the unique nature of cryptoassets. For example, when claiming post-death loss relief, the legislation currently only applies to sales of land and quoted shares. However, cryptoassets are notoriously volatile, with potentially huge losses possible over a short period of time. We therefore recommended that cryptoassets be included within the definition of 'qualifying investments' within the loss relief rules, allowing them to be treated akin to shares. The VAT Act 1994, likewise, has no tailored rules for supplies involving cryptoassets.

The Law Commission recently recommended that cryptoassets be recognised as a 'third form' of personal property in law (in addition to things 'in action' and 'in possession'). Our recommendations for legislative recognition of cryptoassets mirrors that of the Law Commission, but with respect to taxation.

The full CIOT representation can be found here: www.tax.org.uk/ref1228

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estates in addition to the nil rate band. While it would come at a cost, we have suggested that inheritance tax could be both simplified and made fairer by merging the residence nil rate band and the nil rate band into a single nil rate band.

Relief for loss on shares

Where executors of estates sell shares which have fallen below the probate value, they can claim relief from inheritance tax on the value that has been lost, provided that the shares are sold within 12 months of the date of death.

However, many estates are struggling to obtain the required grant of probate in time, due to delays in the processing of probate applications. These delays are outside of their control. The ATT considers that the existing 12 month window needs to be extended to 18 or 24 months from the date of death, even if only on a temporary basis, until these delays are resolved.

All five submissions can be found at: www.att.org.uk/technical/submissions.

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GENERAL FEATURE

LITRG Autumn Statement representation

LITRG has submitted a representation to HM Treasury ahead of the 2023 Autumn Statement.

In our representation, we recommend that HMRC issue a commissioners' direction setting out what constitutes an 'approved' electronic or digital signature for the purpose of paper tax refund forms.

Electronic and digital signatures carry risks, particularly electronic signatures which can include a typed name or a copy and pasted image of a signature. As yet, HMRC have no controls or policies in place.

This means that HMRC are accepting signatures on tax refund forms (containing nominations paying the refund to the agent in the first instance), which carry potential risks:

- They may be harvested from an opaque online sign-up process and used without the taxpayer's full authority, meaning that the taxpayer does not see or sign the completed form that is submitted to HMRC. This method also makes the terms and conditions, and the fees, less transparent.
- They may be recycled from other applications that taxpayers have made with a connected entity (such as a payment protection insurance claims company). This not only means the taxpayer has not seen the completed form, but they may not be aware a claim is being made at all
- In some cases, they may be potentially forged.

We therefore propose that a formal framework is put in place which informs how HMRC deal with electronic or digital signatures. Compulsory new rules should state that an electronic or digital signature, on a form submitted by an agent, is only approved where it has been placed on the *completed* form by the taxpayer themselves or where it is collected separately but is used with the full (documented) authorisation of the taxpayer and where they have seen, understood and approved the contents of the paper tax refund form (including their signature) prior to submission. Where paper tax refund forms are not supplied with an approved signature, they should be taken not to have been submitted.

This proposed change will not just benefit taxpayers who are currently

getting caught out by agents but also ultimately the Exchequer, as public money is exposed where HMRC pay out money to agents that they should not. It may also help to address the current customer service crunch in HMRC, given that a large amount of contact is generated by these agents progress-chasing claims and by taxpayers with questions and complaints.

HMRC have various tools at their disposal to deal with agents that are not acting in good faith; for example, their Standards for Agents, However, even after the Tax Credits Ltd case, unscrupulous repayment agents seem to be abusing signatures. It is high time for HMRC to take firmer action on the repayment agent situation. This should include essentially mandating HMRC to take care to ensure they are only accepting approved signatures (by checking an agent's end-to-end process) via this recommended new framework.

The representation can be read at: www.litrg.org.uk/ref2803. A news article 'Why is my tax refund being sent to a third party I've never heard of?' contains further background information: tinyurl.com/by8k83h5.

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INDIRECT TAX

Plastic packaging tax: consultation on chemical recycling and adoption of a mass balance approach

Plastic packaging tax was introduced in the UK on 1 April 2022, to encourage the creation and use of plastic packaging containing a minimum of 30% of recycled content. As plastic packaging products containing recycled content were more expensive than virgin plastics, the application of plastic packaging tax to products with low or no recycled content contributed to levelling competition on price, making products meeting the recycled content threshold more attractive.

Currently, recycled plastic sourced from a mechanical reclamation route can be used to evidence that plastic packaging meets the 30% plastic packaging tax (PPT) relief threshold test. However, recycled content derived via this method cannot meet the strict requirements for certain food and pharmaceutical packaging, where virgin plastic must be used. These sectors can obtain product containing recycled content via chemical recycling, but it is difficult to evidence the levels of recycled and virgin product from this process.

HMRC have consulted on whether it is viable to identify the percentage of recycled content for plastic packaging derived from a chemical processing method via a mass balance approach. If so, more sectors could benefit from PPT relief as they would be able to prove that the recycled plastic content in their packaging meets the 30% threshold test, where they meet the evidence tests.

Although many consultation questions were quite scientific and aimed at experts within the chemical and recycling sectors, CIOT representatives attended a roundtable meeting with HMRC and industry specialists in September, to discuss the consultation questions. The industry specialists commented that it had been useful to have tax specialists present at that discussion to understand how the chemical recycling evidence and tax administration could interact. The CIOT also submitted a written response (www.tax.org.uk/ref1180) responding to questions that considered how a mass balance approach would impact the application and administration of PPT.

The CIOT agreed in principle that qualifying plastics derived from chemical recycling should be able to qualify for PPT relief. We also commented that if a mass balance approach is introduced for chemical recycling, the data obligations for tax compliance must be straightforward for a business to obtain and that HMRC may also wish to consider in what circumstances, if any, estimation may apply. If an industry certification scheme is used, the most administratively straightforward position would be that such documentation can be used to evidence the PPT relief requirements. We received member feedback that at current PPT rates, it can cost businesses more in resourcing costs to carry out all of the administration requirements for PPT than to just pay the PPT itself, even though their product qualifies for full PPT relief. Therefore, we said that we would like any new methods of determining recycled content to be straightforward for businesses to evidence.

