April 2024

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Chartered Institute of Taxation.

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Taxing non-doms

The new four-year foreign income and gains regime to replace the taxation of resident non-domiciles in the UK

Key Budget decisions

How will they influence the behavioural responses of taxpayers?

Sole traders and SMEs

Pros and cons of the available business models

Disclosure to third parties

The risks of providing information to parties other than your client

HELEN WHITEMAN
JANE ASHTON

Welcome
Reaching out to members

On 6 March, Jeremy Hunt delivered his second Spring Budget as Chancellor of the Exchequer as a 'Budget for long-term growth'. The main announcement, however, seemed like a re-run of last year's Autumn Statement with a further 2% reduction in the rates of NICs for employees and the self-employed, making it very much a Budget for workers.

This was definitely not the only major announcement, though. From April 2025, the non-domicile status is being abolished to be replaced by a 'modern residency based system', and the high income child benefit charge is to be transferred to a 'household' basis from April 2026 after consultation. Big changes for property investors and owners included the abolition of both furnished holiday lettings and multiple dwellings relief, together with a 4% reduction in the higher rate of capital gains tax on residential property from 28% to 24%.

Following the Budget, the ATT issued three press releases and the CIOT/LITRG issued six covering these announcements. We also issued releases welcoming the new working group to clarify the tax treatment of several environmental land management schemes, and the news that the government will seek to extend full expensing to assets for leasing when fiscal conditions allow.

We also now have the long awaited consultation on 'Raising standards in the tax advice market – strengthening the regulatory framework and improving registration' (see tinyurl.com/2akhutra). Running until 29 May, this raises some important questions around how tax agents should be regulated and by whom. We would love to hear your opinions on the three proposed approaches: mandatory membership of a recognised professional body; joint HMRC and industry enforcement; or regulation by a separate statutory government body. Email your comments to standards@att.org.uk or standards@ciot.org.uk.

At the time of writing, we are pleased to say that around 80% of members have submitted their Annual Returns and paid their membership subscriptions.

Outstanding Annual Returns and related 2024 subscriptions are now well overdue (the deadline was 31 January 2024). Completing the Annual Return is a membership requirement (exemptions do apply to a small number, such as those who are fully retired) as it is a key element in monitoring compliance with the high professional standards we uphold.

We will continue to contact members to ensure they bring matters up to date. Failing to submit a return means you risk referral to the Taxation Disciplinary Board. Don't let this be you in 2024, and visit https://pilot-portal.tax.org.uk if your return is outstanding. If you need help to submit, our membership teams are available to support you at membership@ciot.org.uk or membership@att.org.uk.

For those of you looking to keep your knowledge up to date and increase your CPD, there is still time to register your place on the CIOT Spring Virtual Conference taking place on Wednesday 17 and Thursday 18 April. Topics covered at the conference include 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.

Also, the ATT's **free** Fellows' Webinar is on Thursday 25 April. Starting at 1pm and lasting for one and a half hours, the event will cover a main presentation on 'Avoiding Self-Assessment processing problems – help HMRC to help you', delivered by technical officer David Wright, followed by a choice of three breakout sessions, each led by a technical officer and covering MTD and basis period reform; bereavement and tax: improving processes and guidance; and whether or not to regulate tax agents. For those ATT Fellows who haven't as yet registered, please visit: tinyurl.com/mr47natn.

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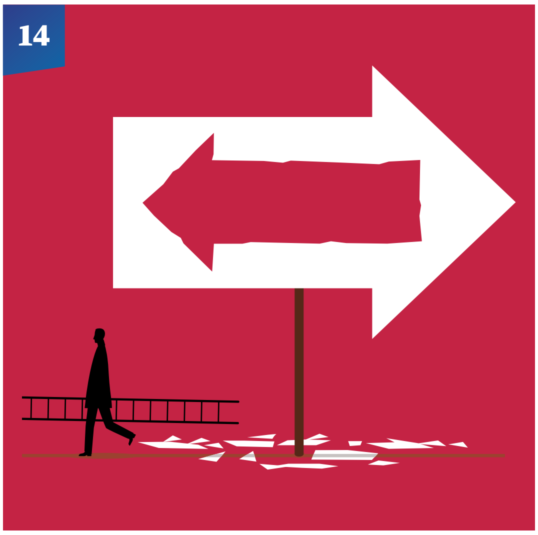

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How future tax changes can address these
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Subcontracting expenditure
The new merged R&D tax relief scheme
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NICHOLA ROSS MARTIN
VICE PRESIDENT

20,000 member milestone

> The non-doms measures are now congealing into the new 'marmite' – with tax advisers quite divided in their opinions about the changes!

