March 2024

TAXADVISER

att
Chartered Institute of Taxation.

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Navigating the tax landscape

We examine the challenges and opportunities that the world of tax is facing in 2024

Thresholds in tax

How tax threshold rules are impacting individuals and small businesses

Scottish taxes

The devolution of Scottish tax powers and how to build a better system

Generative AI

The debate over GenAI and its potential role in the tax profession

HELEN WHITEMAN
JANE ASHTON

Welcome
Please do join in!

Jeremy Hunt will deliver his second spring Budget on 6 March, and we will all be waiting with bated breath to hear what he has in store for us.

Our technical teams took advantage of the pre-Budget consultation period to set out some of the things we would like to see in the Red Book. For ATT, this included increases to the amount that drivers can be paid tax-free for using their own car for work. The CIOT made several representations covering a range of diverse subjects including tax avoidance and evasion, creative reliefs, VAT excise and corporate taxes.

After the Budget, of course, will come the Finance Bill. While the chancellor will no doubt throw in a few late election winning surprises, unlike last year – when we had a pretty good idea what would be in the Finance Bill – this year we are very much in the dark. That said, we could see some major changes to inheritance tax either in rate cuts or even potentially a complete abolishment!

If you want to ensure that your knowledge is up to date after the Budget, there are several ATT and CIOT events coming up this Spring. The CIOT Spring Virtual Conference is on Wednesday 17 and Thursday 18 April. The conference allows for 'live' delegate questions, as well as having all the sessions recorded so that delegates can enjoy the flexibility of accessing the content when convenient to them. This year, there are sessions on corporate losses, R&D, stamp duty, pensions and many more. For more information and to register, please visit: www.tax.org.uk/svc2024.

The ATT's Fellows Webinar is taking place on Thursday 25 April at 1pm. Lasting for 90 minutes, this free event provides a unique opportunity for all Fellows to enjoy the company of members of similar standing within the Association and participate in discussion sessions led by our Technical Officers. This year, the main presentation will be on avoiding Self-Assessment processing problems – help HMRC to help you. It will be followed by a choice of three breakout sessions covering:

- MTD and basis period reform: what are you and your clients talking about?
- Bereavement and tax: improving processes and guidance
- To regulate tax agents or not to regulate tax agents – that is the question!

To find out more and register for the ATT Fellows' Webinar please visit: tinyurl.com/2xff58h3

> **If you want to ensure that your knowledge is up to date after the Budget, there are several ATT and CIOT events coming up this Spring.**

The ATT technical officers have been back in the studios creating 10 new videos for hosting on our website and YouTube channel. These videos will supplement the 13 videos that were produced last year and are already available to view. This year, the topics covered include: a career in tax; how to check and change your tax code; how to pick an agent; and the high income child benefit charge (HICBC) – plus many more! Our videos can be found on our website at: tinyurl.com/37v4tkf6

The CIOT 2024 Admissions ceremony on 14 March is a real highlight in our annual calendar. We will have welcomed our 20,000th member by then, and we hope you will engage in our social media celebrations of achieving such a significant milestone.

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ONLINE PICKS OF THE MONTH

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Abolition of the lifetime allowance
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HMRC guidance
Providing information to individuals, businesses and agents
tinyurl.com/2cft7xxn

GARY ASHFORD
PRESIDENT

Celebrating milestones

> Our students are a perennial source of pride for the Institute, and it is heartening to see their hard work and dedication pay off.

I am really pleased to begin this month's welcome page on a note of congratulations. At the end of February, nearly 400 students from around the world found out that they had passed the ADIT (Advanced Diploma in International Taxation) exams they sat in December. Their successes came hot on the heels of the more than 800 students who took part in November's CTA exams.

All of our students are a perennial source of pride for the Institute, and it is heartening to see their hard work and dedication pay off. I am really looking forward to having the chance to celebrate their accomplishments when we hold our Admissions Ceremony in London later this month.

It is also really encouraging to see ADIT go from strength to strength. Last year, 1,610 exams were sat in 72 countries around the world. This year will mark the 20th anniversary of the first ADIT exam session, and it is of immense pride to all at the CIOT to witness the exceptional standard of students who are pursuing what is a highly rigorous and well-regarded assessment. ADIT is no ordinary achievement and so our collective thanks must go to Jim Robertson and the ADIT Academic Board for their oversight of this important qualification.

Around a third of those who were successful in November's exams have now passed all the requirements necessary to achieve CIOT membership. Last year, we welcomed 699 new members to the Institute, taking our total membership to a record-setting 19,924. The figure for 2023 is just 76 shy of what we hope will soon be our 20,000th member, a milestone moment in the history of CIOT and the tax profession.

We hope that everyone who studies for their tax qualifications and achieves membership will go on to play an active part in the life of the Institute, maybe even one day following in my footsteps to become President!

For some, that will be chairing or participating as an active member of our branch network, helping to organise CPD and networking opportunities for their fellow tax professionals.

Last year, we welcomed over 900 people to face-to-face and other events, while more than 11,000 logged-in to one of our many online events. Although attendance at our face-to-face events isn't quite back to pre-pandemic levels, feedback tells us that our members value the chance to meet in person. That is hugely encouraging to us as we strive to give our members the best possible membership experience.

Others may choose to take a more active role in the work of our technical committees, helping with the development of tax policy and legislation by contributing to consultation responses, meeting with government officials or supporting our media and political outreach work.

Our members' expertise helped to shape over 200 consultation responses to HMRC, HM Treasury and the devolved governments in Scotland and Wales, among others. In turn, this helped to ensure that CIOT and LITRG were mentioned 54 times in parliamentary debates and reports, including a hearty endorsement of our work from the Shadow Financial Secretary to the Treasury James Murray, as the Finance Bill continued its passage through parliament (see page 47).

Regardless of whether members choose the branch or technical route, they are joining committees that are the beating heart of our membership and which are fundamental to helping us to fulfil our charitable objectives to promote education and understanding of taxation.

I think it is really important that we take the time to reflect on the breadth and depth of work that our members, volunteers and staff contribute in the name of building a better tax system. Now more than ever, that expertise and experience is needed so that policy makers are alive to our concerns and take the steps that are needed to ensure the tax system works as well as it can do.

I invite you to take a look at a snapshot of some of CIOT and ATT's accomplishments in 2023 in the infographics on pages 5 and 7 of this month's magazine. If that whets your appetite to take a more active role in the work of our bodies, then please get in touch with us at branches@tax.org.uk. We would love to hear from you.

Have a great month!

Gary Ashford
President
president@ciot.org.uk

Chartered Institute of Taxation.

CIOT IMPACT IN 2023

New members

19,924

is our total membership with 699 new members welcomed

CTA tax exams

3,889

CTA exams sat

ADIT exams

1,610

ADIT exams sat in 72 countries

Events

12,000

attended online and face-to-face events

HMRC

760

responses to member satisfaction surveys on HMRC service levels

Providing guidance

5 Million +

visitors to CIOT's LITRG website

Consultation responses

228

government and other consultations

Supporting scrutiny

Cited

54

times in parliamentary debates and reports

Speaking out

146

mainstream media mentions, including more than 20 times on HMRC service levels

Media

Contacted by

52

different journalists across national, regional and trade media.

SUCCESSES WE CONTRIBUTED TO

Construction Industry Scheme

New regulations to remove most payments made by landlords to tenants from the scope of the scheme

Tax refund companies

Legislation tightening up the tax refund company market

IR35

A clause in the Finance Bill 23-24 on the provision of a set off for taxes already paid and a worker's status is changed to "inside IR35"

Low income trusts

Finance Act 2023 amendment on income of less than £500 from a trust or estate

Making tax digital

Simplifications including keeping traders and landlords with low incomes out of MTD for now

SENGA PRIOR
DEPUTY PRESIDENT

Digital complications

> The Post Office Scandal had me musing on how much we have come to rely on computers for every aspect of life.

Senga Prior
ATT Deputy President
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Due to printing deadlines and the fact that I am about to head off on two weeks of annual leave, I am writing this page on 1 February – the evening when most who work in private client tax are either lying down with a damp towel on their forehead or having a well-deserved glass of wine!

One thing about January when you work in tax is that you miss the start of all the new TV series and dramas that begin in that month. I admit to having become hooked on 'The Traitors', which meant I did at least finish at 9pm on those evenings. I have yet to catch up on 'Mr Bates vs The Post Office' but I did follow with interest the news articles that appeared as a result of this drama and the interviews with the postmasters and mistresses that followed.

So, what has this insight into Senga's preferred viewing have to do with us I hear you ask? Well, the Post Office Scandal had me musing on how much we have come to rely on computers for every aspect of life, and the difficulties incurred when a situation is out of the norm and the computer says 'no' or is incorrectly programmed.

Those of us north of the border will remember the first few tax years when being a Scottish taxpayer actually made a difference to the tax that you paid due to different rates. HMRC used postcodes to identify whether a taxpayer was Scottish or 'Rest of UK' (rUK). Unfortunately, there were computer issues and not all Scottish taxpayers were correctly identified. I remember calling HMRC regarding one such client and being asked if I was certain that Glasgow was in Scotland.

There were then a few years where some Scottish tax returns were subject to exclusions and could not be lodged online. There are still problems with identification when a taxpayer changes his jurisdiction during a year, especially if the correct date of change is not recorded on the system. Even several years later, there was a recent news article about residents of a Scottish new-build estate wrongly identified as rUK.

When MTD for VAT was introduced, some returns were incorrectly captured, resulting in either large refunds or large liabilities that were not due. We have yet to see if the hoped-for improvement in record keeping due to digital records has come to fruition. Over reliance on the software can still lead to bookkeeping errors though. For example, the software may note from previous postings that a payment to, say, NFU is for insurance (other insurance providers are available!) and auto codes the transaction accordingly; but in fact the payment is a pension contribution. The unwary may over claim expenses.

I am sure that most of us have experienced some issue with tax return software due to an unusual situation. Software programmers must adhere to HMRC's approved calculation steps and because of limitations with this, in certain circumstances, we cannot always get our final computation to come to the figure we know is correct. I came across one the other day where due to foreign tax credit relief the preparer wanted to use the personal allowance against a different source than the software was choosing. Not a return you want to deal with late in January – back to an old-fashioned paper return.

Don't get me wrong, I was an early advocate of software for accounting and for a while actually worked for a firm selling accounting software packages. I am grateful for the way computers have improved our working practices, but we have to be careful we don't go too far too soon, and that software is subjected to rigorous testing in multiple situations. I am thinking particularly of HMRC and MTD for Income Tax. Taxpayers and agents are more likely to embrace this positively if they can have confidence that the experience will be glitch free.

No matter what software we use, there is no substitute for a knowledgeable tax professional looking over the end computation and being certain that the correct result has been arrived at.

Talking of knowledgeable tax professionals, I must congratulate all our students who passed their November exams and to our prizewinners. Well done all.

And finally let's not allow machines to take over our lives. Which one of us has not stood in the middle of the kitchen shouting at the equipment: 'Which one of you is beeping?!' Is that just me?

ATT IMPACT IN 2023

Membership

9,830

total membership

New members

582

new members welcomed

Students

7,024

total students

New students

946

new students registered

Exams

3,650

ATT exams sat

Meeting

38

in-person events by the Branch Network, along with 11 other events including joint events with CIOT

Learning

51

webinars to help members and students continue their professional development

Events

7,000+

attended our events and webinars

Published

40

technical articles

Representing

35

HMRC groups on which ATT is represented

Responding

33

technical submissions

Speaking out

45

press releases issued

In the news

38

occasions we featured in the mainstream media

In Parliament

8

times we were cited in parliamentary debates and reports

Facing the challenge

Thresholds in the tax system

We consider the difficulties that the main tax threshold rules cause to individuals and small businesses, and how future tax policy can address these challenges.

by Bill Dodwell

Thresholds are an integral part of the tax system. They apply to exempt some taxpayers from a charge; define when tax is levied, or a higher rate applies; or define when an allowance or other benefit is withdrawn. Thresholds can define administrative savings (those with income, gains or sales below a threshold may not need to register and comply with a tax or may be able to file in a simpler way). Yet thresholds also present challenges for taxpayers. Going over a threshold may result in very high tax costs, as well as administrative costs and burdens.

The Tax Law Review Committee has recently published a discussion paper 'Thresholds in the tax system: policy and administrative considerations', authored by Sally Campbell, Bill Dodwell and Patricia Mock (tinyurl.com/5x9xfces). It discusses the difficulties in the main tax threshold rules as they affect individuals and small businesses, and considers a range of principles which might assist in the design of tax policy in the future. The paper focuses on the additional thresholds layered onto the basic system, such as the tapering of the personal allowance for incomes of over £100,000.

There is a distinction between a threshold where a higher tax rate applies if the threshold is exceeded, and one where exceeding the threshold means that the taxpayer is worse off overall:

- The tapering of the personal allowance for incomes of over £100,000, where a higher marginal tax rate applies across a band of income, is an example of an unexpected higher effective rate.
- The removal of tax free childcare, the threshold for which is also £100,000, is an example of where going over that £100,000 threshold makes the individual materially worse off. Put another way, the marginal tax rate on a band of income is over 100%.

Economists refer to the former as kinks and the latter as notches.

The discussion paper has seven general recommendations (see ***General recommendations***) and specific recommendations on childcare costs, VAT, savings and pensions.

The VAT registration threshold

There are a number of well-known problematic thresholds in the UK tax system. The VAT threshold acts as a barrier to growth, as evidenced by the Office of Tax Simplification in 2017 and, more recently, by the Office for Budget Responsibility.

Too many businesses have sales just below the £85,000 limit, as their owners know that increasing sales will reduce their profits and bring additional administrative burdens. The number just below the registration threshold has increased every year, no doubt due to inflation; the Office for Budget Responsibility predicts that it will reach 44,000 in two years. Introducing an allowance, or rebate, for businesses which go over the threshold could help to promote economic growth.

Evidence from Finland shows that work is also needed on VAT administration; perhaps this could in part be eased when Making Tax Digital for Income Tax has been introduced, such that most businesses keep digital records. The variability of the VAT base is unlikely to change, though. Despite academic encouragement, the public (and thus politicians) seem keener on yet more VAT exemptions.

Child benefit and childcare thresholds

The high income child benefit charge brings a high and variable tax rate on income between £50,000 and £60,000. A parent with one child faces a marginal income tax and national insurance rate of 54% in this band, which rises to 63% where there are two children; the rate for three children is 71%. If the parent is also liable for student loan repayments, an extra 9% boosts the effective rate to 63%, 72% and 80%. The charge does raise some £3 billion to £4 billion annually, though, so it is understandable that the government has chosen to retain it for over a decade.

Having a variable taper rate which increases with the number of children does not help individuals to understand how they are affected by earnings over £50,000. A very high taper rate is more likely to discourage some individuals from working. However, we do not have any useful data on the actual impact. Do some people reduce their work, or do they simply accept a low return on income in the £50,000 to £60,000 band as part of building a career? How well do individuals understand the position? Anecdotes are naturally about individuals reducing their work and may not be helpful in understanding the full picture.

The paper recommends that a standard taper be used, both to get away from very high taper rates but also to be much clearer to affected parents. This would initially cost the exchequer tax money but could potentially boost the economy (and thus tax receipts) through more parents working.

An even more challenging threshold applies in respect of publicly funded nursery places, as well as tax-free childcare. Analysis by the Institute for Fiscal Studies (tinyurl.com/5t4mvjck), which includes the effect of income tax and national insurance, as well as the withdrawal of tax-free childcare and funded childcare hours, finds that:

> 'A parent with two children under three whose childcare provider charges England's average hourly rate for 40 hours per week would, after these reforms, find that their disposable income (i.e. earnings net of tax and childcare outgoings) falls by £14,500 if their pre-tax pay crosses £100,000. Disposable income would not recover its previous level until pre-tax pay reached £134,500, meaning a parent earning £130,000 would be worse off than one earning £99,000.'

There is no easy answer to this threshold, other than to consider making publicly funded nursery places a universal benefit. It would be administratively impossible to introduce a tax charge based on the value of nursery places; there is no mechanism to provide that data to HMRC (unlike child benefit where HMRC does at least know how much has been paid, since it is paid by HMRC). It would help to understand the scale of the issue if data were available on the numbers of affected parents.

Pension contributions

One of the suggestions routinely put forward by tax advisers is for an individual affected by these charges to consider making pension contributions, as a relatively small outlay at these marginal rates.

Yet the evidence to date suggests that few people are taking that advice. Data provided by HMRC under a Freedom of Information request shows no significant increase in pension contributions by those with income just below £100,000. See ***Average pension contributions 2020-21.***

Savings income

The savings allowance for basic and higher rate taxpayers was introduced in 2016, when interest rates were low. It saved significant administration, since banks and building societies no longer needed to deduct tax from interest payments. Savers benefited by up to £200 annually. HMRC estimates that in 2022-23, 12 million individuals benefited from the personal savings allowance, at a cost of £590 million. However, interest rates have risen, such that HMRC estimated in July 2023 that there would be an additional 1 million taxpayers liable to income tax on their savings in 2023-24 – a total of 2.7 million.

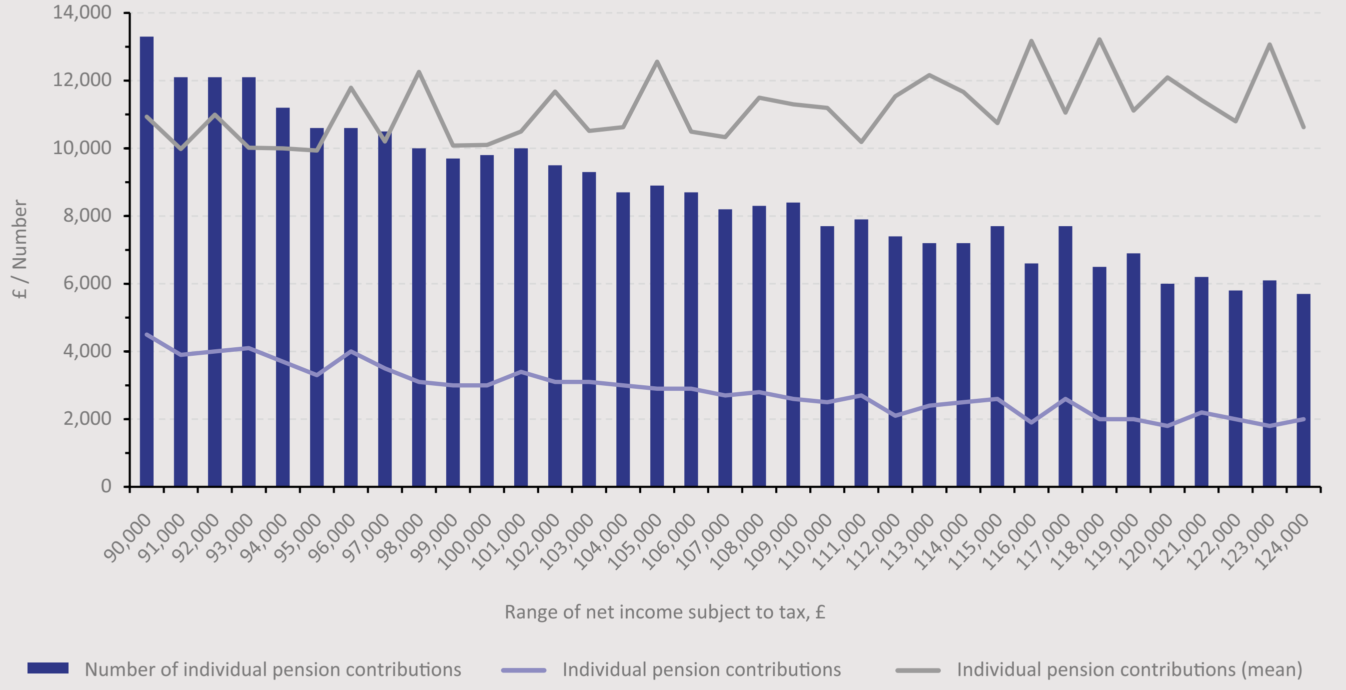
The design of the allowance is sub-optimal; it is in reality a zero rate but is expressed as an allowance. Some individuals with total income slightly above the higher rate threshold can face a very high marginal rate on their interest income, as the notional allowance is reduced to £500.

The starting (nil) rate on savings income up to £5,000 seems a completely untargeted relief. HMRC statistics show that in 2020-21, 635,000 taxpayers (out of 31.7 million) benefited from the savings rate. 538,000 of them had income from property and savings; there were 78,000 employees; 3,000 self-employed individuals; and 16,000 pensioners (out of about 7 million tax paying pensioners). Nowhere else is there a relief mainly benefiting those who are neither pensioners nor working. The paper recommends that the starting rate be abolished.

GENERAL RECOMMENDATIONS

1. Policymakers should take particular care to minimise (and ideally avoid completely) the occasions when exceeding a threshold makes a taxpayer noticeably worse off; i.e. the tax liability is greater than the additional income.
2. Policymakers should take care when setting taper rates not to create significant barriers to taxpayers increasing their income. In general, a lower taper rate is preferable, even though this will increase the numbers of taxpayers subject to the taper and receiving a benefit whilst also increasing the exchequer cost.
3. Research should be undertaken or commissioned by HMRC to understand better the impact of thresholds and higher marginal rates on different types of individual decisions. This could support better decisions on the rate and length of tapers, which at present appear arbitrary.
4. Policymakers should consider whether multiple events could occur at broadly similar income levels and ideally avoid the potential for multiple charges.
5. Policymakers should review thresholds and exemptions periodically to assess whether they continue to meet the policy intent. A standard review period of, say, five years should be established, and the result of the review announced. Where after a review policymakers decide not to increase a threshold or exemption (thus making more people liable to a charge, due to the impact of inflation), policymakers should indicate the additional numbers affected and the exchequer impact – just as is done when a new policy is introduced.
6. Policymakers should consider the impacts of future inflation when designing new thresholds or allowances. Compromises in design that might be accepted when few taxpayers are affected may not remain acceptable when applied to many more taxpayers.
7. Policymakers should keep administrative thresholds under review, in the same way as substantive thresholds. Whilst minimising administrative burdens is in principle desirable, there are cases where administrative thresholds have been set too high, such that insufficient information is provided routinely, when it may be done more cheaply and conveniently. This can introduce additional costs due to compliance checks or the lack of a suitable alternative reporting mechanism.