The CIOT also recommended that HMRC introduce a long term PPT rate plan, including for the mass balance approach, to provide businesses with certainty, as this too will impact investment in the UK. This has been successful for other taxes; for example, landfill tax.

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EMPLOYMENT TAX

'Occupational Health: Working Better': CIOT and ATT responses

The CIOT and ATT have responded to a recent joint HM Treasury and HMRC consultation on whether tax incentives could drive greater provision of occupational health services by employers.

The consultation forms part of a package of measures announced by the Chancellor at the Spring Budget which aim to reduce the number of people out of work due to long-term sickness.

The government estimates that currently only 45% of workers in Great Britain have access to employer provided occupational health services, dropping to 18% in small businesses. The consultation explored the reasons for this, and whether further tax incentives could play a role in encouraging employers to provide occupational health services to their employees.

The ATT supports the proposal that the current benefit in kind exemptions should be extended to cover a wider range of health related services to employees. However, we do not believe that alternative, new tax incentives (such as a super-deduction for occupational health costs) should be introduced, as these could be overly complex and open to abuse.

The ATT particularly welcomes the proposed exemption for employer reimbursed flu vaccination costs. The current system – in which employer provided vaccines or vouchers are exempt but reimbursing an employee leads to a tax charge – is counterintuitive. Removing this discrepancy could drive greater uptake of vaccines, with benefits to employees, employers and the wider economy. We believe that consideration should also be given to extending the current exemption for employer provided eye tests, glasses and contact lenses to include reimbursement.

The CIOT agreed that if the government is looking for employers to do more than they are currently doing by

EMPLOYMENT TAX

Salary advances: Proposed amendments to Regulations

The CIOT and LITRG have responded to a HMRC consultation on amending the PAYE Regulations to defer PAYE reporting of salary advances.

The CIOT and LITRG have responded to a short technical consultation on proposed PAYE amendment regulations, which are intended to allow employers to delay reporting an advance payment of salary ('salary advance') made to an employee until payment of the remainder of that salary instalment, where certain conditions are met.

In recent years, there has been a proliferation of third party salary advance schemes, which charge a fee for their services and which maintain that their arrangements have no impact on employer payroll processes. The technical consultation follows an announcement made by HMRC in Agent Update 102 (tinyurl.com/yc3rbj79) in which they set out their view on the proper reporting of salary advances.

Some employees seem to be turning to these schemes to simulate being paid weekly rather than monthly (whereas if employers simply paid weekly, there would be no need for the employee to incur fees to access their wages). Both CIOT and LITRG were disappointed that HMRC are treating this as a small change and do not seem to be appreciating the wider significance of it. We felt that HMRC would have been better starting with a public consultation, including proper impacting, rather than jumping to drafting legislation to effect the proposed change. In our view, amending the regulations as proposed without wider consultation could be seen as signalling that HMRC support the use of schemes that the Financial Conduct Authority have raised some concerns about.

LITRG was not convinced that HMRC have thought through all of the potential practical issues and interactions, including the fact the proposed changes undermine the entire principle of 'on or before' PAYE reporting and that some payroll software was not currently set up to capture advances. This could introduce the scope for errors and mean that employees may struggle to reconcile their payments into the bank with their payslips. Adding that the use of the word 'must' in the draft legislation looks set to penalise all those employers that have chosen to be compliant; that have accounted for advances in the correct manner to date; and that may wish to continue to do so, rather than change to a new system.

LITRG also queried whether employers that currently pay weekly might swap to using this monthly system to reduce their admin burden and exposure to penalties. There is concern over interactions for universal credit, national living wage and minimum wage recipients. In addition, the position is unclear as to what, if anything, HMRC are going to do in terms of all the historic non-compliance generated by these schemes.

The CIOT also raised some technical issues on interpretation of the proposed regulations; in particular, the meaning of 'main relevant payment'. Contractual payday is not defined as such in the PAYE regulations, so we have some concerns around interpreting 'main relevant payment' where consistently a larger proportion of earnings is received as a salary advance than at the normal contractual payday. We have also raised some points regarding the timing of employer PAYE payments where salary advances are made in an earlier tax month to the remainder of the pay.

The CIOT response is available at: www.tax.org.uk/ref1220 and the LITRG response at: www.litrg.org.uk/ref2802.

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way of occupational health services, then increasing and expanding the scope of existing tax incentives (such as the benefits-in-kind tax/NIC exemptions) would help in this respect. We also suggested that the government develop a framework which sets out what occupational health support services employers should be encouraged to provide to their employees – and we welcomed the fact that the Department for Work and Pensions issued a parallel consultation to this end.

The CIOT welcomed proposals to expand the scope of the health screenings and medical check-ups exemption, review the scope of the recommended medical treatment exemption, and introduce a dedicated exemption for flu vaccinations. In particular, we felt that the £500 limit for recommended medical treatment is too low, and also recommended removing differences in tax treatment between reimbursement of treatment costs and directly provided treatment.

The ATT response is available at: www.att.org.uk/ref436 and the CIOT response at: www.tax.org.uk/ref1211.

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EMPLOYMENT TAX

Optional remuneration, cash long term incentive plans and bonus deferral

The CIOT has received clarification from HMRC that the optional remuneration rules do not apply to bonus deferrals into cash long term incentive plans.

The CIOT has been in correspondence with HMRC regarding the application of the optional remuneration (OPRA) rules to cash long term incentive plans (LTIPs), which involve the deferral of annual bonuses, either where the employer requires part of the bonus to be deferred into the cash LTIP, or where this occurs on a voluntary basis. The OPRA rules are set out at Income Tax (Earnings and Pensions) Act 2003 ss 69A, 69B and 228A.

An LTIP is a generic name for a plan that aims to provide incentives to employers over the long term, via rewards linked to cash, shares or securities. Participation in the plan is often funded by way of sacrifice of all or part of the participant's annual bonus: employers may defer the payment of bonuses and make eventual payment subject to conditions. Such a deferral may be imposed by the employer or may be entered into voluntarily by the employee. In cash LTIPs, the reward arising from participation in the plan is delivered solely in cash.

