February 2024

TAXADVISER

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The abolition of the lifetime allowance

What will the changes due on 6 April 2024 mean for pensions, and how can we adjust to the new regime?

Changes to R&D
Consider the commercial and practical implications for your claims

Business tax road map
Lessons to be learned from the strategies of recent administrations

Basis period reform
The impact on student finances and student loan repayments

ATT - NOVEMBER 2023

	TOLLEY EXAM TRAINING*	NATIONAL AVERAGE
Paper 1	90%	71%
Paper 2	96%	77%
Paper 3	100%	85%
Paper 4	96%	85%
Paper 5	68%	60%
Paper 6	87%	79%

Our students achieved 6 of the 9 ATT prizes awarded

CTA - NOVEMBER 2023

	TOLLEY EXAM TRAINING*	NATIONAL AVERAGE
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Technical	74%	43%
APS	72%	49%

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*Students who have studied with our Guaranteed Pass Scheme

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HELEN WHITEMAN
JANE ASHTON

Welcome
Strains on our tax system

Happy New Year! We hope that you all managed to have an enjoyable break over the festive period and that January was not too demanding for those of you involved in submitting tax returns.

Dealing with last minute tax returns can be challenging enough, but the announcement in the Autumn Statement of changes to NICs from 6 January 2024 placed additional pressure on those members dealing with their own and their clients' payroll obligations. From that date, there was an immediate cut to the main rate of Class 1 employee NICs from 12% to 10%. This will be followed on 6 April with a cut in the main rate of Class 4 self-employed NICs from 9% to 8% and no one will be required to pay Class 2 self-employed NICs.

During the festive period, we were advised that the Chancellor of the Exchequer Jeremy Hunt's second Budget Statement will be delivered on Wednesday 6 March. Both the ATT and CIOT technical officers will be making various representations to the chancellor in advance of the Budget with the aim of achieving a more efficient and less complex tax system for all.

It is hoped that by the time you read this article, the Self Assessment helpline should once again be fully operational (due from 1 February), providing taxpayers with the opportunity to call and speak to someone on all matters relating to their Self Assessment. This service is important for so many taxpayers, especially those who are uncomfortable using HMRC's preferred online tools and who may not meet the criteria for extra support.

Also from 1 February, the restrictions placed on the Agent Dedicated Line during December and January should have been lifted with services reverting to normal! Both ATT and CIOT representatives continue to challenge HMRC on their poor service levels and we will have to wait to see if last year's pilot of a new 'seasonal model' for the Self Assessment helpline, involving its closure for three months from 12 June 2023, will be repeated this summer.

Finally, last year saw further attacks on our tax system by 'bad actors', in particular by high-volume repayment agents putting a strain on both HMRC's systems and resources. Tax advisers have a responsibility to serve their clients' interests whilst they are upholding the profession's reputation. They need to take account of the wider public interest by staying technically competent and adhering to the high professional standards set out in the Professional Conduct in Relation to Taxation (PCRT).

Since 2016, HMRC has had its own Standard for Agents setting out the minimum standards that are required by all agents, and particularly those that are not connected to a professional body and adhering to the PCRT.

As part of the government's ongoing drive to remove 'bad actors', this year we are expecting the publication of the long-awaited consultation on 'regulating' the tax advice market. Once the consultation has been issued, both the ATT and CIOT will be making representations and recommendations, and we will be actively seeking the views and thoughts of our members via our weekly emails and via social media channels.

Our Branches' programme of online and face to face events kicks off from February, so please do keep an eye out for email invitations. We are both really looking forward to meeting new members at our respective Admission ceremonies in late Spring.

See you all soon!

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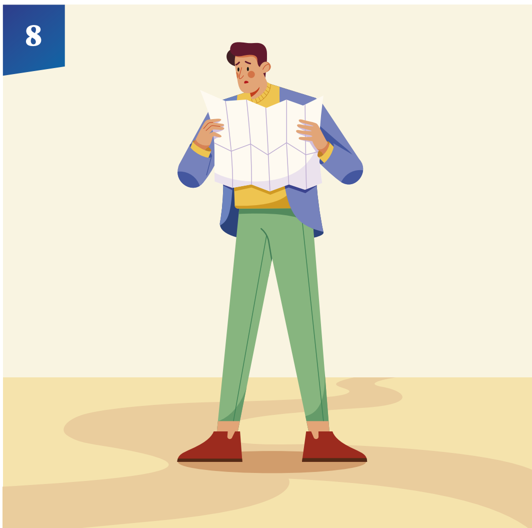

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GARY ASHFORD
PRESIDENT

Buckle up!

> The prospect of a general election means it is possible that we will see tax issues take on even greater prominence in the public consciousness.

I want to begin by wishing you all a happy, healthy and prosperous 2024. New Year is typically a time for optimism and reflection. Those feel appropriate themes for my first President's column of the year.

I recently wrote to the new Financial Secretary to the Treasury (FST) Nigel Huddleston, welcoming him to the role. I took the opportunity to reflect on our priorities for the tax system and to look ahead at opportunities for continued engagement with government. In the letter, we addressed several issues, principally among them our continued concerns about HMRC service levels.

Sadly, these concerns are likely to persist in the year ahead. In December, HMRC decided to restrict access to both the Self Assessment telephone helpline and the Agent Dedicated Line – seemingly to deal with 'priority queries'. This is only one of a number of concerning developments over the past year. HMRC has to make the best use of its limited resources and we support its drive to have more customers interact online. But these are big decisions and – as with the temporary closure of the Self Assessment phone line in the summer – they come with big risks, which we can't see are fully understood or evaluated by HMRC.

If taxpayers are unable to find the information they need online and are then unable to speak with someone to help them resolve their queries, this runs the risk of increased non-compliance and penalties – which in turn means more work (and costs!) for HMRC further down the line. We want to have confidence that changes like these and the drive to digital are helping, not hindering, taxpayers and agents. Our members have told us they want to go online, but 89% of those who responded to our summer service levels survey said they are phoning HMRC because they couldn't resolve their issue online – a worrying picture. We will continue to press for investment to improve service levels in our discussions with the FST and his team.

I also raised developments in Making Tax Digital, the government's approach to tax simplification following the abolition of the OTS, R&D compliance and regulation of the tax profession, among other matters. You can read the letter on the CIOT website: www.tax.org.uk/ref1283

CIOT is in a very privileged position where we are able to use and share our expertise at the highest levels of government to advocate for a better, more efficient tax system. In return, our comments and concerns are listened to and respected, often leading to better outcomes. I am optimistic that we will continue to bring this influence to bear in what promises to be a busy year ahead.

The prospect of a general election between this spring and next January means it is possible that we will see tax issues take on even greater prominence in the public consciousness in the weeks and months ahead. We are already seeing the main protagonists begin to set out their stalls in anticipation of the vote. Indeed, November's Autumn Statement was regarded by many as the starting gun of the long campaign, with reductions in National Insurance seen as a harbinger of further tax changes to come, perhaps as soon as 6 March, when Chancellor Jeremy Hunt delivers his Budget.

Much mooted income tax cuts are likely to be front and centre in the minds of most voters. Scratch below the surface though and dividing lines are being drawn elsewhere in the tax system. As I saw at first hand during party conference season, our politicians are adept at keeping their cards close to their chest, but it doesn't take a genius to work out that we are going to hear much more as polling day approaches on issues like inheritance tax, VAT on private school fees and 'non-dom' status as the parties go after votes.

The Autumn Statement saw several other important tax policy announcements, including making full expensing permanent and easements for Making Tax Digital, which CIOT has broadly welcomed. The merger of R&D reliefs was also announced – though due to the haste of its introduction, the much-needed clarification and simplification seems to have been missed.

Attention now turns to the Finance Bill. Our technical teams have been working hard to provide briefings to MPs ahead of their deliberations and in December, met with Shadow Financial Secretary to the Treasury James Murray to discuss these. It might only be February, but already we see the makings of another busy year in tax. Buckle up!

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Chartered Institute of Taxation.

SENGA PRIOR
DEPUTY PRESIDENT

The danger of a little learning

> Even in my post-Hogmanay lethargy, I quickly became concerned about the amateur tax advice being shared.

The madness of the January tax return filing is behind us, and I hope you all managed to get some quality rest and time with family over the festive season and the New Year.

How many New Year's resolutions have you already broken? I had a significant birthday early in January and my New Year resolution is to try not to dwell on the fact that until a few years ago I would have been collecting my state pension now. (Oops, have I already broken mine?)

As usual, HMRC likes to inform us about how many taxpayers filed their returns on Christmas Day. On 25 December 2023, this was 4,757 – compared to 3,275 in 2022. The peak time continues to be between 12:00 and 12:59. The cynic in me wonders if this is an excuse not to have to help set the festive lunch table, check on the turkey or play the new family board game that Santa brought!

On New Year's Day, the Observer ran an article warning their readers that HMRC will from now on require digital platforms to collect information on their users and their sales. Previously, HMRC had done this on a case by case basis but now this information will start to flow automatically. HMRC will be able to match sellers' details to their tax returns (or lack of tax returns). Some digital sites, such as Airbnb, have already been sharing information but others will now have to come on board.

Not long after the Observer article came out, Reddit users started sharing and commenting. Even in my post-Hogmanay lethargy, I quickly became concerned about the amateur tax advice being shared – some thinking that the £1,000 trading allowance was on profit rather than turnover, others that selling 'stuff' had a £6,000 allowance. I assume they were thinking of chattels but, as with all tax advice, 'it depends'. There is danger in having a little learning and only taking a quick look on HMRC website!!

The real concern on reading some of the Reddit comments was that the information the posters were gleaning from the HMRC website was being misunderstood, and shared second or third hand. While in the past people might have telephoned HMRC for clarification, the delays now in getting through to a call handler may lead them to use other less reliable ways to gather information. I also foresee many 'nudge' letters being sent out by HMRC and possibly more disclosure work for us.

Talking of nudge letters, this seems like a good time to plug the new Special Interest Groups (SIGs) that the ATT Technical Team are trialling. These focus on particular areas of tax and are hosted by our Technical Officers, meeting informally over Microsoft Teams. They provide an opportunity to discuss topical issues and share experiences and best practice. They also provide useful insight into what members are seeing in practice, which can help to inform our members' work and feed into their engagement with HMRC.

Three groups have been launched so far. The first looks at the One-to-Many letters now being used by HMRC and any difficulties they can cause for agents. The second group, Tax Disputes and Resolution, aims to gather feedback on the experience of dealing with HMRC's compliance activities.

Our most recent group will focus on tax issues for digital content creators and influencers. This is an increasingly common area – and those involved in it may lack awareness of the tax issues they need to consider.

If any of these SIGs catch your interest, please email our technical team to find out more on atttechnical@att.org.uk. As mentioned, the groups are informal and there is no need to commit to attending all the meetings. Perhaps joining one could be one of your New Year resolutions! I am sure you would find them informative and rewarding, and your knowledge can greatly assist the Technical Team.

May I take this opportunity to wish you a belated Happy and Prosperous New Year and I look forward to meeting many of you at conferences, events and webinars in the coming year.

Senga Prior
ATT Deputy President
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We look forward to receiving your order for Tax Cards by 5 March.

https://pilot-portal.tax.org.uk/Account/My-profile/Edit-tax-card

Business tax road map
Where are we going?

Calls for a review of our tax policy are likely to multiply in the run up to an election. What can we learn from the road maps of recent administrations?

by Bill Dodwell

When half a dozen tax policy specialists gather, somebody often chips in with 'what we need is a road map'. Professional and representative bodies regularly call for this panacea. It's election year, so we should expect those siren calls to multiply.

The 2010 Coalition road map

In 2010, the Coalition government took office after 13 years of Chancellors Gordon Brown and Alistair Darling. The Conservative shadow Treasury team – David Gauke and Mark Hoban – had spent several years thinking about future tax policy and spending time with think tanks, as no doubt the shadow Labour team are currently doing.

The result was the 2010 Corporate Tax Road Map, 'Corporate tax reform: delivering a more competitive system' (see tinyurl.com/4ceyykcz), published after George Osborne's first Budget, when he announced that corporation tax would be cut from 28% to 24%, over four years.

The road map was a long list of corporate goodies. As well as the significant rate cut, the road map announced:

- the potential introduction of a patent box, which charged an effective tax rate of 10% on profits in the 'box';
- a consultation on widening R&D tax credits;
- a consultation on an improved controlled foreign company regime, with specific relief for overseas finance companies;
- the introduction of an exemption for foreign branch income, replacing the then taxation of foreign income with relief for overseas tax (both a simplification and a tax cut); and
- continuation of the UK's then almost unrestricted relief for interest and financing costs.

The moves on interest and controlled foreign companies were significant, as they represented a reversal from policies put forward by Alistair Darling, who had sought to reduce interest deductions and controlled foreign companies exemptions.

By 2012, however, Chancellor George Osborne had become aware that many multinationals were not paying as much tax as desired, even at the UK's new lower rate. He took the lead at the November 2012 G20 meeting to request that the OECD's administration start work on the base erosion and profit shifting (BEPS) project. That work reported in 2015, with a 15 point action plan to increase the corporate tax base and improve the information flow to tax authorities. Public and parliamentary pressure encouraged Osborne to introduce some elements of the BEPS package early, such as the diverted profits tax.

The 2016 Conservative road map

The new Conservative government published its 'Business Tax Road Map' (see tinyurl.com/2p8ac2p6) in March 2016. The environment had changed. This map majored on the adoption of the BEPS measures, which probably added at least 10% to the overall corporation tax paid by large companies.

There were some tax savings, though: a cut in corporation tax to 17% in 2020 was announced, together with business rates cuts, mainly for small businesses. The main rate of capital gains tax was cut from 28% to 20% and entrepreneurs' relief extended. Following the (unmentioned) Scottish example, stamp duty land tax was put on a slice basis. Corporate loss relief was to be reformed, so as to allow offset of trading losses against other profits in future years, including through group relief. However, the maximum offset was set at £5 million per year – which meant that this very sensible new policy actually raised money. A review of the substantial shareholdings exemption for companies was announced, which ultimately led to greater relaxations, such that almost all sales of a trading business are exempt from taxation. Class 2 NICs were to be abolished, which was intended to simplify the tax affairs of self-employed individuals, as Class 2 was collected separately from income tax and Class 4.

Showing a sense of humour, the road map also mentioned 'plans to introduce digital tax accounts, ending the need for annual tax returns'.

Lessons to learn

This second road map was never as welcomed as the first. Given that it included a similar level of detail, including a calendar, the only conclusion we can draw is that road maps are mainly welcomed when they announce a programme of tax cuts and improved reliefs.

What might a 2025 business road map look like? The state of the country's finances might suggest that there won't be much room for significant business tax cuts.

Perhaps a future map should cover tax administration. Providing individuals and companies with greater tax certainty should be on everyone's list, accompanied by investment in HMRC to help deliver this. A plan for digitisation would also be welcome. This could cover investment in HMRC's back end systems, as well as developing the single customer account so that individuals can see all their tax affairs in one place and use it to exchange information with HMRC. Given that millions will need to report interest, dividends and capital gains, having a digital plan to help this is needed. Finally, adding to the data provided directly to HMRC by third parties would be welcome, as it could reduce the level of tax reporting by individuals.

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Registered pension scheme reforms Abolition of the lifetime allowance

Following the announcement of an increase in the annual allowance and the abolition of the lifetime allowance, we consider what the changes will mean for pensions.

by Rachel McEleney

The tax landscape for UK registered pension schemes has been evolving rapidly since the Spring Budget on 15 March 2023, when the chancellor announced an increase in the annual allowance and, more surprisingly, the abolition of the lifetime allowance.

The government's stated aim was to encourage workers over 50, such as those in the NHS, to remain in work. The annual allowance reforms were straightforward and took effect from 6 April 2023. The lifetime allowance remains in force throughout the 2023/24 tax year, but the lifetime allowance charge ceased to apply from 6 April 2023. The lifetime allowance itself is intended to be abolished from 6 April 2024 with two new allowances introduced in its place.

Reforms affecting the 2023/24 tax year

Annual allowance

The chancellor announced at the Spring Budget that the annual allowance would increase from £40,000 to £60,000 from 6 April 2023, with a corresponding rise in the adjusted income limit, the point from which taper applies, from £240,000 to £260,000 (the £200,000 threshold income limit is unchanged). Additionally, both the minimum tapered annual allowance and the money purchase annual allowance were increased from £4,000 to £10,000. These reforms were legislated in Finance (No.2) Act 2023 ss 20-22.

Taxpayers at all income levels have higher annual allowance capacity, with up to £30,000 extra available compared to 2022/23, as demonstrated in the chart ***Increase in annual allowance***.

As the changes in limits only affect the annual allowance from 2023/24 onwards, the old limits remain relevant until 2025/26 for the purposes of the annual allowance carry forward rules.

Lifetime allowance charge

The lifetime allowance remains in force for the whole of 2023/24. It therefore continues to operate as normal when determining the availability and quantum of certain lump sums. Notably, the 25% tax-free pension commencement lump sum is normally capped at 25% of the individual's lifetime allowance (£268,275 if the individual is entitled to the standard lifetime allowance of £1,073,100).

Prior to 2023/24, if the value of benefit crystallisations exceeded the lifetime allowance, the excess was taxed at a flat 55% rate if the benefit taken was a lump sum, or 25% otherwise (e.g. if the excess was designated for flexi-access drawdown). The lifetime allowance charge was abolished by Finance (No.2) Act 2023 s 18 with effect from 6 April 2023, but other tax charges can apply in its place.

Under Finance (No.2) Act 2023 s 19, benefits that would have otherwise suffered a 55% lifetime allowance charge are instead treated as pension income of the recipient. The benefits affected by this rule are:

- serious ill-health lump sums;
- lifetime allowance excess lump sums;
- defined benefits lump sum death benefits; and
- uncrystallised funds lump sum death benefits.

For an additional rate taxpayer, this can effectively be a rate cut from 55% to 45%. The exact effect depends on the taxpayer's particular circumstances,

Key Points

What is the issue?
In the Spring Budget on 15 March 2023, the chancellor announced an increase in the annual allowance and, more surprisingly, the abolition of the lifetime allowance.

What does it mean for me?
Where an individual starts to take their pension benefits after 5 April 2024, and the values are less than the lifetime allowance, the new regime will seem very similar to the old. For those who crystallise benefits both sides of 5 April 2024 it may be more complicated, and require far closer analysis, particularly if they have some older protections.

What can I take away?
The transition will also have major consequences for pension providers who will not only need to adjust to a new regime quickly but are expected to provide statements to members by 5 April 2025 where benefits were taken under the old regime.

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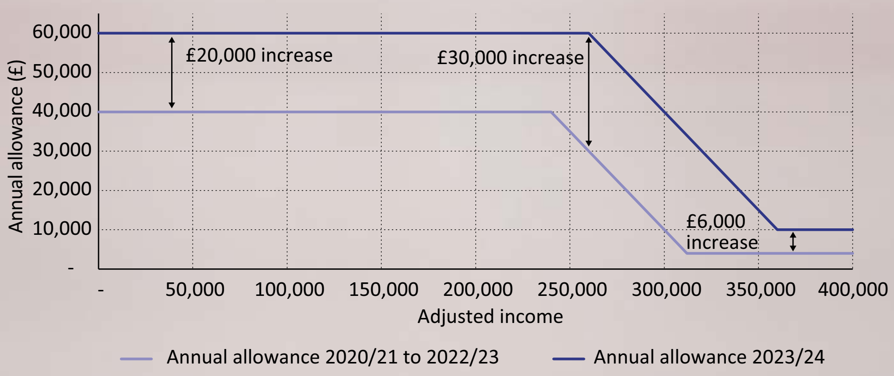
INCREASE IN ANNUAL ALLOWANCE



however. For example, the tax cost could be higher if the extra income reduces allowances. It could be lower if the individual has lower rate bands or tax reliefs available.

The 25% lifetime allowance charge was completely abolished, but in many cases, there will still be some tax due on the amount saved. For example, if the individual has £1 million in excess of their lifetime allowance that they choose to designate for flexi-access drawdown, doing this in 2022/23 would have resulted in a lifetime allowance charge of £250,000 and the remainder of £750,000 being available to withdraw as taxable income. In 2023/24, the full £1 million would be in the fund and available to withdraw as taxable income. The individual should still be better off than before, but the extra £250,000 will form part of any taxable income of the individual when they withdraw it.

Modification of lifetime allowance protections

Section 23 of Finance (No.2) Act 2023 provided for a significant relaxation in the 'protection cessation events' for enhanced protection and the three forms of fixed protection. Enhanced protection provides an exemption from the lifetime allowance charge, whereas fixed protection gives the individual a higher lifetime allowance than the standard amount. In both cases, the protections were lost if further pension savings were made, or certain other events occurred. These conditions could be problematic for those still in work, as they had to periodically opt out of workplace pension schemes to maintain their protections. Joining certain new death in service arrangements was also generally problematic.

With effect from 6 April 2023, protection cessation events only occur where the protection was claimed on or after 15 March 2023. The only affected protections that are still open for claims are fixed protection 2016 and enhanced protection. The latter can only be claimed where there is a reasonable excuse not to have claimed by 5 April 2009, so new claims are rare.

Individuals who claimed their protections before 15 March 2023 were free to resume participation in pension schemes from 6 April 2023 without losing protection. It was still possible to lose protection between 15 March and 5 April 2023, however, which may have caught out some taxpayers. Although loss of protection no longer results in a lifetime allowance charge, the lifetime allowance level remains relevant for some benefits taken in 2023/24 and for future benefits under the new regime from 6 April 2024.