Exciting times: we have hit our 20,000 member milestone! A couple of presidents before now had hoped that we would hit the target on their watch, but member retirements meant that even with fantastic exam results bringing new joiners we didn't quite get there! The wait is now over – too soon for me, but it's great for Gary Ashford, that it happened during his presidency.

In March, we had the Spring Budget, which was designed to be attractive to the electorate and was as a result blissfully quite short. In terms of innovative new measures, there were big changes to the non-domicile ('non-dom') rules for individuals, which overshadowed extending the scope of the creative industries reliefs for corporation tax. Furnished holiday lettings, special tax status and multiple dwellings relief for stamp duty land tax are to be abolished.

I wasn't alone in not quite expecting some of the non-doms measures to take the form announced. They are now congealing into the new 'marmite' – with tax advisers quite divided in their opinions about the changes! I look forward to seeing how the details pan out. I know the CIOT Technical Officers and volunteers have been hard at work analysing what the changes could mean.

Away from the Budget, I've been looking with interest at some of HMRC's manual updates. In particular, what outwardly appears as quite an innocuous update on relief for training costs for the self-employed in HMRC's Business Income Manual may have been overlooked by some, as it was published the day before the Budget.

In reality, it brings what could be a welcome relaxation since HMRC last published its view on the issue in 1991. However, I also question whether we will need some clarity as to the legal position, given that the change in guidance now appears to conflict with the case law.

The Autumn Statement 2023 led us to expect new guidance in this area, and HMRC has now stated that a training course will be tax-deductible if wholly and exclusively incurred for the purposes or 'ancillary purposes' of the trade or business. In short, some new skills will not now be automatically capital in nature.

This is likely to affect many of us and our clients, so I'd recommend having a look at the updated BIM35660. It includes some examples as to when HMRC thinks that the training costs will be allowable. They are possibly not comprehensive but one particularly resonates with me because it pays homage to the new skillset that sole proprietors will need ahead of Making Tax Digital for Income Tax Self-Assessment (MTD for ITSA).

HMRC's BIM35660 example looks at the case of Ryan, a plumber who attends a beginners' bookkeeping course. It states that: 'Although the course will not help Ryan with the skills he needs as a plumber, it will teach him how to keep accurate accounting records, which will help him run his business better. The cost of the course is likely to be an allowable expense.'

If Ryan needs bookkeeping as a business skill, surely he needs tax skills too – so why stop at bookkeeping? Once MTD for ITSA kicks in, Ryan will have to be navigating the complex points-based late filing penalty system (and making suitably timed appeals).

The training concession has the potential for a new generation of sole traders to take not only bookkeeping but tax exams. A great marketing opportunity for the ATT and CIOT!

The change in HMRC's position is welcome. If it is desirable for the workforce to upskill, it seems contrary to disallow tax relief on training costs. However, there was no announcement in the Spring Budget 2024 (nor am I aware of anything at the time of writing this) confirming a change in the law so perhaps HMRC's change to its manual indicates that this is more of a concession.

This adds a tricky angle for tax advisers as HMRC's old guidance has also been reflected in the decision of *Dass v Special Commissioner and others* [2006] EWHC2491 (Ch). Do we follow legal precent or HMRC's manuals? We know the answer to that: we follow legal precedent. That begs the question as to whether the government will change the Income Tax (Trading and Other Income) Act 2005 to provide some much needed clarity on this point.

I'll leave you with that thought and wish you well for the new tax year. I'm looking forward to hearing from our 20,000th member next month!

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Chartered Institute of Taxation.

SENGA PRIOR
DEPUTY PRESIDENT

Turnaround times!