AVERAGE PENSION CONTRIBUTIONS 2020-21



Pensions

The fundamentals of our current system for taxing pensions were introduced in 2006, with the aim of having a single tax regime for all pensions. It has not lasted well. The initial offering of a very high annual limit on contributions (£225,000, rising to £250,000) simply meant that very high earners (whose contributions had been limited under previous regimes) saved huge amounts of tax.

The lifetime allowance started at £1.5 million and rose to £1.8 million. The subsequent picture was then one of significantly reduced annual and lifetime allowances, as chancellors tried to keep the annual costs of pensions under control. This has resulted in much greater complexity for higher earners.

Those in defined benefit schemes started to be hit by unknowable tax charges and those in defined contribution schemes started to cap their contributions (risking a lower pension fund) lest investment growth exposed them to an excessive 55% tax charge.

At the same time, there has always been an anomaly on death benefits, made much more obvious by the 2015 pension freedoms, which removed the requirement to buy an annuity. Where the pension holder died under 75, beneficiaries can inherit the fund (up to the lifetime limit) without a tax charge. This cannot be justified. About 30% of men and 18% of women die below 75. The 2023 and 2024 reforms certainly help higher earners by introducing much higher annual allowances, whilst still preventing those earning more than £360,000 from being able to participate (with a tapered reduction from £260,000).

Abolishing the lifetime allowance has still preserved the death benefit anomaly, subject to a new limit equivalent to the former lifetime allowance. A cap on the tax-free lump sum has been introduced for those with various forms of protection when the lifetime limit was cut. The complexity of the annual allowance for defined benefit schemes remains, albeit affecting fewer people.

At the same time, lower-paid individuals do not have sufficient pension savings, despite the very successful introduction of automatic enrolment.

The paper recommends that a broad review of pension tax relief is needed to end up with a system that is easier to understand and to administer. The Labour party has said that if elected to government it would reintroduce the lifetime allowance. Let us hope that any reintroduction takes place as part of a wider review.

Administration

There are a whole range of administrative thresholds, which typically exempt taxpayers from needing to supply information to HMRC or filing a return. These limits need to be kept under review, just as for substantive limits.

However, care needs to be taken not to set filing thresholds too high, as this could be counter-productive, in that HMRC might need to find less convenient ways to obtain information. A particular example is the planned removal of the requirement for individuals with PAYE income of any level to file Self Assessment income tax returns. This is not thought to be a very large number – probably less than 500,000 people in the context of 12.5 million currently filing Self Assessment returns. Many of those affected will still need to provide information to HMRC or make claims. The tax return system is well-known; finding different ways to exchange information with HMRC could well be less convenient and more prone to error.

In conclusion

Designing effective thresholds in the tax system will never be easy; there will always be trade-offs between exchequer costs, complexity and work incentives. The authors and the Tax Law Review Committee hope that these general principles will help future policymakers.

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

Scottish taxes
Degrees of devolution

We consider the range of tax powers devolved to Scotland, the 2024/25 Scottish Budget proposals, and the progress of continuing devolution of taxes.

by Charlotte Barbour, Chris Thorpe and Chris Young

Key Points

What is the issue?
This article outlines the range of tax powers devolved to Scotland, the 2024/25 Scottish Budget proposals, the wider funding package of which Scottish taxation is a part, the progress with the devolution of taxes and recommendations put forward to build a better tax system in Scotland.

What does it mean to me?
'Scottish taxes' can be grouped under three broad categories, reflecting the varying degrees of control that the Scottish Parliament has over each: fully devolved, partially devolved and assigned taxes.

What can I take away?
Scottish income tax is now well established, as are the land and buildings transaction tax and the Scottish landfill tax. However, other Scottish taxes are at varying stages of implementation, including aggregates tax, air departure tax, VAT and local taxes.

This article outlines the range of tax powers devolved to Scotland, the 2024/25 Scottish Budget proposals, the wider funding package of which Scottish taxation is a part, progress (or otherwise) with the devolution of taxes that are not yet implemented, and recommendations that CIOT and ICAS have recently put forward to build a better tax system in Scotland.

Background

It is nearly ten years since the independence referendum of September 2014 led to the creation of the Smith Commission, which proposed the devolution of additional powers to the Scottish Parliament (see tinyurl.com/5dfx98uh). The Commission made a number of fiscal recommendations aimed at strengthening the financial responsibility of the Scottish Parliament. These were enacted in the Scotland Act 2016, building on the tax powers devolved by the Scotland Acts of 1998 and 2012.

'Scottish taxes' can be grouped under three broad categories, reflecting the varying degrees of control that the Scottish Parliament has over each.

1. Fully devolved taxes

Fully devolved taxes are where responsibility for the tax rests exclusively with the Scottish Parliament, such as taxes on land transactions, landfill, aggregates and air passengers (although the latter two have yet to be made fully operational).

The Scottish Parliament also sets the rules for local authorities to collect two local taxes, council tax and non-domestic (business) rates. It can legislate for new local taxes, as is currently happening with plans for a transient visitor (tourist) levy.

2. Partially devolved taxes

Partially devolved taxes are where responsibility is shared with the UK Parliament. This refers to Scottish income tax, where the UK is responsible for setting the tax base, defining taxable income and the administration and collection of income tax.

The Scottish Parliament can set income tax rates and bands beyond the personal allowance for Scottish income taxpayers and has since 2017. Scottish income tax rates apply to non-savings, non-dividend income (which is an interesting way to describe earnings, pensions and property income). 'Scottish taxpayers' are based on a test of residence.

3. Assigned taxes

Assigned taxes are where legislation and administration remain at the UK level but where a portion of tax receipts are allocated to the Scottish budget; for example, as proposed with VAT.

The 'Scottish taxes' are complicated and not always clearly understood, although the aim is to bring greater financial accountability. Lord Smith said in 2014 that: 'A challenge facing both Parliaments is the relatively weak understanding of the current devolution settlement. This is not surprising, given what is a complex balance of powers. With the enhancement of these powers, improved understanding is all the more critical to sustaining the trust and engagement of the public.'

The CIOT continues to call for better public awareness in relation to these tax powers so that taxpayers can better understand where responsibility and accountability rests.

Some of the devolved taxes have yet to be implemented, whilst others are well established. Two of the fully devolved taxes – the land and buildings transaction tax and the Scottish landfill tax – were legislated for in the earlier Scotland Act of 2012 and implemented with effect from 1 April 2015.

The Scottish Budget on 19 December 2023 (see tinyurl.com/32c2hr6a) played safe with the rates for these taxes. The land and buildings transaction tax rates remain the same as in the current tax year (2023/24), while Scottish landfill tax rates are to be revised so that they maintain consistency with planned UK landfill tax increases.

A more contentious aspect of the land and buildings transaction tax regime is the tax charged when a person owns more than one residential property – the additional dwelling supplement. This is charged at 6% of the whole transaction price for properties costing more than £40,000.

Scottish income tax

The highest profile announcements in the December 2023 Budget concerned Scottish income tax, where the Scottish government further increased the top rate of tax and introduced a new 'advanced' rate of tax. See ***Scottish income tax policy proposals 2024/25***.

The proposals for a sixth 'advanced' rate of income tax were widely trailed, the proposal having first gained traction during the SNP leadership contest of early 2023. The Scottish government also announced that the starter and basic rate bands would increase by inflation.

As a result of these changes, the CIOT noted the following points in its Budget commentary (see tinyurl.com/zw83k6tj):

- Scottish income taxpayers start to pay more income tax compared with the rest of the UK with an income over £28,867.
- Scots with earnings under £28,867 will pay up to £23.06 less tax annually than those in the rest of the UK.
- Introducing a 45% rate of income tax on income between £75,000 and £125,140 will see Scots in this band pay up to £1,871.13 more than in 2023/24; and up to £5,231.81 more than someone on the same salary in other parts of the UK in 2024/25.
- Scots with income between the Scottish and UK higher rate thresholds will continue to pay a higher marginal rate of tax on this slice of income, compared to the rest of the UK, because lower rates of national insurance are tied to the UK higher rate threshold.

These comparisons will change if the UK Budget on 6 March 2024 revises UK income tax rates. The Scottish government has suggested that it will not change its income tax plans in the event of UK changes. However, if it were to do so, it would have a limited timeframe to implement these changes.

The mechanics of setting Scottish income tax rates (see tinyurl.com/37unt7tx) are different from those at Westminster. This is because under Scotland Act 1998 s 80C(6), the Scottish rate resolution which enacts the government's tax plans must be passed before the start of the fiscal year to which it refers.

It also sits within the Scottish parliamentary Budget Bill process. The Bill goes through three stages of scrutiny in the Scottish Parliament; and the Parliament's Standing Orders require the motion for the rate resolution to be moved and agreed to before the commencement of Stage 3 proceedings for the Bill. Regardless of the politics, the processes make it difficult to make late amendments to the Scottish rates of income tax.

It remains to be seen what may happen following the UK Budget on 6 March 2024 because, inevitably, a key measure of Scottish income tax rates is a comparison with the neighbours. Concerns have been expressed in some quarters about increasing divergence in tax payable between Scotland and the rest of the UK.

The Scottish Fiscal Commission has noted that the new income tax rate of 45% for those earning above £75,000, along with increasing the top rate by 1%, are estimated to raise a total of £82 million in 2024/25. This figure includes an adjustment for an assumed behavioural response, without which revenues would be £118 million higher.

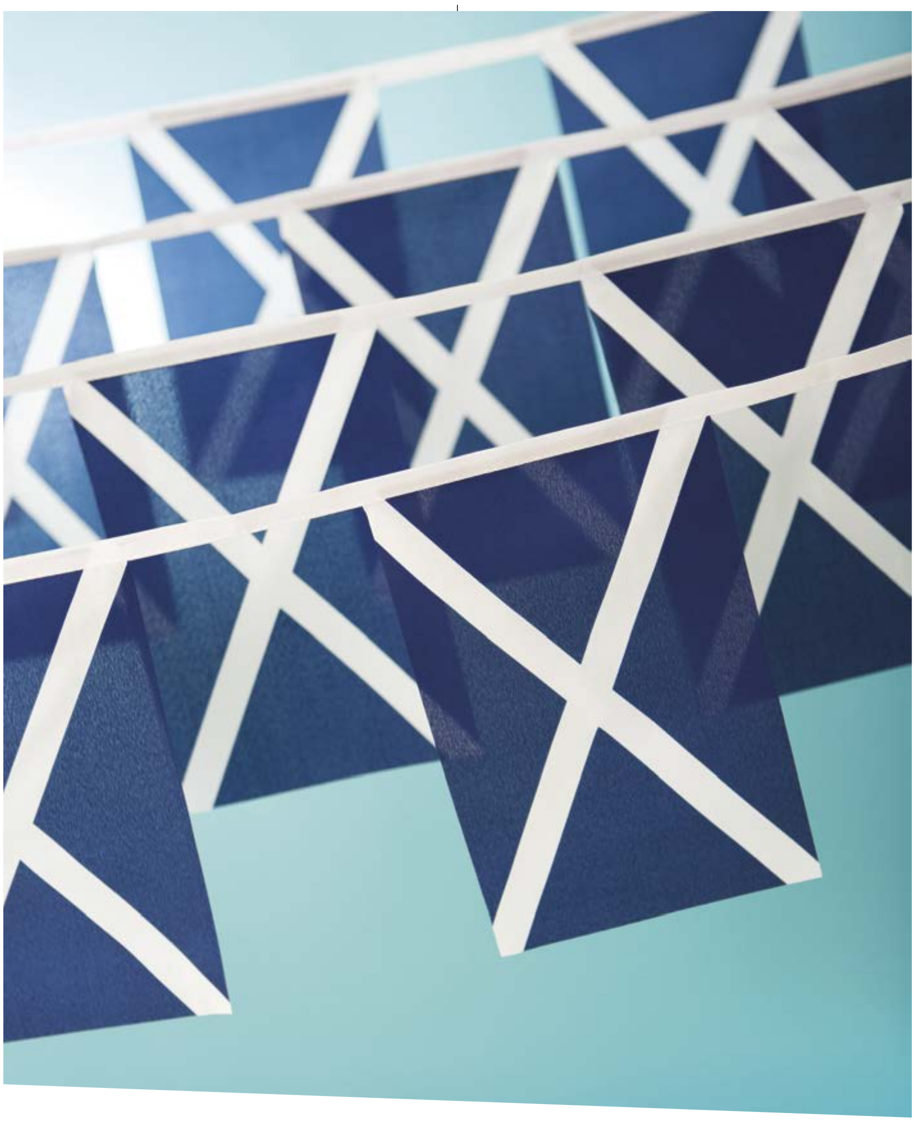
Tax is only part of the funding package

The most significant element of funding for the Scottish government still comes from the block grant, which is based on the Barnett Formula. Other less visible elements also have a significant effect on the Scottish Budget; in particular, the impact of the block grant adjustments

SCOTTISH INCOME TAX POLICY PROPOSALS 2024/25

Band	Income range	Rate
Starter rate	£12,571 – £14,876*	19%
Basic rate	£14,877 - £26,561	20%
Intermediate rate	£26,562 - £43,662	21%
Higher rate	£43,663 - £75,000	42%
Advanced rate	£75,001 - £125,140	45%
Top rate	Over £125,140**	48%

* Assumes individuals are in receipt of the standard UK personal allowance.
** Those earning more than £100,000 will see their personal allowance reduced by £1 for every £2 earned over £100,000.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both in the way they work and their timing.

These form part of the fiscal framework (see tinyurl.com/mrxres9v) – the intergovernmental agreement – that underpins the mechanics of devolved funding, which was renegotiated in August 2023. Block grant adjustments detract from the notion of accountability because they lack visibility, and they can be difficult to understand.

While the recently renegotiated fiscal framework has extended the Scottish government's ability to borrow, this power remains limited and is designed to assist with managing the impact of income tax reconciliations (see tinyurl.com/jjuvxnfh), rather than as a facility to support government spending. The Scottish government must have a balanced budget each year.

Future 'Scottish' taxes

Scottish income tax is now well established, as are the land and buildings transaction tax and the Scottish landfill tax. However, other Scottish taxes are at varying stages of implementation.

Aggregates tax

The Aggregates Tax and Devolved Taxes Administration (Scotland) Bill was introduced to the Scottish Parliament in November 2023 and makes provision for a devolved replacement for UK aggregates levy, to be known as the Scottish aggregates tax. Once enacted, the tax is expected to be introduced from 1 April 2026 and will be fully devolved, with its administration overseen by Revenue Scotland.

The Scottish aggregates tax is unique amongst devolved taxes in that there will be some interaction with its UK counterpart on cross-border supplies and could thus affect businesses throughout the UK.

Air departure tax

The Air Departure Tax (Scotland) Act 2017 is not yet operational. Until a solution can be found, UK-wide air passenger duty rates continue to apply in Scotland.

VAT and the assignment of a proportion of 'Scottish VAT'

The Scotland Act 1998 (inserted in 2016) allows for the first 10p of standard rate VAT and the first 2.5p of reduced rate VAT raised in Scotland to be assigned directly to the Scottish Budget. However, problems remain with the lack of a suitable model for identifying VAT attributable to Scotland, the lack of policy autonomy that would be afforded to the Scottish government from a policy of 'assignment', and the introduction of additional risks to the Scottish Budget.

The Chair of the Scottish Parliament's Finance and Public Administration Committee, which held a roundtable session on this in November 2023 (see tinyurl.com/2edjsku4), summed up with the question: 'How long can you flog a dead horse? There is no enthusiasm certainly for assignment anyway.' Progress updates have been promised, but it remains to be seen whether the policy will proceed.

Local taxes

Local taxes offer a mix of substantial sums from council tax and non-domestic rates, and lesser sums from sources such as a workplace parking levy (enacted in the Transport (Scotland) Act 2019) or a 'tourist tax' (The Visitor Levy (Scotland) Bill having been introduced to the Parliament in May 2023). The latter two each provide a framework for levying a tax, allowing any local authority that wishes to then be able to implement the tax in their area.

A more contentious and longstanding issue relates to council tax, with calls from many parties in Parliament that the tax should be reformed or, at the very least, that the valuations on which it is based (which date back to 1991) be updated.

The Scottish government's 2021 cooperation agreement with the Scottish Greens included a commitment to look at options for reform. However, the surprise announcement at the SNP conference in October 2023 that council tax would be frozen in 2024/25 (since confirmed in the Scottish Budget) cast further doubt on the issue of reform. There have been suggestions that a timetable for change will be announced in the early part of 2024 but, at the time of writing, reform remains in the long grass.

Other proposals that the Scottish government says it is examining and which were referenced in the Budget include:

- a building safety levy to fund the Scottish government's Cladding Remediation Programme (currently subject to consultation);

- a cruise ship levy;
- a carbon emissions land tax;
- the reintroduction of a non-domestic rates public health supplement for large retailers; and
- an infrastructure levy.

Much has been accomplished

Since the Smith Commission delivered devolved tax proposals to the Scottish Parliament, much has been accomplished. There is now a Scottish government directorate for tax, which has sought to open up tax policy making to a process of consultation and engagement, setting out a Framework for Tax (see tinyurl.com/2jddkhyd), and working with stakeholders on the development of legislation (for instance, with its recent work on aggregates tax).

The decision to establish a Tax Advisory Group last summer was done with the intention of developing longer-term strategic thinking around tax policy (see tinyurl.com/ynm6kuac). The Scottish Parliament has also passed several tax Acts and has established new institutions such as:

- Revenue Scotland to collect the fully devolved taxes;
- the Tax Chamber in the First-tier Tribunal for Scotland to hear cases involving the fully devolved taxes; and
- the Scottish Fiscal Commission to produce Scotland's official, independent economic and fiscal forecasts.

The machinery of government has also adapted to tax devolution, setting up operating agreements (the fiscal framework) between the UK and Scottish governments, and agreements between HMRC and the Scottish government to enable the collection of Scottish income tax.

Building a better tax system

Although much has been accomplished, there are some areas that could be further improved. In December 2023, the CIOT and ICAS published 'Building a better tax system: progress report' (see tinyurl.com/mnufe2jn), setting out recommendations for the remainder of the 2021-26 Scottish Parliament. These include the following.

Strengthening decision making

The Scottish Parliament and Scottish government should work together to review whether the current processes for scrutinising tax legislation are as good as they can be. This should include consideration of the merits of a Scottish Finance Bill. The goal of this work should be to ensure that devolved tax legislation can be appropriately considered, and that technical changes and anomalies can be identified and addressed in a timely manner, ideally through primary rather than secondary legislation.

The first report called for the reconvening of the Devolved Taxes Legislation Working Group to assist in this work. This recommendation remains outstanding. The issues that the group was set up to consider remain, such as a lack of parliamentary time for tax scrutiny, the need for legislation to be regularly reviewed and kept up to date, and the ability to consult with outside experts.

> **If further taxes are to be devolved or assigned, there need to be robust and consistent processes underpinning them.**

Making the case for new taxes

There should be a consistent approach to tax policy making, with all proposals subject to consultation and engagement with relevant stakeholders. This can help to ensure that tax policy is developed in a consistent and strategic manner, taking into consideration interactions with the wider Scottish and UK tax systems. Effective stakeholder engagement will also help to ensure that taxes operate as intended, with any operational issues identified and addressed.

The Scottish and UK governments should use the Smith Commission's tenth anniversary in 2024 to review the package of powers delivered to Holyrood. Efforts to overcome the challenges that have prevented the introduction of some of these taxes should be intensified. If the difficulties cannot be resolved for good reasons, a statement to that effect should be made to provide certainty and transparency to decision makers.

Improving public understanding

More effort is needed to raise awareness of how Scotland's tax system works. Taxpayers need to be able to understand their rights and responsibilities – especially low-income taxpayers, who may be unable to afford professional advice.

In summary

Much has been done to strengthen the Scottish Parliament's responsibilities over tax but there is scope for improvement. If further taxes are to be devolved or assigned, there need to be robust and consistent processes underpinning them.

Questions remain about the suitability of the legislative processes for making and amending tax law and a lack of general understanding of Scottish taxes continues to be a cause for concern. But a willingness to consult and engage with stakeholders, including the tax profession, means we can have confidence that our expertise and influence can be contributed.

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Is it really a building?
The true meaning of 'plant'

We consider the recent tribunal cases of *Gunfleet* and *Acorn Venture*, which have shed new light on some core capital allowance issues.

by Ray Chidell

Two capital allowances cases reported at the end of last year address technical issues that are perennially relevant for plant and machinery claims, even though few practitioners will be concerned with the particular assets being considered.

In the Upper Tribunal, the case of *Gunfleet Sands Ltd v HMRC* [2023] UKUT 260 (TCC) concerned expenditure of some £48 million on offshore windfarms, while the First-tier Tribunal case of *Acorn Venture Ltd v HMRC* [2023] UKFT 995 (TC) considered allowances for more modest expenditure on 'camping pods'.

Between them, these cases shed new light on some core capital allowances issues, including all of the following:

- What is meant by expenditure 'on the provision' of plant?
- When deciding if something is plant, is it appropriate to look at the single entity or at the constituent parts?
- What is the capital allowances meaning of 'building'?
- What is the meaning of 'fixed structure'?
- How do the relieving rules for moveable buildings work?

This article addresses each of these questions in turn, showing what the two cases have added to our previous understanding of the issues. All statutory references are to the Capital Allowances Act 2001.

Expenditure on the provision of plant

Plant and machinery allowances may be due where a taxpayer incurs capital expenditure 'on the provision of plant or machinery' (s 11(4)(a)). The term 'on the provision of' is then echoed elsewhere in the Capital Allowances Act 2001.

This term has no statutory definition but has been considered in a number of recent cases.