Changes were also made to certain lump sum protections. Where individuals are entitled to higher tax-free lump sums than normal due to enhanced protection or stand-alone lump sum provisions, the tax-free amount was capped at the amount that could have been taken on 5 April 2023.

Reforms from 6 April 2024

In order to abolish the lifetime allowance, it was necessary for the government to design a new framework for pension benefits. Broadly, the goals of the reforms can be summarised as follows:

- keep the 25% tax-free pension commencement lump sum at the same level as before;
- tax other lifetime benefits at normal income tax rates; and
- prevent significant tax leakage that might otherwise arise in the absence of the lifetime allowance.

HMRC published draft legislation and a policy paper titled 'Abolishing the pensions lifetime allowance' for consultation on 18 July 2023 (see tinyurl.com/8a43adm6). The proposals went much further than the title suggested and included significant proposed reforms to the taxation of death benefits.

The draft legislation was substantially rewritten by the time it was published in the Autumn Finance Bill. Although the death benefit reforms were watered down, new charges were proposed on transfers to qualifying recognised overseas pension schemes (QROPS). The legislation is dense, and runs to about 100 pages, but the key takeaways are set out below.

The basic framework from 6 April 2024

Instead of the lifetime allowance, individuals will have two new allowances: a lump sum allowance; and a lump sum and death benefit allowance.

The default lump sum allowance is £268,275. This caps the amount that can be taken tax-free as pension commencement lump sums and/or the tax-free element of any uncrystallised funds pension lump sums.

The conditions that need to be met for a lump sum to be a pension commencement lump sum remain broadly the same as before. It is still the case that an amount equal to three times the lump sum must be used to provide pension income (e.g. designated for flexi-access drawdown).

The default lump sum and death benefit allowance is £1,073,100 (i.e. equal to the current lifetime allowance). This caps the amount that can be taken tax-free in aggregate during the individual's lifetime and on death. This includes amounts counting towards the lump sum allowance, as well as the serious ill-health lump sums and most non-charitable lump sum death benefits for those who die under 75. For an individual who dies before age 75 holding only uncrystallised funds, this gives broadly the same outcome as under the current rules. The first £1,073,100 of the lump sum would be tax-free and the remainder would be taxed as income of the recipient.

Where the new rules differ from the old regime is where the lump sum is from a drawdown fund and the member dies before their 75th birthday. Under the current rules, the fund is tested against the lifetime allowance when it is designated for drawdown, but there is no further test on death. The fund can therefore be paid out tax-free, even if it has grown beyond the lifetime allowance. From 6 April 2024, the death benefit is only tax-free to the extent of the remaining lump sum and death benefit allowance, with the remainder being taxed as pension income of the recipient (although transitional rules may apply if the designation was made before 6 April 2024).

Effect of lifetime allowance protections

Where the individual is entitled to a higher lifetime allowance due to primary protection, individual protection or fixed protection, their lump sum allowance should be uprated accordingly. For example, someone with a lifetime allowance of £1.8 million due to fixed protection will have a lump sum allowance of £450,000. Similarly, their lump sum and death benefit allowance will be £1.8 million (i.e. equal to their lifetime allowance).

Enhanced protection is slightly different. As noted above, there is currently a cap on the pension commencement lump sum based on what could have been taken on 5 April 2023. The lump sum allowance will be based on this figure. The lump sum and death benefit allowance will be based on the value of the uncrystallised rights on 5 April 2024. Enhanced protection therefore will not protect future growth from tax charges.

Dependant, nominee and successor drawdown

One of the proposals put forward in HMRC's July 2023 policy paper was the removal of the income tax exemption for pension income on funds from members who died before reaching age 75. This proposal has not been taken forward, so it will remain possible for unlimited amounts to pass tax-free if they are taken via dependant/nominee/successor drawdown rather than as a lump sum death benefits.

Transitional rules

Under the same July 2023 proposals, pre-6 April 2024 tax-free benefits would have needed to be quantified to determine availability of the new allowances. This posed practical problems, as the pension providers might only know the percentage of lifetime allowance available rather than how past crystallisations were broken down. Under the revised provisions, when working out how much of the allowances are available for a crystallisation after 5 April 2024, the tax-free element of pre-6 April 2024 crystallisations is deemed to be 25% of the amount of lifetime allowance used. Where the taxpayer has complete evidence of the amount that was actually paid tax-free, they can apply for a certificate confirming the actual amount used. (This would be appropriate if the tax-free amounts were less than 25% of the amounts crystallised.)

Closure of protections and enhancements

Claims for fixed protection 2016 and individual protection 2016 will no longer be possible after 5 April 2025. Similarly, lifetime allowance enhancement factors that are currently available under Finance Act 2004 ss 220, 221 and 224 will close on 5 April 2025.

Changes to QROPS rules

Where a transfer is made from a registered pension scheme to a QROPS, the value is tested against the lifetime allowance. Previously this would have given rise to a 25% lifetime allowance charge on any excess. Without the lifetime allowance charge, there could be the potential for unlimited amounts to be transferred without any UK tax (assuming they were not subject to an overseas transfer charge).

From 6 April 2024, transfers will be tested against an overseas transfer allowance (equal to the lump sum and death benefit allowance), with the excess being subject to a 25% overseas transfer charge.

Conclusion

In straightforward cases where an individual starts to take their pension benefits after 5 April 2024, and the values are less than the lifetime allowance, the new regime will seem very similar to the old. For those who crystallise benefits both sides of 5 April 2024 it may be more complicated, and require far closer analysis, particularly if they have some older protections.

The transition will also have major consequences for pension providers who will not only need to adjust to a new regime quickly but are expected to provide statements to members by 5 April 2025 where benefits were taken under the old regime.

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R&D changes Why you need to act now

Changes to how companies gain relief for their R&D expenditure start after 1 April 2024. However, failure to consider the commercial and practical implications of the changes may cause problems down the line.

by Kathie Haunton and Rebecca Chadwick

Key Points

What is the issue?
Changes made to the UK R&D relief schemes, for accounting periods starting on or after 1 April 2024, will significantly impact many companies' ability to claim relief for the R&D activities they undertake.

What does it mean for me?
The changes are expected to impact which company in a supply chain has the entitlement to the R&D tax benefit. Early consideration of commercial arrangements will enable companies to plan ahead and prevent surprises later on.

What can I take away?
HMRC's intention is that the R&D reliefs are included in project planning and management. Companies that take time to consider how best to document and evidence their R&D claim will be at an advantage if an enquiry letter lands on their doorsteps.

After months of debates and discussions within the R&D tax community, the Autumn Statement and associated Finance Bill confirmed the details of the significant changes being made to how companies gain relief for their R&D expenditure. Most changes will apply for accounting periods starting on or after 1 April 2024.

There have been numerous articles and alerts published that set out the details of the changes, but they can be summarised at a high level:

- Under the new merged scheme, most claimants will gain relief as an above-the-line credit on the same activities as the existing schemes. The notable exception is the treatment of contracted out R&D work where the entitlement to claim now rests with the instigator of the R&D.
- Where a company's R&D expenditure represents more than the applicable percentage of the company's statutory profit and loss expenditure, they may choose to claim under the R&D intensive regime. The intensive regime is effectively the existing SME scheme using the same treatment for contracted out R&D work as the merged scheme and can only be accessed by loss-making SME companies.
- Overseas expenditure is generally excluded from both the merged and intensive regimes unless the conditions to fall within the exemptions are met.

Taken together, these changes are expected to push R&D claims up the supply chain from the companies whose staff undertake the R&D to those companies that plan, initiate and fund the R&D projects. This may well reduce the number of overall claims, particularly in service providers such as consultancies, contract R&D organisations, manufacturing and design specialists.

The recent changes bring the UK in line with many overseas jurisdictions, for instance the US and Australia, where historically more information has been mandated for claimants. Companies with R&D activities in these jurisdictions should consider whether already existing processes could be used in the UK.

This article now focuses on the practicalities of changes in the R&D schemes, the treatment of contracted out R&D costs, the restriction on overseas costs and the additional compliance needed to make a claim.

Move to the merged scheme and interaction with the intensive SME scheme

After many years of both the SME super-deduction and old R&D expenditure credit, the R&D regimes are well understood. Having two regimes has led to complexity, particularly for SME companies that may have made claims under both regimes, so a move to a single regime without the SME criteria appears to simplify the situation for most claimants. Designing the merged scheme so that it provides an above-the-line credit aligns with the desire to improve the visibility of the incentive to management teams beyond the tax function.

The effort needed to identify which costs can now be included in a company's claim will mean that many claimants will not see the benefits of simplification immediately. There is also still complexity where a claimant is an R&D intensive company and has the option to claim under an amended super-deduction regime.

Although at first glance the 'in year' cash benefit appears higher under the R&D intensive super-deduction, it is important that companies model the benefit fully before claiming under the intensive scheme. There are circumstances where an R&D intensive SME may get a better 'in year' cash impact by claiming under the merged R&D expenditure credit due to their tax position. Similarly, the benefits of the immediate cash credit may not match the value of the potentially surrendered losses when future plans are considered.

Those claimants that decide to claim under the intensive scheme will need to prove their SME status as well as their R&D intensity. For many claimants, particularly those where evidencing their SME status is complex or those who would need to claim under both regimes, the marginal increase in benefit may not be worth the additional effort.

Contracted out R&D

The determination of whether work meets the definitions to be eligible R&D has not changed. Where costs of R&D are contracted out, the new merged scheme moves from rewarding companies undertaking the R&D activities to those planning, initiating and funding it. R&D activities can now generally be split into four types:

1. The company can claim for its expenditure on both in-house R&D work and payments for R&D that is intentionally contracted out.
2. The R&D activities are contracted out to the company and the customer anticipates that R&D activity is needed. In this case, the company (supplier) doing the work cannot claim for R&D relief as the customer can make the claim.
3. The R&D activities are contracted out to the company and the customer is ineligible to make its own claim for R&D relief; for example, the customer is an overseas entity so cannot claim, or is a group company which has elected to forgo its own claim.
4. R&D activities are contracted out to the company where the customer is indifferent to the R&D. The company doing the work claims for R&D relief as the customer is not involved in the R&D.

The challenge will be identifying which projects count as contracted out R&D and who has the entitlement to make the claim. The current definition of contracted out R&D seeks to capture arrangements where there was an intention to contract out R&D at the time the contract was agreed. Many contracts will explicitly state that they include R&D. Other contracts will not mention R&D, but if the terms and surrounding circumstances make it reasonable to assume that the customer anticipated R&D would be required by the supplier (and any of its subcontractors) then these will also be captured.

The determination of whether work meets the definitions to be eligible R&D has not changed.

Although *Hadee Engineering Co Ltd v HMRC* [2020] UKFTT 497 considered the meaning of contracted out R&D under the existing SME scheme, it may be persuasive when considering the meaning of contracted out R&D. The following factors influenced the judge's decision when considering if activities had been contracted out to the company:

- The company was typically reimbursed on an hourly basis for its design time so no financial risk was borne.
- The customer provided the project concept and was heavily involved in the design.
- Commissions were for bespoke solutions and public information indicated that the work related to the customer's pioneering processes.

What does this mean in practice for claimant companies? The actions needed are dependent on the company's role, so taking the supplier and then the customer in turn the following issues arise.

Companies performing activities under contract (the supplier)

To claim R&D relief on activities it performs under contract, the onus will be on the company to show that the customer was indifferent to whether R&D would be undertaken at the time the contract was agreed; for example, showing that the contract pricing was based on it being routine activities (e.g. standard pricing and not for tailored or specifically bespoke activities). Retaining contemporaneous evidence of scoping and planning activities may also help to demonstrate that the level of technical customer involvement was relatively limited.

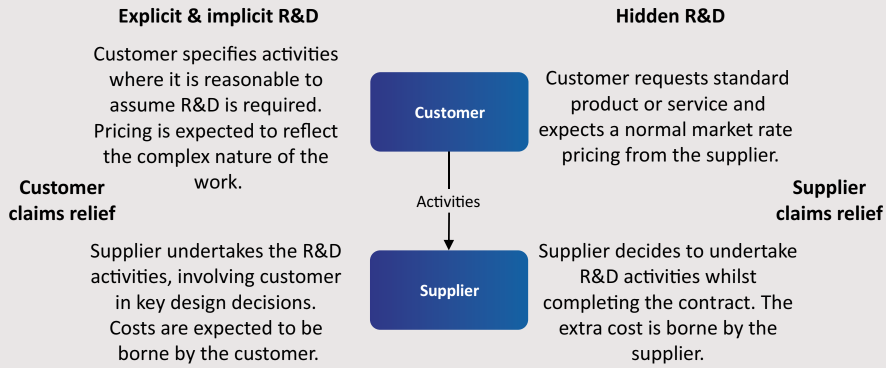
Companies should consider how their commercial teams communicate with customers, ensuring that it is clear what is being paid for and what the expectations associated with the offering are (i.e. can the work be agreed without meetings with the customer's technical specialists or not).

Legal teams should be aware of attempts by customers to insert clauses asserting rights to R&D relief into contracts where there is no expectation in the customer negotiations that the project will involve R&D. Where a customer expects R&D to be undertaken so a supplier cannot claim the relief, the supplying company should consider their pricing structures, particularly where historically R&D relief has been used to increase the margin on customer projects.

Companies contracting out activities (the customer)

Historically, large companies have not been able to claim R&D relief in respect of

WHO CLAIMS THE R&D RELIEF UNDER THE MERGED R&D SCHEME?



R&D activities contracted out to third parties, so many companies will not have steps in their R&D claim processes to identify these activities and costs. The customer will need to show that they intended the supplier to undertake R&D, which should be evidenced through contemporaneous tender documents and contracts. Many suppliers will be used to claiming R&D relief for these activities themselves, so there will need to be discussions about the actual circumstances to agree where the entitlement to claim sits and any impact this has on pricing.

The legislation and explanatory notes are only concerned with whether a customer intends their supplier to undertake R&D at the time the contract is put into place. If a customer subsequently finds out that the supplier was undertaking R&D to fulfil the contract, then the customer will have no right to claim this 'hidden R&D'. Companies may wish to rescope projects or include agreed phases in contracts if there is a significant likelihood of a change of scope leading to R&D activities being undertaken.

The biggest challenge for companies claiming contracted out activities is likely to be capturing the details needed to support their R&D claim, both the quantification and technical aspects. For large contracts, it may be necessary to consider inserting clauses providing that the supplier's competent professionals will assist the company and its advisors with the R&D claim preparation. Equally, a company may consider asking the supplier to complete regular updates setting out the R&D activities, advancements and uncertainties and what proportion of the overall contract they represent. The 'additional information form' template might be used as a guide to the type of information that should be captured.

Supporting evidence

Currently, companies are not required to disclose details of their subcontractors on the additional information form, so there is no mechanism for HMRC to easily check whether double claiming has occurred. However, it must be anticipated that companies in sectors typically working under contract to others, such as consultancy, will be subject to high levels of HMRC scrutiny and will need to evidence their right to claim. Companies in these industries should keep contemporaneous records evidencing any discussions with customers demonstrating the agreed nature of the work.

The need for record-keeping was a point strongly highlighted in the recent 'Guidance for Compliance 3' guidelines for making R&D claims. If an enquiry is raised, HMRC may ask for all correspondence for a specific contract, as well as looking at publicly available information about the contract (e.g. in the *Hadee* case, HMRC referenced press releases by the customer).

Exclusion of overseas costs from the R&D regimes

The exclusion of most overseas expenditure has been well trailed, having first been broached back in Spring 2021. Guidance on the conditions for the exemptions that allow overseas R&D costs to be claimed has been promised by HMRC. It is not unusual for a company or group to have a mix of UK and overseas resources working on projects. In these scenarios there are several steps that could be taken:

- Companies should review their current claims to identify the level of overseas expenditure. It will be important to communicate the impact of this change to management for future investment decisions and financial management.
- Identify if there are readily available mechanisms for tracking the location of costs and how the claim methodology could be changed to incorporate this.
- Where it is believed the exemptions will apply, contemporaneous evidence should be kept regarding how the condition was met.

This evidence may include keeping:

- correspondence with regulatory bodies requesting overseas trials;
- evidence that the company sought a suitable location with the appropriate geographical conditions, but no such location exists in the UK; and
- documentation that shows the necessary facilities to undertake the R&D were not available and could not be reasonably replicated. For example, evidence of searches of existing geological survey data being undertaken or very specific equipment which cannot be reasonably replicated in the UK in the timescales needed.

Future updates to the additional information form

By now, many companies will have had their first experience of the additional information form and therefore will feel more comfortable about the details needed. However, there are more changes to come, as HMRC will update the additional information form once the restrictions on overseas expenditure come into effect.

From accounting periods starting on or after 1 April 2024, HMRC requires all entities to list the externally provided workers (the external resources who augment the company's technical team) working on R&D activities, along with the staff provider's PAYE reference, to confirm these individuals are UK based.

It is recommended that conversations are held with the staff providers about how to obtain this information sooner rather than later, as trying to get this information after a contract has been delivered may be challenging. If a company is unable to obtain the PAYE references of its externally provided workers, then HMRC will expect the associated cost to be excluded from the claim.

Prepare for the R&D changes

The design of the merged scheme and HMRC's continued focus on the compliance process are all part of a wider drive to improve the cost effectiveness of the R&D reliefs by addressing the fraud and abuse that has been identified, and to respond to the criticism they have faced from the Public Accounts Committee, industry, professional bodies and advisers.

HMRC's intention is that the R&D reliefs are not just a tax afterthought considered once year end is closed, but are also included in project planning and management. They are asking for more contemporaneous evidence, so it is clear that companies that take time to consider how best to document and evidence their R&D claim will be at an advantage if an enquiry letter lands on their doorsteps. This is a clear case where acting now will save time later and protect claim value.

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Lessons from the courts

Key judgments in 2023

In this Q&A article, Neil Warren reflects on important VAT decisions reached in the courts during the last 12 months and the practical issues that can be learned.

by Neil Warren

Key Points

What is the issue?
Tribunal decisions can give an important steer to resolving complex VAT issues, even though First-tier Tribunal decisions are only binding on the appellant and HMRC. For example, the case of *All Answers Ltd* is helpful to decide if a website owner is acting as an agent or principal in arranging deals.

What does it mean to me?
If any clients offer promotional incentives to their customers, it is important to be clear whether a financial incentive represents a discount on their bill which is not subject to VAT, or a non-monetary consideration which is VATable. The article analyses the case of *Simple Energy Ltd*, where the verdict was consistent with HMRC's published guidance.

What can I take away?
The allocation of input tax into the partial exemption categories of taxable, exempt or residual is often complicated. The case of *KRM Finance Ltd* again emphasises the importance of an expense having a direct and immediate link with a source of income as far as input tax allocations are concerned.

What was your favourite case in 2023?

I like cases that produce a practical message from which we can all learn. The two cases about the VAT liability of skincare treatments – both lost by the taxpayers – gave an important reminder to all business owners that zero-ratings and exemptions in the legislation have to be earned and justified; they are not an automatic right. Even though HMRC carries out fewer compliance checks nowadays, it is important that the basic record keeping rules are met by all business owners – for example, keeping export evidence to prove that goods have left the UK and are zero-rated.

In the case of *Illuminate Skin Clinic Ltd* [2023] UKFTT 547, the director was registered as a doctor and the services provided by her clinic mainly related to aesthetic, skincare and wellness treatment for women. HMRC issued an assessment on the basis that the services were standard rated as cosmetic treatment, whereas the taxpayer claimed that they qualified for exemption as medical care. She failed to provide evidence to the tribunal that the supplies had a medical basis and the appeal was dismissed.

The same issues about providing supporting evidence were relevant in the case of *Epem Ltd* [2023] UKFTT 627.

The internet and modern technology have made VAT more complex, particularly where three parties are involved in a deal. Were there any significant cases about online sales?

VAT enthusiasts have enjoyed the long-running case of *All Answers Ltd* [2023]


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UKFTT 737, about whether the company was supplying completed essays, dissertations and written coursework to students, rather than the self-employed writers who were given the task of writing the work by All Answers. The company retained two-thirds of the fees paid by students, with the writers getting a third.

All Answers Ltd lost appeals in 2018 and 2020 because the judges dismissed its argument that it provided an agency service to the writers. HMRC and both tribunals agreed that All Answers was the principal rather than the agent and output tax was payable on the full fee paid by the students.

The 2023 appeal focused on a revised contract between All Answers and the writers. The company claimed that this changed both the legal relationship and commercial reality of the deal because the contract stated that the writer retained the copyright of all work supplied to customers and therefore All Answers could only be acting as agent.

The tribunal agreed with HMRC that the contractual amendment did not affect the reality of the deal: 'All Answers delivered the academic works and not the writer.' The appeal was dismissed.

The important learning point is that advisers must emphasise to clients the importance of reviewing the VAT position for website arrangements where a site links a supplier and a customer. Is the website host acting a principal or agent?

The case of *Yorkshire Agricultural Society* [2023] UKFTT 00389 considered the liability of admission fees to an annual farming show and produced an interesting debate about UK and EU law. What are your thoughts?

The taxpayer Yorkshire Agricultural Society claimed that admission fees qualified for exemption as a fundraising event organised by a charity. HMRC's view was that the primary purpose of the show was to act as an educational event about the latest developments in farming and did not qualify as a fundraiser.