HMRC's Employment Income Manual discusses such arrangements

GENERAL FEATURE

ICAEW continuing professional development changes: impact on CIOT and ATT members

Updated ICAEW Continuing Professional Development Regulations came into effect on 1 November 2023. Joint CIOT/ATT and ICAEW members and other CIOT/ATT members regulated by ICAEW will now need to assess if and how they are affected by the changes.

ICAEW have implemented changes to their Continuing Professional Development (CPD) Regulations, effective 1 November 2023. Everyone covered by their regulations will be required to complete a minimum number of CPD hours annually. A proportion of the required hours must be verifiable (that is to say evidenced) and of these verifiable hours a minimum of one hour's ethics training must be undertaken aligned to the ICAEW Code of Ethics. The number of minimum and verifiable hours are variable, dependant on the role and activities of those within scope.

We have received a number of queries about the potential impact on our members as a result of the changes. To address the common questions on this area, we have provided some frequently asked questions (FAQs) with input from ICAEW which include:

1. Do CIOT or ATT have any plans to return to a more hours-based approach to CPD in light of the ICAEW changes?
2. I am a joint ICAEW and CIOT/ATT member. What will be the impact of the changes for me?
3. If I undertake CIOT or ATT provided learning, what type of learning would this be classified as, when providing my records to ICAEW?
4. I am not an ICAEW member, but I work for an ICAEW regulated firm. Do the changes affect me?

The FAQs include further links to ICAEW key points of information and guidance, and are available on the CIOT and ATT websites (tinyurl.com/y6hhrpca and tinyurl.com/524vzk25).

The CIOT and ATT CPD regulations, which were last updated in 2022 (with some minor changes effective from 1 January 2023) remain the same. Those within scope are required to assess and perform such CPD as is appropriate to their duties. There are no requirements in relation to the number of hours of CPD or structured versus unstructured CPD. Further details are available on the CIOT and ATT websites (tinyurl.com/cnwrsjwv and tinyurl.com/bdh7d7ee).

We recommend that all CIOT and ATT members who are, or may be, affected by the ICAEW changes review their position to ensure they are meeting all their requirements. A full overview of ICAEW CPD changes is available on the ICAEW website (tinyurl.com/mrxa5a6n).

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at tinyurl.com/353jx3rw (emphasis added):

> 'Employers may defer the payment of bonuses and make eventual payment subject to conditions. For example, the employer awards a bonus of £100,000 referenced to a performance period. £75,000 is paid in cash immediately following the bonus year; £25,000 is to be paid three years later in cash or shares, if the employee has not resigned or been dismissed before the vesting date. Such a deferral may be imposed by the employer, or it may be entered into voluntarily by the employee. **To develop the example, the £25,000 deferral may be required by the employer but the employee has the choice of voluntarily deferring a further £25,000.**'

The question on which CIOT sought HMRC's clarification was whether or not such bonus deferral or cash LTIP arrangements may be caught by the OPRA rules. This said, CIOT commented that in our view the OPRA rules were designed to cover provision of ongoing benefits-in-kind (for example, under flexible benefit arrangements) to employees in lieu of cash earnings, not cases where part of an annual bonus is deferred to be delivered later as earnings under a cash LTIP. In particular, we considered that the employee does not 'give up' the right to receive earnings; rather the quantum/amount of earnings they would have received is varied by virtue of the terms of the LTIP and delivered – as earnings – at a later date. Furthermore, the legislation draws a distinction between 'benefits' and 'earnings' and there is no particular benefit which the employee receives where they participate in a cash LTIP, other than the prospect of later payment of cash earnings.

In response to our request for clarification, HMRC commented that they consider the OPRA rules apply to scenarios where an employee gives up the right to an amount of earnings in favour of a benefit-in-kind, and (subject to exceptions) result in a tax charge on the higher of the value of the benefit-in-kind and the amount of the earnings foregone.

When all or part of a bonus is deferred into a cash LTIP, the employee is not giving up the right to an amount of earnings, so this is not caught by the OPRA rules. Rather the employee is taxable on any earnings paid out of the plan in the tax year they are received.

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GENERAL FEATURE

Economic Crime and Corporate Transparency Act

Members will be interested to know that on 26 October 2023 the Economic Crime and Corporate Transparency Act received Royal Assent. This act brings reforms to Companies House and limited partnerships, improved information sharing between businesses and law enforcement and greater powers to the National Crime Agency.

Companies House Reforms

The Economic Crime and Corporate Transparency Act (ECCTA) brings enhanced powers to Companies House including the implementation of identity verification checks for:

- all new and existing UK company directors;
- people with significant control; and
- those delivering documents to the Companies House register.

Verification can either be undertaken directly via Companies House or via an indirect route through an Authorised Corporate Service Provider (ACSP). ACSPs will deliver documents on behalf

GENERAL FEATURE

Reporting tax avoidance

A reminder for members about the Professional Conduct in Relation to Taxation tax planning standards for members and considerations in relation to reporting tax avoidance.

The CIOT and ATT have prepared guidance for members reminding them about the requirements under Professional Conduct in Relation to Taxation (PCRT) when undertaking tax planning.

You should be aware of the HMRC current list of named tax avoidance schemes, promoters, enablers and suppliers (tinyurl.com/4wt488pk) and should warn clients about the risks of getting involved with any of these.

The guidance also provides information on the reporting requirements in relation to tax evasion and the possible routes to report either members or non-members involved in tax avoidance schemes and promoters, enablers and suppliers of such schemes.

The guidance is available on the CIOT website at: tinyurl.com/3emunxkb and the ATT website at: https://tinyurl.com/ype4htsv. If members have any queries, they should contact the Professional Standards Team (standards@ciot.org.uk and standards@att.org.uk).

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of clients and provide confirmation of identity verification to Companies House. To provide ACSP services to clients, agents must be registered with a supervisory body for Anti-Money Laundering (AML) purposes and already have an existing duty to carry out customer due diligence checks on clients.

These updates will bring improvements to the quality of information on the company register and seek to prevent bad actors from fraudulently setting up companies under false information.

As the Act will introduce a verified public register of beneficial ownership and improve the accuracy and reliability of Companies House information, AML supervised firms may find this a useful resource for customer due diligence processes in the future, though firms should be aware that these measures will not be introduced right away.