> I found myself pondering about what other major U-turns have there been and what were their turnaround times?

March has been a busy month! I attended the CIOT/ATT Branches Conference at the beginning of the month. You would not believe how difficult it is to get from a village outside Perth to Coventry by public transport but it was well worth the effort. Charlotte Barbour and I met several of the Branch volunteers and the sessions held were really interesting. If you have a local Branch, please consider supporting them by attending events.

There is always an opportunity to network and this can be invaluable, sharing ideas and opinions with fellow professionals. If you do not have a local Branch, there is an online Branch which is available to everyone. Details are available on our website: www.att.org.uk/branch-network

I had listened to the Budget on the train on the way there, although the wifi kept cutting out. I was ever hopeful that I had missed an announcement that there would be funding for 1,000 additional call handlers for HMRC, and that Making Tax Digital and basis period reform had been cancelled. No such luck!

As you can imagine, the Budget was a continual topic of conversation that day and the next; however, I will not dwell on that here as there will no doubt be several articles in *Tax Adviser* on the changes that have been announced. There were also several consultation documents released and I would encourage you to considering dropping the technical team a few lines with your thoughts and opinions. It doesn't have to be an essay! The more input they get will assist them to better represent the opinions of our members.

By the time you are reading this, the Joint Presidents' Networking Event will have taken place. This is a change from the usual sit-down affair and I am sure there will be a great buzz as we put the world of tax to rights.

In other news, in mid-February we had the remarkable U-turn of HMRC announcing that it was not going to go ahead with its decision to treat double cab pickups as vans in only very limited circumstances – and only seven days after it was initially announced. I must admit I breathed a sigh of relief. The subjective test of whether the vehicle was a van or a car was a headache waiting to happen! In my usual fashion, I found myself pondering (as you are probably now used to) about what other major U-turns there have been and what their turnaround times were.

Not too long ago, we had Kwasi Kwarteng's mini Budget announcing the abolition of the 45p rate of tax. After 10 days, this was scrapped – although right up until the day before, Liz Truss was asserting that it was going ahead. In 2012, there was Pastygate and the proposed 20% VAT on hot takeaway food. Well, when the British public get behind a cause they do it in style. Two months later, that idea was banished to the food bin.

One of the most famous political quotes in modern times is by Margaret Thatcher: 'To those waiting with bated breath for that favourite media catchphrase, the "U-turn", I have only one thing to say: You turn if you want to. The lady's not for turning!' But even the Iron Lady was forced into a cul-de-sac requiring a U-turn. If you are too young to remember the Poll Tax (or more correctly the Community Charge), ask your parents. It was introduced in Scotland in 1989 and England in 1990 and led in part to the downfall of Mrs Thatcher. It was withdrawn and replaced with council tax in 1993/94.

U-turns are not only confined to modern times. In 1846, we had the repeal of the Corn Laws. That probably wins the prize for the longest time between implementation and abolition. In 1815, tariffs and restrictions were placed on imported food and, in particular, corn. The intention was to favour British producers but led instead to greatly increased prices and starvation due to poor harvests and as result major riots took place. Maybe the modern U-turns haven't been quite so bad after all.

In conclusion, and going back to the most recent U-turn, if HMRC is looking for a definitive expert on whether a vehicle is a car or a van, might I suggest they consult a four year old boy. As the grandmother of two boys, I can assure you that they can identify every passing vehicle!

Senga Prior
ATT Deputy President
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ATT ANNUAL CONFERENCES 2024

SAVE THE DATE

The ATT Annual conferences concentrate on topical issues with an emphasis on the practical issues faced on a daily basis by the Taxation Technician. This year we will hold one conference face to face and two which will be held as online events.

Please see below the dates below for all of our sessions.

- Tuesday 4 June 2024, 9.30 – 16.45 (Live Online Session)
- Wednesday 12 June 2024, 9.30 – 16.45 (Live Online Session)
- Wednesday 19 June 2024, 9.30 – 16.45, 30 Monck Street, London (Face to Face Session)

ATT and CIOT members and students £185

Non members £210

A Topical Tax Update will be given by Barry Jefferd FCA CTA TEP ATT (Fellow), Tax Partner, George Hay Chartered Accountants.