The legislation for exemption requires an event to pass three tests – all must be met because Value Added Tax Act 1994 Group 12 Item 1 uses the word 'and' rather than 'or':

- It must be organised by a charity for a charitable purpose (part (a) of item 1) – all parties accepted this had been met.
- Its primary purpose must be to raise money (part (b) of item 1).
- It must be promoted as being primarily for raising funds (part (c) of item 1).

The judge decided that part (c) about promotion being 'primarily for the raising of money' was not compatible with the EU VAT Directive, which only required that an event 'is not likely to cause distortion of competition'. He removed the word 'primary' from his analysis of part (c) in accordance with EU law and accepted that Yorkshire Agricultural Society had passed this test. The appeal was allowed – Yorkshire Agricultural Society had fully met the conditions of the exemption for fundraising events.

The key message is that UK legislation will continue to be interpreted in compliance with the implementation period (IP) completion day version of EU law – and the principles of EU law – until there is a specific change away from that outcome. That was the original intention of Parliament and therefore UK law; EU retained law became domestic legislation. This is logical because it would be ridiculous if, say, a VAT exempt transaction suddenly became standard rated without there being any move by Parliament to change the law.

Note: this decision has been appealed by HMRC.

Mixed supplies is a complex subject but the case of *GAP Group Ltd* [2023] UKFTT 970 – lost by HMRC – seems to be consistent with other recent decisions. What were the key issues?

This case related to one of the UK's largest suppliers of plant and tool hire. Typical supplies could be for the hire of diggers or dumpers for customers in the construction industry. As well as plant hire, GAP also provides other services, such as delivery charges and red diesel fuel. With the fuel supplies, 5% VAT is usually charged because of the de minimis quantities specified in Value Added Tax Act 1994 Sch 7A Group 1 Item 1 Note 5(c).

HMRC's view was that the taxpayer was wrong to separately itemise the fuel and plant hire supplies on its sales invoices and that there was a single supply of plant with fuel, all subject to 20% VAT.

The taxpayer argued that the terms and conditions of its contracts only quoted rates for plant hire and that 'fuel was not their business'. The purchase of fuel was only relevant if the customer returned the plant with less than the full tank which was supplied at the beginning of the period. In other words, fuel was an 'optional extra' and the customer had 'genuine freedom to choose' whether they purchased it. Each sales invoice where fuel was charged clearly showed the quantity and price charged to the customer.

The judge allowed the appeal – there was a mixed supply of fuel and plant hire taking place and customers only purchased fuel for their own convenience. It was therefore appropriate to split the supplies for VAT purposes.

The case of *Royal Opera House* [2021] EWCA Civ 910 clarified some tricky issues about the allocation of input tax with partial exemption. Were there any similar cases in 2023?

I enjoyed the case of *KRS Finance Ltd* [2023] UKFTT 855 about whether marketing expenditure carried out by a partially exempt business was only attributable to exempt supplies rather than being a business overhead. Basically, the company's main income relates to the sale of equity release products for people, which is exempt from VAT as a financial service; however, it also receives income from estate planning, which is taxable.

The appeal considered if marketing expenditure was wholly relevant to the equity release sales – as claimed by HMRC – or a general overhead because it was intended to 'promote the business as a whole'. Input tax could be partly claimed if the marketing expenditure was residual; i.e. a mixed/overhead cost. No input tax could be claimed if the costs only related to the equity release products.

The taxpayer claimed that its marketing strategy was to 'build a lasting brand in addition to simply driving leads or enquiries' and its 'hero product' marketing was also intended to establish the brand as a whole. Even though customers would usually start their journey with an enquiry about equity release products, this could lead to estate planning services being cross-sold; i.e. generating taxable as well as exempt income.

HMRC's view was that the adverts, such as TV advertising and pay-per-click online advertising, all focused on the equity release activities and that there was no 'direct and immediate link' with the estate planning business. HMRC and the judge focused on the features and wording of the adverts, which included comments such as: 'Staying in your home for longer and not having to downsize', which clearly relates to the equity release activity. The appeal was dismissed.

Are there any cases you would recommend our readers to review, perhaps because the decision was a surprise?

The case of *Simple Energy Ltd* [2023] UKFTT 976 considered if credits allocated to customers' energy accounts for referring new customers represented a discount from their bills – not subject to VAT – or a non-monetary consideration, which is VATable.

Bulb Energy Ltd (Bulb) is a member of a VAT group, of which Simple Energy Ltd is the representative member. In 2016, Bulb introduced the 'refer a friend' scheme, which meant that existing customers could click on a referral link to their friends and relatives, to encourage them to change their electricity and gas supplies to Bulb. The reward for a successful new account was a £50 reduction in the bill of the new customer and the same amount for that of the referrer.

The disputed issue was whether the £50 reduction was a discount on the energy bills of the referrer or represented non-monetary consideration towards the payment of their energy bills. In the latter case, the referrer would be deemed to be providing a service to Bulb rather than receiving a discount. The marketing literature of Bulb commented to existing customers that 'we'll give you both £50 each to say thanks for going green' and there were clear terms and conditions published about the scheme.

HMRC's view was that the £50 credits given to the referrers – but not the new customers – was additional consideration and therefore subject to VAT. The judge agreed, dismissing the taxpayer's argument that 'very little was done by the referrer'.

If any clients have similar scenarios, HMRC's guidance in VAT Notice 700/7 section 5 is very clear and consistent with this decision.

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The Fisher kings

Transfer of assets abroad

We examine how the Supreme Court approached the transfer of assets abroad legislation to define the boundaries of the rules.

by Keith Gordon

Key Points

What is the issue?
In *Fisher v HMRC,* the business of a UK trading company was transferred to a Gibraltarian company. As the Fishers had 'power to enjoy' the profits, HMRC assessed them on the overseas company's income on the basis that the Fishers (as major shareholders) had, for all practical purposes, effected the transfer of assets abroad.

What does it mean to me?
The transfer of assets abroad rules, at their heart, ensure that any income deriving from the transferred assets can still be subject to UK tax, notwithstanding the fact that it is not directly enjoyed by a UK resident. Yet the rules continue to perplex those attempting to understand them.

What can I take away?
The court's emphatic judgment will remove one level of complexity to the transfer of assets abroad rules. However, the risk of legislation being rushed out means that any less aggressive company transfers might be best effected sooner rather than later.

The transfer of assets abroad legislation (variously abbreviated to ToAA and TAA) was first enacted in 1936. The essence of the rules is to ensure that an individual who is UK resident cannot avoid UK tax simply by transferring assets to a person who is not UK resident. The rules, at their heart, ensure that any income deriving from the transferred assets can still be subject to UK tax, notwithstanding the fact that it is not directly enjoyed by a UK resident.

The latest case to be argued at the highest court on this legislation is *Fisher v HMRC* [2023] UKSC 44. As the Supreme Court noted in the first paragraph of its judgment, the rules have been amended over the decades yet 'have continued to perplex and concern generations of judges faced with the task of construing them'.

Under the core provision (now enacted as the Income Tax Act 2007 s 720), UK tax is payable if a UK resident individual has power to enjoy the income that has been diverted abroad. Section 727 provides a corresponding charge to income tax where individuals receive a capital sum; and s 731 taxes individuals (who escape charges under ss 720 and 727) who receive a benefit as a result of what the legislation calls relevant transactions.

Focusing on s 720 for the time being, it is clear that the tax charge can arise even if the individual being taxed has not

received the income in question. The mere fact that the taxpayer has power to enjoy the income is enough to engage the charge. As noted by the Supreme Court, 'a taxpayer who falls within the provisions can be charged to tax on a substantial amount of income that they have not actually received and which bears no relation to the value of the assets initially transferred'.

Although the paradigm target of the legislation is not in doubt, the case law shows that the predecessor to the Supreme Court (the 'appellate committee' of the House of Lords) struggled to define the boundaries of the scope of the rules.

The facts of the case

In the case of *Fisher v HMRC*, the taxpayers were three members of the Fisher family. Together (but not individually) they controlled a UK trading company whose business was transferred to a Gibraltarian company which, again, they controlled together but not individually. (Ironically, the purpose for the transfer was to prevent the UK business haemorrhaging due to the incidence of betting duty.)

The Gibraltarian company made profits from the transferred business and, as the Fishers had 'power to enjoy' that income, HMRC assessed them on the overseas company's income on the basis that the Fishers (as major shareholders) had, for all practical purposes, effected the transfer of assets abroad.

The questions addressed by the Supreme Court

The case concerned only what is now Income Tax Act 2007 s 720.

A wide range of issues were debated through the course of the litigation, including questions of EU law as one of the Fishers was an Irish national. However, just two such arguments featured in the Supreme Court's decision, as they were sufficient to dispose of the whole case. The questions that the Supreme Court considered were as follows:

1. Does the individual who is taxed under s 720 have to be the transferor of the assets?
2. Did the Fishers transfer the assets?

The first question had been the subject of ambiguous (if not conflicting) decisions in two previous cases that had been argued before the House of Lords:

- In *Congreve v Inland Revenue Commissioners* (1946–1948) 30 TC 163, the House of Lords decided that the individual being taxed did not have to be the transferor.
- In *Vestey v Inland Revenue Commissioners (Nos. 1 and 2)* [1980] AC 1148), however, it was suggested that the person to be taxed had to be either the transferor or at least the quasi-transferor of the assets.

If the s 720 charge applied both to transferors and non-transferors, then it would not have mattered who actually transferred the assets. However, if the s 720 charge is limited to transferors (actual or quasi), then the Supreme Court would be required to move on to the second question; i.e. whether, in the circumstances, it could be said that the transfer was effected by the Fishers. This then puts into sharp focus the non-statutory concept of a quasi-transferor, also described in the case law as an individual who 'procured' the transfer.

> **UK tax is payable if a UK resident individual has power to enjoy the income that has been diverted abroad.**

The Supreme Court's decision

The single judgment was given by Lady Rose, with whom Lords Reed, Hodge, Sales and Stephens agreed.

Is the charge limited to transferors?

In respect of the first question, the Supreme Court noted in particular the provision now found in s 714(4) which, for the purposes of the transfer of assets abroad rules, extends the meaning of individual to an individual's spouse or civil partner. The court considered that this provision expressly extended the charge to non-transferors in a limited way and would not have been required if income could be assessed on non-transferors more generally.

In its submissions, HMRC addressed what the House of Lords had said in *Vestey*. In *Vestey*, the House of Lords had expressed concern that giving the rules a wider scope would be 'so dramatically unjust' that they could not consider such a meaning to have been intended by Parliament.

However, HMRC pointed out that this wider scope was subsequently imposed by Parliament when it later enacted what is now s 731. HMRC's argument was on the basis that Parliament clearly has no problem with what the House of Lords described as 'dramatically unjust' and therefore the reasoning in *Vestey* could no longer stand.

The Supreme Court, however, considered that Parliament was entitled to 'fill the gap created by *Vestey*' but noted that this was done by providing a third strand to the rules (s 731) rather than by modifying the principal strand in s 720. The Supreme Court therefore felt that the approach to s 720 adopted by the House of Lords in *Vestey* remained intact.

As a result, the court concluded that, but for any limited extensions (such as the extension to spouses and civil partners), the charge under s 720 is generally limited to transferors.

Did the Fishers transfer the assets?

The decision in relation to the first question meant that the Supreme Court had to consider whether the transfer legally effected by their company could be said to have been effected by the Fishers themselves. As the Supreme Court put it:

> 'Is there any reason to construe section [720] as applying to the shareholders of a company on the basis that they are associated with or that they procure the transfer of assets by that company?'

The starting point of the court's analysis was the distinction between majority and minority shareholdings. Assuming that there was no problem with imputing a company transfer onto a majority shareholder, there were undoubtedly questions as to how to circumscribe the circumstances in which a minority shareholder should also be treated as a transferor:

- Would every minority shareholder (for example, those thousands of shareholders of a major PLC) be treated as a transferor if they (through

a proxy) had voted in favour of the transfer?
- Alternatively, how should an individual with 30% of a company's shares be treated if that individual abstained from approving a transfer, knowing that the remaining shareholders would vote for the transfer?

HMRC had argued that this uncertainty was a virtue of the drafting – the legislation acted as a warning mechanism without requiring bright lines that would enable individuals to devise a way around the rules. The court was not content, however, to leave the legislation 'in some unclear state just to scare people'.

However, the court then went further and noted that the transfer of assets abroad legislation was silent about attributing company actions to shareholders, unlike other areas within the tax code. As a result, it felt that even controlling shareholders should not be routinely treated as if they were transferors in relation to transfers by the company. HMRC argued that this would leave a gap in the legislation but the Supreme Court identified three reasons why this was not so:

1. There is the s 731 charge on non-transferors, so transfers by companies cannot be completely disregarded under the rules.
2. If an individual simply used a company as a device to effect a transfer of assets abroad, the court considered that the substance of the transaction would most likely be that of an individual transferring assets abroad.
3. If the government felt that this was still insufficient, they could always invite Parliament to fill the gap, albeit suggesting that careful thought should go into ensuring that it is achieved 'in a fair, appropriate and workable manner'.

In summary, the Supreme Court identified no reasons for construing the legislation in a way that automatically treated company transferors as effected by shareholders 'and plenty of reasons not to do so'. For these reasons, the court allowed the Fishers' appeal and dismissed that of HMRC.

Commentary

Academics might regret that the opportunity was not taken to address the plethora of issues that had been argued in the course of the *Fisher* litigation, but which proved to be unnecessary to resolve in the light of how the court concluded the above two issues.

The court's emphatic judgment will nevertheless remove one level of complexity to the transfer of assets abroad rules, although I would not go so far as to say that the difference will necessarily be noted in practice.

Will HMRC now suggest that company transferors are 'devices'? (Indeed, the court did not rule out the concept of quasi-transferors still being caught by the transfer of assets abroad rules.) And there is always the risk of new legislation being introduced to put the code back to where HMRC says it previously believed it was.

If new legislation is to be introduced, it will be interesting to see whether Parliament comes up with something that is fair, appropriate and workable. It will be noted that the idea of keeping legislation uncertain to scare people was deprecated by the court as having 'a flavour of [an] unconstitutional approach'.

What to do next

It would be foolhardy to rush into artificial transfers of assets abroad by limited companies simply by focusing on the fact that the Fishers were held not to have been transferors in relation to the transfer effected by their company. However, the risk of legislation being rushed out (perhaps with effect from Budget Day, which has recently announced as 6 March) means that any less aggressive company transfers might be best effected sooner rather than later.

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HMRC Guidance
Accessing our information

HMRC provides huge quantities of guidance to individuals, businesses and agents, and is working on ways to make it easier for users to access information.

by Kevin Newton

At HMRC we are constantly reviewing and developing our guidance to ensure we are meeting the needs of our customers. As you can imagine, this is a huge task. HMRC has around 100,000 pages of guidance on GOV.UK and we make over 4,000 changes a year to keep them up to date and improve them.

We use the HMRC Individuals, Small Businesses and Agents customer survey as our primary measure of satisfaction (see tinyurl.com/ycum2pm4) with our guidance. In 2022/23, this told us that 61% of agents, 69% of small businesses and 72% of individuals rated our GOV.UK pages positively. Historically, HMRC guidance on GOV.UK has been split broadly into three categories:

- **Mainstream content:** This is around 1,350 pages and makes up around 56% of annual page views. It is designed for users with little tax knowledge. These pages are mainly designed by Government Digital Services and signed off by HMRC.
- **Specialist content:** This covers around 10,000 pages designed by HMRC for people and businesses that have or need more detailed tax knowledge. This content gets around 41% of the page views.
- **Manuals:** These have around 90,000 pages and are written by HMRC specialists. Historically, these were written primarily for HMRC colleagues but in recent years we have paid increasing consideration to the needs of users such as tax agents and solicitors. Our manuals get more than 40 million page views a year.

Follow the data

More than 750 million page views from 100,000 pages, all tagged with a question asking whether the page is helpful, produces a lot of data. In 2019, we started building data feeds and dashboards to highlight and prioritise the guidance that would have the most impact when improved.

Improving our guidance makes it easier for taxpayers to do the right thing, which improves compliance and reduces the demand on HMRC's services. However, measuring that impact is not always easy. Interrogating our data, alongside insight from bodies such as the Administrative Burdens Advisory Board (ABAB) (see tinyurl.com/c3xamvmp), various representative bodies and our own Guidance Strategy Forum (see tinyurl.com/bdhb6hun), has enabled us to develop and evaluate new approaches, as set out below.

Interactive guidance: We are developing step by step interactive guidance journeys designed to make complex things feel simpler as they step the user through the bits that just apply to them; for example, the starter checklist for PAYE (see tinyurl.com/484vc9sw) and check your UK residence status (see tinyurl.com/ywue3jr7). This approach overcomes the problem of users giving up when faced with large amounts of text, much of which doesn't apply to them. User satisfaction for interactive guidance is usually over 80%.

Digital Assistant: We are investing more in our Digital Assistant so that it better understands the many different ways that people use to ask similar questions. This has helped it more effectively provide users with relevant guidance and support. Where the Digital Assistant doesn't find an answer, or the taxpayer needs more

support, if HMRC advisers are available it will offer a webchat, which is a service that gets good feedback.

Video content: We are making more use of video content. We produce our own videos, which are posted on our own YouTube channel, but we have been working closely with Government Digital Services to see what happens when we embed them directly in GOV.UK pages. We have tried this on a few different subjects, ranging from child benefit to anti-money laundering, and are currently evaluating the impact.

Feedback: We recognise the importance of our technical manuals and have focused on generating and listening to feedback. In 2022/23, we received more than 500 items of feedback, with 53% resulting in changes. We made 76% of those changes within 15 working days of receiving the feedback and 89% within 40 working days. We encourage users to send us feedback and are grateful to the CIOT for publishing a piece on their website detailing how the process works (see tinyurl.com/2ejmjt98).

Meeting the challenges

Despite the significant increase in the use of the HMRC app and our online services to over 198 million accesses during 2022/23, we still received 38 million calls the same year. If we were to do nothing, the amount of calls would likely increase as result of tax policy changes that bring more taxpayers into the tax system and increase the number of taxpayers with more complex affairs. Alongside HMRC's target to reduce telephony and post contact by 30% by 2025, this makes it clear that the status quo will not move us quickly enough in the right direction.

The data coming from our recent guidance improvement work, alongside the sheer logic of the benefits of improving guidance, gave us the confidence to make some changes. To increase capacity and further build capability, we brought together our internal and external guidance teams and the HMRC team

EXPLORE OUR GUIDANCE

HMRC on GOV.UK: tinyurl.com/bdfwap3b
HMRC manuals: tinyurl.com/4chsya65

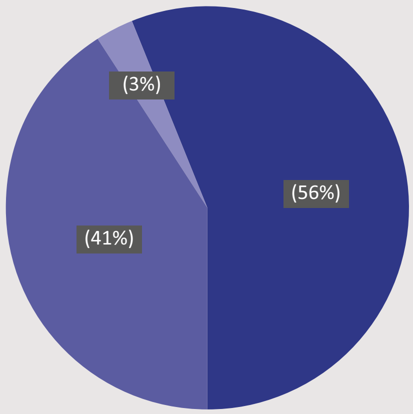
Interactive guidance

- Check what your tax code means: tinyurl.com/3jxttxnr
- Check if you need to tell HMRC about additional income: tinyurl.com/2u7jc55w
- Starter checklist for PAYE: tinyurl.com/484vc9sw
- Check your UK residence status: tinyurl.com/ywue3jr7
- Try our Digital Assistant and get help online for Self Assessment: tinyurl.com/5fu68zxf

Our videos on YouTube: tinyurl.com/ukyc7e6a

Contact the HMRC Guidance Team at: **hmrcguidanceteam@hmrc.gov.uk**

GOV.UK GUIDANCE USAGE BROKEN DOWN BY TYPE



responsible for building the department's plain English expertise.

Those changes enabled us to build more interactive guidance journeys (we've now delivered almost 50) and to devote more resource to improving, rather than simply maintaining, our existing content.

We've also started to make increasing use of our technology. For example, callers to HMRC tell our automated voice system why they are calling us. When we know we have strong guidance or online services that could help with that issue we automatically send the customer an SMS with a link to the guidance or service, if they are using a compatible device. We are also using QR codes on some of our letters to take customers directly to our guidance and online services. We're currently evaluating the impacts but the early data suggests that these will form an important piece of the jigsaw going forward.

What next?

The first job is, of course, to make sure that we keep GOV.UK up to date in our constantly changing world. We work hard at this, making over 4,000 updates a year, and believe we're doing well. If you think there's more that we can do, let us know at hmrcguidanceteam@hmrc.gov.uk.

Sometimes the up-to-date position can be less clear cut, particularly in technical areas where the legislation leaves room for interpretation or HMRC is being challenged through a tribunal. In these circumstances, we're working with the Guidance Strategy Forum to consider ways of updating our manuals to make it clearer that an issue is under review.

On guidance improvement, our biggest focus is the announcement made in the 2023 Spring Budget that by April 2025 we will systematically transform the guidance for small businesses. This is really exciting work for us. We've built our capacity to enable us to deliver this and have been working closely with our users and their representatives to produce a list of areas that we need to concentrate on. This includes helping users to find all the guidance they need to set up and be compliant from the start, to get their returns right, and to register for Self Assessment and VAT.

At the time of writing, we have worked with users to prioritise these areas and are carrying out user research on prototype solutions.