Further reforms aim to tackle the misuse of limited partnerships and Scottish limited partnerships.

Cryptoassets

There will also be changes to law enforcement agencies' powers in relation to seizing and recovering cryptoassets which are proceeds of crime or associated with illicit activity through amendments to the Proceed of Crime Act 2002.

Improvements to information sharing

Currently, there are limitations in the information that businesses in the AML regulated can share between each other.

The ECCTA seeks to improve information sharing measures through disapplying civil liability for breaches of confidentiality in certain situations when sharing customer information for the purpose of preventing, investigating and detecting economic crime.

This Act removes the requirement for a Suspicious Activity Report to have been submitted for an information order to be obtained by the National Crime Agency's Financial Intelligence Unit.

Failure to prevent fraud offence, strategic lawsuits against public participation and reforms to corporate criminal liability laws

A new criminal offence has been introduced, the 'failure to prevent fraud offence'. Organisations will be accountable for failing to prevent fraud committed by employees, if the organisation profits from the fraud and did not have reasonable measures to prevent this in place.

There have also been reforms to hold businesses criminally liable in their own right for economic crimes, as well as changes to Strategic Lawsuits Against Public Participation (SLAPPs) which involve economic crimes.

Further information can be found on the GOV.UK website (tinyurl.com/ynnrz6yc) and the ATT (tinyurl.com/bdd47ak9) and CIOT (tinyurl.com/5by9k4af) websites.

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CIOT		Date sent
Occupational Health: Working Better	www.tax.org.uk/ref1211	12/10/2023
Plastic packaging tax: chemical recycling and adoption of a mass balance approach	www.tax.org.uk/ref1180	17/10/2023
The new UK/Luxembourg double tax treaty	www.tax.org.uk/ref1240	31/10/2023
Draft Finance Bill 2023-24: House of Lords Economic Affairs Committee Inquir	www.tax.org.uk/ref1224	31/10/2023
ATT		
Autumn Statement 2023 representation: mileage allowances	www.att.org.uk/ref441	10/10/2023
Autumn Statement 2023 representation: IHT relief for loss on shares	www.att.org.uk/ref442	10/10/2023
Autumn Statement 2023 representation: IHT simplification	www.att.org.uk/ref443	10/10/2023
LITRG		
Salary advance	www.litrg.org.uk/ref2802	09/10/2023
Autumn Statement representation 2023	www.litrg.org.uk/ref2803	17/10/2023

Tax Policy

LITRG secures paper tax return concessions from HMRC

CIOT's Low Incomes Tax Reform Group (LITRG) has helped to secure an agreement from HMRC that paper tax returns downloaded and printed from GOV.UK for the 2022/23 tax year will continue to be accepted.


Antonia Stokes, Technical Officer, LITRG

Earlier this year, HMRC decided to stop automatically sending out paper tax returns to many taxpayers. This decision was taken as part of HMRC's efforts to have more taxpayers interact with them digitally.

At the same time, the downloadable version of the SA100 (the main self-assessment tax return form) available on GOV.UK was changed to read 'for reference only', with HMRC suggesting that this version would not be accepted if sent in for processing.

It meant that, with limited exceptions, self assessment taxpayers wishing to file on paper would have to contact HMRC by telephone to order the form, rather than printing it themselves.

This situation created some difficulties, with some taxpayers not comprehending the new requirement until too late. With a three-week estimated time lag in receiving the paper return following a call to HMRC's order line, this meant that on the lead up to 31 October, some would-be paper filers were already too late to receive their SA100 and meet the deadline.

It also emerged that some taxpayers in categories that should have automatically received a paper tax return (such as those over 70, the visually impaired, religious ministers and non-UK taxpayers) had not received one. Some overseas UK taxpayers in particular had expressed concern that they had not received their paper return (in some cases due to unreliable local postal services) and would usually rely on being able to download the form directly from GOV.UK.

The situation had been causing confusion, with seemingly contradictory responses from HMRC advisers on its community forums that downloaded forms could and could not be used.

With the paper tax return approaching, LITRG raised these concerns directly with HMRC and published a news article on its website with guidance for affected taxpayers (see tinyurl.com/45udmhy5).

Following the article's publication, LITRG technical officer Antonia Stokes was invited onto Radio 4's Money Box programme to discuss the situation. On the eve of the programme, and with HMRC invited onto the programme to respond, the tax authority confirmed that downloaded paper tax returns would be accepted, a situation greeted with relief by many concerned taxpayers.

Antonia commented: 'This confirmation provides reassurance for taxpayers filing for 2022/23. However, it does not necessarily mean that similar procedures will be put in place for future years.

'HMRC are keen to encourage taxpayers to deal with them online. This is an understandable, even laudable, aim. But it has to take adequate account of those who cannot engage with HMRC online, whether because they lack the capacity to use the internet generally or, as is the case with many of the people here, because HMRC's systems are not able to take account of their particular circumstances.'

Political update

CIOT, ATT and LITRG work with politicians from all parties in pursuit of better

ATT and CIOT have given oral evidence to a House of Lords sub-committee looking at measures in the draft Finance Bill 2023-24. Both ATT's Emma Rawson and CIOT's Ellen Milner told the committee, chaired by CTA Lord Leigh of Hurley, that merging the two R&D reliefs from April 2024 would be too rushed a timetable. Ellen told peers that HMRC's estimate of the cost to businesses of new data collection obligations 'felt very low', while Emma called for a more holistic approach to tackling promoters of tax avoidance schemes. (You can read our report at tinyurl.com/FBSC23).

CIOT attended Lib Dem, Labour and Conservative party conferences during the autumn, meeting with MPs, peers and party advisers and holding fringe meetings at the larger two conferences (see the report in last month's *Tax Adviser* and online).

CIOT President Gary Ashford met with Shadow Financial Secretary James Murray MP in Parliament in November ahead of the Autumn Statement. Joined by the Institute's Director of Public Policy Ellen Milner and Head of External Relations George Crozier, they discussed issues including HMRC service levels, expectations for the Autumn Statement and Finance Bill and Labour's approach to tax policy making.