Sessions supported by our Technical Officers include:

- Making Tax Digital – where are we now? – Emma Rawson (a HMRC representative will join the face to face session)
- Avoiding Self-Assessment processing problems – help HMRC to help you – Helen Thornley & David Wright
- Capital taxes update – Helen Thornley & David Wright
- Options for avoiding the Tribunal – Steven Pinhey

For more information visit:
www.att.org.uk/attconf2024

Key Budget decisions
What they will mean in practice

We ask what impact the Budget decision will mean for UK taxpayers in practice and how they may impact our behavioural responses.

by Bill Dodwell

© Getty images/iStockphoto

Writing about the Spring Budget isn't easy, not least because we have already heard from economists, politicians and commentators on the main Budget decisions.

It seems clear that parts of the Budget were put together at the last minute; there wasn't enough time to produce a paper on the abolition of the furnished holiday letting regime from April 2025. The paper on the major changes to the non-domiciled rules, also from April 2025, is a high level document, with the promise of much more to come on the detail. Fortunately, there was sufficient time for the Office for Budget Responsibility to estimate the revenues and costs from the measures and add their uncertainty rating.

We all know the backdrop to this and preceding Budgets. Overall, taxes continue to rise, to pay for the £370 billion of Covid support and the reduced tax yield at the height of the pandemic. For most individuals, the rising tax burden does not affect cash income tax; rather, there is an increased tax take on growing incomes, as allowances and rate thresholds are not increased for inflation.

The big giveaway

The big giveaway in the Budget was a further 2% cut in the main national insurance rate, costing over £10 billion. This goes both to employed and self-employed individuals, so the new rates become 8% for employees and 6% for self-employed people (the 2% rate above £50,270 is unchanged). About 27 million people benefit from the cut, with the largest cut (£754) going to those with earnings of £50,270 or more. The Office for Budget Responsibility estimates that it will reduce tax motivated incorporations by a cumulative 83,000 by 2028-29.

The Chancellor also floated the idea that individual national insurance might be abolished. However, the cost is currently about £46 billion (compared to total tax for 2024-25 of just over £1 trillion), so it is clear that national insurance will be with us for many more years. Employers' national insurance remains unchanged and would surely stay even if individual national insurance were to disappear.

Naturally, some have pointed out that 12.5 million pensioners do not benefit from national insurance cuts, but they have had the benefit of a 19% increase in the main state pensions over the last two years – more than the average pay rise for employees.

High income child benefit charge

The major change to the high income child benefit charge will benefit up to 485,000 households, with 170,000 people no longer liable to pay the charge. From April 2024, the lower threshold rises to £60,000 and the higher threshold will be £80,000. This reduces the taper for one, two and three children to 48.7%, 53% or 57.5% respectively, compared to 53%, 61% and 68% currently.

Complexity arises because many people will now find it worthwhile to claim child benefit, although HMRC has successfully embedded claims in the new version of the personal tax account and the HMRC app. The data from 2020-21 (unhelpfully the latest published) showed that 355,000 people paid high income child benefit charge in that year and 683,000 households opted out of receiving child benefit, raising about £1.5 billion for the exchequer.

There must be a suspicion that these figures are understated, as they do not include those who did not register for child benefit, or those who did not report liability. There will be a consultation on moving the charge to household income, which would bring additional complexity and challenge independent taxation, whilst appearing superficially fairer.

Property and lettings

The furnished holiday lettings regime was discussed by the Office of Tax Simplification in its 2022 Review of residential property income (see tinyurl.com/2dxnp7rf). About 127,000 furnished holiday lets were declared in 2019-20, with 17,000 in Europe (out of 2.9 million properties). The use of the regime varies; many owners make personal use of the property, while others operate substantial complexes or holiday villages.

The regime was originally introduced in 1982-83 to provide clarity over whether operating a short-term holiday rental business should be treated as a trade for tax purposes, following a number of cases.