We've been also working closely with Government Digital Service colleagues to increase our capacity to make changes to 'mainstream content' more quickly, and, in particular, to reduce the dependency on GDS to implement those changes, while preserving all that is already good about that particular content type. This will be especially helpful for the changes arising from the small business guidance review but will support us to do much more beyond that, too.

Other areas

Beyond our work to transform small business guidance, we have many other things going on to both improve specific guidance and how we deliver it. For example, we're looking at:

1. A range of specific topics within PAYE, Self Assessment, National Insurance, VAT and others too. This isn't the full, systematic review that we're carrying out on small business guidance – it's more about identifying and fixing specific problem areas.
2. How we can improve our guidance for more technical users, such as by making better use of examples and by agreeing an alternative format to PDFs that will give the 'coherent document' feel without the accessibility and other drawbacks.
3. Working more closely with compliance colleagues to use the data we have about where customers make mistakes that lead to a compliance intervention as a prompt to review the associated guidance to ensure it is giving users what they need.
4. Further developing our range of metrics to make sure that we're giving users what they need. For example, are we reducing the ratio of users who go from our guidance to the 'contact us' pages?

We are exploring ways we can do more to put guidance at the point of need. For example, we are working with British Business Bank to include links to GOV.UK guidance on their website to support small business in key areas such as registration, filing and payment processes. If you have ideas or can help us develop ways to put guidance at the point where a user might need it, please do get in touch with us.

Finally, like the rest of the world, we are also looking at ways that artificial intelligence can help us and our customers. This is an exciting and emotive area, and you can be assured that alongside considering the potential of AI to produce content and support designers, we are very mindful of the reliance that our customers place on our guidance and the consequences of any inaccuracies. Uses of AI will comply with our data protection, security and ethical standards.

Our ask of you

Improving HMRC's guidance is more than just a job to us and we genuinely love to hear feedback and ideas, whether that's a big concept or a specific piece of guidance. So if you find yourself muttering under your breath, use the GOV.UK feedback routes or email us at hmrcguidanceteam@hmrc.gov.uk so that we can take a look.

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Basis period reform
Impact on student finances

The basis period reform rules for unincorporated businesses may have an impact on households which are applying for student finance or where the sole trader or partner in a partnership are repaying student loans.

by Claire Thackaberry

Key Points

What is the issue?
The basis period reform rules may result in additional transition profits being spread over five tax years. Consequently, these additional profits may impact student loan repayments and applications for student finance.

What does it mean for me?
Affected taxpayers will need to understand the impact of basis period reform on their student loan repayments and/or their household's student finance applications and consider potential planning opportunities by accelerating the spreading of transition profits.

What can I take away?
It is important to consider any interactions with student loan repayments and student finance applications when looking at the impact of basis period reform on a client's tax position.

Basis period reform means that all unincorporated businesses must move to reporting their business profits on a tax year basis from the 2024/25 tax year with a transition tax year in 2023/24. It will affect sole traders and partnerships that currently do not have an accounting year end date of 31 March to 5 April inclusive. These businesses will need to make transitional changes during 2023/24, which may result in including profits for a period longer than 12 months.

Although this article does not focus in depth on the calculation of profits in the 2023/24 transition year, we need to understand how profits will be calculated in 2023/24 for businesses affected by basis period reform. The calculation is at Finance Act 2022 Sch 1 para 75 and covered within HMRC's Business Income Manual at BIM81200 (see tinyurl.com/54t938uw).

Calculating transition year profits

For 2023/24, profits will be comprised of:

Standard profits + (transition profits less overlap relief)

- Standard profits are based on the 12 month accounting period which ends in 2023/24.
- The transition profits are those from the end of the standard profits period to 5 April 2024.

- Overlap relief is deducted from the transition profits.

For example, Hardeep is a self-employed trader who usually prepares his accounts on a calendar year basis. In 2023/24, his standard profits would be for 12 months; i.e. 1 January 2023 to 31 December 2023. His transition profits would be for the period 1 January 2024 to 5 April 2024.

If there are any transition profits remaining after deducting any available overlap relief and any losses from the standard 12 month period, then these are automatically spread evenly over five tax years (2023/24 to 2027/28) unless an election is made to accelerate the inclusion of these transition profits into an earlier tax year (see below).

Repayment of student loans

Student loan borrowers who are self-employed or partners will usually repay their loans through self-assessment. The main exception to this is directly paying the Student Loans Company when nearing the end of loan repayments.

For most undergraduate loans, in simple terms loan repayments are calculated using a 9% repayment rate on self-employment profits after deducting the relevant student loan plan threshold.

Using the example above, Hardeep has a Plan 2 student loan and has made profits of £32,000 in the 2022/23 tax year. His student loan repayment for the tax year prior to basis period reform would be calculated as:

£32,000 – £27,295 (Plan 2 repayment threshold) = £4,705
£4,705 x 9% = **£423.45**

The amount of £423.45 is due through self-assessment by 31 January 2024.

Student finance applications

Some students may be eligible to apply for additional maintenance loans based on a number of factors, including: which devolved administration the student lives in; where they want to study; and, often, their household's taxable income.

This means that the student will have to declare all their household's taxable income on their student finance application. A 'household' depends on who the student normally lives with or is dependent upon. This might be, for example, both of their parents, or one of their parents and that parent's partner.

If a student is considered 'independent', it will be their own household income that is relevant. Applicants will need to check the rules carefully depending on their individual situation. Applications need to be made in every year that a student is on their course and are usually based on an earlier tax year. For example, for a student finance application for the 2025/26 academic year (September 2025 to August 2026), information will need to be provided based upon the 2023/24 tax year.

There is detailed information on the eligibility criteria and the amounts that students can borrow at 'Funding and finance for students' on GOV.UK (see tinyurl.com/tm9eh6rs).

Interaction with basis period reform

HMRC and the Department for Education have confirmed that the amount of profits to be used when calculating student loan repayments and applying for student finance will be standard profits ***plus*** transition profits (reduced by any available overlap relief).

This means that for affected sole traders and partners in partnerships for the five tax years (2023/24 to 2027/28), there could potentially be:

- higher student loan repayments; and
- a reduction in the amount of maintenance loans that family members are eligible to borrow.

Student loan repayments

The amount of extra loan repayments will clearly depend on individual circumstances. Some borrowers may have an unwelcome surprise when they complete their 2023/24 tax return with higher than expected loan repayments.

For taxpayers who are impacted by basis period reform, it would be advisable to check if they have any unused overlap relief available which would reduce their transition profits. If you do not have accurate information from your client's records (perhaps due to a change of tax adviser), then the quickest way to check their overlap relief position is to use HMRC's G-form 'Get your Overlap Relief figure' on GOV.UK (see tinyurl.com/yc29u7dp). To speed up this process, HMRC requests that as much information is provided on the G-form as possible, such as the year of commencement.

Any transition profits (after overlap relief and losses) are automatically spread evenly over five tax years beginning in the 2023/24 transition year. However, it is possible to elect to accelerate the spreading (although no deferral is allowed). There may be reasons why you may choose not to spread transition profits equally over the five tax years. For example, if forecast profits show a move into a higher rate tax band in the following tax year, it might be preferable to treat all the transition profits as arising in the current tax year.

An election must state the amount of transition profits that the taxpayer wants to be treated as arising in the relevant tax year and it must be made on or within 12 months of the online self-assessment filing deadline of 31 January.

Below is an example of accelerating the spreading of transition profits to assist with planning student loan repayments.

Example: Kirsteen's student loan repayments

Kirsteen has a Plan 2 student loan and is self-employed, making profits of around £27,000 each year. She has an accounting year end of 30 April so will be affected by basis period reform. She has no overlap relief to use against her transition profits as her business was loss-making during the first few years of trading and she has no unutilised losses brought forward.

Kirsteen's profits are as follows:
Year ending 30 April 2023: **£26,500**
Year ending 30 April 2024: **£27,200**

The impact of basis period reform

Without basis period reform, Kirsteen would not be required to make any student loan repayments, unless she chose to do so voluntarily, because her earned income is below the repayment threshold for 2023/24 of £27,295. (The 2024/25 repayment threshold will also be £27,295.)

However, under basis period reform, Kirsteen's profits from self-employment for the 2023/24 tax year will be calculated as follows:

- **Standard profits** (12 months ended 30 April 2023): **£26,500**
- **Transition profits** (1 May 2023 to 5 April 2024): This amounts to 341 days out of 366 days (2024 being a leap year).
  £27,200 x 341/366 = **£25,342**
  This transition profit will be automatically spread evenly over five tax years and therefore **£5,068** will be allocated to the 2023/24 tax year.

In 2023/24, Kirsteen will therefore have profits from self-employment of:
£26,500 + £5,068 = **£31,568**

Her Plan 2 student loan repayments will be calculated as:
£31,568 – £27,295 = £4,273
£4,273 x 9% = **£384.57**

Accelerating transition profits

In these circumstances, Kirsteen may want to consider whether she can accelerate any of her transition profits to a tax year where she may have lower taxable profits.

In the 2024/25 tax year, she earns her usual amount of profits so keeps the spread of transition profits at 20% (£5,068). However, during the 2025/26 tax year, Kirsteen must replace some expensive capital equipment which reduces her taxable profits to £10,000. Kirsteen decides to accelerate the spreading of her remaining transition profits so it is all included within the 2025/26 tax year. This will be beneficial as she forecasts higher profits than usual for 2026/27.

Kirsteen has allocated an even spread of transition profits (£5,068) to each of the 2023/24 and 2024/25 tax years. The remaining transition profits amount to £15,206 (£25,342 – £5,068 – £5,068). Kirsteen elects to include the remaining transition profits alongside her self-employment profits in her 2025/26 tax return. Therefore, her total taxable profits are £25,206 (£10,000 + £15,206). No student loan repayments are due (assuming that the Plan 2 repayment threshold remains at its current level).

Student finance applications

As explained above, any profits from self-employment that need to be declared on an application for an additional amount of maintenance loan must include the amount of any transition profits alongside the standard profits.

In the example above, Kirsteen has a daughter who is applying for an additional maintenance loan from Student Finance England. Her daughter's 2025/26 finance application form must include Kirsteen's self-employment profits from the 2023/24 tax year of £31,568. This may reduce the amount of maintenance loan that Kirsteen's daughter is eligible to borrow.

Kirsteen may want to consider whether she can plan any spreading of her transition profits to assist her daughter in obtaining a higher maintenance loan for some or all of her years studying at university, whilst bearing in mind the amount of income tax and NICs due, as well as any other potential interactions.

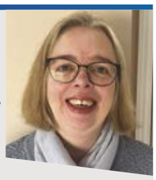
Although student finance applications are usually based on the taxable income of an earlier tax year (so the 2021/22 tax information is used for an application for the 2023/24 academic year), it is possible to request to use current tax year information if you expect your household income to fall by at least 15% compared to the tax year included on the original application.

Closing comments

This article illustrates that the interactions between basis period reform and student loans/student finance can be extremely complex. They may require advisers to look further into the future and more broadly at clients' family circumstances than they might be accustomed to.

Depending on individual circumstances, it may be advantageous to consider an election to accelerate the spreading of transition profits; for example, where it could reduce student loan repayments or increase the amount of maintenance loan eligible to borrow.

However, as basis period reform will result in interactions with other parts of the tax system, it is important to check the rules for each interaction as these can be different to the ones applying to student loans/student finance. For example, tax credits and the High Income Child Benefit Charge will be calculated by using standard profits only.



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Power in a label
Using the word 'tax'

With a commonly negative perception towards taxes, can how we label something change the way it is perceived?

by Amy Lawton

> **I think it is just a shorthand for things that people don't like having to pay, or for the sort of effects that people don't necessarily want to have. Then that comes back full circle towards the unpopularity of taxes.'**

I work in an environment where tax is not the normal specialisation. Fewer law schools are now teaching tax at universities across the UK, which means that fewer law schools have a tax academic based in the department. I have not been to a job interview where a joke about tax has not been made – 'Tax does not have to be taxing, ha ha!' – with people drawing on the popular culture of taxation as a dry, technical and boring subject. We have all been there when we introduce ourselves at a party and respond to the dreaded question: 'And what do you do?'

I experienced this reputation of tax as something that is not positive during my PhD, when I was working on the Carbon Reduction Commitment – an abolished scheme that charged businesses on their energy consumption through the purchase of allowances (and now largely covered by the climate change levy). This highlighted that participants saw the scheme as just a 'tax' – and this association with taxation resulted in participants feeling less engaged in the scheme.

> **They know 'tax' is like a negative word and it's going to get some public attention and uproar.'**

More recently, I interviewed 50 tax professionals (practitioners, academics and policymakers) to see what their views on taxation were – and, specifically, whether calling something a tax changes how it is perceived. Some of their opinions are shown throughout this article.

Tax word aversion

That there is an aversion to taxation has been the subject of quite a lot of academic research, particularly in the United States.

Tax aversion is a bias against taxation compared to other forms of payment (such as a charge, fee or contribution). In particular, people respond more strongly when the tax is more salient

– more visible and explicit – than when the tax is hidden. There can also be a greater objection to taxation when the benefit received in return for the tax (the quality of public services or, as I often hear, whether or not the bins are collected for council tax) is perceived to be of a lower value than the money paid.

Whilst many tax professionals might agree that taxes are unrequited – in that no one receives a particular benefit for their taxes paid – value for money feeds into the popularity of taxation.

Tax word aversion is similar but describes the negative emotional response that we have to the word itself. Research by Edward McCaffery and Jonathan Baron, scholars with expertise in law and psychology, has demonstrated that the word 'tax' can create a visceral negative reaction in the public. The important point here is that the word does not actually need to describe taxation to cause this emotive response; the word itself is sufficient.

This means that just labelling something as a tax can change how it is perceived. In the words of McCaffery and Baron: 'Labels matter, and tax tends to be a negative one.' Knowing the power behind the word 'tax' opens the door for its manipulation.

Communicating the word 'tax' in the UK

How the word tax is used is therefore important. The UK media has labelled many things a tax. Sometimes this is true, as with the 'pasty tax' and the 'tampon tax', which were used as a snappy shorthand for the VAT applied to these products.

Sometimes, it is less clear: the 2018 proposed changes to the probate fees as a 'death tax'; the Ultra-Low Emissions Zone in London as a 'car tax'; the retraction of welfare benefits as the 'bedroom tax'; and the money needed to be spent on fertility treatment for same-sex couples as a 'gay tax'. More recently, Sky News labelled the information sharing between platforms such as Airbnb and HMRC as the 'side hustle tax'. The labels can be seen across the UK media, in both tabloid and broadsheet newspapers.

It is not just the UK media. Sometimes more public bodies adopt the language too. The Scottish government refers to the fact that it has 'fully mitigated the bedroom tax in Scotland' on its website. Likewise, HM Treasury adopted the media label of the tampon tax when it announced its abolition on 1 January 2021 (see tinyurl.com/mwv5vxx7).

Finally, the Carbon Reduction Commitment was included in the 2015 'Reforming the business energy efficiency tax landscape' consultation and described as a 'burdensome and bureaucratic tax' (see tinyurl.com/2aamj2zb) – despite the fact that the scheme was not introduced by primary legislation and was initially designed as an emissions trading scheme.

What this means is that we can see the word 'tax' being used to describe a number of different policy instruments in the UK, exposing the general public to a wide range of uses for it.

Power in the tax label

My interviewees agreed that there is a negative connotation to the word 'tax' in the UK. It was described as 'negative', 'unhelpful', 'hostile', 'a shadow' – and another word that is used pejoratively! These descriptions of the word 'tax' are not surprising and support the existing academic research on tax word aversion. The UK is no different to other countries in this regard.

> **I think calling something a tax is sometimes used strategically to create negative associations with a certain policy. If you didn't like a particular public policy, you might strategically want to call it a tax because people generally don't like taxes and that may make them less predisposed to this particular policy.'**

Knowing that the word creates a negative emotional response in people opens up the possibility of using it to bias how people think about various policies. If people do not like taxation, then labelling something as a tax allows the labeller to incite those negative feelings amongst the general public. The problem is that the more we use the word 'tax' this way, the more embedded the negative feelings could become.

Deloitte's 2019 study on the 'Tax Education Gap' illustrated that tax literacy (our understanding of the tax system) in the UK is low (see tinyurl.com/dm2uv2un). My interviewees raised concerns that this could mean that the general public may not always see past the tax label when it is applied to non-taxes. This strengthens the possibility of using the word to bias people.

The power of this manipulation can allow the media (or the political opposition, devolved governments or the government) to discredit non-tax policy simply by calling it a tax. If the public are unable to see past this label due to the low levels of tax understanding in the UK, then this presents an additional problem: it perpetuates the murkiness of the UK tax landscape. Even if the public do see past the tax label, it reinforces that negative connotation behind the word. Tax is already a political hot potato, and a stronger tax word aversion could lead to less visible tax policy making in the UK.

Even using snappy shorthand to describe elements of taxation, such as the tampon tax, also fails to educate people about the existing UK taxes – particularly when this is not accompanied by an explanation.

In conclusion

The exploitation can go both ways. We can also avoid the word 'tax' in revenue-raising policy to try to circumvent these negative feelings, instead calling instruments contributions, levies and duties. It would be interesting to see research on whether our visceral response remains for these words as well, particularly as we a shift away from the word 'tax' in some areas: HMRC calls taxpayers 'customers', and other countries have labelled those who pay as donors (Japan's Hometown Tax) or contributors (France, for some of its taxes).

It is also unlikely that people are as opposed to the word 'tax' when it is coupled with something favourable, such as a 'tax relief' or a 'tax cut'. Either way, there is power in how the word 'tax' is used, or not used – something that is worthwhile thinking about.

References

Edward McCaffery and Jonathan Baron, 'Thinking about tax' (2006) 12 *Psychology, Public Policy, and Law* 106. An older paper on the same subject is freely available online via SSRN (see tinyurl.com/3er93mar).

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Unlocking import VAT The role of ownership

The ability of a taxable business to deduct the VAT that it has incurred is supposed to be sacrosanct, but has the case law of the CJEU and now the UK courts called that into question when it comes to import VAT?

by Michael Taylor

Articles 167 and 168 of the Principal VAT Directive are in some ways the crux of the whole VAT system, the legal provisions which ensure that a taxable business should be placed in a fiscally neutral position when it comes to charging and deducting VAT. As the CJEU is wont to remind us:

> 'The right to deduct stipulated in that provision constitutes a fundamental principle of the common system of VAT established by EU law, so that that right is an integral part of the VAT scheme and in principle may not be limited.'
>
> (*Vos Aannemingen BVBA* (Case-C-405/19), [23] *inter alia*).

Article 167, of course, states that 'a right of deduction shall arise at the time the deductible tax becomes chargeable'. Article 168 – in well-known terms – provides that 'in so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled … to deduct' the VAT that he has incurred, defined in five scenarios.

For the majority of those scenarios – which concern goods and services consumed with the taxpayer's member state of establishment, and intra-Community acquisitions – the case law of the CJEU has developed gradually over the years. We may derive the following principles from this jurisprudence:

- Goods or services acquired for the purpose of non-economic activity will give rise to the right to deduct where they are consumed for the benefit of a taxpayer's taxable economic activity in general (*Kretztechnik* (Case C-465/03)).
- The relevant goods or services must constitute a cost component of the taxpayer's downstream taxable supplies (*University of Cambridge* (Case C-316/18)).
- The taxpayer's intention to make taxable supplies at the time of acquiring the relevant goods or services is a necessary consideration, although the actual use of those inputs will take priority in the analysis (*Sonaecom* (Case C-42/19)).

When it comes to the fifth scenario contemplated by Article 168, however, the case law appears to have taken a different turn. This provision, Article 168(e), concerns 'the VAT due or paid in respect of the importation of goods into that member state', and here the CJEU has articulated a different set of conditions.

VAT on the importation of goods

In *DSV Road* (Case C-187/14), the court considered the case of a business which had been contracted to import goods on behalf of its customer from a freeport into the territory of the member states. The taxpayer paid the import VAT that was due to the Danish authorities, but the authorities rejected the taxpayer's claim for the recovery of that VAT.

When the court ruled on the taxpayer's entitlement to recover the disputed VAT, it found that:

> 'Under the wording of Article 168(e) … a right to deduct exists only in so far as the goods imported are used for the purposes of the taxed transactions of a taxable person … [and] that condition is satisfied only where the cost of the input services is incorporated either in the cost of particular output transactions or in the cost of goods or services supplied by the taxable person as part of his economic activities.' [49]

It followed that even though bearing the burden of the import VAT was an essential aspect of the taxpayer's taxable business of freight services, he was not entitled to recover it because the relevant goods themselves were not cost components of those freight supplies.

Key Points

What is the issue?
The precise wording of the Principal VAT Directive Article 168 requires that for a taxable business to deduct the VAT it has incurred, the relevant 'goods and services' are used in the taxpayer's downstream supplies, not simply that a taxpayer incurs import VAT in the course of making supplies.

What does it mean to me?
There is a subtle difference between the Principal VAT Directive and the UK's VAT Act 1994 when it comes to the right of deducting import VAT: the former places the emphasis on the relevant 'goods and services', whereas the latter refers directly to the 'VAT paid or payable'.

What can I take away?
Discrepancies between UK law and the Principal VAT Directive, such as appear to exist when it comes to import VAT, could well be a subject of interest for businesses, their advisers and HMRC in the years to come.


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Indeed, the CJEU appears to have considered this interpretation of the Principal VAT Directive as *'acte clair'*; i.e. if the judgment or rule of law is clear enough, then a member state has no duty to refer a question for preliminary ruling to the CJEU.