> **There can often be uncertainty about whether the test ('Is it plant?)' has to be applied to an entire asset or to its constituent parts.**

In the case of *Urenco Chemplants Ltd v HMRC* [2022] EWCA Civ 1587, it was common ground between the parties that expenditure on the provision of plant or machinery included installation costs but did not include 'expenditure more remote in purpose'.

The *Gunfleet* case – at both the First-tier Tribunal in 2022 and the Upper Tribunal in 2023 – took a close look at the meaning of 'on the provision of' in the context of preparatory studies for a large windfarm project. The First-tier Tribunal held that some of these studies qualified but others did not, depending on whether they were fundamental to the functioning of the windfarms or turbines.

After both sides appealed, however, the Upper Tribunal ruled in HMRC's favour, holding that this interpretation was too broad: 'We agree with HMRC that "on" does not mean "in connection with" or "directly related to" but signals a closer connection.'

The Upper Tribunal drew a distinction between expenditure on the provision of plant and expenditure on design that merely put the company in the position to provide plant:

> 'None of the studies were provision of the plant … in that expenditure on them was not expenditure on the actual making or construction of the plant, its actual installation or actual transport of it. Nor were they expenditure of a similar nature.'

The tribunal held that as the design of the plant happens when 'the final form and shape of the plant is still to be determined', it would be odd to refer to that design as being the provision of plant. Drawing together principles from earlier case law, the tribunal summarised the position as follows:

- 'On the provision of' may include the installation and transport of

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Key Points

What is the issue?
Two capital allowances cases reported at the end of last year address technical issues that are perennially relevant for plant and machinery claims, even though few practitioners will be concerned with the particular assets being considered.

What does it mean to me?
Among other issues, the cases address what is meant by expenditure 'on the provision' of plant and, when deciding what is plant, whether it is appropriate to look at the single entity or at the constituent parts.

What can I take away?
The cases set out the capital allowances meaning of 'building', including the meaning of 'fixed structure' and the relieving rules for moveable buildings.

plant (and, in principle, of other similar expenditure) so that the plant can be used for the purposes of the trade.

- It can also include construction of the plant.
- However, it is not the case that any expenditure that the taxpayer needs to incur in order for the plant to be provided is automatically allowed.
- It is helpful to ask whether the expenditure was on the provision of plant or (as in *Gunfleet*) on something else.
- The fact that some element of construction might precede the completion of the plant by many years would not be any bar, in principle, to including those earlier construction costs.

Single entity or constituent parts

There can often be uncertainty about whether the test ('Is it plant?') has to be applied to an entire asset or to its consituent parts.

In *Gunfleet*, the practical relevance of the point was explained by the Upper Tribunal as follows:

> 'Expenditure relevant to the general configuration or layout of the wind turbines on the site could more readily be argued by the taxpayers to be "on the provision of plant" if the wind turbines and cabling collectively were a single item of plant.'

The First-tier Tribunal had found that the 'generation assets' (more clearly defined by the Upper Tribunal to mean the wind turbines and the connecting cables collectively) constituted a single item of plant. The Upper Tribunal was critical of many aspects of the First-tier Tribunal decision but ruled that as the fact-finding tribunal, it had been entitled to reach its conclusion on this point.

The author's view is that HMRC is too keen to break assets down in this way. In relation to ticket barriers at a large transport hub, for example, the author has seen HMRC seeking to separate out the physical gates from the mechanical works that cause those gates to open when a passenger presents a ticket. Yet a car (to give a different example) is clearly plant, and it would be absurd to apply the plant test separately – perhaps to the roof of the car, the steering wheel, the floor covering, and so on. It may well be that further case law will be needed to provide greater clarity on the correct approach.

The meaning of building

The question of whether a given asset is a building is of fundamental importance for capital allowances purposes, most obviously for structures and buildings allowances but also for the purposes of claiming plant and machinery allowances. Our focus here is only on the latter.

Section 21 states that 'expenditure on the provision of plant or machinery does not include expenditure on the provision of a building'. It then gives a broad definition of 'building' to include certain specified assets (e.g. walls and floors) but also any asset that is incorporated in a building, or that is in the building and is of a kind normally so incorporated.

So the definition is very wide. It is, however, subject to s 23, which provides a whole host of exceptions, and which therefore allows substantial plant and machinery claims for property fixtures.

In *Acorn Venture*, the First-tier Tribunal had to consider whether two different types of 'camping pod', used by a company providing adventure holidays, constituted plant or machinery. Most of the pods were for children and were fairly basic, with an electric hook-up but no plumbing. The remaining pods, for the teachers accompanying the children, did have some plumbing facilities.

In deciding (narrowly) that the more basic pods were not buildings, the First-tier Tribunal noted the following:

- They did not have walls and roofs in a traditional sense, and did not look like a conventional building (looking, rather, 'like an upturned boat').
- They did not provide living accommodation as such, but rather offered 'only a very crude place to sleep, such that whilst they provide shelter in a basic sense, in our view the shelter offered whilst greater than a tent is not significantly so'.
- They performed the same function as canvas tents, being 'non-permanent accommodation akin to the tents in which the children otherwise sleep'.
- The provision of electricity did not change this conclusion (not least because the tents also had electricity).

However, the tribunal reached ('on balance') the opposite conclusion in relation to the teacher pods, as:

- They were fixed to the ground because of the plumbing.
- They provided more facilities for living with a greater level of comfort (fewer occupants and additional facilities, including a basic kitchenette).
- The substance of the shelter offered to the occupants was therefore far greater, such that these pods were 'all but living accommodation providing sufficient security and shelter'.

By comparing and contrasting the two types of camping pod in this case, and by jumping narrowly to opposite conclusions on the two, the First-tier Tribunal has provided some useful indicators of where tax tribunals may draw the line between what is and is not a building.

Structures and fixed structures

The same case also considered whether the pods were fixed structures. This is relevant as s 22 provides a bar on claiming plant and machinery allowances for most fixed structures, though again subject to the relaxing provisions of s 23.

The First-tier Tribunal was clear that both types of camping pod were structures, being (as the tribunal put it) 'assembled from parts to form a solid object'. (That is not a statutory definition, however, and little weight should be given to it: a watch or a laptop would meet that definition but neither would be a structure. Nevertheless, it was apparently uncontroversial in this case that all the camping pods were structures.)

The question of whether the pods were *fixed* structures was more difficult. Once more, the First-tier Tribunal reached different conclusions in relation to the teacher pods and the children's pods, and it is again instructive to see what led to those different outcomes.

In relation to the children's pods, the tribunal referred back to the Court of Session ruling in *Anchor International Ltd v CIR* [2004] ScotCS 281. The *Anchor* case had found that a huge synthetic carpet on a five-a-side football pitch was plant, upholding the decision of the Special Commissioners that the carpet was not a fixed structure:

> 'Whatever "fixed" means in the context of the definition of structure, a carpet resting on the ground, however heavily weighed down with sand, is not fixed to anything. The fact that it cannot be moved as a whole or even in the same size rolls in which it was installed does not mean that it is fixed.'

In *Acorn Venture*, the First-tier Tribunal found that the children's pods were not fixed as they were 'considerably less "fixed" than the pitches in *Anchor*':

> 'It is right that they are heavy, but they rest under their own weight on concrete block and beams and are anchored only for safety… From the pictures, we saw it was possible to see under the pods from all angles and any anchor was considerably less substantial than [the weight of sand holding down the synthetic carpet in *Anchor*].'

The teacher pods, by contrast, were fixed as a consequence of their plumbing facilities. Each was securely attached to a foul water drain, which meant that each had to be in a fixed place with access to the underground drain 'and then attached in a way which had a degree of permanence'.

Moveable buildings

If an asset is a building or structure, caught by s 21 or s 22 respectively, allowances will be denied unless the asset is rescued by one of the exceptions in s 23. Section 23 is broad in its scope, including in particular relaxations for integral features (e.g. electrical, water and heating systems) and for a wide range of particular assets given in 'List C'.

For the children's pods, the relieving provisions of s 23 were not needed. The First-tier Tribunal had already determined that the pods were not buildings (and were therefore not caught by s 21) and were not fixed structures (and were therefore not caught by s 22). Expenditure on these pods could therefore qualify for plant and machinery allowances as long as the pods were plant on ordinary case law principles (which define the concept of plant very widely) without having to rely on s 23.

The teacher pods, by contrast, had been held to be fixed structures, and were therefore caught by s 22. It followed that expenditure on these could only qualify if the s 23 restrictions came to the rescue. The First-tier Tribunal had also held that the teacher pods were buildings, which had a double effect: on the one hand, it meant that allowances were also barred by s 21 (the restriction for buildings); but on the other hand, it meant that item 21 at List C could be considered, potentially overriding both restrictions. Item 21 applies to 'moveable buildings intended to be moved in the course of the qualifying activity'.

Although the First-tier Tribunal had found that the teacher pods were fixed structures, it saw no contradiction in finding that they were also moveable buildings. The tribunal found that planning permission to move them would almost certainly be given, and the fact that costs would be incurred did not affect the question of whether they were moveable. The fact that the sanitary drainage connection would need to be removed was not 'sufficient to preclude a conclusion' that the pods were moveable. Furthermore:

> 'Nor do we consider the fact that the pods required a forklift truck to move them short distances and a lorry and trailer to move them further precludes a conclusion that they are moveable. HMRC accept that a builder's Portakabins will be moveable. We can see no material difference in the complexity of the requirements and cost of movement of a builder's Portakabin to the movement of a teacher pod.'

On this basis, the teacher pods were held to be moveable.

HMRC nevertheless won the appeal on the teacher pods on different grounds, persuading the First-tier Tribunal that there must be (emphasis added) 'an evidenced intention to move moveable buildings in the course of a qualifying activity *in the period of claim*'. This wording is ambiguous but from the context it seems clear that what is required in the period of claim is the intention to move; there is no requirement that actual movement should take place in that period. The company had demonstrated no such intention during the period, so its claim for annual investment allowances was denied.

HMRC did concede, however, that a later claim to writing-down allowances could succeed if the intention demonstrably changed in future.

(A later claim for annual investment allowances would not be possible, as s 51A(2) requires claims to be for the period in which the expenditure was incurred.)

Finally, and rather incidentally, HMRC sought to argue that there was a distinction between an intention 'in the course of' and 'for the purposes of' the qualifying activity. The First-tier Tribunal was not persuaded by this, finding it difficult to discern a substantive difference between the two expressions.

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Property VAT
Option to tax rules

We emphasise the importance of the option to tax procedures for a business with an interest in property because an election, once made with HMRC, remains in place for 20 years.

by Neil Warren

A well-known English dictionary defines the word 'option' as 'the power or right to choose'. In the mysterious world of VAT, the option to tax legislation for land and property is unique: it is the only situation when a supplier has the opportunity to charge 20% VAT on their income when it would otherwise be exempt. In other words, a taxpayer has – back to my dictionary – the power or right to choose to opt or not.

In this article, I will consider the key issues with the legislation and dispel some common myths.

Two stages: decision and notification

A successful option to tax election with HMRC requires two separate stages to be carried out:

- The business has **decided** that it is in its best interest to opt to tax a building or plot of land.
- Within 30 days of making that decision, the option is **notified** online to HMRC at optiontotaxnationalunit@hmrc.gov.uk

Most elections will be notified to HMRC on form VAT1614A. However, if a business has earned past exempt income from the building in question, it might need to get HMRC's permission to opt and will therefore complete form VAT1614H.

A common situation occurs when a business has decided to opt to tax a property – claiming input tax on expenses and charging VAT on rental income – but has failed to notify HMRC of its decision. The oversight is usually identified many years later, often when a building is being sold and the buyer's advisers ask to see evidence – quite rightly – of the seller's election. HMRC will usually allow a backdated election if it is given proof that the decision-making stage was carried out; i.e. it was an oversight with the paperwork that caused the problem,

BILL AND BEN: SHOULD THEY OPT TO TAX?

Bill trades as a computer wholesaler and has purchased a warehouse for £300,000 plus VAT, which will be used for his trading activities. There is no need for Bill to make an option to tax election; he can claim input tax of £60,000 because he is wholly using the warehouse to make taxable sales. The fact that the previous owner opted to tax is irrelevant.

Ben trades as a computer consultant and has purchased a two-floor office block for £400,000 plus VAT. He will trade from the ground floor and rent out the first floor to a firm of accountants. If Ben opts to tax the property, the rental supplies to the accountants will be standard rated rather than exempt. He will therefore avert a partial input tax block on the £80,000 VAT paid on the building cost because there are no partial exemption issues.

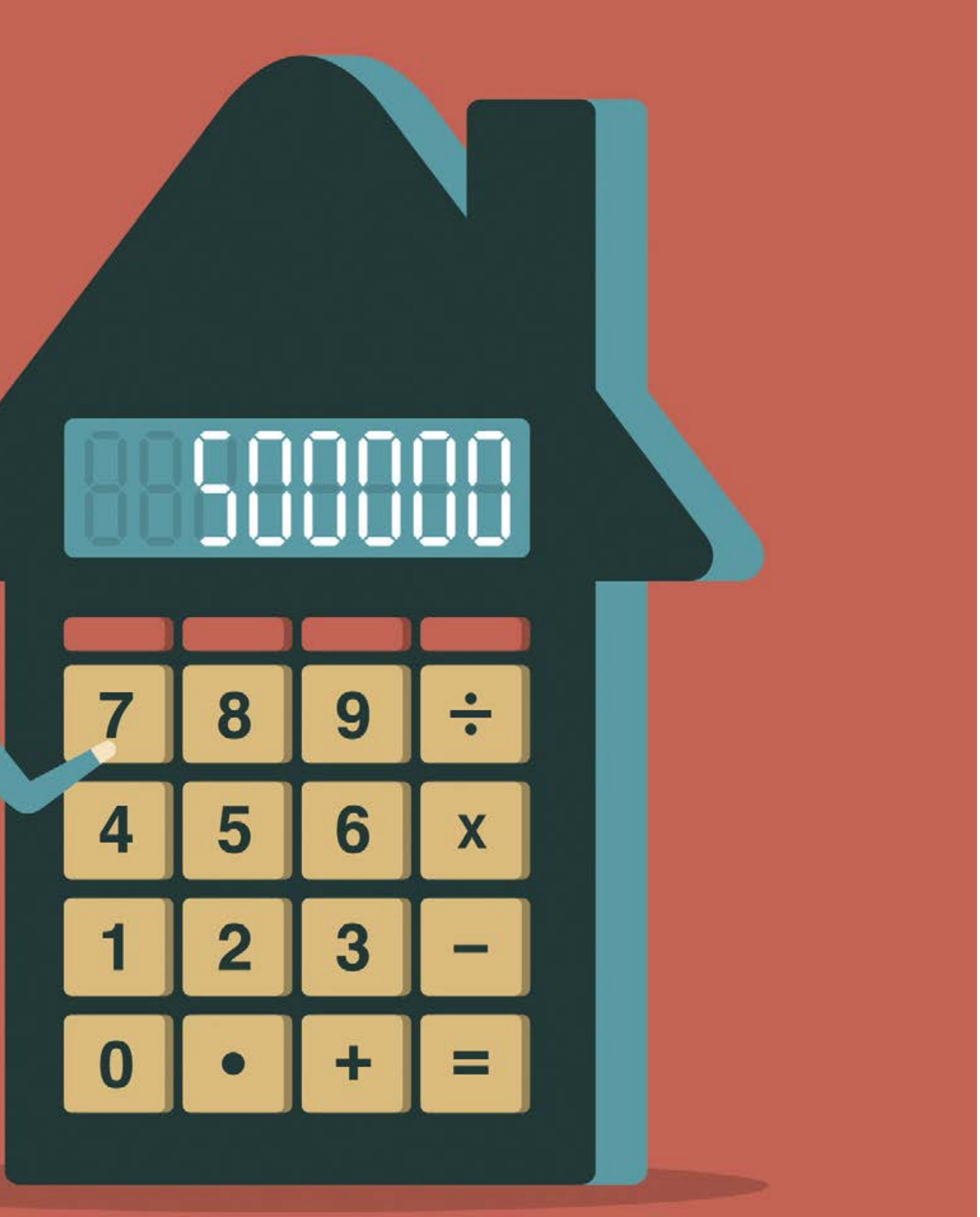
Note: Bill and Ben must review their input tax over the next ten years with the capital goods scheme because both properties cost more than £250,000 excluding VAT. This could produce an input tax repayment in some situations; for example, if Ben ceased to trade as a computer consultant before the end of the ten year period and used the building for an exempt activity such as an insurance broker.

Key Points

What is the issue?
An option to tax election on a property should only be made by a business if there is an input tax benefit that would not otherwise be available. For example, if a landlord buys a commercial property to rent out, they will be blocked from claiming input tax on the purchase of the property and other costs if the rent is exempt rather than standard rated.

What does it mean to me?
There is no such thing as an opted property. Each business with an interest in a building will decide to opt to tax or otherwise. For example, a landlord might opt to tax a building and charge VAT to their tenants; the tenants might not have opted, meaning that income they earn from sub-tenants will be exempt.

What can I take away?
There are two stages to an option to tax election: the decision to do it; and the subsequent notification to HMRC, usually on form VAT1614A. In cases where the decision has been made but the business has forgotten to notify HMRC, the department will usually allow a backdated notification as long as proof is given that the decision to opt was made at the time.



rather than any attempt to make a belated election after the horse has bolted from its stable. See HMRC manual VAT Land and Property VATLP22400.

Some advisers incorrectly think there is such a thing as an 'opted property'; i.e. if the seller or landlord has opted, then the buyer or tenant must also opt as a *fait accompli*. However, the correct outcome is that each taxpayer with an interest in a property makes their own decision about whether they opt or otherwise. Another school of thought – also incorrect – is that a buyer must always opt to tax a property in order to claim input tax. See ***Bill and Ben: should they opt to tax?***

> **Each taxpayer with an interest in a property makes their own decision about whether to opt or otherwise.**

Motive for opting to tax

When an accountant asks me for advice about whether a client should opt to tax a property, my first question is always the same: 'Will the client get a worthwhile input tax benefit from opting?'

If the answer is 'no', it is usually best practice to avoid an outcome which would mean that all rental income and selling proceeds from that property will be VATable in the next 20 years. Charging VAT will be a problem for buyers and tenants that cannot claim input tax.

To share a tale, a local dentist was buying the freehold of a building for £750,000. The seller initially said it was exempt from VAT but belatedly discovered they had opted to tax the property many years ago. The £150,000 VAT charge would become an extra cost to the dentist because of partial exemption – and that's not forgetting an extra stamp duty land tax liability because this tax is charged on the VAT inclusive price of a sale. The proposed deal collapsed very quicky!

To highlight an example of when an option to tax election is definitely worthwhile, see ***Property Pat: purchase of office block.***

Mixed use buildings

When I worked for HMRC many years ago – or Customs and Excise in those days – I visited a property business in Leicester. They rented out a building that consisted of a ground floor shop and a first floor flat. They had opted to tax the property and were charging VAT to both the shop tenant and a separate tenant in the flat. The VAT charged for the shop was correct

PROPERTY PAT: PURCHASE OF OFFICE BLOCK

Pat is VAT registered and buying an empty building for £1 million plus VAT because the seller has opted to tax. Pat will spend £100,000 plus VAT on building improvements and rent it out to a firm of lawyers on a ten year lease for £80,000 per annum.

It makes sense for Pat to opt to tax the property with HMRC for three reasons:

- He can claim input tax of £200,000 when he buys the property and also £20,000 on the building improvements.
- The annual output tax of £16,000 charged to the lawyers will not be a problem because their business is fully taxable without any input tax restrictions.
- The property purchase will be subject to the capital goods scheme because it cost more than £250,000 excluding VAT, so input tax must be reviewed and adjusted over the next ten years according to the mix of exempt and taxable use of the building. However, as rental income for the next ten years will be VATable, the annual adjustments with the capital goods scheme will be nil.

Warning: When Pat buys the property, he must get proof that the seller made an option to tax election with HMRC to confirm that the VAT charge of £200,000 is correct. A business can only claim input tax when VAT has been correctly charged in the first place.

but an option to tax election is always overridden for any part of a building that is used for residential purposes; those supplies are still exempt (see HMRC Notice 741A para 3.10).

The director said that the company was charging VAT on the flat rent – despite the legislation – so that it could claim input tax on all of the improvement and repair costs it had incurred. 'Oh no you can't,' I said, adding a bit of pantomime fun to the proceedings. 'You cannot make an exempt supply taxable by incorrectly charging 20% VAT. Definitely not!'

Revoking the option after 20 years

The option to tax rules were introduced on 1 August 1989, when Margaret Thatcher was Prime Minister. This means that all option to tax elections made by business owners between August 1989 and February 2004 can now be revoked because they have been in place for at least 20 years.

The revocation is made by completing and submitting form VAT1614J to HMRC and all income earned from the building thereafter will be exempt (see HMRC Notice 742A s 8).

Several years ago, I advised a betting shop business, which traded from rented high street shops located across the UK. It paid VAT to most landlords. This was a big cost to the company with partial exemption because most sales were exempt under the betting and gaming legislation. The company asked all landlords if they could revoke their elections with the 20 year rule and there was a successful outcome for two shops.

All option to tax elections made between August 1989 and February 2004 can now be revoked.

Final poser

Here's a final scenario to test your little grey cells:

- Bet and Alec have decided to buy the freehold of a pub from a brewery and trade as a partnership. However, they will buy the pub in a separate limited company and each own 50% of the shares, renting the property to the partnership on normal commercial terms.
- Mike and Marie have decided to buy the freehold of a commercial property and trade in partnership as a children's nursery. They will buy the building in a separate limited company and each own 50% of the shares, renting the property to the partnership on normal commercial terms.

You might think that the two scenarios are identical and that the companies will be able to register for VAT and claim input tax on the purchase of the buildings and other costs as long as they opt to tax them with HMRC and charge VAT on the rent to the partnerships.