CIOT, ATT and LITRG have all submitted written evidence to the Public Accounts Committee ahead of its annual session looking at HMRC's performance over the past year. The session will take place on 14 December. See the article in the Technical Newsdesk section of this magazine for an outline of what CIOT and LITRG said. Under parliamentary rules, evidence provided to select committees may not be published by the submitter until the committee has itself published it.

Award

ATT win award

The ATT technical team have won the silver award in the Best Association Team category at the 2023 Association Excellence Awards.

The award was collected by technical officer David Wright at a ceremony in central London on 3 November.

In their entry, the four-strong team are described as 'small but mighty', with the entry highlighting their involvement in over 35 HMRC and HM Treasury groups, their media work and production of a range of CPD webinars.

Other finalists at the awards included CIOT for Best New Event by an Association for the Diploma in Tax Technology Launch Webinar, and ATT and CIOT jointly for Best Association Newsletter or Magazine (circulation over 25,000) for *Tax Adviser* magazine.

David Wright, Technical Officer, ATT collects the ATT Award

Tax Policy

'Outdated' mileage rates warning

People who use their own cars for business trips are being left out of pocket by 'severely outdated' mileage rates, the ATT has warned, calling for the rates to be increased.

Senga Prior, Chair of ATT's Technical Steering Group, said: 'Freezing mileage rates for the last 12 years means employees are no longer fairly compensated for the real expenses incurred during their business travel. This particularly affects those on low wages, such as care workers, who have no choice but to use their own cars for work.

'The current rates are severely outdated, meaning employees are bearing the financial burden of business travel on behalf of their employers.'

The current rates of 45p per mile for the first 10,000 miles, and 25p per mile thereafter have not been updated since 2011. If the rates had kept pace with inflation, the rates would now be 63p and 35p respectively.

Mileage allowances was one of five topics on which ATT made representations to government ahead of the Autumn Statement. The others covered jointly owned properties, trivial benefits and two on inheritance tax. One of these suggested a simplification of inheritance tax, while the other requested that executors are given a longer period in which to sell shares from the estate and claim relief for a loss on sale.

CIOT also made a pre-Autumn Statement representation, repeating the Institute's call for the government to address the tax treatment of cryptoassets. 'The world of cryptoassets is developing at a rapid rate; unless there is a clear, uniform set of legislation across the taxes, the UK will lose out to other countries whose legal systems recognise cryptoassets for the unique assets they are, providing certainty and a more attractive place to do business for investors,' the representation states.

In the news

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

'Emma Rawson, technical officer at the Association of Taxation Technicians, a professional body, said while the changes would simplify the tax system overall, they would be a "massive complication" for those affected. "It's a hard conversation to tell people: 'You've got extra tax to pay, not because you've made more money, but just because HMRC are changing their rules.' That's hard, especially in the current environment," she said.'

Financial Times on higher tax bills for the self-employed due to basis period reform, 3 November. Emma also featured in the Daily Telegraph on this issue.

'For those who are able to take part, the Help to Save account is a very attractive savings scheme, especially when the saver is able to maximise their bonuses. They can do this by paying in the maximum amount each month and making no withdrawals. Those who are eligible can still get bonus payments, even if they can't save the maximum. That is why we recently welcomed the extension of the scheme to April 2025.'

Victoria Todd, head of the Low Incomes Tax Reform Group, in the Daily Mirror on savings scheme bonuses, 3 November

'It's a case of having a look and thinking whether an ISA would be the better option for you. Sometimes the interest rates are lower so would you be better off getting a higher interest rate and paying some tax?'

Helen Thornley, technical officer at the Association of Taxation Technicians, on BBC Radio 4 Money Box on tax charged on savings interest, 4 November

'While the Welsh government's tax powers are limited, they are not non-existent. Wales should explore innovative tax based incentives favouring job creation, growth and prosperity. Even if Wales cannot unilaterally implement new taxes, there is still a place for a balanced and reasoned debate about tax strategy – and we know that other areas of the UK are listening to the debate in Wales.'

Ritchie Tout, chair of the CIOT's Welsh Technical Committee, in an opinion article titled 'How Wales can be smarter on its limited tax powers to boost its economy', published on Business Live, 13 November

Charities

The gift of an hour

Can you gift us the last hour of your pay this Christmas?

Your support of the tax charities, TaxAid and Tax Help for Older People, enables us to provide our tax advice services, stopping vulnerable people from falling into further financial hardship.

Last year, the two tax charities supported 13,965 vulnerable people through our helplines. We helped to generate £628,240 in tax refunds for people in financial hardship and remitted £834,557 of their tax debt.

The difference your donation can make

The tax charities aim to provide tax help to all who need it. We do this through our helpline services, but also through education on tax and by advocating for our beneficiaries to HMRC.

Last tax year, we saw an influx of issues surrounding tax refund agents. Although some are legitimate and upfront about fees, others charge high fees or make inflated and fraudulent claims. In some cases, clients did not even know they had signed up to a refund agent. We were able to feed this back to HMRC, and were pleased to see that HMRC ran a consultation about this very issue later that year.

Can you donate your last hour?

TaxAid and Tax Help for Older People are the only charities providing specialist tax help for people across the UK. Your generous support enables us to continue and grow our services, reaching more people who need our help.

Together, we can stop vulnerable people, like Emma, from falling into further financial hardship paying tax debts that they do not owe. Please donate your last hour's pay this Christmas.

You can donate to the tax charities through our fundraising campaign, Bridge the Gap, at https://cafdonate.cafonline.org/24753.

Emma's Story: When tax penalties keep piling up

Emma, a young widow, had to sell her home and move into a one-bedroom flat with her son. She registered as self-employed, but due to learning difficulties and digital illiteracy she did not understand the letters telling her to submit a tax return.

On contacting HMRC, she was pointed to online resources, which made her feel helpless. Letters and penalties continued to arrive, which Emma paid as they came through, hoping this would solve the problem. She paid £4,700 in penalties when her annual income was only £6,000.

We worked with Emma to complete her tax returns and appeal the penalties. She received a full refund, finding herself in a better financial position, with a better understanding of how to manage her taxes going forward.

The funds raised will be split evenly between TaxAid and Tax Help for Older People. You can also use our QR code to donate. Thank you for your generosity.