When the question of deducting import VAT was next referred to the CJEU in the case of *Weindel Logistik* (Case C-621/19), it merely issued a reasoned order. Here, it reiterated that Article 168(e):

> '...must be interpreted as precluding the grant of a right to deduct value added tax to an importer where he does not dispose of the goods as an owner and where the upstream import costs are non-existent or are not incorporated in the price of particular output transactions or in the price of the goods or services supplied by the taxable person in the course of his economic activities.'

Necessary conditions under EU law

As far as EU law is concerned, therefore, a taxpayer must satisfy three conditions in order to deduct the tax that it has incurred as import VAT:

1. The taxpayer bears the cost of importing the goods.
2. The taxpayer has the right to dispose of the goods as owner.
3. The goods are cost components of the taxpayer's downstream taxable supplies.

Although this interpretation may be unwelcome for taxpayers whose business concerns the importation of goods, it is entirely consistent with the precise wording of Article 168, which requires that the relevant 'goods and services' are used in the taxpayer's downstream supplies, not simply that a taxpayer incurs import VAT in the course of making supplies.

But has the UK transposed these provisions into domestic law in a way that is consistent with the Principal VAT Directive and its interpretation by the CJEU? Perhaps not.

The UK's interpretation

Section 24(1)(c) of the Value Added Tax Act (VAT Act) 1994, for instance, defines input tax as: 'VAT paid or payable by him on the importation of any goods, being ... goods or services used or to be used for the purposes of any business carried on or to be carried on by him'.

And so, on one reading, there is a subtle difference between the Principal VAT Directive and the VAT Act 1994 when it comes to the right of deducting import VAT: the former places the emphasis on the relevant 'goods and services', whereas the latter refers directly to the 'VAT paid or payable'. It may therefore appear that a plain reading of UK law would permit the deduction of any import VAT incurred for taxable purposes, whereas the EU test is more stringent.

This analysis came to the fore in the recent case of *Piramal Healthcare UK Ltd* [2023] UKFTT 891 (TC), where the taxpayer had imported pharmaceutical ingredients for processing and paid the import VAT, but was denied the right of deduction by HMRC because it did not own the relevant goods.

Finding itself bound by the case law of the CJEU, the First-tier Tribunal dismissed the taxpayer's appeal, ruling that even though the goods were essential to the taxpayer's business, and even though the import VAT would have been a cost component of the prices charged to the taxpayer's customers, the relevant factor was whether *the goods themselves* – and not just the associated VAT – were components of the taxpayer's supplies.

What does the future hold?

Many businesses have resolved potential problems within their supply chains pursuant to the Revenue and Customs Briefs that HMRC issued on the subject (RCB 2/2019 and RCB 15/2020). However, the discrepancy between the right to deduct 'domestic' input tax and import VAT persists. So where does this leave taxpayers who are importing goods into the UK without taking ownership of them, such as businesses that are importing goods on hire?

On one view, there is a potential sense of injustice in circumstances where a taxpayer has imported goods for the purpose of its business and incurred import VAT accordingly, and where it has factored such import VAT into the prices that it charges to its customers, but where it is denied the right to recover the VAT because it did not own the goods that were – in any event – essential to the taxpayer's business activities. But might there be scope for businesses now to argue that the plain wording of VAT Act 1994 should take precedence over the case law of the CJEU?

The accounting periods that were relevant to the First-tier Tribunal's decision in *Piramal* all occurred before the UK's departure from the European Union, and so EU law was supreme. Moreover, the recently enacted legislation concerning the interpretation of VAT and excise law appears to provide for the ongoing supremacy of EU law, despite the provisions of the Retained EU Law (Revocation and Reform) Act 2023.

Even so, if *Piramal* were to come before the First-tier Tribunal again, and if the tribunal were to consider only the provisions of VAT Act 1994 and their effect after 1 January 2024, might it come to a different conclusion? Discrepancies between UK law and the Principal VAT Directive, such as appear to exist when it comes to import VAT, could well be a subject of interest for businesses, their advisers and HMRC in the years to come.

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Sustainability regulations and tax

Keep a connecting line

A more cross-functional approach is needed within businesses to ensure that they are fully compliant with sustainability regulations. We ask what operating models can benefit the tax team.

by Mark Feldman

This is the third article in a series exploring the connections between tax and sustainability. It highlights what sustainability means in practice for in-house tax functions. In particular, it looks at how tax teams need to be aware of the impact of the wave of global regulation that is washing over them right now, organising their response to it and ensuring that they stay compliant.

The third wave of global regulation and relevance to tax

The world is currently entering the 'third wave' of global regulation.

The first wave came in the late 19th and early 20th centuries in response to rapid industrial growth and urbanisation during the Industrial Revolution. Regulations were introduced, notably in Europe and North America, that included laws on working hours, fair wages, child labour, industrial pollution and so on.

The second wave of regulation occurred in the aftermath of World War II, establishing social welfare systems, health and safety regulations, consumer protections, environmental standards on a global scale, trade and tax treaties, and creating international regulatory bodies such as the United Nations, the World Bank and the International Monetary Fund.

The advent of the digital age and the need for sustainability is now ushering in a third wave of regulations globally: data protection and privacy; frameworks for cybersecurity; the safer development of artificial intelligence; and a significant body of environmental, social and corporate governance (ESG) regulations, particularly in the EU. As explained below, it is these ESG regulations that tax functions need awareness of.

The mutual regulatory awareness gap

A lack of clarity between tax and other functions often creates a void, where departments are slow to assume accountability. As a result, they are potentially rendering businesses non-compliant with respect to environmental regulations, such as the Carbon Border Adjustment Mechanism (CBAM).

Let's take a look at a couple of other practical live examples.

Example: double materiality reporting

Are tax functions sufficiently aware of the concept of 'double materiality' reporting, which is required by various ESG regulations?

This concept recognises that companies have:

- material impacts on society and the environment (the inside-out view); and
- sustainability developments giving rise to material risks and opportunities to businesses (the outside-in view).

Among those in-house tax professionals who are aware of double materiality, how many are advocating to their chief sustainability officer that tax – typically one of the largest financial items on income statements and one of the largest contributions made by business to society – needs to be considered in that materiality assessment and potentially be included in reporting?

What about the material opportunities for the business of new tax incentives such as under the US Inflation Reduction Act? What about new financial risks from environmental taxes – plastic and packaging taxes, and carbon taxes such as CBAMs? Are these material? This is at least a question that should be posed and answered.

Example: minimum safeguards

Many tax functions and tax advisors will be aware of transparency regimes such as public country-by-country reporting and Global Reporting Initiative 207. However, how many are aware of the minimum safeguards laid out by the EU Taxonomy Regulation? This 2020 regulation 'is a classification system that defines criteria for economic activities that are aligned with a net zero trajectory by 2050 and the broader environmental goals other than climate' (see tinyurl.com/3ntzanzr).

The interaction of that regulation with European Sustainability Reporting Standard 2 (ESRS 2) and the EU Corporate Sustainability Reporting Directive (CSRD) requires businesses to implement 'procedures to ensure alignment with the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct' (see tinyurl.com/29awajpd).

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Key Points

What is the issue?
Tax teams need to be aware of the impact of the wave of global regulation that is washing over them right now, organising their response to it and ensuring that they stay compliant.

What does it mean for me?
Tax functions are not adequately aware of the impact of sustainability regulations on tax, while sustainability functions are not adequately aware of the tax elements of sustainability. This needs to change.

What can I take away?
Every organisation is different, so every organisation's approach will be different. Whilst there is no single 'right' approach, there are wrong approaches. Ignoring the issue or adopting siloed responses without cross-functional interaction will not work well in the long term.

Those Guidelines state: 'Enterprises should comply with **both the spirit and the letter of the tax laws and regulations** in the countries in which they operate?' (emphasis added). This statement rarely appears explicitly in published strategies, and even where it does compliance means keeping the area under review.

A lack of focus

This lack of knowledge of sustainability regulations in tax functions is compounded by the fact that sustainability, HR, legal, risk and other functions are probably focused on trade compliance, climate change, human rights, modern slavery and anti-bribery and corruption regulations. They are not necessarily thinking about tax in those contexts. In short, my experience is that tax functions are not adequately aware of the impact of sustainability regulations on tax, while sustainability functions (and other functions) are not adequately aware of the tax elements of sustainability. This needs to change.

Who is responsible?

The current position is not surprising, given that sustainability is a fast-developing area with new ESG regulations proliferating around the world.

In my view, the mutual 'regulatory awareness gap' between sustainability and tax arises in many businesses from a lack of organisational clarity over responsibilities. Without clear internal policies, procedures and allocated responsibilities, there is a clear risk of regulatory compliance falling between functional stools.

Developing a ESG tax operating model

There are many ways for tax functions to address this challenge and to initiate a new ESG tax operating model. The approach advocated below is one that can be adapted to any organisation and follows a roadmap that involves four stages.

Stage 1: Scan the regulatory landscape

First, you should understand what regimes exist that require compliance. There are tools that can help you to understand the scope of environmental taxes or pseudo-taxes, tax transparency and other requirements. Some tools are free to use, such as the EY Green Tax Tracker (see tinyurl.com/33k26hp).

Discuss with other functions what regulations they are complying with. Do any of these overlap with the tax function's list, or impact on the company's approach to tax? Are there existing processes and controls already being used to address some of these requirements?

Finally, identify gaps and start to make the case for a holistic future state.

Stage 2: Align stakeholders

Set out and agree principles that are flexible enough to adapt to future developments. For example, if a regulation is administered by a tax authority, should the tax function have the final sign-off? If not administered by a tax authority, should that fall to sustainability, finance or legal teams?

In developing these principles, it is generally preferable to integrate them into existing frameworks that can be modified or extended, rather than introducing new standalone processes.

Stage 3: Design policies, processes and controls in alignment with the principles

Take the time to develop and secure agreement for a cross-functional RACI matrix (allocating Responsibilities and Accountabilities, and determining which functions need to be Consulted or simply Informed).

How will new regulations be monitored and incorporated into the RACI? Consider the resources needed to deliver on the framework: will these be in-house roles or require outsourcing in whole or in part?

Critically, consider the associated technology roadmap. Much of ESG regulatory compliance will become a data challenge. Many data sets will overlap – for example, plastic taxes with extended producer responsibility (EPR) requirements; or Taskforce for Climate-related Financial Disclosures (TCFD) Scope 3 with science based targets (SBTi) and CBAMs.

Typically, it is advisable to use an approach that aligns with the technology function's existing strategy. This will often adopt a holistic approach to data warehousing, gathering and wrangling, rather than working on a point by point solution basis, ensuring fewer inconsistencies and more efficient processes.

Stage 4: Implement the sustainability tax operating model

You should take the following steps:

- roll out the policies and controls;
- ensure that staff are appropriately trained;
- incorporate key performance indicators (KPIs) into your goals and objectives; and
- adopt the technology solutions – will these be bought in or built internally?

Ask internal audit to periodically verify that the processes and controls are effective and refine and iterate the model as necessary over time.

Sustainability tax operating models

As indicated above, there is no 'one size fits all' answer. However, a robust response to developing a strong sustainability tax operating model will likely involve a high-degree of cross-functional collaboration. A number of illustrative models that work well in practice are described below.

Illustrative Model 1: Tax led, local responsibility

This model has been applied by a group that adopts a decentralised approach, given its independent divisions. The tax group sets out the RACI matrix (in conjunction with other functions) – preferably, a handshake or even a written ‘contract’ such as a service level agreement with KPIs.

However, the responsibility rests with local tax or finance teams, supported by advisors as needed for compliance. The cross-function business partnering is facilitated by an ESG committee chaired by the sustainability function. Tax plays a role and has a seat at the table together with legal, HR, finance, IT and strategy.

The technology architecture is fragmented as a result of the divisionalised model. This lends itself to a local model, with local teams gathering the required data, supported by advisors.

Illustrative Model 2: Sustainability led, central responsibility

This model adopts a much more centralised approach, which in this case happens to be led by the organisation’s well-resourced sustainability function.

That team tracks new ESG regulations and highlights them to other functions. ESG tax responsibilities are clearly divided between the tax and sustainability functions: sustainability takes accountability for pseudo-taxes; whereas plastic packaging tax and other ESG tax compliance is led by tax.

The sustainability function uses advisors to support it with its pseudo-tax compliance, whereas the tax function uses a shared service centre for compliance, whilst maintaining central oversight and sign-off. Business partnering is led by the sustainability function – in conjunction with a team of cross-functional champions. The sustainability function manages the data gathering for its compliance internally, although the process for CBAM is more fully outsourced.

Illustrative Model 3: Legal/risk led

A legal and risk driven approach is rarer in practice. It is more common in US groups, where the legal function often has wider remit and resources, particularly around cross-border trade compliance and in responding to legal regulations.

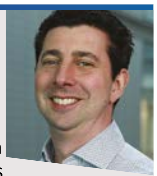
The ESG regulatory responsibilities are divided by the risk function in accordance with a global risk-control framework. Multiple functions are involved in supporting the controls and the associated compliance. Risk monitors compliance with agreed functional KPIs through software.

Conclusion

The models described here are simply examples of operating models within a wide spectrum of different approaches. Every organisation is different, so every organisation’s approach will be different.

Whilst there is no single ‘right’ approach, there are wrong approaches. Ignoring the issue or adopting siloed responses without cross-functional interaction will not work well in the long term.

Ensuring our sustainable future will require radical collaboration. It is incumbent on in-house tax teams and the wider tax adviser community to first educate themselves, and then educate their colleagues in other functions of how tax interconnects with sustainability regulations. By collaborating together we can build the sustainable future we need.



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NEWSDESK ARTICLES

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WELCOME

February Technical newsdesk

While it is certainly too late to wish readers a happy new year, it is not too late to wish a 'happy February' to those who have been working hard to help clients meet the self-assessment deadline.

At the time of writing (in mid-January), we understand from HMRC that, notwithstanding the restrictions to the Self-Assessment Helpline and Agent Dedicated Line, filing rates compare favourably with last year. Of course, this is only part of the story. It is only when final filing figures are known, the accuracy of returns checked and the level of amendments understood, that the impact of these restrictions will be fully known.

Unsurprisingly, HMRC's announcement of those restrictions was badly received by members. Perhaps the reaction would have been different if HMRC had explained that, in large part, these changes were necessary because their phone lines were being bombarded with calls by high-volume repayment agents chasing repayments within days of their submission. We keep encouraging HMRC to work with us on these messages, so that people understand why they have to take such steps, as well as offering to help with their underlying cause.

You will see from this month's edition that the CIOT, ATT and LITRG technical teams have been busy preparing briefings for MPs on various clauses within the Finance Bill.

We do this as part of our educational objectives, in order to inform the debate, identify shortcomings or unintended consequences, and make recommendations for improvements in the form of new clauses or amendments to existing ones. Our briefings were referenced several times, with the Shadow Financial Secretary to the Treasury praising the 'excellent team' at the CIOT and ATT for our representations on the Bill.

Making Tax Digital (MTD) continues to figure substantially in our ongoing work. This month, we summarise how the Autumn Statement introduced several easements to the rules for MTD for Income Tax Self-Assessment (ITSA). Just two days after the Autumn Statement, the Public Accounts Committee published its report on its inquiry 'Progress with making tax digital', with a mischievously entitled release 'Making Tax Difficult: HMRC losing sight of customer in tax changes, PAC report warns' (tinyurl.com/mr2dr6hs).

We welcomed the report, reiterating the need to consult on MTD's future direction and delivery, including carrying out a fresh evaluation of the impact of the project on the 'tax gap', and calling on HMRC to do more to mitigate the burden of complying with MTD. We continue our regular engagement with HMRC, striving to ensure that MTD can deliver on its objectives.

Indeed, there remain several key issues which will remain 'front and centre' in our engagement with HMRC, HM Treasury and ministers during 2024. These include HMRC's service levels, tax simplification, R&D compliance and regulation of tax services.

The CIOT raised these issues in its recent letter to the Financial Secretary to the Treasury, and they formed the topic of conversation for a recent CIOT, ATT and LITRG meeting with senior HMRC officials. So, whether it be in the detail of Finance Bill clauses, or bigger picture issues, there is always plenty to discuss.

CORPORATE TAX INTERNATIONAL TAX OMB

Finance Bill 2023-24 Briefings: corporate taxes

CIOT and ATT submitted briefings to parliamentarians ahead of the Committee of Whole House debate on corporate tax provisions in the Finance Bill. These covered permanent full expensing, research and development and amendments to the UK's Pillar Two rules.

Clause 1: Permanent full expensing, etc. for expenditure on plant or machinery

CIOT welcomed the introduction of permanent full expensing, which is a welcome simplification of the business tax system. However, it is not as beneficial as it might at first appear due to limitations – such as only applying to expenditure on plant and machinery, and only applying to corporates – meaning that large unincorporated businesses (such as farming partnerships) cannot benefit from it.

However, following discussions with the CIOT, HMRC have made some changes to the Capital Allowances manuals to confirm their view that partnerships with corporate partners are able to claim capital allowances that are only available to companies within the charge to corporation tax, including first year allowances such as full expensing (and the super deduction). These changes, made in January 2024, are mainly in CA11145 (tinyurl.com/3d75y83e), but some additional text has also been added to the super-deduction guidance at CA23163 (tinyurl.com/5dx4d72x).

This point was clarified by the Financial Secretary to the Treasury, who said the following in the Finance Bill debate (see columns 349 – 350, **our emphasis**): 'The hon. Member for Ealing North also mentioned partnerships; **a corporate partner is eligible for full expensing**, but an unincorporated partner is not. Again, the annual investment allowance of £1 million covers the investment needs of almost all unincorporated partnerships' (tinyurl.com/4dczbw3r).

Claims made via the partnership's corporation tax computation will benefit the corporate partners of the partnership in proportion to their share of partnership profits, but partners who are subject to income tax will not obtain a benefit.

ATT agreed that making full expensing a permanent measure would bring welcome certainty to those large companies that benefit from it. However, ATT also noted that full expensing would provide no benefit to the 99% of companies whose capital expenditure is already fully relieved under the annual investment allowance.

ATT suggested that more focus is required on the needs of smaller businesses, including how the capital allowances rules could be simplified.

Both CIOT and ATT noted that the Autumn Statement announced that there would be some further consultations in relation to capital allowances, but are disappointed that these will be limited in scope, ruling out substantive reform.

Clause 2: New regime for research and development carried out by companies

CIOT said that, although we support in principle the concept of a new merged research and development (R&D) scheme, which would be a simplification to the UK tax code, that is not what is happening with the current proposals. The new rules will still leave two R&D tax relief schemes in the UK. CIOT noted particular concerns around the treatment of subcontracting within the new merged scheme and suggested some amendments that could provide clarification around this. We also cautioned that rushing in the new merged scheme would bring problems both for taxpayers and for HMRC and risks undermining the policy aims of encouraging innovation and growth through R&D investment.

ATT agreed and said that the new merged scheme should be postponed until at least April 2025 to ensure that it can be delivered successfully. ATT also suggested that the additional support for loss making, R&D intensive small and medium sized enterprises (SMEs) should be incorporated into the new merged regime, and not operated as a standalone scheme, as is currently proposed. ATT also said that the reduction in the threshold for a company to be considered R&D intensive that was announced at the Autumn Statement should be backdated to April 2023.

Clause 21 and Schedule 12: Pillar Two

The multinational top-up tax and domestic top-up tax were introduced by Finance (No 2) Act 2023 as the first tranche of implementation by the UK of the agreed G20-OECD Pillar Two framework. It was envisaged that additional law and significant additional guidance will be required to supplement this tranche as negotiations were, and are still, continuing at the OECD on many technical and interpretive issues (the 'Implementation Framework'), as well as mechanisms for qualifying each country's implementation for the purpose of other implementing countries' rules.

Clause 21 of and Schedule 12 to the Finance Bill make changes to the multinational top-up tax and domestic top-up tax, to ensure that these new taxes work as intended and comply with the global anti-base erosion rules, commentary and administrative guidance agreed and issued by the Inclusive Framework.

CIOT's briefing said that we are supportive of these changes, which have generally come from consultation with stakeholders. However, we also noted that the new top-up taxes are complicated and will be burdensome.

The CIOT's briefing on all of these clauses can be found here: www.tax.org.uk/ref1275

The ATT's briefing on full expensing can be found here: www.att.org.uk/ref446

The ATT's briefing on R&D can be found here: www.att.org.uk/ref447

These clauses were discussed by the Committee of the Whole House on 10 January 2024 and CIOT's blog on the debate can be found here: www.tax.org.uk/fbdebate

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EMPLOYMENT TAX

Finance Bill 2023-24 Briefings: Employment taxes

CIOT has provided representations to parliamentarians for the Finance Bill 2023-24 Public Bill Committee on the employment taxes and pensions clauses.

Clause 13: Enterprise management incentives: time limits

The legislation extends the time limit for an employer company to notify HMRC of a grant of enterprise management incentive (EMI) options from 92 days after the date of the grant of the option to 6 July following the end of the tax year in which the option was granted. The amendments will have effect in relation to share options granted on or after 6 April 2024.

We welcomed the change that will align the notification time limit for EMI options with that of other employment-related share schemes.

Clause 14 and Schedule 9: Provision in connection with abolition of the lifetime allowance charge

The legislation sets out the new tax treatment of lump sums and lump sum death benefits paid from registered pension schemes. The changes have effect on or after 6 April 2024.