However, this is incorrect. Mike and Marie will trade as an exempt business, so must consider anti-avoidance rules, which could mean that their company's option to tax election will be disapplied and it cannot either register for VAT or claim input tax. There is no problem for Bet and Alec because their pub is a fully taxable business (see HMRC Notice 742A s 13).

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Generative AI What can it bring to tax?

We explore the possibilities that Generative AI can bring to the tax world, along with a consideration of its current limitations.

by Priya Vijayasarathy and Frankie Jell

Key Points

What is the issue?
GenAI is a rapidly evolving field, and there is much debate over its potential impact on tax professionals. This article explores the power of GenAI in balance with its limitations.

What does it mean to me?
The use of GenAI is being considered for a range of tax functions, including document generation and summarisation, knowledge extraction, and data querying, analysis and visualisation.

What can I take away?
No technique is perfect, however, and there should always be a human to apply a layer of subject matter expertise to review GenAI outputs.

This article aims to provide a simple overview of generative artificial intelligence (GenAI) and its relevance to tax. As artificial intelligence, particularly GenAI, is a rapidly evolving field, there is much debate over its potential impact on tax professionals. Rather than taking a binary viewpoint, this article explores the power of GenAI in balance with its limitations and identifies what tax professionals should focus on in the near term.

What is Generative AI?

GenAI is a form of artificial intelligence that enables users to generate new content across various modalities – such as text, image, code and audio content – based on a broad set of inputs through chat interfaces. There are different types of GenAI models, including text-to-text generators powered by Large Language Models that are trained on massive amounts of text data, amongst others.

These models learn the patterns and structure of natural language and generate text that has similar characteristics. Chat interfaces have transformed GenAI usage by making artificial intelligence more accessible and enabling users to interact with these technologies in a more intuitive way, producing content that can be indistinguishable from that produced by a human.

How GenAI can transform the tax profession

Artificial intelligence has been utilised in tax for over a decade, among other things for automating the analysis of transactional data. This could include, for example, categorising corporate expenses data into allowable and disallowable expenses for tax compliance purposes using supervised machine learning. However, artificial intelligence has not yet automated all the tasks performed by tax professionals.

There are three key aspects that differentiate GenAI from traditional artificial intelligence.

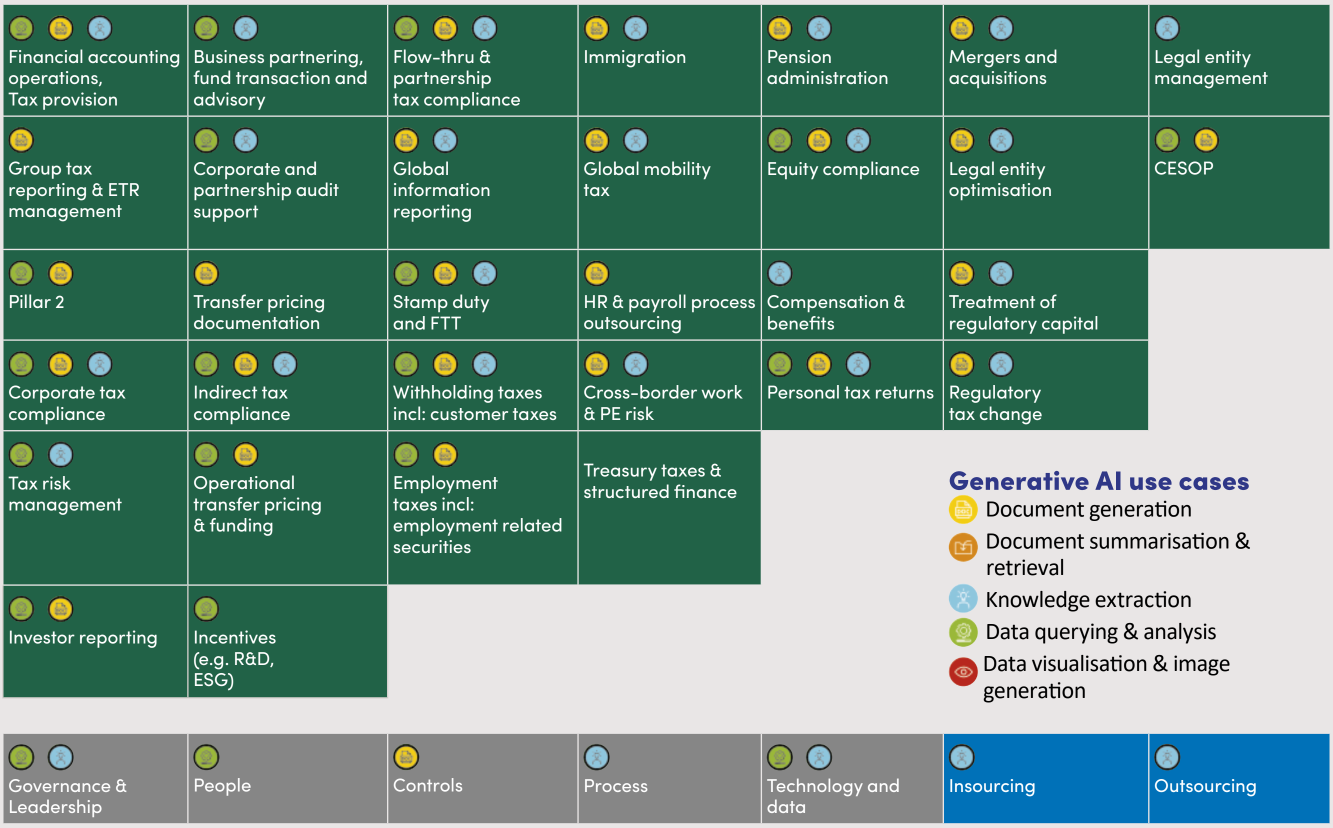
1. Large Language Models use general-purpose text data based on open-source content, such as the web. It is worth noting that the quantum of information available to a Large Language Model is greater than what is available to a single tax professional, and it can distil information at a significantly faster speed.
2. The output of a GenAI application is generally new, novel content that reflects the characteristics of the input data but does not repeat it. In contrast, traditional machine learning aims to produce a desired outcome or target as a prediction, such as the classification of tax data for analysis in a tax return.
3. Finally, GenAI makes artificial intelligence more accessible to a wider audience beyond data scientists. It allows general users to access it in an intuitive way to boost productivity with its ability to process and generate natural language. Additionally, there are several powerful open-source models available, making Large Language Models more accessible for experimentation and application across a variety of use cases.

How does GenAI apply to tax?

From our conversations with major corporates, the types of use cases being considered or implemented are in the following categories:

- **Generation of documents:** assisting with tax compliance, including producing tax memos and supplementary returns;

USES OF GEN AI IN TRANSFORMING THE TAX FUNCTION



- **Document summarisation and retrieval:** reviewing new tax legislation and summarising its contents;
- **Knowledge extraction:** highlighting the pertinent points within a tax consultation;
- **Data querying and analysis:** applying tax legislation to a specific company or personal situation in order to produce an optimal outcome; and
- **Data visualisation and image generation:** generating process maps for governance purposes, and producing video training for non-tax professionals on tax matters such as account payable processing.

The diagram above illustrates some of the use cases by area of tax. Whilst this is a rapidly evolving area and it is not an exhaustive list, it gives an overview of the breadth of GenAI. It is striking how many of these uses are emerging in the advisory space – not just in compliance, where traditionally technology has been most impactful to how tax work is done.

What are the limitations of GenAI?

Despite its power, there are significant limitations to the use of GenAI in tax. Below, we set out some of the possible key limitations, why they occur and what can be done to mitigate them.

Hallucination and producing inaccurate results

GenAI Large Language Models can produce content that is wrong, although it looks very plausible. This is a phenomenon called hallucination and is largely due to the nature of how these models are built and function.

Large Language Models are statistical models and predict the next word in a sentence based on probabilities derived from the vast amounts of text data it has been trained on. They are driven by the patterns they see in the training data, as opposed to understanding the meaning or context in the way humans do. They cannot draw on experiences or common sense. As language is inherently complex and ambiguous, Large Language Models can also struggle to reproduce language nuances.

It should be noted that the impact of outputs being incorrect could be high in a regulated environment, whether in the public, corporate or personal spheres. We have already seen cases come before UK courts where Large Language Models have been used to build the technical arguments and some of these arguments have been hallucinated.

The data which trains the models

Tax work is often based on experience and tailored consultation. Much of this work is not available in the public domain and therefore is not included in the data used to train these Large Language Models.

The other challenge is how up to date the data set is. Tax regulation changes frequently and using the right reference rule set is critical to producing accurate results. At the time of writing, GPT4 was accurate up to April 2023, so would not capture legislative updates from the UK Autumn Statement 2023, for example.

Large Language Models aren't built for real-time search and retrieval purposes. They are not a search engine as their primary purpose is to understand natural language, not to be up to date with world affairs. For Large Language Models to act like a real-time search engine, they will need to be integrated with search engine technology; i.e. a hybrid model.

Confidentiality and privacy

A person's tax affairs are a confidential matter. There are cloud platform providers which provide technology solutions to keep data secure from the cloud and Large Language Models. This typically requires the involvement of an organisation's IT function. For smaller businesses, however, these solutions may not be practical in the near-term, restricting the use of GenAI to cases where confidentiality may be less challenging.

The economics of using GenAI

Large Language Models split the text into tokens for processing. Tokens are usually individual words, but can be a group of letters. The cost of using Large Language Models varies, based on the tokens processed and the computational power needed.

Much tax legislation is several thousand words long and the context of these words is critical for interpretation. There are token size limits on the interfaces for these Large Language Models which, whilst ever expanding, do restrict processing. For example, the OECD's original Pillar Two guidance and all subsequent versions are too large for current processing so asking for a summarised response of changes between guidance isn't possible in one user query.

Token size is also used as the unit of cost for the use of GenAI models. The balance of cost vs potential productivity saving compared to the cost of manual interpretation needs to be considered. It is worth noting that token size limits and pricing models are ever evolving so the impact of this limitation is likely to reduce over time.

In conclusion

There are a range of techniques that can be used to overcome some of the challenges posed by current state GenAI. No technique is perfect, however, and there should always be a human to apply a layer of subject matter expertise to review GenAI outputs.

GenAI is having, and will continue to have, an impact on the tax profession. The magnitude, timing and types of impact can be debated. As tax professionals, there are four things we can do in 2024 to appropriately consider this new player in our profession.

1. Educate ourselves on the domain area by reading articles, attending webinars, and so on. This is a rapidly changing area, so for most people it is almost impossible to stay up to date completely, but it is worth engaging with key updates. Use this to develop a view of what GenAI could mean for the tax activities you undertake or lead.
2. Reflect on use cases and where most value can be added within tax.
3. Experiment with GenAI, noting its limitations.
4. Have an open mind to the positive effect that GenAI could have on the productivity of our next generation of professionals.
5. Lastly, review your data and infrastructure readiness to adopt artificial intelligence.

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A tale of two sections

Taxing discretionary payments

We look at how a discretionary gift by a former company owner to its employees was taxed.

by Keith Gordon

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Key Points

What is the issue?
When the company OOCL was sold, Mr Tung (who ran the company) announced a discretionary payment to be made through the payroll to the 10,300 staff worldwide and funded by his family. He decided that the payments did not need to be subject to PAYE and NICs.

What does it mean for me?
HMRC argued first that the payments represented emoluments from the workers' employment, and that they represented benefits caught by ITEPA 2003 s 201.

What can I take away?
The case provides a timely reminder that the employment income rules are widely drafted and that HMRC will often seek to establish that truly gratuitous payments are indeed 'from' the employment.

A payment made by an employer to an employee will usually be subject to tax as employment income and, in the case of a cash payment, PAYE will usually be due. However, that is not an immutable rule. Indeed, although it might represent a reasonable assumption, any proper analysis needs to be more rigorous than that. The need to take a close look at the legislation and not to rely on short cuts was recognised by the First-tier Tribunal as demonstrated in its decision in *OOCL UK Branch v HMRC* [2023] UKFTT 996 (TC).

The facts of the case

OOCL is a worldwide company operating in the container ship business. It was established in 1947 and until 2018 was family-owned. The third family member (Mr Tung) to run the company was appointed in 1996. He instituted a policy of creating a loyal workforce and, for example, rewarded staff with a Rolex watch once they had reached 25 years of service.

In July 2018, the company sold its business to a third party, no doubt giving rise to a substantial gain for the Tung family. In early August 2018, Mr Tung sent an email to the company's 10,300 staff worldwide announcing a discretionary payment to be funded by him and his family. The payment was to be made at the next suitable moment and, for the UK employees, was paid through the company's September 2018 payroll.

The company took the decision that the payments did not need to be subject to PAYE and National Insurance, but HMRC disagreed.

The dispute went to the First-tier Tribunal.

The First-tier Tribunal's decision

The case was considered by Judge Amanda Brown KC and Member Shameem Akhtar.

HMRC argued first that the payments represented emoluments from the workers' employment with the company. In the alternative, HMRC contended that they represented benefits caught by the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 s 201.

Emoluments 'from' employment

The first question centred on the word 'from' as found in ITEPA 2003 s 9. Was the payment 'earnings from an employment'? By reference to the email sent by Mr Tung, the tribunal noted in particular that the payment was not a reward for past, present or future service. Instead, that email suggested that the payment was truly a gift from the former shareholders.

Furthermore, the tribunal distinguished between two concepts (often known by their Latin phraseology): was each worker's employment the underlying cause of the payment or was it merely the fact but for which the payments would not have been made? For the payment to be 'from' the employment, the payment had to be in the former category; falling within the latter was insufficient.

The tribunal accepted that each payment would not have been made but for each worker's respective employment with the company (the latter concept) but it did not accept that these employments were the underlying cause of the payment (the former).

As a result, the tribunal considered that the payments were not earnings 'from' the employment.

In reaching this conclusion, the tribunal also noted that there was no contractual obligation to make the payments, and that the payments were indeed voluntary and unexpected. They were also one-off. They did not represent a top-up of contractual wages to bring them up to market level. Furthermore, the payments were funded exclusively by Mr Tung and his family out of the proceeds of the share sale.

There were factors that pointed in the other direction – notably the fact that the payment was effected through OOCL's payroll. More equivocally, the tribunal noted that the payments were about half the annual salary and more than five times the normal maximum annual bonus paid to staff. The tribunal felt that had the payments been significantly higher that would have reinforced the company's arguments but equally they were not so modest so as to undermine its position.

Overall, the tribunal was persuaded that the payments were not 'from' the employment.

Employment-related benefits

In relation to the second argument, the tribunal noted the wording of s 201 which concerned the provision of benefits 'by reason of employment'. It decided that that this test was broader than the 'from' requirement in s 9 and that it caught situations such as the present, where the employment was merely a condition for a benefit to be conferred.

Thus, although the bonus was not considered to be taxable under normal principles, it amounted to an employment-related benefit taxable under s 201.

Accordingly the company's appeal was dismissed.

Commentary

This is a decision with which I am uncomfortable, although I cannot say that the First-tier Tribunal has clearly taken the wrong course.

So far as the s 9 point is concerned, I consider that the tribunal was right to say that the payments received by the workers were not from their employment but a truly gratuitous payment by the company's former owners. However, there is something strange in my view about that outcome being circumvented by a broad interpretation of the employment-related benefits code at s 201. There is at least an argument to suggest that the word 'benefit' is to be limited to non-cash benefits, so as not to overlap with what in the vast majority of cases is going to be taxable anyway.

On a related point, it seems somewhat surprising that employment-related benefits taxable under s 201 (and which will not usually be paid in cash) should be subject to PAYE, which is the implication of the First-tier Tribunal's decision.

There is at least an argument that the word 'benefit' is to be limited to non-cash benefits.

Indeed, since the First-tier Tribunal accepted that the true payer of the sums was the Tung family (and not the company), there is an argument that, even if subject to PAYE, the liability to operate PAYE should not have fallen on the company which was merely the conduit for the payments. (If the sums were not subject to PAYE, or at least if any PAYE obligations fell on the Tung family who made the payments, then the company's appeal should have been allowed, even if under s 201 the payments were still taxable on the employees.)

Another area which might merit further consideration is the part of the First-tier Tribunal's decision which considered s 201(3). That subsection contains a deeming provision very similar to that considered by the Supreme Court in the recent case of *Vermilion Holdings* [2023] UKSC 37 (see my article in *Tax Adviser*, December 2023). The relevant part of s 201(3) reads:

> 'A benefit provided by an employer is to be regarded as provided by reason of employment…'

As the Supreme Court held, the deeming provision ensures that (except in cases covered by the omitted words which are not relevant to the present case) whenever a benefit is provided by an employer, one does not need to investigate the reasons for its provision; instead, such a case is deemed to satisfy the statutory requirement for the benefit to be 'provided by reason of employment'.

However, the First-tier Tribunal agreed with a submission made by HMRC to the effect that 'the deeming provision in ITEPA 2003 s 201(3) must carry the consequence that s 201(1) applies to benefits funded by third parties'.

It is undoubtedly the case that the deeming provision, if it applies, carries the consequences of the deeming, irrespective of the source of the funding of any benefit. However, the inference I drew from the First-tier Tribunal's decision is that it considered the deeming provision itself to bring benefits provided by third parties into the scope of the s 201 charge.

In my view, that is going too far. In the present case, I do not consider that the benefit was provided by an employer – it was provided by the Tung family who used the employer as a mere conduit. That, in my view, means that the deeming provision has no relevance. As to whether that is sufficient to overturn the First-tier Tribunal's decision, I do not know.

What to do next

Irrespective of the concerns I have raised, the case provides a timely reminder that the employment income rules are widely drafted and that HMRC will often seek to establish that truly gratuitous payments are indeed 'from' the employment. Whilst they will be right in many cases, there are always going to be exceptions, as the *OOCL* case demonstrates.

Furthermore, anyone making payments of PAYE income should take care to comply with the PAYE obligations because recovery action from HMRC at a later date will usually lead to an additional tax burden on the payer which will be hard (and sometimes impossible) to recover from the workers.

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Subcontracting expenditure
Merged R&D rules

We consider changes to the rules surrounding subcontracting expenditure to be introduced under the new merged R&D tax relief scheme.

by William Sweeney

Key Points

What is the issue?
The introduction of the new merged R&D tax relief scheme will attempt to finally clarify the rules surrounding subcontracting expenditure. This has historically presented a challenge for companies as it is not defined in the legislation.

What does it mean for me?
The new rules are designed to better incentivise R&D by ensuring the company making the decision to undertake R&D can receive the relief for that expenditure. However, while some companies will benefit, others will find that their R&D claims are substantially reduced or that they are no longer eligible for relief.

What can I take away?
Many companies have been undertaking R&D and making claims for R&D relief for many years but will have to review their operations and the underlying contracts carefully to assess whether they will be eligible to claim for expenditure incurred on their R&D activities in the future.

The introduction of the new merged R&D tax relief scheme will attempt to finally clarify the rules surrounding subcontracting expenditure, an area that has historically presented a challenge for companies as it is not defined in the legislation.

What are the existing rules?

SME R&D tax relief scheme: Under the SME R&D tax relief scheme, payments to subcontractors attributable to relevant R&D undertaken on behalf of the company are a qualifying category of R&D expenditure.

R&D Expenditure Credit: By contrast, under the R&D Expenditure Credit (RDEC) scheme, subcontracted costs may only be included within a company's qualifying R&D expenditure where the work is contracted to be undertaken by a qualifying body, an individual or a partnership (each member of which is an individual).

Subcontracting company: To prevent double claiming, if a company undertakes R&D that has been subcontracted to it by a third party, it is unable to make a claim under the SME scheme. Relief may, however, only be claimed under the RDEC scheme if the R&D has been subcontracted out to it from a large company or from a person otherwise than in the course of carrying on a chargeable trade (Corporation Tax Act (CTA) 2009 s 104C).

How is qualifying R&D expenditure calculated?

Different rules apply to the calculation of the qualifying R&D expenditure depending on whether the contracting party is connected (see CTA 2010 s 1122) or unconnected. These apply regardless of whether the subcontractor is resident in the UK or overseas.

For SMEs, if the R&D claimant and the subcontractor are unconnected, the claimable amount is 65% of the amount paid to the subcontractor for undertaking activities that are part of the company's R&D.

If the company and the contractor are connected, the company can claim the lower of:

- the payment that it makes to the subcontractor; and
- the relevant expenditure of the subcontractor.

The relevant costs are those incurred in delivering the R&D; however, the rules do not provide for a connected party subcontractor to further subcontract the work (CTA 2009 s 1134), so any such expenditure is excluded.

A company and unconnected subcontractor may also jointly elect to be treated as connected. This offers the potential to increase the R&D claim if the gross margin on the R&D work is less than 35%. However, this is rarely seen as few third parties would be willing to disclose their costs in this way (CTA 2009 s 1135).

If a large company or one that is undertaking R&D that has been subcontracted to it makes a claim under

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the RDEC scheme, subcontractor payments made can be included without the above restrictions (CTA 2009 ss 104E and 104K). By contrast, an SME claiming under the RDEC scheme because the R&D project was subsidised will have to apply the rules under CTA 2009 ss1134-1136.

What is the issue?

As noted, there is no specific definition of subcontracting in the current legislation and so it takes its common meaning. To fill this void, the HMRC guidance suggests that: 'Where there is a contract between persons for activities to be carried out by one for the other, and those activities form the whole of an R&D project or are part of a wider R&D project, then R&D activities have been subcontracted.'

In recent years, however, HMRC has taken a more aggressive stance. It has sought to expand this definition, stating that: 'Any activities carried out in order to fulfil the terms of a contract (whether for R&D or for wider commercial activity) are considered to have been contracted to the company.' This has created considerable uncertainty for SMEs, as a similarly uncommercial approach applied to the subsidised rules was rejected entirely by the First-tier Tribunal in *Quinn vs HMRC* [2021] UKFTT 437.

Furthermore, substantial changes are proposed to the R&D rules with the introduction of the new merged R&D scheme. As a result, while some companies will benefit, others will find that their R&D claims are substantially reduced or that they are no longer eligible for relief.