The Office of Tax Simplification recommended that if the government did abolish the holiday letting rules, it should introduce a 'brightline' test for a holiday letting trade, with similar advantages to the current regime. Without this, there would no doubt be a return to uncertainty for those operating substantial businesses. It is to be hoped that this will be considered, together with some easements for those moving out of the capital allowance regime to the renewals basis.

The government has already acted to prevent owners from benefiting from business asset disposal relief on selling properties from 6 March. They will, however, benefit from the cut in the capital gains tax rate to 24% on sales of residential property from April 2024.

Behavioural responses

One of the useful explanations from the Office for Budget Responsibility covers uncertainty and behavioural responses (see tinyurl.com/3xm6py32).

Obviously, there is a tiny number who bought fuel just before the Budget, in case fuel duty rose; most of us didn't bother. Conversely, reducing the capital gains tax rate on residential property means that virtually no one will conclude a sale in March – whilst many are thought to accelerate sales into the following two years, with more actually paid in stamp duty land tax (and equivalents) than capital gains tax.

The major changes to the non-dom rules are covered by Anthony Whatling (see page 11). It is just worth adding that the Office for Budget Responsibility's costings estimate that between 10% and 20% of current non-domiciled individuals will leave; it has not modelled the impact of people potentially not coming to the UK. Its estimated tax yield in the short term comes from just 5,500 individuals, ineligible for the new regime.

The UK's carbon border adjustment mechanism – a levy payable when the carbon price in the country of origin is lower than the carbon price paid by UK producers – is thought to raise £200 million in 2028-29, which comes almost entirely from iron and steel imports from China, as well as aluminium. The Office for Budget Responsibility estimates that the EU carbon price will remain above the UK price – otherwise a much larger amount would be raised.

Just as for previous years, the government estimates that the majority of households (over 60%) receive more in welfare income and benefits in kind than they pay in tax. There were 28.2 million households in 2022; some 8 million (30% of households, but only 13% of the total number of people) live alone (see tinyurl.com/2uuuvchz). The median income before tax for households is interesting (see tinyurl.com/2479f7th); the much higher income for two adults with two children compared to two adults without children is presumably not because the children go out to work!

In conclusion

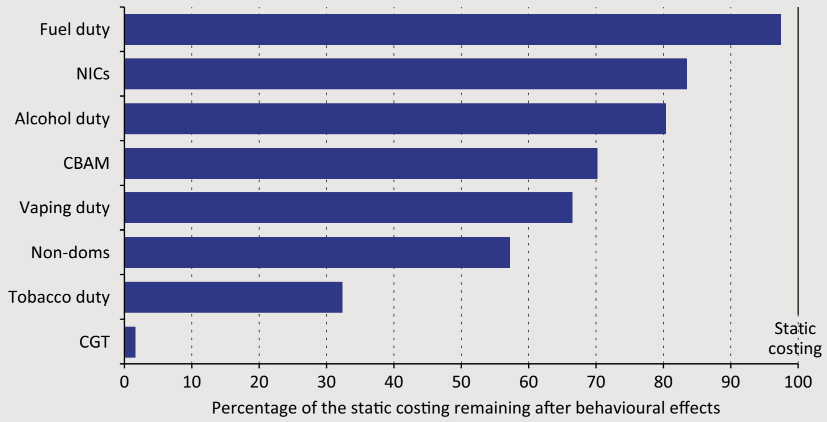
Finally, tax professionals will need to consider the government's proposals for new regulation. The consultative document initially covers those acting as tax agents, rather than the much wider category of tax advisers. A choice is put forward between mandatory membership of a recognised professional body; joint regulation with HMRC; and regulation by a new government body.

Regulation by HMRC alongside professional bodies is the least desirable model, in my view – so the choice should be between an enhanced role for professional bodies, with no doubt increased inspection of members, or handing over regulation to a new body, as happens with solicitors.

Whichever route is chosen is likely to mean much higher costs for tax agents and advisers. Software developers have been left out, as well as those already regulated, such as solicitors and barristers. It is surely doubtful whether an enhanced role in the UK tax system for third-party software is compatible with a lack of regulation.

The second Finance Bill of the year has already been published, with few of the important changes included. Tax Administration and Maintenance day comes on 18 April, with the promise of more tax documents to mull over. Time will tell whether we have further fiscal events in 2024.