We have raised concerns that implementing the new rules from 6 April may cause problems for pension administrators because, for example, direct contribution schemes need to provide information to members about their retirement options at least four months before their normal pension age. We therefore suggested delaying the implementation of the changes until 6 October 2024.

Clause 15: MPs' pension scheme, etc.: rectification of discrimination

The legislation provides the Treasury with the power to make regulations to address the tax impacts of a rectification exercise to remedy age-related discrimination when pensions were reformed under pension schemes for Members of Parliament from 2015, and under pension schemes for members of the Senedd and members of the Northern Ireland Assembly from 2016.

The changes are capable of having retrospective effect in order to ensure that individuals are, as far as possible, put in the tax position they would have been in had the discrimination not occurred.

We welcomed the government's commitment to remedy the identified age discrimination and mitigate the tax impacts arising from this.

Clause 17: PAYE regulations: special types of payer or payee

The legislation gives HMRC the power to make regulations that will enable it to set off amounts of tax already paid by a worker and their intermediary on income from engagements under the off-payroll working rules against a subsequent PAYE liability of their deemed employer. The provision comes into effect from 6 April 2024 and can apply to deemed direct payments made on or after 6 April 2017.

The CIOT has argued for this set-off to be legislated for since the off-payroll working rules were introduced in 2017. We welcomed the proposal to remedy the present situation whereby, in compliance settlements between HMRC and public bodies, the result is that the public body effectively bears all the tax out of public funds and the worker (and their limited company) is entitled to reclaim the corporation tax, income tax (usually dividend tax) and (in certain circumstances) NICs they have paid.

The full briefings can be found here: www.tax.org.uk/ref1281

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MANAGEMENT OF TAXES OMB

Finance Bill 2023-24 Briefings: Cash basis, evasion and avoidance, information to be contained in returns

CIOT and LITRG have provided representations to parliamentarians for the Finance Bill 2023-24 Committee of Whole House debate and for the Public Bill Committee. Our previous comments on the draft legislation were reported in November 2023's *Tax Adviser*.

Clause 16 and Schedule 10: Calculation of trade profits, etc. (cash basis)

The legislation removes several restrictions in the cash basis with effect from the tax year 2024/25. In particular:

- The turnover threshold (currently £150,000) will be removed to expand the regime to larger unincorporated businesses.
- The cash basis will be set as the default basis for eligible businesses to calculate taxable profits. Currently, generally accepted accounting principles (GAAP) is the default basis and businesses must elect to use the cash basis. This will be reversed, so that businesses must in future elect if they wish to use GAAP accounting.
- The £500 interest restriction will be removed, thereby allowing businesses to deduct any amount of interest as long as it is incurred wholly and exclusively for the purposes of the trade.
- Restrictions on loss relief will be removed. This means that cash basis losses will be able to be set sideways against general income of the same period or carried back to earlier years. Currently, for businesses which use the cash basis, losses can only be carried forward and set against future profits from the same trade or used when the business stops trading.

CIOT's comments

The removal of these restrictions is a simplification that may encourage more unincorporated businesses to use the cash basis. The current restrictions around loss relief and interest deductions undoubtedly influence some businesses' decisions not to use it. However, the cash basis will still not be suitable for all businesses, particularly larger and more complex ones. We are doubtful that removing the turnover threshold will encourage larger businesses to use it.

For small businesses, we are concerned that, in encouraging the cash basis, the benefits of the accruals basis in improving financial literacy for the small business owner may be diminished. There is a lack of awareness of what the cash basis is, particularly amongst businesses that do not have an accountant. Making the cash basis the default could lead to businesses using it where it is not the best option for them. HMRC's guidance needs to be improved and updated.

HMRC need to be alive to the possibility that some taxpayers may try to abuse the rules once the restrictions are lifted.

LITRG's comments

LITRG are generally supportive of these changes, as making the cash basis the default way to prepare business accounts will formalise the way some low-income unrepresented traders are currently, and technically incorrectly, completing their tax returns. However, we consider that the removal of the turnover threshold will not particularly affect this cohort.

LITRG are concerned that there is poor understanding about the cash basis and have stressed there needs to be improved guidance clarifying areas which low-income unrepresented businesses struggle with, such as the timing of receipts and payments under the cash basis, in particular when trading through digital platforms. Therefore, we are pleased that HMRC recognise the need to update their guidance in this area, particularly for unrepresented taxpayers moving from the accruals basis to the cash basis.

HMRC need to develop a compliance approach for taxpayers who realise they have been preparing their tax returns incorrectly using the cash basis but not electing to do so. We recommend that HMRC apply a sensible and 'light-touch' approach regarding any genuine errors that come to light following the move to these new rules.

The full CIOT briefing can be found here: www.tax.org.uk/ref1282

The full LITRG briefing can be found on the LITRG website under Submissions at: www.litrg.org.uk

Clauses 31–34 and Schedule 13: Evasion and avoidance

Clause 31 doubles the maximum term of imprisonment for the most egregious tax offences. The CIOT is dubious that the measure will achieve its objective of deterring people from committing tax fraud unless it is prominently publicised and lengthier sentences are actually imposed on those who commit such offences.

Clause 32 and Schedule 13 introduce a new power enabling HMRC to bring disqualification action against directors of companies involved in promoting tax avoidance. Whilst we support this measure and the need to protect taxpayers from promoters, it is essential that it is appropriately targeted and prominently publicised. The problem is that, in many cases, the 'controlling minds' behind avoidance schemes are not directors of the companies themselves and instead recruit 'stooge directors' in order to conceal their own involvement. We want to avoid a situation where stooge directors, who may lack culpability, take the fall for those actually promoting the tax avoidance. It is important to understand what impact the government believe this measure will have on these controlling minds.

Clause 33 introduces a new criminal offence for a person who, without reasonable excuse, fails to comply with a stop notice issued by HMRC requiring them to stop promoting a tax avoidance scheme. While we are generally supportive of measures to crack down on avoidance schemes and protect taxpayers, we are concerned that this measure crosses an important constitutional line; namely, that something can potentially become a crime on HMRC's say-so alone. This is because the decision to issue a stop notice rests entirely with HMRC with no external oversight. To add a higher level of scrutiny into the process, we suggest that HMRC should have to make an application to the Upper Tribunal for 'judicial' approval before a notice that carries with it the risk of criminal charges is issued by HMRC.

Clause 34 and associated regulations expand the grounds for immediate removal of gross payment status for sub-contractors in the Construction Industry Scheme (CIS) in relation to cases of fraud in some areas. We believe that this measure will achieve its objective, but it is important that minor VAT errors or delays do not exclude a business from gross payment status.

The full CIOT briefing can be found here: www.tax.org.uk/ref1276

Clause 35: Additional information to be contained in returns under TMA 1970, etc.

Clause 35 is enabling legislation to allow HMRC to introduce regulations that will specify additional information to be collected from businesses and self-employed people via tax returns. It is expected that the regulations will be published in draft in early 2024 and that they will require businesses to provide the following additional information to HMRC:

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

The CIOT is concerned that the cost to business of providing information on employee hours has been underestimated. We also need to understand why HMRC are collecting the data and what they are going to use it for before we can say whether the legislation will work as intended and whether the additional burden on businesses is proportionate.

HMRC must provide sufficient guidance for taxpayers to understand what is required of them, so that the risk of non-compliance (and incurring a penalty) is minimised.

The legislation appears to leave open the possibility that HMRC may in future decide to widen the data they collect by making further regulations. Any increase in HMRC's data collection powers under this enabling legislation should be consulted on before being introduced, giving particular consideration to the financial impact on businesses and other taxpayers, as well as the need for the data itself.

The full CIOT briefing can be found here: www.tax.org.uk/ref1279

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MANAGEMENT OF TAXES PERSONAL TAX

Finance Bill 2023-24 Briefings: Penalties

LITRG have published a briefing setting out some concerns relating to the proposed piecemeal introduction of the new late filing and late payment penalty regimes.

Clause 36 introduces a regulation-making power that allows for the new penalty regime on late filing and late payment (FA 2021 ss 116-118 and Sch 24-27) to be brought into effect for income tax from 6 April 2024 for those volunteering for the Making Tax Digital (MTD) for income tax self-assessment (ITSA) pilot. We have not yet seen the regulations, but HMRC's policy paper and notes accompanying the Finance Bill state that the new regime will be adapted for those joining the pilot, such that it will apply only to annual obligations and only from January 2026.

Furthermore, HMRC updated their Policy Paper on penalties for late submission (tinyurl.com/yadwuc93) to say that introduction of the new penalties would be staged to coincide with being mandated to join MTD. It would therefore come into effect from 6 April 2026 for those with relevant turnover above £50,000, and from 6 April 2027 where turnover exceeds £30,000. There is no clarity when the new penalty regime will come into effect for those outside the scope of MTD – HMRC have only noted that this will be 'after the introduction for MTD taxpayers'.

As a result, LITRG have raised two concerns in our briefing to MPs ahead of the Finance Bill debates.

The first is that, although it is perhaps not unusual to see incentives for joining pilots, we question whether the difference in penalties for non-compliance is fair on those unable to access the MTD pilot, given that there could be significantly different outcomes for people in an otherwise similar position. For example, a taxpayer who volunteers for MTD from April 2024 and misses their annual filing obligation in January 2026 would receive one penalty point but no financial penalty. A £200 financial penalty would only be applied (presumably) if that taxpayer were also late in their filing obligation arising in January 2027. If the same taxpayer does not sign up to MTD in April 2024, the financial penalties for late filing are not only applied sooner (£100 immediately for the missed obligation in January 2026) but they also have the potential to increase to £1,600 if that return is still outstanding 12 months later.

Our second concern is that the piecemeal introduction of the new penalty regime – meaning both the old and new regimes will run concurrently – is likely to result in significant confusion for taxpayers, with HMRC having to produce guidance on both regimes and taxpayers having to understand which they fall under.

LITRG's suggestion is that the government should introduce the new regime for all, at the same time, from 6 April 2026. If that is not possible, full clarity over the timing of its rollout should be given as soon as possible, with a clear commitment to minimise the period during which the two regimes run concurrently.

The full LITRG briefing can be found on the LITRG website under Submissions at: www.litrg.org.uk

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INDIRECT TAX

Finance Bill 2023-24 Briefings: Interpretation of VAT and excise law

CIOT provided representations to parliamentarians ahead of the Committee of Whole House debate on provisions in the Finance Bill that aim to provide clarity on interpretation for VAT and excise duty in the UK, following the end of the supremacy of EU law.

Clause 27: Interpretation of VAT and excise law

The proposed legislation in the Finance Bill seeks to clarify how VAT and excise legislation should be interpreted in the light of changes made by the Retained EU Law (Revocation and Reform) Act 2023 (REUL Act). The REUL Act ends the supremacy and special status afforded to retained EU law in the UK and came into effect on 1 January 2024.

While we support the legislation's aims, we are concerned that significant complexity and uncertainty will remain, so that the legislation's objectives will not be fully met.

Our briefing noted that feedback from CIOT members has highlighted the complexity of interpreting this legislation, and potential gaps in its application, undermining the certainty which it is intended to bring. This includes:

- Recognising the distinction between disapplication and quashing of an enactment because of EU law on the one hand, and its interpretation on the other. In this regard, we consider that sub-section 4 should continue to apply more generally (that is, without this distinction).
- The extent to which a 'conforming interpretation' is relevant or preserved.
- Legislative gaps, which will occur where previous UK law did not fully or accurately reflect the EU law that it implemented, and removal of the reliance on the EU provision will leave the UK law incomplete.
- Uncertainty as to the extent to which UK higher courts are intended to be bound by prior CJEU case law.

Our full briefing can be read here: tax.org.uk/ref1277

Previous consultation

The government had published the draft legislation for technical consultation in October 2023 ahead of its inclusion in the Finance Bill. This followed an informal consultation through the Joint VAT Consultative Committee (tinyurl.com/4vfkj26b), giving stakeholders including the CIOT an opportunity to comment on the draft legislation before its more general publication.

In our response (tax.org.uk/ref1237), we raised questions and concerns about the interaction with case law and the principle of direct effect, as well as the key points noted above. We also included several commercial examples where uncertainty arose.

Disappointingly, the only addition to the draft legislation in the Finance Bill, published 10 days after the close of the consultation period on 27 November, was the inclusion of a new sub-section 8, stating that the section is treated as coming into force from 1 January 2024. No other amendments were made to the draft legislation, notwithstanding the consultation feedback.

Committee of the Whole House

The Committee of the Whole House considered clause 27 on 10 January 2024. Labour signalled its support for Clause 27 but, citing concerns from CIOT, questioned its effectiveness in reducing complexity for businesses interpreting the VAT regime. Shadow Economic Secretary Tulip Siddiq also expressed concern that the REUL Act had created 'significant gaps in UK legislation where our domestic rule book did not fully transpose EU directives' and called for detailed guidance to help address these concerns.

CIOT's blog on the Committee of Whole House debate can be found here: www.tax.org.uk/fbdebate

Jayne Simpson *jsimpson:ciot.org.uk*

EMPLOYMENT TAX

Construction Industry Scheme proposed amendments

The CIOT has commented on draft regulations to ensure that minor VAT compliance failures will not result in gross payment status refusal or removal, and to remove most payments made by landlords to tenants from the scope of the Construction Industry Scheme.

The CIOT has responded to a consultation on draft regulations amending the Income Tax (Construction Industry Scheme (CIS)) Regulations 2005 ('the 2005 Regulations') to:

- ensure that minor VAT compliance failures will not result in gross payment status refusal or removal; and
- remove most payments made by landlords to tenants from the scope of the CIS.

Exception for minor VAT compliance failures

The regulations complete the changes being made to the rules relating to gross payment status and compliance failures that are included in the Finance Bill 2023-24.

The Finance Bill expands the grounds for immediate removal of gross payment status for cases of fraud involving VAT, corporation tax self-assessment, income tax self-assessment and PAYE. The Bill also adds compliance with VAT obligations to the gross payment status compliance test, which must be passed by subcontractors to obtain and keep gross payment status.

The 2005 regulations provide a limited exception to the gross payment status compliance test requirements and this exception will be extended to include: the submission of VAT returns; and the payment of VAT within prescribed time limits.

Exemption for landlord to tenant payments

The regulations will revoke regulation 20 (reverse premiums) of the 2005 Regulations and insert a new regulation 24ZA (payments made by landlord to tenant) to exempt certain payments made by a landlord to a tenant from the definition of a 'contract payment' in FA 2004 s 60.

The CIOT has for a number of years recommended removing payments from a landlord to a tenant from the scope of the CIS, where the tenant engages a subcontractor to complete construction work on the property occupied by the tenant. We therefore welcome the policy intent of these amendments. We did, however, have some concerns regarding the wording of the new regulation.

In particular, we recommended relaxing the requirement for construction obligations to relate exclusively to parts of

GENERAL FEATURE

Changes to Making Tax Digital for income tax

Further amendments, announced through draft Regulations released last year, are being made to Making Tax Digital for income tax self-assessment to implement the simplifications announced following HMRC's Small Business Review.

On 22 November 2023, HMRC published the outcome of their 'Small Business Review', which was to consider whether the remit of Making Tax Digital (MTD) for income tax self-assessment (ITSA) should include those traders and landlords with turnover below £30,000. This is the threshold that takes effect in April 2027; this follows the stage for those with turnover above £50,000, which applies with effect from April 2026.

CIOT, ATT and LITRG have raised concerns about the burden of completing quarterly returns along with an end of period statement (EOPS) for each income source: those not registered for VAT will be unfamiliar with the concept, let alone the actual mechanism, of undertaking quarterly reporting. Errors or omissions made on quarterly returns would have meant going back and amending them, rather than treating the returns as cumulative and thus making amendments in the following quarter. We are also concerned about how joint owners of property report their shares of rental income, and how multiple agents of a taxpayer can interact with MTD for ITSA.

The outcome of the Small Business Review was largely positive. Quarterly returns will now be prepared on a cumulative basis, the EOPS will be removed altogether, and easements will be available to joint property owners (allowing for expenses to be excluded from each quarter, and for less detailed records to be kept). In addition, foster carers' qualifying care income and those without national insurance numbers will be excluded from the process altogether. More significantly, the £30,000 threshold will not be lowered – for now. HMRC said that this will be kept under review, so the position may well change. The view of CIOT, ATT and LITRG remains that the original £10,000 mandation threshold is too low, bringing people into MTD for ITSA with insufficient support, no free software and lack of awareness amongst those on lower incomes, especially as they may be non-taxpayers anyway. The prospect of those earning below £30,000 still being brought within scope remains a possibility. The government is committed to developing a solution allowing multiple agents to act on a customer's behalf in support of MTD mandation.

The full outcome of the Small Business Review can be found at: tinyurl.com/3jhkfnxt.

Uncertainty continues about how owners of furnished holiday lets – which are recorded under a separate heading to ordinary lets – will know whether to record their properties as such during the year, given the occupation criteria for furnished holiday lets qualification. It is also unclear how adjustments and claims will be made in the absence of EOPS. For those businesses whose year-ends are not aligned with the tax year, the submission of quarterly reports anchored on a 6 April start date will be problematic. The CIOT, ATT and LITRG will continue to engage with HMRC regarding these matters and, have responded to HMRC's consultation on the draft Regulations.

Prior to the Autumn Statement, and hence before the outcome of the Small Business Review had been announced, the CIOT and ATT jointly wrote to the Financial Secretary to the Treasury about MTD for ITSA. The joint letter, and the minister's response, can be found on the CIOT (tinyurl.com/yc34x6cx) and ATT (tinyurl.com/6y9dbvmh) websites. We will be following up on the minister's suggestion of a meeting.

The CIOT's comments on the draft Regulations can be found here: www.tax.org.uk/ref1259

The ATT's comments on the draft Regulations can be found here: www.att.org.uk/ref448

LITRG's comments on the draft Regulations can be found on the LITRG website at: www.litrg.org.uk

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the property that the tenant occupies or will occupy under the lease agreement, on the basis that there will be cases where the works carried out by the tenant will, for practical reasons, extend beyond the demise of the tenant's premises.

We also considered that the omission of a definition of a lease agreement could cause difficulties and suggested adding one to make clear that it includes the lease, an agreement for lease, a side letter, an agreement for variation or extension of a lease and a licence for alterations.

While the draft regulations do include a definition of a landlord we suggested omitting the proposed definition, as we thought it would be better if the term had its natural meaning. This said, we felt that the landlord should include a superior landlord, as well as the direct landlord. We also welcomed the confirmation that the tenant includes a sub-tenant.

Lastly, we welcomed the confirmation that the new rules on landlord/tenant payments will apply to payments falling within scope of the CIS that are made on or after the commencement date, rather than leases/agreements for lease, etc. entered into on or after that date.

The full response can be found here: www.tax.org.uk/ref1262

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CIOT		Date sent
VAT Assignment briefing for Scottish Finance and Public Administration Committee	www.tax.org.uk/ref1243	02/11/2023
Letter to the Financial Secretary to the Treasury on Making Tax Digital	www.tax.org.uk/ref1248	14/11/2023
RPDT just and reasonable apportionment and other uncertainties	www.tax.org.uk/ref1086	15/11/2023
Interpretation of VAT and excise legislation	www.tax.org.uk/ref1237	20/11/2023
Review of Double Taxation Treaties 2024-25	www.tax.org.uk/ref1244	22/11/2023

SDLT relief for special tax sites	www.tax.org.uk/ref1255	23/11/2023
R&D tax relief enquiries by ISBC Campaigns and Projects teams	www.tax.org.uk/ref1260	11/12/2023
Finance Bill 2023-24 briefing Clause 1, 2, 21 Corporate Taxes	www.tax.org.uk/ref1275	03/01/2024
Finance Bill 2023-24 briefing Clause 31-34 Schedule 13 Evasion and Avoidance	www.tax.org.uk/ref1276	03/01/2024
Finance Bill 2023-24 briefing Clause 27 VAT excise	www.tax.org.uk/ref1277	05/01/2024
Construction Industry Scheme (CIS) proposed amendments	www.tax.org.uk/ref1262	08/01/2024
Finance Bill 2023-24 briefing Clause 35 Information to be contained in returns	www.tax.org.uk/ref1279	09/01/2024
Finance Bill 2023-24 Clause 3-7 Creative reliefs	www.tax.org.uk/ref1280	09/01/2024
Finance Bill 2023-24 Clauses 13-15, 17 Employment Taxes and Pensions	www.tax.org.uk/ref1281	09/01/2024
Finance Bill 2023-24 Clause 16 Cash basis	www.tax.org.uk/ref1282	09/01/2024
Income Tax (Digital Requirements)(Amendment) Regulations 2024	www.tax.org.uk/ref1259	11/01/2024
ATT		
House of Lords inquiry into draft Finance Bill 2023-24	www.att.org.uk/ref445	30/10/2023
Finance Bill 2023-24 briefing Clause 1 Full expensing	www.att.org.uk/ref446	03/01/2024
Finance Bill 2023-24 briefing Clause 2 R&D	www.att.org.uk/ref447	03/01/2024
Income Tax (Digital Requirements)(Amendment) Regulations 2024	www.att.org.uk/ref448	12/01/2024
LITRG		
Employment status of personal assistants	www.litrg.org.uk	12/01/2024
Finance Bill 2023-23 briefing Clause 32 Disqualification for promoting tax avoidance	www.litrg.org.uk	12/01/2024
Finance Bill 2023-24 Clause 16 Cash basis	www.litrg.org.uk	12/01/2024
Income Tax (Digital Requirements)(Amendment) Regulations 2024	www.litrg.org.uk	12/01/2024

Making Tax Digital

Minister responds to tax bodies' MTD concerns

The tax minister has told ATT and CIOT that the government is not going to launch a further review of Making Tax Digital for Income Tax Self Assessment (MTD for ITSA), and remains committed to delivering the project in April 2026.