Merged R&D rules

The government published the draft legislation for its new merged R&D scheme on 18 July 2023. Despite the representations of the professional bodies that this was 'too much, too quickly', it was confirmed in the Autumn Statement that the government would be implementing these measures with minor modifications for periods starting on or after 1 April 2024. We expect to see this laid before Parliament in the Budget this month.

The headline measure is that relief under the merged R&D scheme will be delivered through a taxable expenditure credit, in a similar way to the existing RDEC scheme for all eligible companies, with separate rules for loss-making R&D intensive SMEs based on the existing scheme. However, both schemes see significant changes to the subcontracting rules that are, if anything, more significant.

How does this affect subcontracting costs?

The treatment of contracted out R&D expenditure under both schemes would be more aligned with the rules for the current SME scheme:

- Subcontracted expenditure will be a qualifying category of R&D expenditure for all companies undertaking R&D (Finance Bill 2023-24 adds CTA 2009 ss 1042E and 1053).
- Companies undertaking R&D that has been subcontracted to them from a third party will be unable to make a claim under the new rules, unless the contracting party is an 'ineligible body' or a person not acting in the course of a trade, profession or vocation within the charge to tax (Finance Bill 2023-23 adds CTA 2009 ss 1042F and 1053A).

It should be noted that subcontractor expenditure will be calculated using CTA 2009 ss 1134-1136 and so may be less in some cases. The definition of an ineligible body follows that of a qualifying body (CTA 2009 s 1142). However, it has been extended so that group companies may jointly elect for a contracting party to be considered ineligible so that a contractor can claim instead. This allows groups in which the R&D is undertaken by multiple companies which all claim relief under RDEC to continue to do so.

How do I know whether the R&D has been contracted out?

There has been a welcome attempt to bring clarity to the subcontracting rules by replacing CTA 2009 s 1133 with a new definition of 'contracted out' that aims to determine who was the 'decision-maker' for the R&D, and thus who is entitled to claim relief.

> '(2) A person "contracts out" research and development if:
> a) the person enters into a contract under which activities are to be undertaken for it (whether by another party to the contract or by a subcontractor);
> b) the activities undertaken in order to meet the obligations owed to the person under the contract include research and development; and
> c) it is reasonable to assume, having regard to the terms of the contract and any surrounding circumstances, that the person intended or contemplated when entering into the contract that research and development of that sort would be undertaken in order to meet those obligations.'

All three conditions must be met for work to be contracted out, with the R&D that is contracted out limited to 'the research and development referred to in sub-section (2)(b), to the extent that sub-section (2)(c) is satisfied in relation to it'. Thus, if the nature of the R&D undertaken differed from that initially intended, the right to claim R&D would rest with the contractor, because the decision to carry out the work would have been undertaken of the contractor's own volition.

The key to this is when it is reasonable to assume that the person engaging the subcontractor intended or contemplated that R&D would be required to meet the obligations of the contract. This may not be easy to determine after the event, and the temptation for many contracting parties will be to use their size and power to argue that any R&D required was never intended. To forestall this, HMRC has issued detailed guidance on the new rules.

In this, it clarifies that the words 'intended or contemplated' carry a greater weight than mere belief, or even knowledge, that R&D will be required. For R&D to be contracted out, the customer will need to show a 'specific appreciation of what R&D will be done and therefore the ability to understand and specify that', going as far as stating the advances in science or technology sought and any uncertainties to be addressed. Simply noting the challenges faced by a project or speculating or accepting that R&D may be needed will not suffice. While not a condition of the legislation, HMRC therefore infers that the company will have to be able to draw on significant technical expertise to understand the work required.

What evidence will be required?

It is clear that these rules will place significant demands on companies to document any R&D activity contemplated prior to entering into a contract. Regardless of whether the contracting company asserts they intended the R&D would be required, or whether the contractor claims to have undertaken the R&D of their own volition, it is easy to envisage HMRC asking companies for a significant degree of evidence to support this.

Any assessment should be made 'having regard to the terms of the contract and any surrounding circumstances'. HMRC has confirmed that while the contract wording is important, it recognises that it may not contain full details of any R&D contemplated. Further evidence may therefore be provided by any documentation leading up to the contract or by internal project documentation such as contemporaneous minutes or project plans.

These must be supported by the commercial and organisational details of the R&D project. As with many areas of tax, it is necessary to look at these overall circumstances in the round, to form a balanced view on which party is the decision maker for the specific R&D activity.

These circumstances might include (but are not necessarily limited to):

- intellectual property ownership;
- financial risk in undertaking the work;
- autonomy in how the activity is executed;
- how the R&D is to be exploited;
- the decision-making process;
- the experience and seniority of decision takers; and
- the nature of the parties (e.g. typical work undertaken).

Is overseas expenditure to be restricted?

The introduction of the merged scheme also takes the opportunity to reintroduce the proposed restrictions on overseas R&D expenditure that were deferred at the last Budget. Relief for subcontracted R&D will be limited, based on where the activity takes place, subject to certain specific exceptions.

Expenditure on payments to contractors must either be:

- 'UK expenditure' on R&D undertaken in the UK; or
- 'qualifying overseas expenditure' undertaken outside the UK in certain specific circumstances.

It should be noted that R&D is undertaken in the UK to the extent that the activities which are part of the R&D project actually take place in the UK, regardless of where any factors used for the R&D project (such as materials) are sourced. If activity takes place partly in the UK, it should be apportioned appropriately.

Overseas expenditure on contracted out R&D may, however, qualify for relief if: the conditions necessary for the R&D are not present in the UK; they are present in the location where the R&D is undertaken; and it would be wholly unreasonable for the company to replicate the conditions in the UK (CTA 2009/1138A(2)).

This may be due to geographical, environmental or social factors (for example, the presence of specialist test facilities) or due to legal or regulatory requirements (for example, clinical trials); and it is reasonable to consider timeliness when considering whether it is reasonable to replicate the conditions in the UK. However, the cost of the work and availability of workers are specifically excluded as factors enabling expenditure to be qualifying overseas expenditure (Finance Bill 2023-24 Sch 1 para 9(12)).

This will particularly have implications for more mobile sectors, such as technology, as well as industries that rely on pockets of specialist expertise globally, such as the space industry. Multinational groups will also have to consider how they structure projects to minimise any elements of R&D projects undertaken by fellow group companies (or their staff) overseas.

In addition, further guidance is required from HMRC regarding how the rules will be interpreted, in particular concerning qualifying overseas expenditure. HMRC agree that a company that needs to use a particular facility for R&D purposes which is not available in the UK on a reasonable timescale would qualify. However, there is a lack of clarity in determining whether the overseas subcontractor is the only available provider with the necessary skills or experience in the field. HMRC may argue that staff can be trained or relocated more easily than a facility, but this is not a practical or timely option in many cases. In such cases, we would advise companies to carefully document the reasons for carrying out any overseas R&D, and why it would be unreasonable to replicate these conditions in the UK.

In summary

The new rules benefit large companies and those at the top of supply chains. While the 'decision makers' behind the project should still be assessed on an individual basis, the wording of the new subcontracting test will enable many to claim for a greater number of projects than they previously realised and for a wider range of subcontracted expenditure than under the old RDEC scheme.

Conversely, the view for many smaller companies that make up their supply chains is less positive. The new scheme represents a further small reduction in R&D rate to 15% for companies at the main rate of corporation tax and to 16.2% for the small companies rate.

Many companies have been undertaking R&D and making claims for R&D relief for many years but will have to review their operations and the underlying contracts carefully to assess whether they will be eligible to claim for expenditure incurred on their R&D activities in the future. Worst affected will be those SMEs that have been claiming under the RDEC scheme for contracted out projects, as they may now be ineligible for relief.

The news is not all bad for SMEs, as the removal of the restrictions on subsidised expenditure may enable lossmaking companies in R&D intensive industries that have received grants to claim tax credits under the R&D intensive scheme.

Given the scope of these changes, and the additional work required to satisfy HMRC, agents should engage with clients as soon as possible to help them understand the new rules and address these in their contracts and project documentation. Otherwise, the risk is that many firms may find themselves unable to claim or simply opt not to, investing in more R&D friendly jurisdictions instead.

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Navigating the tax landscape The challenges for 2024

Following a global BDO survey of senior tax professionals, we examine the challenges and opportunities we are all facing in 2024.

by James Egert

2024 is looking to be a challenging year for tax directors and all senior leaders who have responsibility for tax operations within the business. There is ongoing economic uncertainty, upcoming elections in the UK and US and the lingering effects of the Covid-19 pandemic. These factors, along with the need for tax authorities to maximise revenues and reduce costs – and for businesses to demonstrate greater transparency – create a complex landscape.

Initiative overload?

Tax leaders are facing a 'risk multiplier' effect due to a variety of intersecting risks arising from UK and global tax initiatives. The digitalisation of the economy has further complicated matters, with initiatives such as the G20/OECD BEPS Project and the Pillar Two Framework adding to the workload of tax directors.

If you feel like this, you are not alone. In 2023, BDO carried out its Global Tax Outlook survey, seeking out the views of more than 630 senior decision makers, representing 48 countries (see tinyurl.com/kb24anm7). What we heard is that tax leaders keep raising the same five consistent challenges: risk, cost, efficiency, disputes and talent. Behind all of these, complexity in tax law is a major challenge, with increased scrutiny from stakeholders such as tax authorities, NGOs, media and civic society.

The most significant issue, with 70% of all respondents saying this is a key challenge, is 'increased tax authority funding and scrutiny' (see ***Tax challenges***). This comes as no surprise, particularly for those in the UK. Below we share the experiences of a number of UK tax leaders when dealing with tax authorities, especially in relation to both the Business Risk Reviews (BRR+) and the introduction of the temporary Customer Compliance Manager (tCCM) model.

The tCCM initiative has been a notable recent development as HMRC seeks to provide a broader mechanism to more effectively engage with businesses. The scheme is aimed at a much wider base of businesses than those who already may be allocated a Customer Compliance Manager with the objective of providing 'greater coverage' by HMRC.

> **Tax leaders keep raising the same five challenges: risk, costs, efficiency, disputes and talent.**

How businesses are responding

In order to better navigate these complex tax landscapes, businesses are striving to drive efficiencies, more effectively manage tax risk and demonstrate good governance to HMRC. Tax directors are seeking to establish a consistent approach to enhancing tax operations and developing a robust tax control framework.

From talking to hundreds of businesses we hear the same three objectives raised as key to achieving a robust tax control framework:

1. **A culture of no surprises over tax risk:** This requires a clear vision for strong tax risk management, with a defined tax risk appetite, clear roles and responsibilities, a formalised risk identification methodology, a 'living' risk and control matrix, and defined reporting lines.
2. **Confidence in meeting evolving regulatory requirements:** Tax directors want tax processes that are fit for purpose, compliant with legislation, nimble enough to respond to changes of law and able to withstand scrutiny from tax authorities and boards. Pillar Two is the most obvious example of this at the moment.
3. **A transparent and efficient tax control framework:** This requires alignment of tax operations with the wider business's governance (and ESG) agenda, adopting clear tax principles and demonstrating

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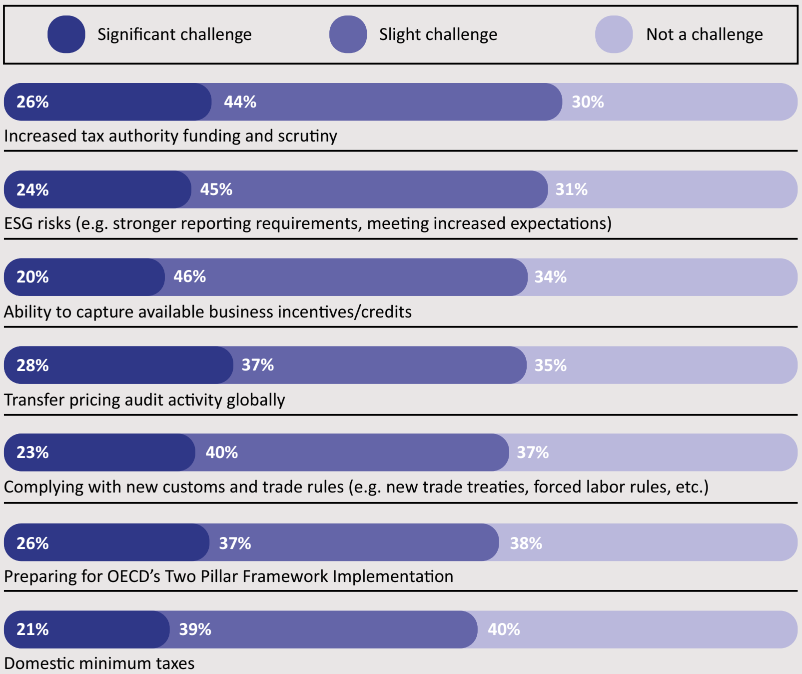
TAX CHALLENGES

How would you rate the following tax challenges to your organisation in the next 12 months?



responsible tax behaviours. The tax control framework helps tax directors to enhance their current state and develop a roadmap to ensure effective global tax operations.

Working with stakeholders, especially tax authorities

On first sight, there is little silver lining to these challenges, especially the increase in the number of regulatory requirements facing businesses, both in the UK and internationally. Increased tax authority scrutiny is the number one challenge for tax leaders. In addition, other stakeholders – from the board to the investors – expect you to be fully tax compliant so that you are able to withstand tax authority reviews and avoid unexpected costs.

Building valuable relationships with tax authorities is crucial. These days, it's not just about adhering to compliance and legal responsibilities. Increasingly, tax authorities want tax functions to demonstrate that they are operating effectively and can optimise tax delivery through the effective use of people, processes and technology. In other words, they want evidence of an effective tax control framework and, in the UK, the tax authorities have designed ways to work with businesses to prioritise this.

The temporary Customer Compliance Manager model

Most readers will be familiar with the Business Risk Review+ (BRR+) process, but for over a year now, HMRC has been piloting its tCCM model for mid-sized businesses. This initiative was designed to provide 'time-limited one-to-one' support to mid-sized businesses, especially those that have significant growth, multiple enquiries or are simply new to requirements like the senior accounting officer regime and country-by-country reporting.

The scope of businesses eligible for a tCCM is much wider than many corporates may be accustomed to. Unlike 'large' businesses with a turnover of over £200 million and who may be allocated a Customer Compliance Manager, mid-sized businesses are defined as having a turnover of over £10 million and/or more than 20 employees. This expands the potential reach of the tCCM regime to a large number of businesses.

We have seen a number of letters from HMRC allocating a tCCM to our clients. In HMRC's own words, the objective of this is to:

- 'ensure effective two-way communication to enable prompt resolution of any issues;
- agree on the most efficient channels for exchanges of information; and

ABOUT THE BUSINESS RISK REVIEW PROCESS

The BRR+ process (the next phase of the original BRR) was developed with the intention of enabling businesses to gain a clearer understanding of their risk rating.

The BRR+ process typically involves an initial request for information from HMRC, as well as a face to face meeting with a presentation by the business on how it is managing its tax risk.

The main features of the BRR+ are:

1. There are four risk categories: low, moderate, moderate-high and high.
2. The business landscape (including size, complexity and degree of change) will be considered.
3. There is a more detailed review across each type of tax, with an assessment of 24 low risk indicators, separated into three categories (systems and delivery, internal governance and approach to tax compliance).
4. A business will have a higher risk rating the more low risk indicators it fails to meet.

Benefits of a low BRR+ risk rating

Achieving a low BRR+ risk rating sets the tone for your relationship with HMRC and potential benefits include:

- Low risk businesses should be subject to BRR+ reviews less frequently.
- Interactions with HMRC should, in general, be driven by the business rather than HMRC, so that enquiries instigated by HMRC will be the exception rather than the rule.

FEEDBACK ON TCCM AND BRR+

‘Prior to the BRR+, we had a rather reactive relationship with HMRC. Having the chance to talk about our business and tax issues as part of the BRR+, it feels like we now have a more collaborative relationship. It’s in both parties’ interest to understand each other’s needs. In my experience, being open and receptive during the BRR+ exercise and having a dedicated person at HMRC allocated to us has been beneficial for both sides.’

Tax leader at a well-known utility company

‘Having our own Customer Compliance Manager at HMRC has proved invaluable to us over the years. Although we also have external professional advisers to assist us, having the ability to send an email or pick up the phone to a dedicated HMRC resource provides additional comfort, ensuring compliance in what can often be fairly complex areas of tax.’

Christina Wilson, Finance Director – Construction Services, John Sisk & Son Ltd

‘We were appointed a tCCM after our first senior accounting officer certification. The tCCM has been outstanding in helping resolve compliance issues from the past and helping us get current. Highly collaborative and helpful.’

Head of Tax at a leading veterinary care provider

- develop a work plan early in our engagement to give you certainty around timeframes.’

Embracing the opportunities of tCCM and BRR+

We encourage businesses to embrace these HMRC initiatives or at least try to turn them into a positive experience. Many of our clients are seeing value in engaging with the tCCM, and discussing their tax operations and business transparently and cooperatively. For larger organisations, these meetings can evolve into BRR+ assessments.

The BRR+ process has been around for a number of years. See ***About the Business Risk Review process*** for further information.

In the words of many of our clients, both the BRR+ and/or the allocation of a tCCM offers the opportunity to take ownership of their relationship with HMRC and demonstrate low-risk behaviours, ideally leading to a low (or moderate) risk rating. The benefits of this are clear both in terms of a greater culture of no surprises and ensuring a level of assurance to share with the board and other stakeholders.

Taking control

Businesses can – if they want – ask about being allocated a tCCM. There are various advantages and disadvantages to this and tax leaders may or may not see value in doing so. HMRC likes direct dialogue and there are clear benefits in proactively reaching out to tax authorities if there are concerns and issues that need to be shared, rather than waiting for HMRC to ‘lift the stones’ themselves.

The tCCM model is not going to go away. In late 2023, HMRC published its research carried out by Ipsos during the year (see tinyurl.com/yt97xet6). There were a number of key findings, including:

- Businesses generally had poor experiences of HMRC interaction before the tCCM model.
- Participation in the tCCM model helped businesses to manage their immediate tax issues and improved perceptions of HMRC.
- Some suggestions for improvement centred on some level of permanence for the tCCM model.

It is no surprise therefore that, given the findings of the survey, HMRC has confirmed that it will continue with the tCCM initiative as part of its overall compliance approach to mid-sized businesses.

Looking ahead

We have seen that the role of tax directors is becoming increasingly complex and challenging. The digitalisation of the economy and the introduction of G20/OECD initiatives are just two examples of where these challenges are being compounded. Our survey identified some common challenges faced by tax leaders, with increased funding and scrutiny from tax authorities being a significant concern. To address these, businesses must manage tax risk effectively, establish a consistent approach to enhancing their tax operations and develop a robust tax control framework.

The allocation of tCCMs by HMRC underscores the importance of building valuable relationships. UK businesses should be ready to engage constructively with tax authorities, including through the new tCCM initiative whether voluntarily or otherwise, and demonstrate transparency and cooperation. These increased demands on tax leaders aren’t going away so it’s far better to take the initiative when it comes to managing your tax risk in 2024.

The BDO Global Tax Outlook survey is available at: tinyurl.com/kb24anm7

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Habitat banking
Relief for farmers and landowners

We look at habitat banking in the context of research and development relief, which can only be claimed through the legal entity of a limited company.

by Julie Butler

Farmers have to be participating in research and development to be able to claim the new grants for farming for the environment and the Environmental Land Management Scheme, together with all areas of carbon capture and moving towards net zero.

Habitat creation, enhancement and ongoing management

Biodiversity net gain will be mandatory for most housing developments in England, with a phased introduction that started in November 2023 and which is subject to much debate.

In England, biodiversity net gain is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990. The mandatory requirement came into place on 12 February 2024 for all development under the Town and Country Planning Act 1990, with a temporary exemption for non-major developments until 2 April 2024.

Developments will need to deliver at least a 10% uplift in biodiversity compared to the impacts to habitats within their site boundaries. Habitats must be replaced on a 'like for like' or 'like for better' principle.

If habitat creation has not yet started, work to create habitats or enhance existing habitats can begin. Any habitats will then need to be managed and monitored for at least 30 years in line with the legal agreement and agreed habitat management and monitoring plan. Guidance on these steps will be published at tinyurl.com/2s3v425p in the coming months.

> **Where biodiversity net gain cannot be delivered on the site, developers can buy off-site biodiversity units.**

Habitat banking

Where biodiversity net gain cannot be delivered on the site, developers can buy off-site biodiversity units on the off-site market. Landowners can create or enhance habitats to sell biodiversity units. The first action point is to carry out a baseline habitat survey to determine what habitats are present on their land and what condition they are in.

Landowners can then decide what habitats they want to create or enhance. They may agree to create or enhance certain habitats to sell the units to a specific development, or they may create habitats and sell the units to a developer later (known as habitat banking). With all the uncertainties that farmers are faced with, one certainty is starting to review the suitability of habitats.

The habitat baseline and planned enhancements for the site that has been chosen can be entered into the 'biodiversity metric', which uses habitat features to calculate a biodiversity value, to give landowners an idea of unit outputs. The number of units generated will vary depending on the timing of the habitat creation and the location of the development they are sold to.

More information about the impact of these factors can be found in The Biodiversity Metric 4.0 user guide at Natural England Publications (see tinyurl.com/ycxnxbyy).

In the last resort, if developers cannot achieve on-site or off-site biodiversity net gain, they must buy statutory biodiversity credits determined by a metric tool (see tinyurl.com/4tuubp9p). Statutory credits are priced in tiers, determined by the value of the habitat, and are currently priced between £42,000 and £650,000 per credit. Prices will be reviewed every six months.

Research and development relief

Whilst we all await the results of the Budget 2023 Consultation on the taxation of environmental land management scheme, tax advisers must still look at opportunities for research and development (R&D) relief.

In addition to habitat banking, other examples of R&D that might be considered by landowners include: trials to pioneer the net zero production of crops through sustainable

fertilisers; reduced cultivation; improved soil health; and improvement to storage and transfers. Some of the work will be carried out centrally through organisations like the Centre for High Carbon Capture Cropping with funding from Defra's farming innovation programme.