SCALE OF BEHAVIOURAL RESPONSE FOR SELECTED TAX POLICY CHANGES



Source: OBR

MEDIAN GROSS INCOME

Median gross income for each decile (£ per year, 2024-25) for different household compositions

Median gross income of households in decile	1 adult	1 adult and 1 child	2 adults	2 adults and 1 child	2 adults and 2 children
Top decile	87,400	–	123,700	168,100	216,600
Ninth decile	56,400	–	82,400	109,500	135,800
Eighth decile	44,800	–	66,200	87,300	108,400
Seventh decile	37,500	51,800	55,600	71,800	88,900
Sixth decile	32,600	45,600	47,600	63,000	75,700
Fifth decile	27,700	37,000	40,900	54,000	64,700
Fourth decile	23,300	30,400	35,100	45,100	54,900
Third decile	19,700	25,900	29,800	38,600	46,700
Second decile	16,300	21,600	25,100	32,100	37,400
Bottom decile	11,700	15,400	17,900	22,000	26,000

Source: HM Treasury distributional analysis model

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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.

Resident non-domiciles
The end of the line?

Following the Spring Budget 2024, we consider the abolition to the non-dom regime, what this means for affected taxpayers, and points to consider in advance of 6 April 2025.

by Anthony Whatling

© Getty images/iStockphoto

Key Points

What is the issue?
The Chancellor has proposed to replace the taxation of non-doms with a 'modernised residence-based regime that is simpler, fairer and more competitive'.

What does it mean for me?
As well as the new four-year foreign income and gains regime, the Budget announcements also set out proposals for transitional rules and a wholesale overhaul of how inheritance tax will apply to non-UK assets.

What can I take away?
Whilst the changes are fundamental for all non-doms and connected structures, there is a lot of uncertainty on the exact operation of the rules, particularly relating to inheritance tax.

Following a series of significant changes to the taxation of non-doms in both 2008 and 2017, the Spring Budget may have effectively signalled the end of the regime entirely from 6 April 2025.

Currently, many UK resident non-domiciled individuals elect to be subject to the 'remittance basis of taxation' each tax year, whereby individuals are subject to UK tax on foreign income and gains when remitted to the UK. The use of the remittance basis arguably attracts internationally mobile families and their businesses to the UK, although it has been criticised as outdated and unfair.

The Chancellor has proposed to replace it with a 'modernised residence-based regime that is simpler, fairer and more competitive'.

As well as the new four-year foreign income and gains regime, the Budget announcements also set out proposals for transitional rules and a wholesale overhaul of how inheritance tax will apply to non-UK assets. A lot of the finer detail is still to be released and the inheritance tax proposals will be subject to consultation; however, it is clear that the transitional rules are intended to facilitate investment in the UK.

The changes announced are far-reaching, but before anyone rushes to do anything, it is worth bearing in mind that nothing will come into force until after the next General Election. While it seems certain that there will be a significant change to the taxation of non-doms, a lot can change before 6 April 2025.

New four-year rule for foreign income and gains

Arriving to the UK

For recent or new arrivals, a four-year rule comes into force:

- From 6 April 2025, the foreign income and gains regime will be available to individuals (regardless of their domicile) for their **first four tax years of tax residence** after a period of at least 10 years of non-UK residence.
- Those claiming to be taxed under the foreign income and gains regime will be fully exempt from UK tax on their foreign income and gains, even if these are remitted to the UK.
- Those arriving to the UK before 6 April 2025 may still be able to benefit from the new foreign income and gains regime if they are within their first four years of tax residency in 2025/26 (and subject to meeting the 10 years of non-UK residency condition).

See ***Bridget: the new four-year rule*** for an example of how this will work in practice.

Whilst tax exemptions are welcome news for many, the four-year period is shorter than many of the inbound tax regimes offered in other European economies; for example, Italy grants a 10 year incentive regime for new residents.