The two organisations' chief executives had written to Nigel Huddleston, the new Financial Secretary to the Treasury, in November, calling for a full review of the MTD for ITSA plans.

In his reply, sent in December, the minister writes positively of input from the two bodies and other stakeholders which 'has influenced the design and timing of MTD greatly ... making it simpler and easier to use'. However, he says that while he understands the view that there should be a wider rethink of the project, he believes that MTD 'is crucial to modernising the tax system, and its strategic design remains the right approach'. For this reason, the government's focus remains 'on working in partnership to ensure successful implementation in April 2026'.

The minister also responds to the two bodies' concerns that the costs of complying with MTD are being underestimated. While HMRC believes that the original estimates 'represented a realistic assessment of the likely costs those within scope would have faced', it is developing 'new cost estimates to reflect the changes announced last December and review outcomes'. HMRC will publish these in a revised tax information and impact note (TIIN) which will, he says, be 'informed by work with the accountancy, business and software communities'.

The minister states that he would welcome the opportunity to meet with the CIOT and ATT to discuss MTD and we are hopeful a meeting will be set up shortly.

MPs warn on MTD burdens

The minister's reply came two weeks after the House of Commons Public Accounts Committee (PAC) published a report sharply criticising HMRC over MTD costs and burdens.

In a report citing evidence from ATT, CIOT and LITRG, the PAC says that HMRC has lost sight of needing to put customers at the heart of changes to the tax system. The report accuses HMRC of not being open enough about the substantial costs that will be imposed on many taxpayers. While MTD will substantially benefit HMRC by improving its systems, taxpayers will be asked to spend more and do more to comply, states the committee.

Specifically, the report finds that HMRC excluded a total of over £2 billion in upfront transitional costs for customers from its 2022 and 2023 business cases for MTD. The PAC is concerned about how much MTD could cost customers and calls for full transparency on costs and benefits to the public purse and customers in future.

Nigel Huddleston, Financial Secretary to the Treasury

Among a number of citations of CIOT and ATT, the report notes a survey which found that nearly 90% of the bodies' members thought the VAT element of the programme had not reduced errors and that the cost to comply had far exceeded government estimates.

The committee highlights LITRG's concerns about the levels of service that HMRC will provide for unrepresented taxpayers. LITRG are calling on the government to give those on the lowest incomes certainty as to whether they will be required to comply with MTD in due course, following November's announcement that the mandation of MTD for businesses with turnover between £10,000 and £30,000 will continue to be kept under review for the time being.

Read the letter and reply at: tinyurl.com/MTDletter2

Political update

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

CIOT, ATT and LITRG have together produced 12 briefings for MPs scrutinising the current Finance Bill, which have already been extensively cited during debate. March *Tax Adviser* will carry a full report on the Bill's passage and the bodies' input into proceedings.

CIOT evidence was also highlighted during a debate on the short National Insurance Contributions (Reduction in Rates) Bill in November, with CIOT's points being raised by the shadow minister on implementation costs for business and how ready payroll software would be for the change.

November also saw an appearance by CIOT Deputy President Charlotte Barbour before the Scottish Parliament's Finance and Public Administration Committee, discussing VAT assignment. Charlotte was one of a number of witnesses to sound a sceptical note on the topic, noting it would bring increased risks and complications for the Scottish Budget, without any ability for the Scottish government to exercise direct control over VAT policy, such as by setting rates and exemptions.

In December, the Scottish Parliament's Local Government, Housing and Planning Committee's report on the Transient Visitor Levy (Scotland) Bill made several references to evidence provided by CIOT and called on the Scottish government to respond to points raised by the Institute in respect of the definition of 'overnight accommodation'.

CIOT and ICAS paper

Call for greater clarity from governments on Scottish tax system

CIOT and ICAS have published a paper calling on the Scottish and UK governments to review Scotland's devolved tax powers.

Ahead of December's Scottish Budget, the two bodies collaborated on a new paper, 'Building a better tax system: progress report', reviewing the development of Scotland's tax regime in the first half of the 2021-26 Scottish Parliament. They say that policymakers should use the tenth anniversary of the Smith Commission next year to review the implementation of devolved tax powers in Scotland.

The paper contains calls for clarity on the status of the devolved replacement for UK air passenger duty (air departure tax), in addition to proposals to assign half of VAT revenues raised in Scotland directly to the Scottish Budget, which would 'provide certainty and transparency' about the future role they will play in Scotland's devolved tax mix.

Both proposals were put on hold in 2019 over concerns about their introduction and no firm timetable has been given for their implementation. However, concerns have been raised about the risks posed by the policy of VAT assignment.

CIOT and ICAS have recommended that the Scottish government find ways of improving public understanding of Holyrood's tax responsibilities, expressing concern that income tax divergence has created a more complicated tax system that is harder for taxpayers to understand and engage with.

The two bodies have also called on the Scottish Parliament and Scottish government to work together to review how tax decisions are examined at Holyrood, following the decision of the Finance and Public Administration Committee to end its participation in the Devolved Taxes Legislation Working Group in January 2023.

Read the report at: tinyurl.com/y968e889

Research and Development

R&D: HMRC still rejecting valid claims

CIOT has reiterated concerns that HMRC's handling of R&D tax relief compliance is resulting in valid claims being rejected. The institute wrote again to HMRC in December, following an exchange of letters on this issue over the summer.

Ellen Milner, CIOT's Director of Public Policy, explained: 'Abuse of R&D relief is a genuine problem, and HMRC should take appropriate action to tackle it. However, as well as correctly catching invalid claims, a large number of valid claims are being rejected or withdrawn due to the "volume compliance" approach being taken. HMRC are undermining confidence in R&D tax relief, having eroded the trust that they will accept or properly consider legitimate claims.

CIOT concerns about R&D credits were raised by the Public Accounts Committee at a hearing with HMRC bosses in December. Chief executive Jim Harra told MPs he did not accept CIOT's analysis of the problems in this area but HMRC would continue to engage with the Institute on this.

Read the letter at: www.tax.org.uk/ref1260

In the news

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

'Helen Thornley, technical officer at the ATT, warned that more people are currently being drawn into paying the [child benefit] charge. This is because of an uptick in wages pushing people over the £50,000 limit, and increased savings income boosted by higher interest rates.'

Financial Times, 17 November

'Others, including the ATT, disagree. It is concerned that [basis period reform] will create a major complication for those affected and that businesses caught are likely to pay increased amounts of tax.'

Daily Telegraph, 28 November

'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… That is why we recently welcomed the extension of the scheme to April 2025.'

Victoria Todd, Head of LITRG, GB News, 5 December

'While we understand HMRC's desire to prioritise where it puts its limited resources, we are concerned that in practice many of their customers will be unable to navigate HMRC's digital services, and will simply give up.'

John Barnett, Chair of CIOT's Technical Policy and Oversight Committee, Financial Times, talking about restrictions to the self-assessment helpline, 7 December

'The concern really here is people who are maybe selling a bit but not quite up to the point where they think that's trading or they're not sure if they're trading. HMRC can argue that and come and ask for tax money that should have been declared.'

Emma Rawson, ATT technical officer, Hello Magazine, talking about new reporting requirements for online selling platforms, 13 December

'The Scottish government's income tax plans increase divergence between higher earners in Scotland and the rest of the UK and we cannot rule out the possibility that divergence could widen further in the spring.'

Sean Cockburn, Chair of CIOT's Scottish Technical Committee, The Times, 19 December

Debate

CIOT/IFS non-doms debate

Panellists at a debate on the taxation of non-doms agreed that the current regime needs reform, and said that ideally any new system will command political consensus.

More than 800 people registered to watch the online event hosted by CIOT and the Institute for Fiscal Studies on 29 November, chaired by Helen Miller, IFS Deputy Director, and featuring speakers:

- Emma Chamberlain, barrister at Pump Court Tax Chambers and joint chair of CIOT's Private Client (International) Committee;
- Nimesh Shah, CEO of accounting firm Blick Rothenberg;
- Arun Advani, associate professor at the University of Warwick; and
- Jane Page, a tax adviser at Kirk Rice accountants and former Treasury adviser.

Emma spoke first, setting out how the system currently works. Nimesh outlined the impact of some recent reforms. Arun explored the numbers behind non-doms, saying that while they are fairly small in number, they are often highly paid. They frequently work in finance and professional services, while more than 10% are pensioners.

There was agreement among the panel that many elements of the regime are out of date. A particular bugbear was how the current system can act to discourage investment. However, there was agreement that change is difficult because it requires predictions of how people will react and must also take into account non-tax reasons for people moving in and out of the country.

Exploring alternatives to the current system, Emma said that other 'connecting factors', such as residence and citizenship, would need to be considered to decide who pays tax in the UK if the idea of 'domicile' is scrapped. She noted that Canada rebases all assets at market value when someone enters the country, and then implements an exit charge when they leave. Other ideas include phasing in taxes over a number of years or time-limited exemptions of five or 10 years.

Jane thought it would be possible to improve the system for the 'vast majority' and raise money, but she would recommend removing any reference to 'domicile' and not taxing people on remittances. 'It's just a historical accident that we do things that way, it's not how you'd design a tax policy today,' she said. She said particular consideration should be given to whether reforms might lead to 'decision makers' leaving the UK, or people not coming here who otherwise would have.

Nimesh said that the fast rate of 'small but regular' change in recent years has not been helpful, as it diminishes certainty. We need a regime which encourages investment and the right wealth (i.e. not dirty money) to come to the UK, he said.

The panel agreed that political consensus is vital. 'It would be good if all the parties could agree on what they want to do and who they want to encourage to come here,' said Emma.

Labour propose to scrap non-dom tax status if they win the forthcoming general election. The panel disagreed on how they should go about this. Emma suggested it would need to be done 'fairly quickly'. However, Nimesh disagreed, saying it is 'such a massive opportunity' for the UK to reset its regime that it is not worth rushing it. Arun hoped that Labour were 'doing some groundwork' now ahead of the election.

Watch the debate at: tinyurl.com/ynbauju4

IR35

Legislation to offset taxes paid by workers caught by IR35 welcome

CIOT welcomed the announcement in the Autumn Statement that taxes already paid by workers who were incorrectly categorised as outside the scope of off-payroll working rules (IR35) can be offset against the tax due from their deemed employer.

The CIOT has been calling for this move, saying that it would be fairer and more efficient than the current system which obliges HMRC to notify affected workers of their recategorisation and requires them to recalculate their taxes, amend tax returns and submit claims for overpayment relief.

Colin Ben-Nathan, Chair of the CIOT's Employment Taxes Committee, explained: 'At the moment, a worker who is recategorised as being in a "deemed employment" relationship is likely to end up paying no or little tax on the amount paid to them by the organisation who engaged them, with that organisation effectively bearing that tax as an additional cost. We do not believe that can be the right answer.

'The set-off approach will, in particular, be much fairer on the public purse in cases that involve public bodies, as taxes paid by workers as if they were outside the scope of IR35 would be retained by the Exchequer and only the difference would be settled by the public bodies out of their government funding. At the moment, in these cases, the full tax cost is potentially being borne by the Exchequer and the worker can effectively make a windfall gain at the Exchequer's expense.'

Roundtable

The future of council tax

On 29 November, CIOT hosted an online roundtable discussion on the future of council tax, bringing together contributors from across the UK to explore the different approaches being taken to council tax reform across the nations and discuss challenges and potential ways forward.

David Phillips | Emma Congreve | Charlotte Barbour

CIOT Deputy President Charlotte Barbour chaired the event. Opening proceedings, she observed that with council tax being a devolved issue, there are largely separate debates taking place in Wales, Scotland and England, and these are at different stages of progress. However, many of the issues are the same, including the frequency of revaluations, the treatment of second homes and empty properties, and whether the system should be made more progressive.

The first speaker, Debra Carter, Deputy Director for Local Government Finance Reform at the Welsh government, set out the Welsh council tax situation. She explained that, following comprehensive research, a conclusion has been reached within the Welsh government that, in order to achieve a fairer system, fundamental structural reform of council tax is required. She observed that there is some cross-party political support for this.

While the Welsh government has been looking at alternatives to council tax, particularly the possibility of a local income tax or a local land value tax, these are long-term ideas, and in the meantime more immediate reforms are being looked at.

Last year, the Welsh government consulted on the broad principles of council tax, including its fairness, revaluation cycles and discounts and reduction schemes. Now they have launched a second consultation on the scale and pace of reform, presenting three examples for how the system might look and three examples for the pace at which it should be addressed.

The second speaker was Emma Congreve, Deputy Director of the Fraser of Allander Institute, a research institute based at the University of Strathclyde. She said that, since devolution, calls for reform of council tax have come from both the Labour/Lib Dem coalition and the SNP government. However, 'no one has really quite managed to crack it'. Some changes have been made to council tax multipliers since 2017, increasing payments for more expensive homes, which have made the system a bit less regressive.

In Scotland, two separate commissions have advocated a move away from the regressivity of the current structure towards something akin to a proportional property tax. The first independent committee had its recommendations rejected by the then Labour First Minister. The second had political appointees from all the main parties (apart from the Conservatives, who did not wish to take part) to try to ensure the political implications were addressed head on but struggled to come to a robust consensus on the way ahead. Resulting reforms were fairly minor changes to the charging structure of the council tax, with a regressive system remaining in place and no revaluation.

The third speaker was David Phillips, an Associate Director at the Institute for Fiscal Studies. He provided an overview of the council tax landscape in England, arguing for revaluations as soon as possible and against the current single person discount, which he suggested contributes to both overcrowding and under-occupation of property.

Phillips argued for reforms to council tax to make the system more progressive and efficient. In terms of structure, he expressed a preference for a continuous value system over the existing banded system, so that efforts to make council tax more progressive overall do not lead to even bigger jumps in bills at tax band thresholds. And though he acknowledged that such a move may create additional administrative burdens, he argued that it's not as clear cut as some have suggested that it would increase appeals – because the big jumps in bills associated with being the 'wrong side' of a band threshold would no longer exist. He suggested that there is a strong case for land value tax for non-residential properties, but for residential properties he felt the property itself should be part of the tax base.

Following the opening speeches, the wider group explored historic attempts at council tax reform in England, including Labour's promise of revaluations every ten years and the 2010-15 coalition government's abandonment of national council tax benefit.

A number of participants advocated a move to a proportional property tax. One suggested that a move of this kind could be 'a vote winner for any party that wants to get behind it'.

One Scottish participant suggested that Wales seems a lot more 'grown up' than Scotland in regard to this issue. With a council tax freeze in 2024-25 and a Holyrood election in 2026, they were pessimistic about seeing any reform of council tax soon. It was suggested that politics in Scotland is more divisive, whereas it is easier to reach a broad consensus on reforms in Wales.

A participant from Northern Ireland explained that that is the only part of the UK without a banded council tax system, instead operating based on rates. Instead of a council tax reduction scheme, Northern Ireland has built support into a universal credit rebate scheme.

On valuations one participant suggested that a 'more creative' approach might be taken; for example, valuations could be staggered, being carried out on sale of a property.

The importance of revaluing before any major reform was emphasised.

Disciplinary Changes

CIOT and ATT disciplinary changes

CIOT and ATT members agree to adhere to a number of membership requirements including five fundamental principles of:

- Integrity
- Objectivity
- Professional competence and due care
- Confidentiality
- Professional behaviour

The Professional Rules and Practice Guidelines, Professional Conduct in Relation to Taxation and the Continuing Professional Development and Professional Indemnity Regulations, together with other CIOT and ATT governing documents, set out a number of requirements based on these fundamental principles. Disciplinary matters are dealt with by an independent disciplinary process, which is run by the Taxation Disciplinary Board (TDB).

Members who meet the requirements set out in the fundamental principles and associated documents are unlikely to come into contact with the TDB but each year a number of members do come within the disciplinary process.

The Taxation Disciplinary Board Scheme Regulations came into force in 2014 and the latest amendment to them applies from 1 January 2024. There have been some important changes in these Regulations which members need to be aware of.

Up until 31 December 2023, the Taxation Disciplinary Board Scheme Regulations provided that a fixed penalty could be applied by the TDB where there had been a breach of CIOT and ATT administrative requirements, rules or procedures. Examples included failure to provide CPD records, and failure to complete anti-money laundering renewal forms on time. If the fine was not paid within 14 days, the matter would then progress further through the more formal disciplinary process as set out on the TDB website (see www.tax-board.org.uk).

Under the updated Regulations, administrative breaches will not be dealt with by the TDB. Instead, they will be dealt with by the CIOT and ATT. Failure to pay the fines will result in a referral to the TDB by the CIOT and ATT and the matter will then go through the usual disciplinary process. Members receiving a fine can, of course, choose not to pay and have the matter referred to the TDB for full consideration by the reviewer.

Members should also be aware that the amended regulations give the TDB Investigation Committee the option to agree a consent order with the member. If the member agrees the consent order, the Investigation Committee will be able to make an order for costs, fines, etc., rather than referring the member on for further consideration by the Disciplinary Tribunal, where the potential costs can be considerably higher.

Members currently in the disciplinary process will be contacted if the change in the Regulations has any impact on their case. Members with queries on the disciplinary process should email the TDB at TDB@tax-board.org.uk or contact the CIOT and ATT Head of Professional Standards.

Jane Mellor
Head of Professional Standards
jmellor@ciot.org.uk

Technical Spotlight

Spotlight on the Owner Managed Business technical committee

The Owner Managed Business (OMB) Committee was formed in May 2007 to provide a voice for CIOT members involved in advising small businesses and their owners – a significant proportion of our membership.

Committee members come predominantly from small and medium sized accountancy and tax advisory firms located around the UK. The Committee has a wide-ranging remit, which includes all aspects of small business taxation, whether that business is a sole trade, a partnership or a limited company. Further details, including members, can be found at: www.tax.org.uk/our_tcs.

We devote substantial time to responding to public consultations and commenting on draft legislation; for example, the recent measures to remove the turnover, interest and loss relief restrictions in the cash basis and to make it the default basis for unincorporated businesses to calculate their taxable profits. We also considered the proposals to enable HMRC to collect additional information from taxpayers about employee hours, dividend income and shareholdings, and self-employment start and end dates. All our submissions can be found at: www.tax.org.uk/submissions/1.

Last year, our work included submitting two representations ahead of the March Budget on legislative issues we identified on capital gains tax relief for gifts of business assets, and on company purchase of own shares involving multiple completion contracts. We have also been discussing HMRC's simplification objectives and have suggested that there should be a mechanism to identify and correct defective legislation more easily; for example, through post-implementation reviews and a dedicated 'corrections' section in each Finance Bill.

On basis period reform, we have met with HMRC to discuss implementation and communication of the changes. Committee members were involved in testing HMRC's overlap relief online request form. We also have regular engagement with HMRC's Mid-Sized Business (MSB) team and topics discussed have included the support that HMRC offers MSBs through its Customer Support Team and its temporary Customer Compliance Manager service.

There can be regular overlap with the work of other CIOT technical committees. We liaise closely with the Corporate Taxes Committee on matters such as R&D, tax relief and capital allowances; the Property Taxes Committee on the taxation of property income within businesses; and the Management of Taxes Committee on issues relating to tax administration, particularly those concerning Self Assessment and HMRC processes.

The Committee usually meets quarterly. At our most recent meeting in December 2023, discussions included whether ESC D32 'Transfer of business to a company' is still fit for purpose in light of the recent professional and media interest in property business incorporations, HMRC's volume approach to R&D enquiries, and various measures announced in the Autumn Statement.

Margaret Curran mcurran@ciot.org.uk
Matthew Brown mbrown@ciot.org.uk
CIOT Technical Officers

Fellows

CIOT New Fellows 2023

Body of work

- **Grahame Jackson:** International exchange regimes, their application and practical consequences
- **Harriet Brown:** How information exchange changed the world (of tax): the development and application of international information exchange in the UK, its overseas territories and beyond
- **Stephen Daly:** Tax authority, advice and the public
- **Andy Wood:** Cryptocurrencies and other digital assets: tax law and practice
- **Thomas Dalby:** Employee share schemes equity reward for private companies.

Dissertation

- **Hannah Hurley:** Why did the film tax incentives in Finance Act (No.2) 1992 and Finance Act (No.2) 1997 fail? Are the incentives provided by Part 15 CTA 2009 destined to follow?
- **David Currie:** The VAT exemption for the management of special investment funds: a review of their design, impact and alternatives.