Possible errors on R&D claims

Given the current high profile of R&D errors, impartial expert reviews of all R&D claims made by farmers and landowners are a sensible precaution, particularly where the claim was made by a separate claim handling business.

The type of errors that arise could be based on published generic findings:

- When claims are made for commercial activity, rather than scientific or technological advances, farmers and landowners must still be commercial around these advances.
- Farmers taking insufficient care to check claims or not providing the right information on the specifics of the claims to advisers.

The checking of claims can be difficult, for example:

- The farm operation may fail to properly explain complex technology or engineering, creating a situation where the HMRC inspector does not fully understand a business or its activities. Some farming operations are very specialist and appear complicated to the outsider who is not used to farming.
- No or insufficient documentary evidence is provided to support an R&D claim to demonstrate compliance with the rules.
- Fraudulent claims are made; for example, knowingly claiming the whole cost of an asset that has continuing value to the business. Obviously, farmers and farm advisers must avoid such claims.

Additional information form for R&D

The new additional information form that must be submitted in support of R&D claims from 8 August 2023 onwards is considered by many to be overly bureaucratic. Farming companies should take greater interest and ownership of their R&D claims, given that a named company officer must sign the claim off.

HMRC hopes that this will drive higher quality and consistency of R&D claims. However, farmers must not rule out valid R&D claims because of the increasingly bureaucratic nature of the tax relief.

It is considered that providing HMRC investigators with all the detail they need will go a long way to limit the overall impact of an enquiry and is often reciprocated by HMRC. It will always be better for a forensic analysis of the original claim submitted by farming companies to be undertaken to both identify mistakes and build a case to support a corrected claim.

With all the other changes that farmers face, farmers and the farming industry must always consider R&D claims as an integral part of tax planning. For individual farming projects, there must also be a limited company for R&D which must be considered by the tax adviser in context.

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Employment-related securities

International hybrid working

We consider the treatment of restricted securities for individuals who undertake hybrid working overseas.

by Lisa Wootton

For many people, some degree of hybrid working is now firmly here to stay. Technology to support this new approach has advanced at a rapid pace over the last few years. Many aspects of the job can arguably be carried out just as effectively virtually as they can in person, at least for short periods of time or in relation to carrying out certain tasks.

Naturally this has led employees to question why their work must be carried out from their home base. Provided there is a suitable internet connection, and good coffee, what should stop individuals from working remotely wherever in the world they may find themselves, balancing their work around their lives. Naturally, this depends on having the right to work, which is a separate matter. This desire to work flexibly is becoming so common that many employers now have policies in place governing overseas 'homeworking' by employees.

Tax residency

The general starting point for many tax authorities is to levy taxes based on an individual's tax residency status. However, when it comes to employment taxes, where an individual carries out their duties is equally important. Employment tax issues could arise where employees spend time working outside their home country.

The risk of such issues inadvertently occurring is increased where decisions are made by employees themselves over their homeworking location without proper consultation with their employers, who are better placed to assess the tax risks of these arrangements.

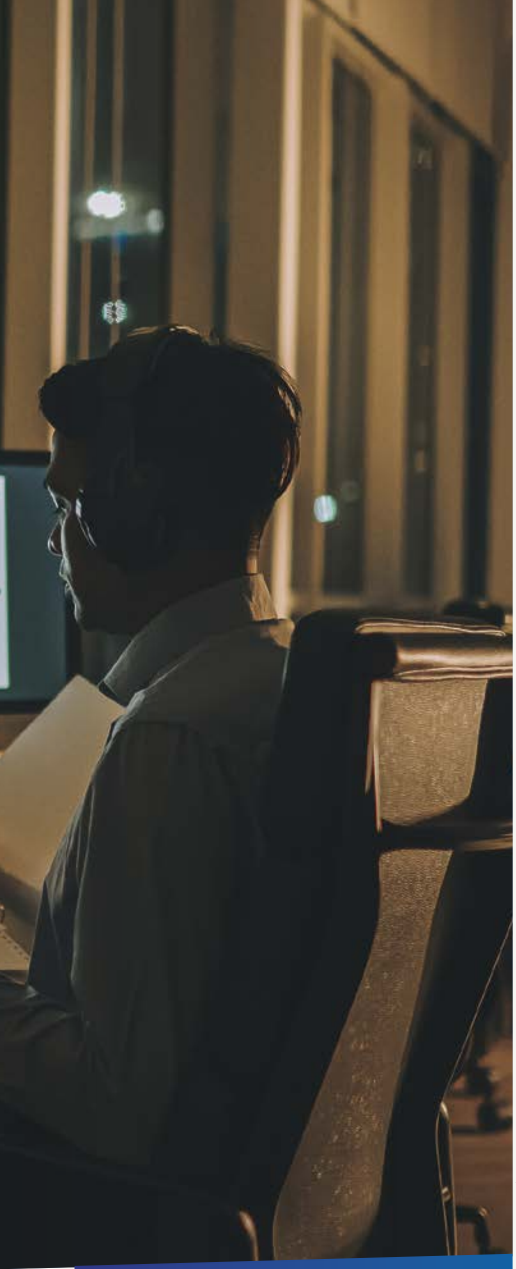
If an employee is exposed to employment taxes outside of their home jurisdiction, not only could this impact the taxation of their salary and other compensation, but an often overlooked point is that it could affect the taxation of an individual's participation in a company management equity plan. Not all jurisdictions treat an investment in a management equity plan in the same way, depending on the terms, and therefore unexpected complexities can quickly arise.

Restricted securities

The rules in respect of the taxation of restricted securities under the Income Tax (Earnings and Pension) Act 2003 Part 7 Chapter 2 is a particularly complex area and a detailed discussion of this piece of legislation is beyond the scope of this article.

However, broadly, where an employee acquires shares with restrictions attached and where the individual does not make a timely election under s 431, specific employment income is deemed to arise under s 426 when certain chargeable events occur. One such event would be the lifting of restrictions on the securities, which will depend upon the securities' terms and vesting schedule. In a private company, it is not uncommon for the securities to fully vest only upon a disposal event of the business to a third party.

The process to make a valid election is set out in detail in s 431, including: the requirement for the election to be made within 14 days of the securities being acquired; and the requirement that the individual has UK taxable earnings in the tax year in which the securities are acquired. The election provides that the individual is taxed by reference to the unrestricted market value and that



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Key Points

What is the issue?
International hybrid working can give rise to employment tax charges on an employee's equity participation outside of the individual's home country.

What does it mean to me?
Where a group has set up a management equity plan, particular care should be taken to ensure that there are no unintended tax consequences of individuals choosing to work remotely overseas.

What can I take away?
Due consideration should be given to the rules in Part 7 of the Income Tax (Earnings & Pensions) Act 2003, where overseas workers participating in a management equity plan intend to spend time working in the UK.

subsequent growth is subject to capital gains tax.

Non-residents working in the UK

The provisions determining the treatment of restricted securities for internationally mobile employees are found in s 41F. Broadly, these state that income deriving from restricted securities that is not treated as 'foreign' is subject to income tax in the UK. Foreign would include, for example, income relating to duties performed wholly outside of the UK. Therefore, income relating to duties performed in the UK will, on the face of it, be taxable in the UK.

This is a rather simplistic analysis, and it will be important to consider the nature of the duties being performed in the UK, as well as the impact of any double taxation agreement between the UK and the employee's home country. However, on the assumption that relieving provisions do not apply, what constitutes income deriving from duties performed outside the UK versus inside the UK is determined by ss 41H and 41L. These state that the income in question must be apportioned and that apportionment should be done on a just and reasonable basis.

Incidental duties

The legislation has long recognised the international nature of both today's businesses and their workers, and there is specific legislation addressing the tax implications where employees spend time working outside of their home location. Historically, this legislation will have been applied in arriving at a logical outcome where employees made short non-substantive business trips to the UK on behalf of their overseas employer. In these instances, it seems just that taxing rights should remain with the worker's overseas employer.

In more recent years, this legislation may serve to relieve taxation of overseas workers' remote homeworking in the UK but the position will be heavily dependent on the facts. Given the high degree of flexibility afforded to workers today over their hybrid working pattern, the outcome and final position could be somewhat grey.

The legislation under s 39 states that provided the duties carried out by a non-resident in the UK are merely incidental to the performance of their duties in their home country, the duties carried out in the UK are deemed to be performed outside of the UK. What constitutes merely incidental duties is not defined in the legislation; however, HMRC Employment Income Manual EIM40204 sets out that it is necessary to consider the nature of the individual's duties both in and out of the UK to form a judgment. Some examples of the types of activities HMRC would expect to fall into the merely incidental bucket include, for example:

- arranging meetings and business travel;
- providing feedback on employee performance and/or business results, if this does not involve the employee concerned in preparation or analysis whilst in the UK and as long as responsibility for these matters is not part of the employee's core duties of employment;
- input to team restructuring and staff matters, provided that the employee does not have a management role; and
- reading generic business emails that do not relate directly to the employee's role/responsibilities.

The list is not exhaustive and what constitutes merely incidental for one individual may not be the same for another.

Application of the double tax treaty

If the duties carried out by an individual cannot be said to be incidental to the employee's role outside the UK, the other area to consider is the application of the employment income article of the relevant double taxation agreement between the UK and the individual's country of residence. If the conditions of the agreement are met, any employment income that would otherwise become taxable in the UK under domestic law will remain taxable only in the individual's home country.

The precise wording of the conditions will depend upon the relevant treaty; however, broadly the three conditions are commonly:

1. The individual's presence in the UK does not exceed 183 days in a 12 month period (either a rolling 12 month period or the calendar year depending on the treaty).
2. The individual's remuneration is paid by, or on behalf of, an employer who is not a resident of the UK. Broadly, this means the individual is employed (legally/economically depending on the jurisdictions) by an employer outside of the UK.
3. The individual's remuneration is not borne by a permanent establishment which the employer has in the UK.

Applying these conditions could be complex, particularly in the context of large international groups where the individual's economic employer and the cost of their remuneration being borne outside of the UK may be less clear.

Case study: the impact of hybrid working

Justine is employed by Group Y, a Dutch based business. Prior to the pandemic, Justine both lived and worked in the Netherlands. However, given the acceptance of hybrid working, Justine now splits her time between her homes in the Netherlands and the UK. She now typically spends three to four days in the Netherlands in any given week and the remainder of the time in the UK. Whilst in the UK, she works from home.

Group Y believes in making employees owners of the business and therefore four years ago Justine was invited to acquire shares in Group Y. The terms of these shares require her to remain employed by the group or otherwise she will forfeit her shares. As she is employed by a local Dutch business, no specific UK tax advice was taken at the time she acquired her shares.

Group Y's majority shareholders are currently undertaking a disposal of the group, whereby Justine would also be required to sell her shares.

What this means for management's equity

As Justine is an employee of Group Y and received shares as result of her employment, the shares will be employment-related securities. The shares will also be restricted securities under s 423(1) on the basis they are forfeitable if she leaves her employment. Justine did not make a s 431 election within 14 days of acquiring her shares and therefore a proportion of the value she realises in respect of the shares as part of the upcoming transaction will be treated as specific employment income under the restricted securities regime.

Justine's tax residency status would need to be assessed. Assuming that she is non-UK resident, as Justine carries on her regular duties whilst in the UK, her work in the UK would not be considered incidental to her Dutch employment.

Turning to the UK-Netherlands double taxation agreement, and assuming that Justine has spent more than 183 days in the UK in a 12 month period, the conditions in Article 14 (Income from Employment) would not be met. Therefore Justine will be subject to UK income tax on the proportion of her employment income that relates to UK workdays.

This would include her share proceeds relating to UK workdays and deemed to be specific employment income under the restricted securities rules. It is likely that such a charge to UK tax was not on Justine's radar. In addition, her share proceeds may be subject to capital gains taxes, instead of employment taxes, in the Netherlands, which could further complicate the position with regard to claiming tax credits.

Conclusion

The focus of this article has been on the application of the restricted securities rules in an international context for workers employed by the group. The final position in any of these cross border cases is highly fact dependent and can become complex quickly, including where Employer of Record arrangements are in place, which is a separate topic.

It is also worth noting that there are wider potential tax implications for the group and its corporation tax position. It is therefore recommended that there are robust processes and controls in place and careful planning is undertaken to ensure there are no nasty surprises for employee shareholders on realising the value of their equity.

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NEWSDESK ARTICLES

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WELCOME

March Technical newsdesk

Apologies to those of you who work in the private client sector, but I am going to take you back into the throes of the self-assessment peak. More precisely, I am going to look at some of the statistics and what they might tell us.

Immediately after the 31 January self-assessment deadline, HMRC publish statistics about that year's filing rates. On 1 February 2024, HMRC issued a press release (tinyurl.com/d57bx6pn) which included the following statistics:

- 12,187,811 self-assessment returns were due;
- 11,581,962 returns were received by 31 January (in total, including voluntary returns);
- 11,027,962 expected returns were received by 31 January; and
- 11,246,962 returns were filed online (97.11% of the returns expected, following adjustments).

It is pleasing to see that the rate of online filing continues to increase, though almost all self-assessment returns are already being submitted electronically. Ten years ago, the rate was still high at 84.5%, and it shows that it is not necessary to mandate the use of an online system if it is good enough to make you want to use it.

The other statistic to highlight is the rate of *expected* returns filed on time. Out of the 12,187,811 expected returns due, 90.48% were submitted on time. This compares to the most recent pre-Covid self-assessment deadline of 31 January 2020, when 91.82% of expected returns were filed on time. This shows a fall of nearly 1.5% (around 180,000 returns).

There is no way of knowing what caused that fall, and so I am speculating when I consider call waiting times. As at 31 January 2020, the average call waiting time on HMRC's phone lines was six minutes and 42 seconds, and there were no restrictions on the self-assessment helpline. Today, HMRC's average call waiting time is over 22 minutes, while helpline restrictions were in place both during the self-assessment peak and last summer. Is it just a coincidence that filing rates fall when people find it more difficult to get through to HMRC?

The increasing rates of online filing show a desire to go digital, but a shortage of adequate support from HMRC (or agents) could lead to a reduction in compliance. In the coming years, HMRC will have significantly more new 'customers', as well as existing customers with more complex affairs. The freezing of the allowances and thresholds to 5 April 2028 will bring around 1.1 million individuals into income tax, the reductions in the dividend allowance will affect around 3.2 million taxpayers and the reduction in the capital gains tax annual exempt amount will affect around 570,000 individuals and trusts, of which around 260,000 will be brought into the scope of capital gains tax for the first time. Further, Making Tax Digital for Income Tax Self-Assessment will affect around 700,000 self-employed individuals and landlords from April 2026 and 900,000 from April 2027, which includes moving affected taxpayers from one 'touch point' with HMRC a year to at least five.

HMRC propose to take some quite radical steps to 'encourage' customers to interact online. We continue to urge the government not to reduce HMRC's resources until the benefits of digitalisation have been realised. In the meantime, we will be keeping a close eye on compliance rates, to see whether there's anything in my speculation.

GENERAL FEATURE

Letter to the Financial Secretary to the Treasury

The CIOT wrote to the Financial Secretary to the Treasury, setting out several key issues which require his attention.

Nigel Huddleston MP was appointed Financial Secretary to the Treasury (FST) on 13 November 2023, succeeding the Rt Hon Victoria Atkins MP. When a new FST is appointed, we write to them setting out what we think are the priority areas which require their attention.

Because Mr Huddleston was appointed just nine days before the Autumn Statement, our first letter to him (sent jointly with the ATT) focused solely on Making Tax Digital (tinyurl.com/yc34x6cx). In early January, we took the opportunity to write our usual 'welcome' letter, highlighting the following issues:

Investing in HMRC to improve service levels: We explained that HMRC's performance standards are falling badly short and remain the single biggest concern of our members. We highlighted the results of our survey, which had found widespread dissatisfaction with HMRC service levels. We set out our concerns about the possible impact on compliance if taxpayers and agents are unable to get the information and support they need from HMRC, and urged investment in HMRC to be maintained until digital services and guidance enable better self-service.

Review Making Tax Digital: We referenced our earlier correspondence, and our desire to follow this up.

Simplifying the tax system: We said that the UK tax system has become far too complicated for taxpayers to understand and comply with. Further, a complicated tax system is harder to digitalise, as well as making it more challenging for HMRC to administer it effectively. We expressed our disappointment at the abolition of the Office of Tax Simplification, but welcomed the government's commitment to 'embed tax simplification into the heart of government'. We reiterated the need to make changes to policy process, and attached the letters (www.tax.org.uk/ref1098 and www.tax.org.uk/ref1221) we had sent to his predecessor, suggesting nine changes to help embed simplification at the heart of tax policy.

Research and development (R&D) tax credits compliance: While we agree that action is needed to tackle high levels of error and fraud in R&D credit claims, we expressed our concern that HMRC's handling of R&D tax relief compliance is resulting in valid claims being rejected. Though we are continuing to engage with HMRC, we requested a meeting with the FST to discuss alternative approaches to tackling abuse in this area.

Regulation of tax services: We are keen to see the raising of standards across the industry, but recognise that this is a complex area and that many issues need resolving to identify an effective and workable system. We would like to better understand the specific problems the government is seeking to fix through regulation, to ensure that any regulatory model is designed in a way that best achieves tackling these issues or is introduced with an understanding of the limitations of such a model. We also would like to ensure that due consideration is given to alternative or additional options, which may more directly tackle the specific problems identified. For example, enforcement of restrictions that HMRC could put on 'bad' agents, whom none of us wish to see acting in the industry.

A copy of our letter, and the FST's response can be found at: www.tax.org.uk/ref1283.

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GENERAL FEATURE

Care Leaver Payment: Scotland

LITRG have submitted a response to the Scottish government consultation on the development and delivery of the Care Leaver Payment.

As part of its response to the Independent Care Review in 2020, the Scottish government committed to develop a payment to provide young people moving on from care with additional financial security. The proposed Care Leaver Payment aims to fulfil this commitment. It will form part of a broader package of support for care leavers in Scotland. The intention is that the Care Leaver Payment will provide a one-off payment to care leavers moving on from care and into adulthood and more independent living.

The Scottish government published a consultation (tinyurl.com/5n7ke6v6) in November 2023 to gather views on the proposed Care Leaver Payment. The consultation considered eligibility criteria, application processes and the amount of the payment. These are questions of policy on which LITRG did not comment. The LITRG response focused on tax and benefits considerations in the development and delivery of the Care Leaver Payment.

We noted that the Scottish government needs to consider how the payment should be treated for tax purposes. While not advocating a particular policy approach, given the stated intention for the payment and the Scottish government's view of care leavers as potentially disadvantaged, we wondered if consideration should be given to making the Care Leaver Payment exempt from income tax and disregarding it in the calculation of benefits payments. As such, we went on to look at the practical considerations of the payment being taxable and of it being exempt.

Beyond this, we set out some key issues the Scottish government needs to explore if the payment is to be treated as taxable income; for example, the need to consider the categorisation of the payment under legislation. We also considered the practicalities of collecting tax on the payment. If tax is to be deducted at source, this could result in care leavers overpaying tax and needing to claim a repayment. Care leavers will need clear guidance and support to ensure they are aware of the process for claiming a tax repayment and to actually make the claim. We stressed the importance of the Scottish government and HMRC working closely to ensure good operational processes, as well as communications for recipients.

For benefits purposes, we discussed the implications of the payment being taken into account when calculating entitlements. We noted that the Scottish government must work closely with the Department for Work and Pensions to ensure that any legislative amendments are made, so that the payment fulfils the policy intent.

We also called on the Scottish government to ensure that it incorporates learning, not only from its own experiences of introducing other new support payments in Scotland, but also from the experiences of colleagues in the Welsh government, in relation to their basic income for care leavers pilot (acknowledging that in some cases, these experiences relate to regular instalments rather than one-off payments).

The full LITRG response is available here: www.litrg.org.uk/10839

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PERSONAL TAX

ATT calls for clarity on taxation of natural capital

The ATT has written a letter with other representative bodies to the government calling for a response to last year's consultation on environmental land management and ecosystem service markets.

On the 22 January, the ATT wrote to the Financial Secretary to the Treasury (FST) expressing concerns about the delay in responding to a consultation on 'natural capital' schemes. The consultation, titled 'The taxation of environmental land management and ecosystem service markets', closed in June 2023, but there has been no response from the government. The letter was written jointly with the Institute of Chartered Accountants of Scotland and the Law Society of Scotland.

All three bodies are concerned that uncertainty regarding the tax treatment of land management schemes, including the Woodland Carbon Code and the Peatland Code, is hindering the ability of land managers to engage with a range of environmentally beneficial schemes. This affects not only the UK's ability to achieve its net zero goals by 2050, but also has a direct impact on areas such as house building, where developers have to meet obligations in respect of schemes such as biodiversity net gain and nutrient neutrality before development can commence.

At the Autumn Statement, the government committed to responding to the consultation by Spring 2024 – a period well in excess of the usual 12 week response window. In the meantime, biodiversity net gain for developers became mandatory on 12 February 2024, nutrient neutrality is already in force, and the first tranches of pending issuance units generated from the Woodland Carbon Code have been verified and are available to purchase.

The full joint letter is available here: www.att.org.uk/ref449

The original consultation, which closed in June 2023 can be found here: tinyurl.com/5n8jj4vp

Helen Thornley hthornley@att.org.uk

INDIRECT TAX

VAT registration: further developments

Representatives from CIOT and ATT and other professional and industry bodies attended recent meetings of the Joint VAT Consultative Committee's VAT registration sub-group to discuss upcoming changes and potential improvements for VAT with HMRC. This article looks at some of the points discussed.

Service levels

After experiencing long-term delays in processing VAT registrations due to a combination of the Covid period then a fraudulent attack on the system in summer 2022, HMRC's VAT registration team has been working within its service level agreement of processing at least 80% of applications within 40 working days for over a year. In the last six months, these targets have been exceeded, with applications being processed in a reduced number of working days in over 90% of cases. We understand that the contact email address is also working within the five working day service level agreement standard. That said, there are still some outlier cases falling into the delayed service level agreement category (see below).