Technical Spotlight

Spotlight on the Digitalisation and Agent Services Committee

The remit of the joint CIOT-ATT Digitalisation and Agent Services Committee (DASC) is that of the infrastructure and working relationship between HMRC and agents and, predominantly of late, Making Tax Digital for Income Tax (MTD for ITSA).

For several years now, the committee has been involved with discussions with HMRC on the introduction of MTD for ITSA. The main concerns have involved:

- the additional administrative work for taxpayers and their agents;
- the imposition of quarterly returns (which would not operate cumulatively) and End of Period statements;
- the lack of any substantial testing through pilots; and
- widespread ignorance of MTD for ITSA among taxpayers (and in particular, landlords).

The December 2022 announcement increasing the MTD for ITSA thresholds and extending the timeframe for mandation was welcomed by DASC. However, it was made clear to HMRC that by 2026 everyone must be ready, and the uncertainty and delays over the last few years must not be repeated. There must be continuing dialogue between stakeholders and HMRC, with nothing being off-limits for discussion.

A recent survey, responded to by 517 CIOT and ATT members, uncovered significant concerns:

- 70% of respondents thought that April 2026 was still an unrealistic start date for MTD for ITSA; and
- 79% said that the MTD for ITSA proposals had 'significantly' (56%) or 'to a fair amount' (23%) adversely affected their trust in the tax system as a whole.

Concerns have also remained on matters such as jointly owned property and interaction between multiple agents.

DASC members have fed into HMRC's 'small business review', looking at whether and how businesses with income below £30,000 should be mandated into MTD for ITSA. By the time you are reading this, we should know the outcome of this review, which we hope will lead to a sensible and pragmatic outcome for those concerned.

Penalty reform has also been a recent area of focus for DASC. The new VAT penalty regime, which took effect in January this year, is expected to apply to MTD for ITSA from 2026. It is hoped that a more encouraging and constructive approach to penalties will help to smooth the transition to MTD for ITSA, but that those not subject to MTD will also benefit.

HMRC service levels are another area which the committee frequently discusses, and feeds into the wider work of the CIOT and ATT. A further survey carried out primarily revealed dissatisfaction primarily with the length of time to answer the telephone and written correspondence and issuing repayments. Agent, as well as taxpayer, interaction with HMRC is also subject to ongoing discussions with HMRC via the Agents Digital Design and Advisory Group (ADDAG), with 'Transforming Agent Authorisation' and the 'One Login' platform being recent topics.

HMRC continue to focus more and more on their digital services as a solution to their stretched resources. As the move to 'digital by default' continues, we expect there to be many more issues for DASC to grapple with.

Continuing Professional Development

Beyond the exams: continuing your international tax learning

It is important to keep abreast of developments in the international tax world and continue your tax learning – and our webinars and conferences provide the perfect opportunities.

The international tax landscape continues to evolve at a rapid pace, reflecting many of the most important global challenges of the age – from the future of the climate and issues of economic fairness to the arrival of new technologies such as AI.

As a result, it is important for tax professionals to keep learning, even if they have passed their exams and completed their formal academic and professional studies.

Join our webinars

Led by experts from across tax practice, industry and government, many of whom are CTA or ADIT holders, and covering a wide range of technical subjects of global interest, our ADIT International Tax Webinars have emerged as a convenient and popular way for international tax practitioners to improve their understanding of new topics and stay on top of the latest developments in their favourite areas of tax.

Highlights from this year's series – our fourth and counting – have included the following webinars:

- Liliana Ariton ADIT and William Graham CTA led a session on the emergence of plastic taxes in Europe.
- Corporate tax specialists around the world joined ADIT holder Lubna Khatri as she explored recent and ongoing transfer pricing controversies.
- Argyro Myzithra ADIT considered the implications of environmental, social and corporate governance for multinationals' transfer pricing policies in an era of increasing environmental and social awareness among businesses.
- Those with an interest in the UK's cross-border tax regime were able to hear from Luda Beanland CTA ADIT and Dmitry Zapol ADIT, as they discussed the double residency provisions from the perspectives of both individual and corporate taxpayers.

The webinars are open to ADIT, CTA and ATT students, Affiliates and members, as well as anyone else with an interest in international tax.

If you have a topic that you would like us to feature in a future ADIT International Tax Webinar, or if you would like to get involved as a speaker or panelist, contact Rory Clarke at rclarke@adit.org.

We look forward to delivering yet more webinars to support international tax professionals across a variety of exciting subjects for many years to come!

Our latest conference exhibition

We were delighted to support the recent Cross Border Tax Conference, developed and hosted by Catriona Loughran, Managing Director at ExtraTax Training, who provide tuition for the ADIT programme.

The conference brought tax professionals together to discuss UK and Irish tax issues impacting their businesses and clients. Elaine Farrell CTA, Tax Director at Farrell & Farrell Chartered Accountants, showed the depth and breadth of her UK and Irish tax expertise, sharing practical insights of dealing with cross-border tax issues for businesses and individuals, throughout the conference programme.

Lisa Knipe CTA, Group Tax Manager at Almac Group, and Jonathan Megaw, Tax Director at Grant Thornton NI LLP, shared their experience of international tax and current priorities for businesses, from Corporate Criminal Offence legislation and the Senior Accounting Officer regime to the challenges of homeworking in a cross-border context.

Lorraine Nelson CTA ADIT, Tax Partner at BDO NI, and Rose Tierney CTA, Principal at Tierney Tax Consultancy, finished the day with pitches for Northern Ireland and the Republic of Ireland as prime destinations for foreign direct investment. It wouldn't be a North/South event without a bit of good-natured rivalry!

Finally Salema Hafiz, Head of BD and Marketing at the CIOT, and Colm Mooney FCCA ADIT, Senior Manager at Pfizer, promoted the ADIT international tax qualification. Colm stressed the unique importance of ADIT to the island of Ireland, with issues like Brexit and BEPS 2.0 putting Northern Ireland and the Republic of Ireland at the centre of global conversations.

Cross Border Tax Conference panellists: Lisa Knipe CTA, Group Tax Manager at Almac Group; Jonathan Megaw, Tax Director at Grant Thornton NI LLP; and Catriona Loughran, Managing Director at ExtraTax Training.