Members

ATT New Fellows 2023

Ashfaq Adenwala
Joshua Allen
Vanajah Balakumar
Michelle Baldwin
Richard Barrett
Malcolm Binnie
Debashish Biswas
Ann Bocock
Charlotte Brown
James Cannaford
Bhavesh Chawda
Alia Choudhury
Clark Christie
Sau Ying Rita Chu
Dean Coak
Louise Croucher
Peter Davis
Stephen Day
Rahul Desai
Simon Doughty
Alexandra Duncan
Gurvirinder Dyal
Charlotte Edwards
Jessica Foster
Elizabeth Gillick
Paul Goulding
Thomas Griffiths
Laura Hepworth
Kerry Hudson
Celia Hurst
Ben Jackson
Hannah James
Victor Jones
Gemma Jones
Afzal Khan
Amanda Laird
Andrew Learmond
Kay Lewis
Robert Littlefield
Lisa Macpherson
Daniel Martin
Trevor Martin
Wilma McIntyre
Faisal Meraj
David Murphy
Kimberley Murphy
Richard Nedin
Christopher Edward Newton
Elaine Nicolson
Gavin Nurse
Vinal Patel
Fumi Popoola
David Portman
Lukshmiera Ramachandran
Sarah Redfern
Dean Reynolds
Catriona Robertson
Jonathan Rose
Samantha Samuel
Daniel Self
Juliana Staight
Nicola Stephenson
Kevin Thomas
Samantha Timberlake
Sashi Verma
Shameem Wahid
Andrew Wilkie

Event

Celebrating 40 years of success: Severn Valley Branch anniversary

What started as months of meticulous planning, culminated in a spectacular evening as the CIOT/ATT Severn Valley Branch celebrated its 40th Anniversary.

Helen Whiteman, Simon Groom, Gina Gardner, Matt Babbage, Suzy Babbage (left to right)

The event, held at the Revolution Bar in Cheltenham, proved a resounding success, in a night dedicated to honouring the past and embracing the promising future of the Branch. Hosted by the new Branch Chair Gina Gardner, attendees were welcomed by an incredible display of balloons in CIOT/ATT colours. The Committee expressed gratitude for the overwhelming support from attendees. The celebration offered a fantastic atmosphere and an opportunity for Branch members to network with fellow local professionals, all complemented by delicious food.

A series of heartfelt thanks are extended to those who played pivotal roles in ensuring the event's success, especially Emma Barklamb, Head of Member Services at CIOT, and Andrea Gale, Branch Network Manager, for their months of support leading up to the celebration. Their infectious energy undoubtedly contributed to the positive atmosphere of the evening.

Special recognition was given to Simon Groom, Senior Tutor at LexisNexis, and Helen Whiteman, CEO of the CIOT, for their insightful speeches and unwavering support. Lynne Poyser, Tax Manager at Tolley, and Sarah Hewson, Tax Technical Lead, shared words of wisdom for the future, adding depth to the evening's reflections. We were also delighted to be joined by the Mayor, Councillor Matt Babbage, and his wife Suzy, who admired the strong community spirit being displayed that evening.

Ballards LLP sponsored the drinks reception allowing guests to mingle, exchange ideas and form new professional connections. We then welcomed Elaine Warwicker from Canny Conversations who provided her top ten networking tips. Her interactive session provided valuable takeaways in our post pandemic world.

New committee members Joe Newton and Harriet Turner were commended for their enthusiasm and willingness to contribute to the event's success, and we were delighted to be joined by a new member. The evening concluded with an unexpected highlight – as Alex Nelmes, the recipient of the Branch Prize, received a bottle of prosecco with a fountain candle as a huge well done for a great exam result.

The Committee look forward to the continued success and growth of the CIOT/ATT Severn Valley Branch. The 40th Anniversary celebration served as a testament to the commitment and shared passion that defines the Branch's journey over the past four decades. Here's to the next 40 years of excellence!

Training
Online training hints and tips

Reshma Johar shares some advice on how to present a successful online webinar.

It has been a year since my last article seeking out volunteers to join the newly formed 'Online Branch'. Since then, we have held several online meetings and are working hard to build a new stream of online tax technical content, presented by a range of talented tax professionals from across the UK.

The committee's objective outside of delivering tax technical content is to promote new talent and diversity in all its forms. So, what do I mean when I say new talent? Quite simply, the online committee is open to speak to tax professionals who are well established in their roles or areas of specialisms and who have not previously been involved in delivering a tax technical lecture for the CIOT, ATT or other training provider.

We offer supportive conversations, tips and training, as well as the opportunity for a practice run through so the speaker is not left in the dark as to how the session will go on the day.

Over the years, CIOT and ATT have provided lots of great opportunities to new speakers, who are now more established and well known in the tax arena. This is not only a great personal development opportunity for your business or employer; it's also a great marketing opportunity, as well as self-brand promotion.

My first CIOT online webinar was a few years ago. I received great support from the CIOT team and the run through was super helpful. On the day, I felt relaxed as I was at home and in my space, which kept me calm.

Below I have shared some of my own tips but also advice from other more established speakers:

- Turn off any computer notifications, including work emails and teams chats, etc.
- Try your best not to move or swing around in your chair – for the attendees that could get a little distracting or dizzying!
- Always ensure that you finish on time and ideally with some time for Q&As. If you're part of a panel, definitely do not be the person that overruns and steps onto another person's allocated time slot.

Sarah Hewson, UK Employment Tax Technical Lead at Vialto Partners and a CIOT council member, says:

- Try not to overcrowd your slides with text. This will distract the participants and may result in your point being missed.
- Incorporate some break slides to give you some breathing time. This will give you a chance to sip on a drink or control the pace of your delivery.


Reshma Johar

Sofia Thomas, Head of Tax at Juno Sports Tax and a member of ATT's Technical Steering Group, says:

- Think about the three main things that you want the audience to take away from you talk and make sure these are covered.
- Where possible, use real life examples to bring relevance to the talk.
- Engagement online can be harder than in a room. Consider using polls or asking non-technical questions with a multiple choice answer to encourage participation.

These tips are useful even in your day to day working life. We hope you can see that we really are here to help and support new tax talent. I recommend reaching for an initial discussion with me or one of the committee members of the Online Branch or email us at: branches@tax.org.uk

Reshma Johar is a Tax Consultant at Mazars and is Chair of the ATT/CIOT Online Branch.

Appointment
CIOT welcomes Chief Operating Officer

The CIOT is delighted to have appointed Andrew Burnett, who joined the CIOT as Chief Operating Officer in 2023.

Over the last six months, Andrew has assumed responsibility for our day-to-day business operations, including IT, HR, facilities, membership and marketing.

Andrew has a background in executive leadership and operations management. Before joining CIOT, he worked at the Pensions Ombudsman as Deputy Chief Operating Officer with responsibility for all customer facing services. He is an MBA graduate, and is professionally accredited as a chartered manager and chartered engineer.

Having previously served as an officer in the Royal Air Force, Andrew has had a unique career as an ex-military officer, combining military and senior civilian leadership experience. He brings with him a track record of supporting organisations in developing their strategic aspirations, then providing the leadership to turn them into operational reality.


Andrew Burnett

Andrew is looking forward to drawing on his broad experience in this pivotal role in progressing and developing the CIOT's business operations to ensure that we continue to be fit for purpose and deliver our organisational priorities.

Appointment

Tom Hayhoe appointed TDB Chair

The ATT and CIOT have appointed Tom Hayhoe to take over as Chair of the Taxation Disciplinary Board (TDB) from February 2024.

Tom Hayhoe

Tom follows in the footsteps of Susan Humble who successfully led the organisation through a period of transformation during her four year tenure.

Tom has a wealth of experience across a broad range of private, public and third sector roles, including at the College of Policing, Nursing and Midwifery Council, ACCA and various NHS bodies. He has chaired and been a member of many professional regulatory boards and panels and will join existing board members Brian Palmer and Dan Lyons. One of Tom's first roles will be to complete the appointment of a new lay member to the TDB and review the Memorandum of Understanding (MoU), which exists between the TDB and the ATT and CIOT as its two sponsoring bodies.

On his appointment, Tom said: 'I am delighted to be joining the TDB at a time when professional standards and conduct remain firmly in the spotlight. I would like to thank Susan and the TDB for their warm welcome and smooth handover and I look forward to building on the work they have undertaken over recent years.'

Whilst the vast majority of students and members maintain the highest standards of conduct and professionalism, the TDB exists to ensure that there is suitable independent protection and redress for those who may have cause to complain.

A MEMBER'S VIEW

Gurdeep Singh Dhanjal

Tax Manager (Sports & Entertainment), HW Fisher

This month's member spotlight is on Gurdeep Singh Dhanjal CTA, ATT, Tax Manager (Sports and Entertainment), HW Fisher

How did you find out about a career in tax?

I'd be disingenuous if I said it was always the plan. I was broadly open to a career in tax. I found an intriguing opportunity within the sports and entertainment sector and haven't looked back since!

Why is the CIOT qualification important?

It's very much the gold standard and a well-respected qualification. The qualification covers the depth and breadth of tax and is geared to equip you to make sound advisory decisions for your clients. Working in the profession is certainly more meaningful and rewarding once you have a high level of technical understanding.

Why did you pursue a career in tax?

It was a new challenge. After having studied biology at University, I wanted a chance to try something different. I wanted a career that could stimulate me intellectually and provide longevity. There will always be a need for tax advisors and as Benjamin Franklin said, 'Nothing is certain except death and taxes.' I was initially drawn to tax by the interplay between accounting and law and it seemed to be a sensible choice. The interaction of tax with politics was also particularly interesting.

How would you describe yourself in three words?

Hardworking, tenacious and sometimes far too competitive for my own good!

Who has influenced you in your career so far?

Although I've been privileged to work with leading experts in the industry, I would say no single person. However, a mentor in my early days gave me advice which stuck with me. 'Be a sponge,' he said. 'Soak up what you can from those around you and craft your own unique style.'

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

Tax plays a large part in society and will undoubtably be ever-present. Don't be afraid of the challenge that further study entails but be prepared to make sacrifices. It's a step up from other qualifications and will require sustained commitment. Put in the time now and you'll soon reap the rewards of your hard toil – you will get as much as you put into it.

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

'The only constant in life is change' and from what I've seen working in the profession, the same can certainly be said of tax. Technology has a ubiquitous presence and is therefore hard to ignore, as are the numerous growing opportunities to automate processes. Notwithstanding this, the human element will remain vital and so professional judgement, communication and connection will be even more invaluable. Further embracing technology will enable us to both streamline and add value to our role in the business world.

What advice would you give to your future self?

Keep your finger on the pulse. As you progress in your career, complacency can creep in and it's easy to rest on your laurels.

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

I trained in karate from the age of four and have competed in numerous local and national competitions. I would relish the chance to train in other styles at some point! I particularly enjoy the discipline and self-development aspects of martial arts and it has very much shaped me to who I am today.

Contact

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

Annual Returns

Outstanding 2023 Annual Returns are now late!

If you have not yet submitted your 2023 Annual Return (due by 31 January 2024), it is now late. Action is required!

Outstanding membership subscription fees relating to 2024 are also now overdue for payment.

Annual Return completion obligations have been publicised as part of the subscription communications from the Membership team, in addition to notices in *Tax Adviser*, on our website and on social media. The vast majority of your fellow members do comply with their Annual Return membership obligation, which is set out in the CIOT and ATT's Professional Rules and Practice Guidelines.

Relevant extracts are detailed in the highlighted box.

The Annual Return is a key element in our monitoring, and being seen to monitor, compliance with the high professional standards we expect our members to observe.

Please submit any outstanding 2023 Annual Returns by logging on to the portal at: https://pilot-portal.tax.org.uk **as a matter of urgency**. If you do not file your return in a timely manner from this point onwards, you will be **fined or referred to the Taxation Disciplinary Board** – see www.tax-board.org.uk for more information – which has the power to impose a wide range of sanctions.

Completion of Annual Return

2.8.1: A member must complete and submit their Annual Return to the CIOT/ATT within the advised time limits.

Provision of information to the CIOT and ATT

2.12.1: A member must provide such information as is reasonably requested by the CIOT and ATT without unreasonable delay. A member must reply to correspondence from the CIOT and ATT which requires a response and again must do so without an unreasonable delay.

If you have any questions or require any support to meet this membership obligation, please first review our guidance on the websites of CIOT: www.tax.org.uk/annual-return-guidance and ATT: www.att.org.uk/annual-return-guidance, or contact us at membership@tax.org.uk using the heading 'Annual Return'.

Exams

Success in CIOT and ATT November 2023 exam results

On 24 January 2024, the Chartered Institute of Taxation and the Association of Taxation Technicians announced the results from their examinations taken at the November 2023 exam session.

Gary Ashford

Simon Groom

864 CTA candidates sat exams with a further 276 candidates who sat one or more papers on the ACA CTA Joint Programme (with ICAEW) and 20 candidates sat a paper on the CA CTA Joint Programme (with ICAS). 809 ATT candidates sat exams in November 2023 and 1,000 ATT CTA Tax Pathway candidates sat a combination of ATT and CTA papers.

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

'240 candidates have now successfully completed all of the CTA examinations and we very much look forward to welcoming them as members of the Institute in the near future. Included in this figure are 60 candidates who were on the ACA CTA Joint Programme, one candidate who was on the CA CTA Joint Programme and 51 candidates who have now fully completed the ATT CTA Tax Pathway by passing the CTA element.

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

The Association President, Simon Groom, commenting upon the results said: 'I am delighted to congratulate all the successful candidates from the November sitting of our exams. In total, 809 ATT candidates and 495 ATT CTA Tax Pathway candidates sat 1,743 papers and 1,328 passes were achieved. 92 distinctions were awarded to candidates for outstanding performance.

'With my background in tax education, I am well aware of the many hours of study required to sit our examinations and I commend all the candidates for putting in the work necessary to achieve success.

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

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

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

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TRIDENT TAX

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Our firm is renowned for its tailored, personalised consultancy services, catering to a varied client base centred on HNW and UHNW UK RNDs & RDs, overseas trusts, entrepreneurs, owner-managed businesses and tax investigations.

Founded by Alan Kennedy in 2009 and comprising a team of ex-Big 4 tax specialists, Trident Tax has a strong reputation for offering boutique and bespoke private client services to HNW and UHNW clients, in the UK and internationally. Upholding values of integrity, professionalism, and excellence, we are growing our team in Manchester.

Senior Manager / Manager
Private Client Tax
£Competitive + Benefits

We are seeking a qualified tax professional (CTA or equivalent) with extensive experience in private client tax advisory services. The role demands a deep understanding of various aspects of private client taxation and structuring, focusing on UK RDs & UK RNDs, overseas trusts, entrepreneurs, and other related areas.

Some experience in tax investigations work would also be an advantage, but is not essential.

We are open to considering a small team move, contingent on a compelling business case.

Key Responsibilities

- Providing expert private client tax advisory services.
- Developing and maintaining strong client relationships, offering bespoke tax advice.
- Playing a pivotal role in business development and networking to support the growth with our presence in Manchester.

Senior Manager / Manager
Tax Investigations & Resolutions
£Competitive + Benefits

We are seeking a qualified tax professional (CTA or equivalent) with substantial experience in practice at a managerial level or above. This role involves a significant focus on tax investigations, including COP9, COP8, HMRC Nudge Letters, and all types of contentious tax disputes and tax resolutions work.

Experience in both private client and corporate tax will be highly valued

We are also open to considering a small team move, contingent on a compelling business case.

Key Responsibilities

- Leading and managing complex tax investigations and resolutions, often involving cross-border issues.
- Providing ad hoc support and advice to our tax advisory services clients.
- Playing a pivotal role in business development and networking to support the growth of our business in Manchester.

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- A permanent, full-time position in our Manchester office, with flexible remote working options.
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- Ample opportunities for career advancement and professional growth.

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This is an opportunity for a strong, client facing corporate tax adviser to join a firm with 200 staff and significant corporate client base.

The role will be mainly advisory and will involve working with the firm's 12 partners and senior staff providing tax advice to their corporate clients. It will also involve some management and review of work undertaken by tax team members.

The successful applicant will be CTA or ACA qualified with corporate tax experience, ideally gained in a Big 4 or medium sized firm of accountants.

As well as a competitive salary and huge benefits package, including flexible and hybrid working, the role offers the opportunity to live and work on the edge of the Lake District, arguably one of the most beautiful areas of the country.

For further details on the role please contact our HR Manager, Nicky Hill on 01228 530913 or email nicky@doddaccountants.co.uk

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Director

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In this role you will:

- Take ownership of VAT controls and assist with compliance tasks, identify process improvement opportunities for existing process and controls, and drive positive change across the organisation.
- Manage the VAT compliance process and VAT reporting for several VAT groups.
- Prepare, review and submit Intrastat returns as necessary.
- Assist with VAT registrations across various jurisdictions.
- Manage the relationship with HMRC for all indirect tax issues including Customs.
- Work closely with advisors on VAT projects.
- Work with the Group Tax Manager on transactions and advisory issues.
- Tax governance – ensure up to date policies and strategies are in place and that the processes around them are fit for purpose.
- Tax support to the Procurement Team on ascertaining VAT ratings for new products and service lines.
- Working alongside the Group Tax Manager to improve compliance and tax reporting processes.
- Review month-end VAT account reconciliations.
- Provide internal and external audit support, including data analysis.
- Liaise with, and deal with VAT compliance and audit enquiries from, tax authorities.
- Provide Indirect Tax support to and partner with colleagues throughout the business.
- Lead and participate in cross-functional projects.
- Support business growth and on-boarding of new companies and entities

This role can be hybrid worked – with a minimum of two days in the office. Full and part-time applications welcomed.

Experience of Customs an advantage. Ideally, you will be an experienced indirect tax professional who has dealt with large groups. You'll be comfortable rolling up your sleeves to do account reconciliations while also being able to advise on projects such as acquisitions.

For further information:
call Georgiana Head on 07957 842 402
or email her at georgiana@ghrtax.com

www.georgianaheadrecruitment.com

Tax Advisory Senior Manager
UK wide
£60,000 to £75,000

Our client is a real UK success story, one of the fastest growing independent accountancy firms in the UK. Headquartered in Manchester, this practice has offices in Leeds, Birmingham, London and throughout the UK. Their advisory tax team seeks a Senior Tax Manager for a role dealing with owner managers, HNW individuals, families and their large property investment portfolios. They are keen to see individuals from mixed tax or private client backgrounds There is lots of potential for development in the role. Full or part time appointment considered. **Call Georgiana Ref: 3419**

R&D and Advisory Tax Manager
Remote
£55,000 to £75,000

Our Client is an innovative chartered accountancy firm based in London, focused on providing high-quality accounting and tax services to clients in the technology sector. They seek a Tax Manager to join a remote team on a full-time basis. Occasional travel to London may be required for team and client meetings. The key areas of tax that you will need experience are: EIS/SEIS; employee share option schemes; and R&D tax credits. You do not need to have a full working knowledge of other areas of tax, but a willingness to learn and grow is important. **Cal Georgiana Ref:2426**

In-house VAT Manager
Malton or remote with travel to North Yorkshire – £excellent

Our client is the in-house tax team of an international business. They seek an experienced Indirect Tax Manager. This role is office based in Malton, North Yorkshire, but candidates working remotely with some travel to Malton considered. There is free onsite parking and the role has an attractive salary and benefits package. Our client will accept applications from candidates with backgrounds in practice and industry. Would also consider those relocating to the North Yorkshire from other areas of the UK. **Call Georgiana Ref: 3424**

Tax Senior or Junior Manager
Berwick, Melrose, Kelso
£competitive

Our client is an accountancy firm based in the English/Scottish borders. They seek a tax specialist to deal with self-assessment tax returns for a portfolio of diverse personal and partnership tax clients, advising clients on tax liabilities and liaising with HMRC and third parties, in relation to the tax affairs of clients. For suitable applicants, there would also be an advisory aspect to the role, assisting in providing tax advice to clients, including HNW individuals, trustees, business owners, farmers, landowners and partnerships. **Call Georgiana Ref:3423**

In-house Assistant Manager
Malton, North Yorkshire
£50,000 to £55,000 + benefits

Our client is the in-house tax team of an international business. They seek a corporate tax specialist. This role is office based in Malton. There is free onsite parking and the role has an attractive salary and benefits package. Our client will accept applications from candidates with backgrounds in practice and industry. Ideally, you will have a relevant professional qualification (ACA, ICAS, CTA, ACCA or ATT) and experience of UK corporate tax as it impacts large groups. Lovely role for a first move into industry and based in a lovely area. **Call Georgiana Ref: 3425**

Mixed Tax Senior
Macclesfield, Cheshire
£30,000 to £43,000

Our client is an independent accountancy firm based in Macclesfield. They are looking for a tax professional with experience of both personal and corporate tax issues for both OMB's and HNW individuals to join their growing team. A full time or a 4 day week appointment would be considered, particularly if the candidate is able to offer flexibility over busier periods. If working in a vibrant, people focused office with excellent office culture and opportunity for progression sounds like the right fit for you, please get in touch. **Call Georgiana Ref: 3417**

WE'RE HERE TO BE YOUR MATCHMAKER

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

We are looking for a Tax Advice Manager

TAX HELP FOR OLDER PEOPLE

TaxAid

Location: London/Dorset (hybrid working, with, on average, one to two days a week in the office)

Salary: £45,000 – £50,000 + benefits

TaxAid and Tax Help for Older People aim to provide help to those who need it, supporting people in poverty and the vulnerable who are unable to afford advice and when the service provided by HMRC has not resolved their problem.

Are you inspired by the idea that you could make a real difference to the lives of those we help? If so, we are recruiting for a Tax Advice Manager and would love to hear from you.

You will be responsible for a small team of advisers and oversight of our helpline and volunteers to ensure accuracy and consistency in the quality of our advice.

This highly variable role will be interesting and challenging, giving you the opportunity to shape it and make it your own. You will also work on developing and enhancing relationships with our key stakeholders including HMRC and other tax professionals.

If you would like an informal discussion about this unique opportunity please contact Brian Chapman at **brian@taxaid.org.uk**

To apply, scan the QR code
Closing date: 12 February