Automatic rejection of compulsory registrations

We received several examples from members where clients have had compulsory VAT registration applications automatically declined. Based on feedback, HMRC carried out an internal review of several cases and as a result, have updated the system so that this should not be happening going forward. If an application fails the fully automated process, the case should now create a 'more information is required' correspondence request.

Automatic rejection of trade class

We have submitted several examples of applications that have been automatically rejected based on the Standard Industrial Classification Codes (SIC codes, sometimes also referred to as 'trade class') which have indicated a wholly exempt activity (for example, insurance or financial service intermediary services). HMRC recommended that where there are some taxable activities, further SIC codes can be selected to reflect that activity.

We also highlighted that purchases may be the reason for VAT registration; for example, purchasing international services that are subject to a reverse charge in the UK. The business may also be making international supplies of services that would be exempt in the UK which qualify for the 'specified supplies' rules for input VAT recovery (see VAT manual VATPOSS03200 for fuller details of specified supplies), which allows for voluntary VAT registration. HMRC recommended adding wording to the 'further details' text box in the VAT registration application, such as 'specified supplies' or 'reverse charge purchases', and further system work is ongoing to recognise additional circumstances. HMRC subsequently updated paragraph 2.7 of VAT Notice 700/1 to make this clearer for specified supplies.

Member feedback

Currently, both the CIOT and ATT (and other JVCC membership representatives) are able to escalate member cases of excessive VAT registration delays or procedural issues to HMRC if, for example:

- there has been no contact within 45 working days (40 working days for the registration period and five working days for the business/agent to use the team's email contact address); or
- there has been automatic rejection of compulsory VAT registrations (and no request for further information received).

If you would like to provide feedback on the examples provided or to highlight other issues with the VAT registration process, please contact us at technical@ciot.org.uk or atttechnical@att.org.uk.

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INDIRECT TAX

VAT: Partial exemption special methods

CIOT attended a focus group with HMRC to discuss partial exemption special methods and some of the more common difficulties.

The CIOT previously engaged with HMRC on VAT partial exemption special methods (PESMs) when the PESM application form was digitalised via G-form (see earlier article tinyurl.com/9jewwa57). A PESM is the methodology by which a business with both VAT exempt and taxable income can recover input VAT on a fair and reasonable basis where the standard method is not suitable. For a fuller description of the basics of partial exemption, standard and special methods, see February 2022 *Tax Adviser*, 'Partial exemption in VAT registered businesses' (tinyurl.com/yc523zwh).

The CIOT were invited to attend a recent HMRC focus group meeting with other VAT specialists from practice to discuss various aspects of PESMs. HMRC reported at the focus group that since the digitisation of the application process had been launched, this had much improved the monitoring of live applications (approximately 700 to 1,000 per year) by the allocated PESM caseworker. This included timeline adherence as the application passes through the different stages of review and engagement by other teams. The digitised process also highlights when cases are becoming long term, so they can come under scrutiny sooner.

Common sticking points

Attendees raised several examples of times when finalising a PESM proved to be difficult. For example, for a sectorised PESM, only one sector out of a larger number could end up in dispute. In some more extreme examples, up to five resubmissions were required to bring the case to full agreement. HMRC said that 'use' is the key factor in any PESM request and it is important to provide the evidence that supports the fair and reasonable declaration (see para 6.2 of VAT notice 706 (tinyurl.com/yc8a6jt9)).

Another example discussed was possible simplifications in circumstances where a company joins an existing VAT group. This results in having to resubmit the whole PESM for approval, as the 'fair and reasonable' declaration must cover the whole group. A PESM is therefore required each time a new company is added to the business. This was seen as particularly burdensome in cases where the added company had no impact on the PESM.

Discussing the PESM

There was broad agreement from attendees that, where the application requires it, advisers would like early conversations with HMRC caseworkers to discuss perceived issues with the PESM application. Generally, the costs incurred by clients for this engagement are less than having to enter into repeated correspondence with HMRC. Although this position was less favoured by HMRC in the past, they have started to recognise the value of early conversations, particularly in complex cases where it is far easier to understand the fact pattern in live discussion than by letter. HMRC did highlight that it is crucial to present background information for a meeting in advance (for example, a week or so before the meeting) to allow officers to review the data and prepare questions. There was little use presenting data on the day of the meeting when the team had had no time to review it.

Rejected applications

Several stakeholders highlighted that they had received rejection letters on a PESM application, and it was frustrating to not understand the reasons why the rejection read: '*it is not fair and reasonable*'.

HMRC agreed that the reason(s) for rejection should be included in this correspondence and that this had addressed internally. They expect all current PESM rejection letters to include explanatory points and welcomed feedback should it be found that this information was not supplied. The CIOT had flagged this in our earlier meeting (see article linked above).

If CIOT or ATT members have received such limited information in recent PESM rejection letters, please let us know at technical@ciot.org.uk and we can provide these details to the PESM team.

Please note, at the time of the workshop, the *Hippodrome Casino Ltd* [2024] UKUT 27 (TCC) case transcript was not in the public domain so was not discussed.

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GENERAL FEATURE

GOV.UK Collections of guidance

HMRC have recently published new 'collection pages' for various tax topics that bring GOV.UK guidance on that topic into one place. CIOT representatives on the Guidance Strategy Forum comment on this development and invite feedback.

HMRC have recently published a series of new collections of guidance on GOV.UK that bring together and list the existing guidance, forms and calculators on specific tax topics such as tax on savings and investments, inheritance tax, compliance, tax agents and advisers, stamp duty, stamp duty land tax, capital gains tax, capital allowances and the construction industry scheme. We understand that further work is ongoing on collections, so more taxes and topics may be included going forward.

At the time of writing, using the search term 'detailed information' in the GOV.UK search bar (with the 'topic' drop down filter selected to 'Money') brings up the full list of collection pages on pages one and two of the search return results.

We think the collections have several benefits. Primarily, this brings GOV.UK guidance, forms and calculators together in one place. Also, the collection pages link to more detailed guidance in the manuals and include links to related non-tax guidance. This helps to overcome the problem of siloed guidance and is something the CIOT and LITRG have promoted. We are pleased to see that the different elements of guidance in the collections are dated and that users can subscribe to updates to the collection page.

The usual feedback routes are available at the bottom of the collections pages to report any errors or where the collection is out of date or incomplete.

In terms of enhancements, we would like to see the ability to search a single collection, in a similar way to the tax manuals search function. We also have some concerns about how users land at the collection page. For example, a general Google search on a topic may not take the user to the collections page initially but instead to one element of the guidance. This may undermine the advantages of the collection page, but we note that collection pages are generally cross-referenced from individual pages which helps. We look forward to HMRC expanding their range of collection pages – for example, by creating one with relevant material for those earning money in the gig economy. We would also like to see an index of collection pages, as a hub from which users could find collections on different tax topics without needing to use the 'detailed information' search term referred to above.

Overall, we think the collections pages are a positive development that go some way to making it easier for users to find the right guidance and increase confidence that you have the full list of GOV.UK pages on the particular topic. We would welcome your feedback on the concept to technical@ciot.org.uk.

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GENERAL FEATURE PERSONAL TAX

Personal tax compliance for platform sellers

The new OECD platform reporting rules will give HMRC greater visibility over transactions made by people who sell goods or services through online platforms. It will also mean that significant numbers of taxpayers could be worried about their compliance. Many platform sellers do this as a 'side hustle', others as their main earning activity – either way, some will fall outside the remit of the tax charities and will need good value professional tax advice and assistance.

You can get an idea of the types of issues that platform sellers need help by looking at LITRG's recent articles on the topic (tinyurl.com/32thtcz8). In summary, they might include:

- understanding all the regimes and rules that apply in this area and which side of the line they come down on;
- providing simple reassurance for the 'worried well' that their activity is not taxable;

GENERAL FEATURE PERSONAL TAX OMB

Making Tax Digital for Income Tax

The CIOT, LITRG and ATT have each responded to the draft Income Tax (Digital Requirements) (Amendment) Regulations 2024, which amend the 2021 Regulations following the outcome of the Small Business Review.

Following the announcement in December 2022 that Making Tax Digital for Income Tax Self-Assessment (MTD ITSA) for those with income over £30,000 would be deferred, HMRC undertook a Small Business Review. The outcome, published in November 2023, was that the £30,000 mandation level should be kept under review and that:

- quarterly updates will be cumulative;
- End of Period Statements will not be required;
- 'easements' will be in place for joint landlords; and
- foster carers and those without National Insurance numbers will be exempt from the MTD for ITSA requirements.

The 2024 Regulations bring these changes into effect.

However, the amended regulations still raise concerns, which were highlighted in our responses. One is the provision of digital records: what they are to consist of, and the levels of detail required. The Regulations do not make the position clear and the terminology could be potentially confusing or misleading, particularly for unrepresented taxpayers. Likewise, it is not clear where digital links might begin, especially with the involvement of third parties (for example, letting agents). It was suggested that some easements might be introduced (similar to that within VAT Notice 700/22 regarding agents' supplies being incorporated into one invoice).

Also, owners of furnished holiday lets need clarification as to how to report their profits, as they cannot be certain whether their property qualifies as a furnished holiday let until at least the second quarter.

The submission deadlines for quarterly updates are the fifth of the month following the end of the quarter. All responses called for that to be moved to the seventh to coincide with the VAT return deadline. Some uncertainty remains about how adjustments or claims could be made without an End of Period Statement and how errors in the fourth update should be corrected in light of their cumulative nature; utilising the final declaration is the most suitable solution. It was also suggested that for landlords and sole traders without 31 March or 5 April year ends, aligning accounts with the updates will likely prove costly and burdensome.

An exemption from MTD ITSA also applies to those whose turnover falls below the £30,000 threshold for three consecutive years. Remaining subject to MTD ITSA whilst one's turnover is below the threshold should not only be kept to a minimum, but these continuing obligations should be publicised as far as possible. Being subject to MTD ITSA from 2026 by virtue of 2024/25 tax returns, and when an individual without a National Insurance number might become subject to MTD ITSA, are matters that also require greater public awareness.

LITRG also raised concerns about businesses caught by the MTD turnover criterion but which may nevertheless have low profits and not be liable to tax. HMRC should be prepared to offer significant direct support to those affected. Another area of concern is the complexity introduced by the interaction between the rules on 'digital start dates' and the mandation level (income exemption). LITRG suggests that there should be a formal requirement for HMRC to notify the taxpayer that they must comply with MTD with effect from a particular date, to provide some protection against penalties which might accrue without a taxpayer's knowledge in relation to missed MTD obligations.

The full CIOT response can be found here: www.tax.org.uk/ref1259

The full ATT response can be found here: www.att.org.uk/ref448

The full LITRG response can be found here: www.litrg.org.uk/10824

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- managing their ongoing tax positions, including preparing tax returns;
- withdrawing tax returns for those who might have got confused or prematurely registered with HMRC;
- potentially dealing with historic problems, including making a disclosure and having to deal with interest/penalties; and
- providing guidance on making payment plans.

Often, people who make money in the gig/sharing economies are on low incomes and may have additional needs (for example, if they have English as a second language or have a disability) and TaxAid would probably be their first port of call.

However, the tax charities cannot help everyone, and using LITRG's online guidance to 'self-serve' may not be feasible, particularly where an issue has several strands or has been ongoing for some time. In many instances, there may be no substitute for having a tax professional deal with HMRC on their behalf, so we are anticipating that members might see an increase in enquiries in these types of case.

LITRG have a website page on getting professional advice (tinyurl.com/y8junawf). This encourages those who can afford to pay for their tax advice to find reputable professional assistance by using ATT or CTA members.

The gig economy and HMRC's approach to taxpayers with historic compliance issues will be an area of focus for LITRG in 2024. We would be interested to hear members' experiences of any clients coming forward with concerns over selling goods or services via online platforms, which could help to inform our work. Please use our contact form to get in touch: www.litrg.org.uk/form/contact.

In the meantime, there is clearly a need in this market and we are sure there are ATTs/CTAs who are competent to provide this advice, who can help meet that need. If you are one of them, how can you make sure that, practically speaking, people can find you? We can offer you these tips:

- Ensure people can see that you are an ATT or CTA.
- Consider setting up a web presence if you do not have one already, and post articles or blogs on the gig/sharing economy topic, so that people searching for information on the internet can find you.
- Put yourself in the shoes of someone on a lower income. Does your marketing/advertising material make you seem friendly/approachable/accessible?
- If you are happy to take on ad hoc, rather than recurring, work and/or can help individuals as well as businesses, tell people.
- It may be an obvious point (and indeed, is covered by Professional Rules and Practice Guidelines), but people on lower incomes are likely to be price sensitive. Make sure your pricing structure is as clear as possible.

Meredith McCammond *mmccammond@litrg.org.uk*

GENERAL FEATURE PERSONAL TAX
MANAGEMENT OF TAXES

New HMRC initiatives around repayment claims

HMRC are taking a number of steps to tackle unscrupulous repayment agents, which may also affect members who make repayment claims for their clients.

Agent reference number requirement

HMRC have confirmed (tinyurl.com/s69nhw5j) that, from 26 February 2024, an agent reference number (ARN) will be required on forms P87 (tax relief on employment expenses claims) and marriage allowance election forms. Where a form is submitted by an agent without an ARN, HMRC will treat any nomination on the form as invalid and will make payment directly to the taxpayer.

The requirement for all agents that are charging fees for making repayment claims to register with HMRC through an agent services account has been in place since 2 August 2023. To enforce the requirement, HMRC are now updating the P87 and marriage allowance forms to include a box to enter the ARN. The new versions of these forms should be on GOV.UK from early February 2024.

Print and post form R40 already has a box for the ARN in the nomination section. From 30 April 2024, any forms submitted by an agent completing this section without an ARN, will also be treated as an invalid nomination.

Joint HMRC/Advertising Standards Authority Enforcement Notice

HMRC have been working with the Advertising Standards Authority to report and take down misleading adverts by repayment agents.

On 7 December 2023, they issued a joint Enforcement Notice (tinyurl.com/4bumhebp) which provides guidance to those advertising, marketing and promoting tax repayment agent services. The notice applies across all media (including paid-for advertising, websites and social media) which targets UK consumers.

Any advertisers that fail to adhere to the guidance within the Notice will be subject to sanctions. Following a grace period, we understand targeted monitoring and enforcement has now begun.

R40 (PPI) claims: new evidence requirement

In a recent article (tinyurl.com/49m6928h), LITRG explained that HMRC have changed the requirements for submitting a Payment Protection Insurance (PPI) repayment claim on form R40. This is in response to concerns over the nature and scale of R40 claims for PPI tax refunds being submitted by certain tax refund companies. The changes aim to help ensure that HMRC are only processing claims that are correct and properly authorised by the taxpayer.

HMRC now require evidence of the PPI claim before they will progress a claim for repayment of tax deducted. The supplementary evidence required is either:

- the final response letter from the company that made the PPI payment to the taxpayer; or
- a certificate from the company that refunded the taxpayer to confirm the amount of tax deducted.

HMRC expect that people making genuine claims will easily be able to provide the supplementary evidence that is being requested. Legitimate agents who have a good and proper relationship with their clients should be able to interact with them to get the evidence and should therefore also be able to provide it.

Going forward, HMRC will write to taxpayers who submit an R40 form to obtain a PPI tax refund, to inform them of this requirement where the evidence is not already attached. We understand agents who have a 64-8 in place will receive a copy of the correspondence sent to taxpayers.

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CIOT	Date sent
CIOT letter to Nigel Huddleston MP, Financial Secretary to the Treasury www.tax.org.uk/ref1283	10/01/2024
Local Government Finance (Wales) Bill www.tax.org.uk/ref1258	11/01/2024
Income Tax (Digital Requirements)(Amendment) Regulations 2024 www.tax.org.uk/ref1259	11/01/2024
The Land and Buildings Transaction Tax (Miscellaneous Amendments) (Scotland) Order 2024 www.tax.org.uk/ref1285	31/01/2024
ATT	
Income Tax (Digital Requirements)(Amendment) Regulations 2024 www.att.org.uk/ref448	11/01/2024
LITRG	
Employment status of PAs www.litrg.org.uk/ref2816	12/01/2024
Finance Bill briefing: Clause 32 and Schedule 13 Disqualification for promoting tax avoidance www.litrg.org.uk/ref2815	12/01/2024
Finance Bill briefing: Clause 16 and Schedule 10 Provision relating to the cash basis www.litrg.org.uk/10804	16/01/2024
Finance Bill briefing: Clause 36 Commencement of rules imposing penalties for failure to make returns etc www.litrg.org.uk/10805	16/01/2024
HMRC consultation on proposed amendments to Making Tax Digital Regulations www.litrg.org.uk/10824	19/01/2024
Care Leaver Payment: Scotland www.litrg.org.uk/10839	24/01/2024

Research and Development

CIOT and ATT concerns prominent in new Lords report

CIOT and ATT were extensively cited in a new report by the House of Lords Finance Bill Sub-Committee that has called on government to do more to prepare businesses for changes to research and development (R&D) reliefs.

The report, published on 1 February, said that the government should consider the impact of giving HMRC greater powers to gather data on employees and punish promoters of tax avoidance schemes. Both CIOT and ATT raised concerns over the proposed new R&D relief scheme with Ellen Milner, CIOT's director of public policy, agreeing that more discussion is needed over the proposals, including a proposed notification system for subcontractors unable to claim R&D relief. ATT technical officer Emma Rawson said that uncertainty and short timescales mean businesses will find it 'hard to plan'.

The sub-committee also said that measures to gather more data on employees and companies, such as the number of hours worked by salaried employees, should avoid imposing additional burdens on businesses. ATT told the committee that data on hours worked would be 'quite difficult to gather', while there is also the risk that an employer who is purposefully – and shockingly – not paying minimum wage could 'massage' their figures. The government has estimated that collating data like this will cost employers £35 million upfront, but that ongoing costs would be 'negligible'. CIOT has said it expects the real-life costs will be 'significantly higher'.

The committee welcomed the government's commitment to cracking down on tax fraud but questioned its effectiveness in tackling offshore promoters of tax avoidance. ATT said that professional regulation of tax services in the UK could enable the promotion and marketing of tax avoidance schemes to be 'countered more swiftly and effectively', while CIOT added that disqualification may not always be appropriate, especially in the cases of 'stooge' directors.

CIOT's blog is available at: tinyurl.com/2py7mass
The House of Lords report is available at: tinyurl.com/4h5a3ebe

Wales

Institute warns Welsh local tax bill could limit Senedd scrutiny

CIOT has warned that a Bill to reform council tax and business rates in Wales risks limiting the ability of the Welsh Senedd to scrutinise tax measures.

Scheduled to become law in the summer of 2024, the Bill proposes changes to council tax and non-domestic (business) rates in Wales.

Lakshmi Narain, the former chair of CIOT's Welsh Technical Committee, warned the committee that the Bill had the potential to limit parliamentary scrutiny of tax measures due to its reliance on secondary legislation as a means of making changes, in particular the 'affirmative procedure' (which means that proposals are either accepted or rejected without amendment).

Narain used his appearance before the committee to emphasise the need for 'appropriate scrutiny' and to caution against the potential compliance costs for businesses as a result of a move towards more frequent business rates revaluations.

Representatives from the Institute of Revenues, Rating and Valuation and the Institute for Fiscal Studies joined CIOT at the committee.

Lakshmi Narain

You can read the full report of CIOT's evidence at: tinyurl.com/w692rkz6.

Political Update

Invaluable Finance Bill briefings raised in Parliament

CIOT, ATT and LITRG were thanked for their contributions towards the current Finance Bill in remarks by the Shadow Financial Secretary to the Treasury.

As MPs concluded report stage consideration of the Finance Bill in January, James Murray thanked the bodies for their 'invaluable' input to proceedings. Between them, CIOT, ATT and LITRG produced 12 written briefings for MPs.

The comments and suggestions made in these briefings were referenced extensively as the Bill made its way through parliament early in the New Year.

James Murray

Working Group
Spotlight on Cryptoassets Working Group

The joint Cryptoassets Working Group is made up of members and representatives of both CIOT and ATT, as well as representatives from the CIOT's Low Incomes Tax Reform Group.

The group has been meeting since July 2022 and is chaired by Gary Ashford. The group was created to support the various bodies in making representations via the HMRC Cryptoasset Roundtable, which has been meeting since 2018.

Recently, the group has been looking at proposed changes to the rules surrounding lending and staking on Decentralised Finance (DeFi) platforms. DeFi transactions can be viewed as the cryptoasset version of traditional financing transactions, in which holders of cryptoassets or 'tokens' can lend or borrow tokens to earn rewards akin to interest.

Currently, such transactions are subject to capital gains tax, as HMRC regards most lending and staking as involving the transfer of beneficial ownership of tokens. HMRC's view is set out in guidance first published in February 2022.

However, those in the industry have argued that this does not reflect the substantive or economic reality in which owners retain effective ownership of the underlying token throughout the transactions. As well as potentially facing capital gains tax charges, owners engaged in DeFi transactions need to keep track of them, but the frequency can make compliance requirements very burdensome and costly. (HMRC treats cryptoassets akin to shares, so cost pools must be maintained.)

Proposals have therefore been put forward to keep DeFi transactions out of the scope of capital gains tax altogether (assuming the same quantity and type of tokens are eventually returned to owners). Capital gains tax will only be chargeable when tokens are economically disposed of (i.e. exchanged for fiat currencies or for goods and services). The Working Group had recommended this in the first consultation, released in July 2022, and supported the proposed change in the second consultation of April 2023.

Another issue which the Working Group highlighted within both consultations was the tax treatment of these rewards received by the tokens' owners. This has always been an area of uncertainty, with rewards potentially taxable as either income or capital. The Working Group proposed that they be subject to capital gains tax; however, the preference put forward by HMRC within the second consultation was for income tax treatment.

We expect draft legislation to be released imminently.