Colm Mooney FCCA ADIT, Senior Manager, Pfizer and Salema Hafiz, Head of BD and Marketing, CIOT

Awards

Celebrating ADIT excellence at the 2023 Virtual Awards Ceremony

On Thursday 9 November, the CIOT recognised the incredible achievements of nearly 100 award winners, international tax affiliates and graduates from recent ADIT exams at the 2023 Virtual Awards Ceremony.

ADIT award winners and finalists

President of the CIOT Gary Ashford offered a warm welcome to all the attendees, as well as some thought-provoking insights on the dynamic field of international tax in a changing world, in which this newest group of ADIT achievers are sure to take leading roles.

Chair of the Academic Board Jim Robertson served as Master of Ceremonies and congratulated each of the attendees on their ADIT exam success. Attendees had gathered from 31 countries around the world, from tax authorities to accountancy firms and beyond, reflecting the ever-growing diversity of the ADIT community.

In regional breakout rooms led by ADIT Champions and committee members, the attendees were invited to meet and network with their peers. The resulting discussions were indicative of the enthusiasm of ADIT professionals to support one another, work together to strengthen regional ties, and further develop their skills and expertise in international tax.

The latest ADIT graduates join a vibrant and inspirational community of 1,900 people across six continents who now hold the qualification. Congratulations to all those honoured at the Virtual Awards Ceremony. We hope you are feeling proud of your success and look forward to seeing how ADIT continues to help you in your career!

Disciplinary reports

Mr Simon Olver

At a hearing on 4 September 2023, the Disciplinary Tribunal of the Taxation Disciplinary Board determined that Mr Simon Olver of Reigate was in breach of the following Professional Rules and Practice Guidelines, namely:

- Rule 2.2.1, in that he was not honest in his professional work;
- Rule 2.2.2, in that he engaged in illegal activity;
- Rule 2.6.3, in that he performed his professional work or the duties of his employment improperly to such an extent and on such number of occasions as to be likely to bring discredit to himself, to the CIOT, and to the tax profession;
- Rule 2.14.1, in that he failed to inform the CIOT within two months of the criminal charges, and of his conviction for fraud;
- Rule 2.14.2, in that he failed to inform the CIOT in writing of the disciplinary action upheld against him by the ICAEW within two months as required; and
- Rule 2.13.2, in that he failed to respond to correspondence from the TDB.

The Tribunal made an Order that Mr Olver be expelled from membership of CIOT. It also ordered that he pay costs of £3,776.

The full decision of the Tribunal can be found on the TDB website: www.tax-board.org.uk

NOTIFICATION

Mr Paul Dyer

At its hearing on 4 September 2023, the Disciplinary Tribunal of the Taxation Disciplinary Board determined that Mr Paul Dyer of Nottingham, a member of the Chartered Institute of Taxation, was in breach of the following rules of the Professional Rules and Practice Guidelines 2018, namely:

- Rule 2.10.1, in that Mr Dyer failed to comply with the UK's AML legislation as required;
- Rule 2.14.2, in that Mr Dyer failed to notify the CIOT in writing of disciplinary action upheld against him by the ICAEW within two months as required;
- Rule 2.6.3, in that Mr Dyer performed his professional work or the duties of his employment improperly to such an extent and on such number of occasions as to be likely to bring discredit to himself, to the CIOT, and to the tax profession and that Mr Dyer conducted himself in a manner which was unbefitting and which tends to bring discredit upon a member and which may harm the standing of the profession and the CIOT;
- Rule 7.6.5, in that Mr Dyer failed to keep clients' money separate from money belonging to the firm by using his personal account for clients' money which was not kept in a separate client account; and
- the Fundamental Principle of Professional Behaviour, in that he failed to take due care in all his professional conduct and professional dealings. He performed his professional work inefficiently, negligently and incompetently to such an extent as to be likely to bring discredit to himself, to the CIOT and to the tax profession.

The Tribunal determined that the appropriate sanction was that Mr Dyer be expelled from membership of CIOT and that he pay the TDB's costs in the sum of £3,451.

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

Call for review of MTD

CIOT and ATT are calling for a full review of Making Tax Digital (MTD) for Income Tax Self Assessment (ITSA).

In a letter to the new Financial Secretary to the Treasury Nigel Huddleston, the chief executives of the two bodies set out their concerns about the current approach to MTD. They say that while they fully support digitalisation of the UK tax system and recognise the potential for easier reporting and filing to aid with reducing errors and mistakes, the current approach needs a rethink.

'MTD is seeking to mandate decisions made almost a decade ago, which were ill-informed given that there was no prior consultation amongst those affected at the time, and the project continues to suffer delays and growing costs as the enormity and complexity of the task has emerged,' Jane Ashton (ATT) and Helen Whiteman (CIOT) write.

The chief executives point to the results of a survey of agents' and taxpayers' views on MTD undertaken by the two bodies in the summer of 2023, which found that most respondents doubted MTD for ITSA would achieve its aims. They also note that existing poor HMRC service levels are likely to be exacerbated when MTD multiplies the number of 'touch points' that affected taxpayers have with HMRC from one a year to at least five.

'We recognise that significant time and money has been invested in MTD, and we are not suggesting that the project is abandoned,' the two chief executives write. 'However, considering the lack of tangible progress since your predecessor's announcement last December, we would urge you to openly consult on how MTD should be progressed and to gather and consider the opinions of those affected; something which hasn't been done for over seven years, and indeed has not been undertaken properly at all.'

The letter urges the minister to take the opportunity to carry out a full review of MTD for ITSA, including costs and burdens on business and how well the current approach will deliver on its objectives.

Read the letter at: tinyurl.com/MTDletter

A MEMBER'S VIEW

Lisa Matthews

ACA/CTA Apprentice, Corporate Tax, HW Fisher

This month's member spotlight is on Lisa Matthews, ACA/CTA Apprentice, Corporate Tax, HW Fisher.

How did you find out about a career in tax?

I studied Business Management with Accounting and Finance at university with a placement year and I thoroughly enjoyed working in overseas payroll tax. I wrote my dissertation on European social security schemes, which further developed my interest for working in the tax industry. This meant I actively researched ways of entering the industry which led me to undertaking the ATT qualification.

Why is the ATT qualification important?

I view the ATT as the entrance into a career in tax. The qualification has been vital in assisting my development on the job and providing the building blocks to aid my growth within the industry. It has not only supported me in my role in corporation tax, but also in working towards the CTA qualification.

Why did you pursue a career in tax?

When I graduated from university, I knew tax was the area I wanted to work in. Following my placement year and final year writing my dissertation, I developed a real interest in learning about the tax system and studying the legislation. The tax industry appealed to me because of the teamworking environments, knowledge sharing and overall ability to exercise professional judgement.

How would you describe yourself in three words?

Loyal, driven and focused.

Who has influenced you in your career so far?

My employer has had a large influence. My role began in the Corporate Tax department working towards the ATT qualification. Since completing it, I've had further opportunities to develop and grow, specifically to now studying the joint ACA/CTA programme. My line managers have been influential in assisting my progress, and I am grateful to my mentor for supporting my overall growth to date.

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

Jump at it! The ATT qualification is invaluable for performing in the tax sector. The more you put in, the greater the returns, so my advice is to put everything you can into it.

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

Technological development is influential in our world today but I don't foresee automation overtaking our industry. Instead, I feel our role as advisors will become more and more vital to society. As tax legislation continues to develop and become more stringent and demanding, it will be even more important for advisors to exercise professional scepticism and make judgement calls to add value for clients.

What advice would you give to your future self?

Continue to seek out opportunities. Growth is a rollercoaster with its highs and lows – most importantly, enjoy riding it. Focus on your development, whilst staying present. If you're not feeling challenged, explore all your options – nothing worth having comes easy!

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

I love unwinding from the day by learning new pieces to play on the piano. When I was younger, I had lessons and worked towards my Grade 5, but now I play for leisure. I hear a song on the radio and enjoy finding the chords and teaching myself to play.

Contact

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

Membership

Membership Requirement: your 2023 Annual Return

An Annual Return must be completed by all CIOT and ATT members and ADIT Affiliates each year (excluding students or the fully retired). All members and affiliates should receive an email reminder to complete the return and pay any subscriptions due. If you do not receive a reminder and are a member you **must still fulfil** this mandatory requirement.

To ensure that you receive our emails, you should add membership@ciot.org.uk or membership@att.org.uk to your email contact list. If you don't receive an Annual Return reminder in November, check your spam folder and make sure that we have your current email address. Members can update their details in the Portal account.

Why we require an Annual Return

CIOT and ATT members and ADIT Affiliates are required to meet high professional standards as these are essential in retaining our reputation for excellence in tax, and in maintaining trust in the tax profession by the public, HMRC and others. The Annual Return is one of the tools to ensure these standards are being followed, as we ask you to confirm that you are meeting a number of membership and legal requirements.

Top 10 tips!

1. The form can be accessed at https://pilot-portal.tax.org.uk and it works best if accessed through the following browsers:
   - Microsoft Edge v86 or higher
   - Google Chrome v86 or higher

   Some members have experienced problems using Firefox and Internet Explorer so these browsers are best avoided where possible.
2. The deadline for submission of the return is **31 January 2024**.
3. Remember that you are answering questions about compliance during the year to 31 December 2023. For your information, there were some minor updates to the CPD and Professional Indemnity Insurance (PII) regulations and guidance, effective January 2023, so you should answer based on these updated 2023 requirements.
4. Members are asked whether they work in tax. Make sure you answer this correctly so that the form generates the correct questions which need to be answered. You are working in tax if you provide tax compliance or tax advisory services in private practice, the public sector (e.g. HMRC), commerce, industry, the not-for-profit sector, those working in mixed tax and technology or tax software development roles, or in any other form including roles that are not client focused such as writers, lecturers and trainers in the area of tax.
5. If you undertake more than one activity – for example, you are in employment and also run your own business – please remember to **select all the appropriate options** so that you answer the required questions relating to each role. If you have more than one role applicable to the listed options, e.g. you have two or more directorships at Companies House, email us at standards@att.org.uk or standards@ciot.org.uk with details of your additional roles.
6. If you work in tax and have your own business, you will be asked to confirm your Anti-Money Laundering (AML) supervisor. If your supervisor is not on the drop-down list, please answer 'No' to the question 'Does your practice/firm/partnership have an Anti-Money Laundering Supervisor?' and give an explanation in the box provided.

   AML supervision is not provided as part of your membership subscription and requires separate registration. Members **are not meeting their legal requirements** if they are in business providing tax services and are not registered for AML supervision. Further information about registration is available on the CIOT website (tinyurl.com/22z3s9bp) and the ATT website (tinyurl.com/32zb7sc2).
7. The return asks members providing tax services by way of their own business to confirm they have PII in place and to identify which insurer is providing that cover.
8. There is further guidance on how to complete the Annual Return on the CIOT website (tinyurl.com/xavmjcze) and ATT website (tinyurl.com/5n7nxmcf). This is particularly useful for those unsure how to answer the PII or CPD questions, as a table sets out the requirements and what you need to tell us (depending on your circumstances).
9. The form generates a summary of all the answers to review and edit (if necessary) before final submission. We recommend **checking this summary**to avoid hitting a wrong button to give an erroneous non-compliant answer!
10. If you need any other assistance with completion of the Annual Return or if you have concerns that you have not met all your membership requirements contact membership@ciot.org.uk or membership@att.org.uk in the first instance. It is important to contact us if you need any help or are having any difficulties so we can work with you to ensure compliance. Ignoring reminders and failing to meet this membership requirement will result in referral to the **Taxation Disciplinary Board**.

Membership

Subscription Rates for CIOT, ADIT Affiliates and ATT

CIOT	2024
Associate/Standard	£418
Overseas Standard	£386
Fellow	£436
Overseas Fellow	£399
Retired with Literature	£82
Retired without Literature	£21
Reduced Rate	£82
Life Associate/No fee renewal	£143

ATT	2024
Standard	£235
Fellow	£255
Joint Rate	£145
Joint Fellow	£155
Retired with Literature	£135
Retired without Literature	£20
Reduced Rate (Not working)	£75
Low Income Reduced Rate	£135
Life Member	£200

ADIT	2024
ADIT Affiliate	£194
Reduced Rate	£45
Joint Rate	£97