In both consultations, we had also recommended a wider-scale review of the law on cryptoassets, beyond DeFi, to give greater certainty for investors and their agents.

The CIOT/ATT Working Group continues to meet with HMRC regularly for roundtable discussions, alongside the Industry Working Group. Such topics for discussion have included: situs of tokens; interaction with VAT; application to employment remuneration; and general provision of HMRC guidance.

If members have any feedback or examples of issues, or have encountered areas of uncertainty surrounding the tax treatment of cryptoassets, please contact cthorpe@ciot.org.uk or hthornley@att.org.uk

Webinars
This year's ADIT webinar programme

ADIT International Tax Webinars and ADIT Network Webinars are a convenient and accessible way to follow the latest international tax developments.

Tax professionals around the world are confronting a range of complex questions. These range from the future direction of the two-pillar solution and growing competition between the OECD and the UN in international tax governance, to fiscal challenges and solutions presented by the move toward net zero and the impact on the tax profession of generative AI. In a fast-changing world, demand for the latest expert insight has never been greater.

The CIOT is continuing to expand its programme of international tax webinars, enabling you to explore emerging topics in depth with international tax thought leaders, and to contribute to the discourse on the subjects that matter to you.

Led by experts from across tax practice, industry and government on wide-ranging technical subjects of global interest, our **ADIT International Tax Webinars** are an accessible way to keep on top of the latest international tax developments. There is a nominal fee to register and attend each of these webinars, with free entry for those ADIT holders who hold International Tax Affiliate status.

Our ever-expanding selection of **ADIT Network Webinars**, organised with the help of our ADIT Champions and featuring insights from members across national and regional ADIT communities, enables international tax professionals in countries across the world to connect and discuss the tax topics that are most specific to them. Entry to the ADIT Network Webinars is free for all participants.

Last year's ADIT webinars saw an emphasis on sustainability, with International Tax Affiliate Liliana Ariton and William Graham CTA analysing the emergence of plastic taxes across Europe, while ADIT holder Argyro Myzithra explored the impact of ESG considerations on transfer pricing practice.

Other highlights included a look at the DAC7 and DAC8 Directives and what tax transparency means for digital platforms and cryptoassets, presented by accounting expert Constantinos Kounnis. Also, for our fast-growing ADIT Gulf States community, Mariia Merkulova and Joo Whan Lee reviewed the UAE's new corporate tax law.

This year's webinar programme will feature sessions on a number of personal, corporate, customs and energy tax issues, from a wide range of viewpoints across the EU, G20 countries and emerging economies. Upcoming webinars include:

- 10 April: Migration of a company and the place of effective management, with Angelo Chirulli; and
- 24 April: Carbon taxation: enhancing revenue scalability for emerging economies, with Oladimeji Alawode.

For information about upcoming ADIT webinars or to access previous recordings, visit: www.tax.org.uk/adit/events.

Website

New LITRG website launched

The Low Incomes Tax Reform Group (LITRG) launched a new website at the start of February.

The website address remains www.litrg.org.uk but the site has been redesigned to make it easier for users to access LITRG's guidance and information on a range of tax topics more quickly and easily.

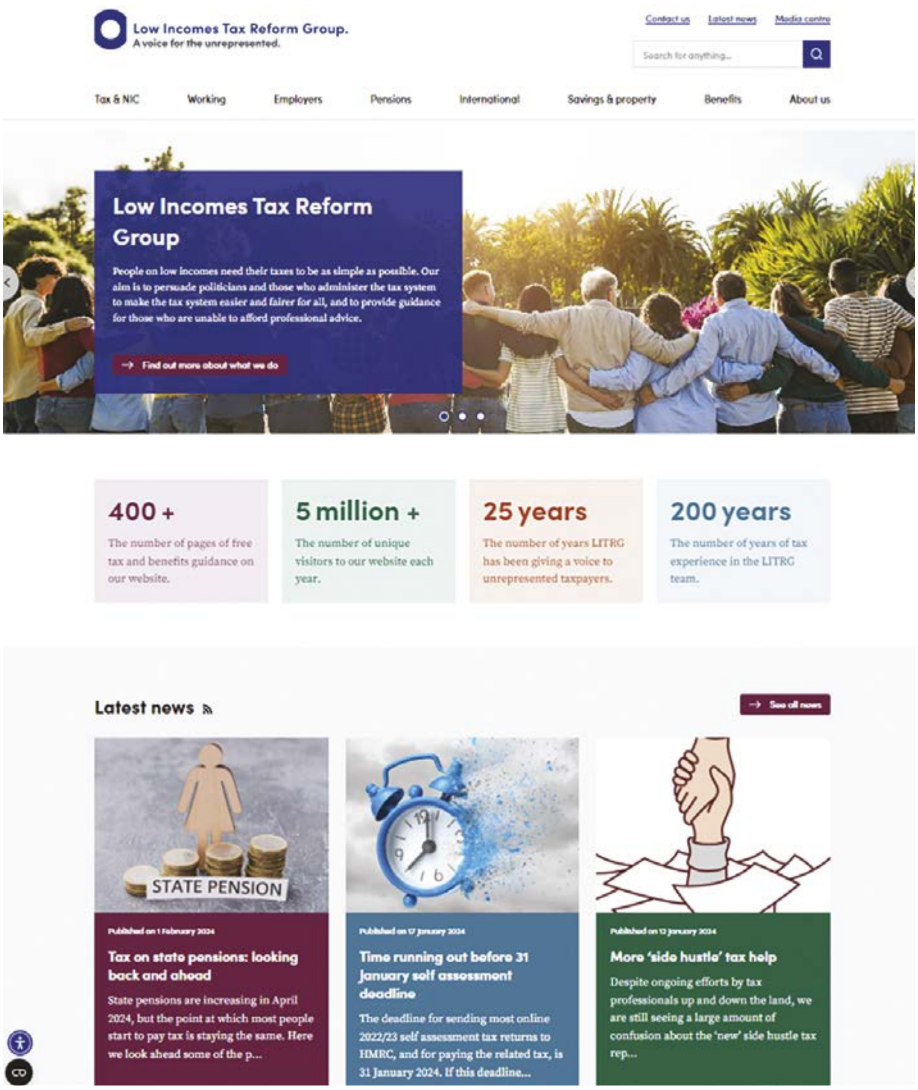
The redesign includes improved functionality for mobile users, a feature that was identified as a weak point in the previous website offering. Accessibility has also been improved, with a built-in tool allowing users to make adjustments suited to their individual needs.

Last year, more than 5.2 million people visited LITRG's website, viewing 7.88 million pages.

Although it is primarily aimed at helping people who cannot afford to pay for professional tax advice, the breadth and depth of content means that it has become a valuable resource for those looking for information on the tax system, such as CIOT and ATT members and students, other professionals and third sector advisers such as charities.

LITRG's website was prominent in its response to the pandemic, when the site's dedicated coronavirus guidance pages were viewed by over 1 million people.

The project to get the new website up and running was a major focus of the LITRG team's work in 2023. It involved the rewriting of existing material into an improved format and making the website easy to administer. Some further work will continue into 2024, as additional functionality is deployed.



In the news

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

'The new rules have caused a great deal of confusion, but they simply mean that HMRC is receiving more information from online platforms than they were before. If you are following existing rules, then you don't need to worry, or do anything differently.'
Victoria Todd, head of LITRG, Daily Telegraph on HMRC reporting rules for online platforms, 12 January

'According to the CIOT, if a worker was earning £27,850 a year last year then they would pay the same amount of income tax in both Scotland and England. However, those earning less would pay less tax in Scotland than in England and those earning more would pay more.'
The Daily Mirror, 16 January

'The ATT said in its Monday letter to Treasury there are outstanding tax treatment concerns across environmental land management programmes when it comes to income tax, inheritance tax, value added tax and stamp duty land tax that need to be addressed in the government's consultation response, expected in the spring.'
Bloomberg Law, 23 January

'We worry that HMRC's desire to push taxpayers towards digital resources will mean some people are left behind, and the services available to taxpayers and professional advisers via digital channels are too often incomplete, disjointed and poorly designed even for those who can go digital.'
Helen Thornley, ATT, Daily Telegraph, 30 January

'This might be the case if something outside your control stopped you from filing on time. HMRC won't accept being too busy or forgetting about the deadline as a reasonable excuse. They'll also expect you to have filed your tax return as soon as the excuse ended.'
ATT technical officer Emma Rawson, Daily Telegraph on those who missed the tax return deadline, 1 February

'A survey by the CIOT of over 500 tax advisers revealed 95% were not confident about HMRC's ability to oversee the introduction of the Making Tax Digital plans for income tax, and 70% thought even postponing the start date to April 2026 was unrealistic.'
The Daily Telegraph, 5 February

DITT
The Diploma in Tax Technology: for the tech-enabled tax professional

How the DITT qualification can better enable tax practitioners to embrace technical transformations in the world of tax and meet the future head on.

Over the last 18 months or so, it seems as though the world has gone through a technological revolution. Generative AI and ChatGPT, in particular, have become household terms. You might find yourself discussing technology with friends and colleagues more than you ever have before – even if you're not *quite* sure what it all means.

Of course, these changes and more have been taking place behind the headlines for years. At the CIOT, we have been following their effects on the tax field closely, considering how we can better enable tax practitioners to meet such transformations head on.

From real-time reporting systems adopted by tax authorities, to blockchain technologies used for recording financial transactions, the world of tax today is digital, in a way that presents both challenges and opportunities to tax practitioners.

The Diploma in Tax Technology (DITT) is the CIOT's latest innovative qualification, designed to build technological competency specific to the tax profession, enabling candidates to participate in tax-tech projects and liaise with experts in tax technology.

To govern the DITT, we're pleased to introduce our new DITT Committee, chaired by Paul Aplin OBE, a past President of the ICAEW, a member of the CIOT Council and an experienced tax partner. For Paul, 'an understanding of available technology and how it impacts is fast becoming "must have", rather than "nice to have", knowledge for tax professionals'.

Equipping tax practitioners with this essential knowledge is at the core of the CIOT's mission with the DITT, which seeks to help its candidates stay relevant in a rapidly digitalising tax landscape.

Paul is also a member of HMRC's Admin Burdens Advisory Board and a former member of the OTS Board. Along with HMRC colleagues Matthew Vick and Sam Wood, he provides the Committee with invaluable insights from the tax authority perspective, as well as guidance on the Making Tax Digital modules of the DITT syllabus. Ian Hayes, President of CFE Advisers Europe and CIOT Council member, Georgiana Head, Director of a tax recruitment firm, and Shan Sun, Tax Technology Lead at Deliveroo, make up the rest of the Committee, leading the DITT's governance and ensuring its quality.

With nearly 700 registered candidates so far, more than 100 of whom have already gone on to achieve the qualification, the DITT is also undergoing its first syllabus update in April 2024, from which candidates can expect to see new content at the forefront of technological change to make sure their learning remains cutting-edge.

The future of tax is digital, and we believe that education is the key to help you flourish in a tech-driven professional landscape. Register as a DITT candidate today at www.tax.org.uk/ditt and grow your career in the exciting world of tax technology.

ADIT
ADIT candidates savour exam success

Nearly 400 tax students around the world are celebrating after passing exams for the Chartered Institute of Taxation's ADIT (Advanced Diploma in International Taxation) qualification.

A total of 720 students sat 777 online exams in December 2023 across 61 different countries, with 375 of those passing at least one exam and 83 successfully completing their third ADIT module and achieving the full qualification. Of the new ADIT holders, 13 also achieved the distinction grade for excellence in their exams.

CIOT President Gary Ashford said: 'We extend our heartfelt congratulations to ADIT students around the world for their outstanding successes in the latest examinations. As ADIT enters the 20th anniversary of the first exam session in 2004, it is of immense pride to all at the CIOT to witness the exceptional standard of students pursuing the qualification. To those students with exams remaining, I would like to extend my best wishes for your success in your studies.

'We hope to see many graduates and students attending our exciting 2024 programme of International Tax Webinar events and regional network events taking place around the world in the coming months. These events offer members of the ADIT community valuable opportunities for further development and can help you extend your professional networks whilst you continue your learning in the hugely enriching field that is international tax.'

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

- Ross Hickey of London, who is employed by Shell, is awarded the Heather Self Medal for the best overall performance in Module 1 Principles of International Taxation.
- Corrinna Loveless of Guildford, who is employed by HMRC, is awarded the Raymond Kelly Medal for the best overall performance in Module 2.09 United Kingdom option.
- Scott McCartney of Glasgow, who is employed by HMRC, is awarded the Tom O'Shea Prize for the best overall performance in Module 3.01 EU Direct Tax option.
- Laura Grant of Newcastle and Jamie Roberts of Bristol, who are both employed by HMRC, are jointly awarded the Croner-i Prize for the best overall performance in Module 3.03 Transfer Pricing option.
- Vongai Ziyambi of Harare, Zimbabwe, who is employed by the Zimbabwe Revenue Authority, is awarded the Wood Mackenzie Prize for the best overall performance in Module 3.04 Energy Resources option.
- Ioannis Protopapas of Athens, Greece, who is employed by KPMG and sat Module 3.02 EU VAT option, is awarded the Worshipful Company of Tax Advisers Prize for the highest mark in Module 3 (All other options).

Obituary

Roger Cobley

It is with great sadness that we report the recent passing of long-time member of the Institute, Roger Cobley, who has died after a long illness.

Roger left school at 17 and went to work for Whitmarsh Sterland & Co in St Neots, qualifying as a Chartered Certified Accountant in 1973. In 1974, he moved to Northampton to take up a senior role with Orton Desborough & Co, becoming a partner in 1977. Over the years he turned a small practice employing a couple of staff into an extremely successful and well regarded firm – now named Cobley Desborough – employing over 30 people by the time he retired in 2018. In addition to running the business, Roger volunteered tirelessly as treasurer for a number of charities, most notably for his church, St Alban the Martyr in Northampton.

Roger qualified as a Chartered Tax Adviser in 1978 and cherished his membership of the Institute. He threw himself whole heartedly into the Institute's activities, attending both Spring and Autumn conferences every year without fail. He loved attending Institute meetings, not just for the top class lectures, but also for the wonderful society of friends he looked forward to meeting up with there.

He was a founder member of the Bedford (now Mid Anglia) Branch in 1979 and served on the committee for over 40 years before having to step down through ill health in 2020. He was one of only a select few members to be awarded the Certificate of Merit for his devotion to the Institute and to his profession.

Roger's sons followed him into practice and continue to help run the business that bears his name. As well as inheriting his passion for tax and accountancy they have also inherited Roger's cherished number plate: C10 TAX. Roger is survived by his beloved and devoted wife Irene.

A MEMBER'S VIEW

Sarah Ibbotson

Senior Tax Manager, Co-op Legal Services

This month's ATT member spotlight is on Sarah Ibbotson, Senior Tax Manager at Co-op Legal Services.

How did you find out about a career in tax?

Accidentally! After a Psychology degree, I applied for a job within the Civil Service. My first choice was HM Customs & Excise – I had some romantic notion of heroically uncovering drug smuggling rings, having watched too much crime drama. In the end, I got my second choice, was recruited as a Tax Officer (Higher Grade) with HM Revenue & Customs (Inland Revenue in old money) and began my tax career.

Why is the ATT qualification important?

I was keen to obtain a professional qualification in tax to further my career. I knew that if I wanted to be taken seriously as a tax professional, it was an important and desirable qualification to have. ATT has grown and expanded, and those in the tax industry recognise that qualifying as a Taxation Technician indicates an individual's commitment to the field.

Why did you pursue a career in tax?

I have always liked numbers and maths, and the logic of tax calculations appealed to me. My work involves dealing with tax matters for deceased individuals and in the administration of their estates.

I often feel like a detective or a forensic analyst, piecing together information needed to get a picture of the individual's tax position. It requires research, initiative, experience and problem-solving techniques. Since joining Co-op Legal Services in 2018, I have enjoyed the most interesting and challenging tax work of my career.

How would you describe yourself in three words?

Diligent. Committed. Honest.

Who has influenced you in your career so far?

During my time at HSBC Trust Co (UK) Ltd, I was strongly influenced by David Byrom and Ian Degville-Thompson – both my seniors, and David unfortunately gone too soon. They encouraged me to have confidence in my ability and judgement, inspiring me with their expertise and skills. They were excellent mentors, colleagues and friends, extremely professional and with great integrity.

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

If you are committed to a career in taxation, it's the best thing you can do. It will give you a great grounding in tax, and will show your current and potential future employers that you are a serious individual who will be an asset to their business.

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

Despite the 'tax simplification' promises of years ago, it has not got any easier for the man on the street, and I do not see that changing any time soon. Digitalisation is being implemented and will no doubt continue. How this will be managed around tax matters of deceased individuals remains to be seen, but I will await developments with interest.

What advice would you give to your future self?

Remember that 'in this world, nothing is certain except death and taxes'. If you're facing a potential redundancy situation, you'll be fine and will get another job in tax. Good tax professionals will always be needed.

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

I almost lost the tip of my finger in a lawnmower accident when I was a child. Playing horses and carts with my Staffy, Honey, who didn't enjoy the game as much as I thought she would!

Contact

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

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- offshore structuring
- residency and domicile advice
- estate and succession planning

Salary

Excellent salary based on experience + varied benefits package.

Who we are

Pierce Group is a leading independent firm of business advisers supporting owner-managed businesses. Based in Blackburn and Bolton, Pierce Group employs over 120 people and works with an exceptional client base of prominent owner-managed businesses, HNWIs and entrepreneurs based in the UK and internationally.

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Harbour Key stands as a reputable, award-winning company specialising in accounting, tax, and business advisory services. They seek an experienced tax professional to join their growing team. This role is succession planning for the retirement of a tax partner, and applications will be considered from candidates from experienced manager upwards.

Located in Cheltenham, Harbour Key offers a comprehensive suite of services to businesses and high-net-worth individuals, both domestically and internationally. The position is focused on providing tax and business advice to dynamic OMB's – helping them through their life cycle. Day to day, this will include areas such as:

- business restructuring;
- management buyouts (MBOs);
- business sales and business acquisitions;
- valuations;
- employee incentive schemes;
- venture capital schemes;
- research and development (R&D) projects;
- tax disclosures & enquiries;
- compliance support and management;
- preparation of reports that effectively communicate tax-related information to clients in a clear and concise manner;
- business development, contributing to the acquisition of new clients for the firm;
- establishment and nurture of strong client relationships, aiming to provide an exceptional level of service;
- staying current with developments in tax legislation and HMRC guidance, identifying clients affected by any alterations;
- generation of technical briefings and marketing materials as needed;
- travel across the UK to meet with clients.

This role presents a wide array of challenging advisory prospects, making it an excellent fit for individuals aspiring to enhance their technical expertise and advance in their tax careers. The position will encompass a mix of hands-on client work preparation and review of junior and peer files using accounting software packages.

In summary, this opportunity offers a departure from the conventional confines of a large accountancy firm. It holds significant importance for the directors, with substantial potential for future growth and development and equity participation. Ideally, candidates should prefer working with owner-managed business (OMB) clients, and have a desire for direct client engagement and a commitment to delivering a comprehensive, value-added service to clients.

Harbour Key welcomes applications from ambitious and qualified tax professionals with diverse backgrounds, who are eager to collaborate within a dynamic team, offering abundant opportunities for progression and personal growth. This role is office based with travel to clients.

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

Reward/Share Plan Director
London
£excellent

This is a genuinely exciting opportunity for a reward/share schemes specialist to join a Top 20 firm as director. There is a clear partner track built in to the business plan for this role. Our client has a growing team, and would consider applicants from share plan specialists with accountancy or legal backgrounds. Alongside strong technical skills you will need the ability to get involved in day-to-day business development. Looking for a 'game-changer' – someone who can come in and really help with the next stage of development of this practice. Great flexible working too. **Call Georgiana Ref:3435**

Expatriate Tax Manager
Bristol
£excellent

Calling all global mobility practitioners. This is a great role for an expatriate tax specialist. Based in Bristol, this large firm seeks someone to join a multidisciplinary tax team. There are opportunities to develop client relationships and be involved in managing relationships and delivering services across a broad range of issues above and beyond tax compliance and advisory. Our client is a great employer, they can offer flexible working hours, hybrid working part time, full time to suit you. A great manager level role. **Call Georgiana Ref: 3433**

Personal Tax Assistant Manager or Manager – Saxmundham, Suffolk
£market rate

Our client is an independent accountancy firm. They seek a personal tax specialist to join their Saxmundham office near the Suffolk coast. They are looking for someone who will relish building long-term client relationships with HNW individuals, families and business owners. You will deal with an interesting mix of compliance and advisory work. Ideally, you will be ATT qualified (CTA would be the icing on the cake). A lovely role in a local firm in a market town. Applications from experienced seniors to experienced managers. **Call Georgiana Ref: 3427**

Tax Accountant – In-house
Manchester
£excellent

Great in-house role for a tax professional looking to develop a career in industry. Reporting to a manager, this role would suit an ATT, AAT (or equivalent) qualified or part-qualified who has tax accounting experience, ideally gained within an in-house tax or finance team. You will need strong Excel skills. This is a highly acquisitive business which continues to grow at an impressive pace. You will work on an interesting mix of direct and indirect tax, developing your compliance, reporting and advisory skills. Hybrid working available. **Call Georgiana Ref: 3434**

VAT Accountant – In-house
Manchester
£30,000 to £35,000

In-house tax role in a fast growing international group. Would suit a junior VAT specialist, potentially ATT qualified, or someone looking to move from HMRC. You will have responsibility for the timely preparation and submission of VAT returns across the group's European entities, to include submission of the UK return and co-ordination of submission by third party advisers for other European returns. Includes associated reports such as Intrastat, EC Sales list etc. This role is mainly office based in the Trafford Park area. Study support available. Great team. **Call Georgiana Ref: 3431**

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 North Yorkshire from other areas of the UK. **Call Georgiana Ref: 3424**

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DUBAI	**International Tax Manager**
ABU DHABI	**Tax Operations & Compliance**

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