Resident non-domiciled individuals currently in the UK on or before 5 April 2025

In an attempt to ensure that existing resident non-domiciled individuals remain in the UK, there are helpful transitional rules aiming to minimise the disruption and alleviate fears of a mass exodus:

- Resident non-domiciled individuals are eligible to claim the foreign income and gains regime if they are still within their first four years of UK tax residence.
- For 2025/26 only, resident non-domiciled individuals who are not eligible to claim the foreign income and gains exemption will only be subject to UK tax on 50% of their foreign income (not foreign gains), provided the individual is not yet deemed domiciled as at 5 April 2025.
- Personally held foreign assets can be rebased to their 5 April 2019 value (for capital gains tax), provided the individual is not yet deemed domiciled as at 5 April 2025 and has claimed the remittance basis historically. This will be subject to further conditions.

In addition to the above, the government has also announced an attractive 12% tax rate on certain remittances to the UK, under a Temporary Repatriation Facility, which it estimates will result in £15 billion flowing into the UK.

The Temporary Repatriation Facility

Any individual who has historically claimed the remittance basis (prior to 6 April 2025) can remit their foreign income and gains to the UK between 6 April 2025 and 5 April 2027 and be subject to a flat 12% tax on remittances.

If the Temporary Repatriation Facility is implemented, it could represent a crucial one-off opportunity for non-doms still living in the UK. For many longer-term non-doms, the use of the remittance basis has left them with limited access to funds in the UK due to the potential 45% tax cost of remitting historic funds.

From 6 April 2027, remittances of pre-6 April 2025 foreign income and gains will be taxed at 'normal tax rates'.

See **Reece: using the Temporary Repatriation Facility** for an example of how this works in practice.

The Temporary Repatriation Facility applies to personal foreign income and gains remitted during the Temporary Repatriation Facility period. Foreign income and gains generated in trusts pre-April 2025 are specifically excluded from the Temporary Repatriation Facility, but further clarity will be needed to understand whether a distribution from a trust pre-2025, which would normally then be considered the beneficiary's foreign income and gains, could then be eligible for the Temporary Repatriation Facility.

Protected trusts: income tax and capital gains tax

One aspect of the proposals that hasn't received as much attention in the media so far are the proposed changes to the taxation of offshore trusts. Although many observers expected that any change to the taxation of non-doms would come with an element of grandfathering for existing 'protected trust' structures, there are in fact significant changes proposed.

Currently, foreign income and gains within a protected trust settled by resident non-domiciled individuals are not subject to UK tax until a distribution is made to a UK resident beneficiary.

From 6 April 2025:

- Foreign income and gains generated within trusts will be taxable on the settlor(s) if the trust is 'settlor-interested' as defined under current rules in force.
- Beneficiaries of existing protected trusts will continue to be subject to UK tax on distributions received from a trust with reference to pre-2025 foreign income and gains within the trust.

See ***Lucia: protected trusts*** for an example of how this works in practice.

The impact of these changes cannot be understated as they represent a radical change to the taxation of trusts.

Inheritance tax

Among the areas impacted by the change to the non-dom policy is inheritance tax. These wide-ranging changes include a new residence-based system for inheritance tax, the details of which will be subject to further consultation.

It is expected that UK assets will remain subject to inheritance tax obligations, irrespective of one's tax residency status. However, for non-UK assets, inheritance tax liability will depend on the residence (rather than domicile) of the individual, with a 'cliff-edge' after 10 years of residence, whereby worldwide assets will fall into the scope of inheritance tax (and remain in scope for the first 10 years of non-residence).

Given that non-doms are not currently subject to worldwide inheritance tax from their fourth year of non-UK residence, the increase to 10 years would significantly increase their tax exposure.

These proposals are subject to consultation, and the government has indicated that other 'connecting factors' may also determine whether an individual is within the scope of the new rules. This could mean that in some

BRIDGET: THE NEW FOUR-YEAR RULE

Bridget moved to the UK after 40 years in Spain. She is non-UK domiciled and has non-UK assets. Bridget is UK tax resident in 2023/24 and plans to sell her Spanish property in 2025/26. How do the new rules affect her?

- **2023/24 and 2024/25:** Bridget is a resident non-domiciled individual, eligible for the remittance basis.
- **2025/26:** Bridget can claim exemption from tax on foreign income and gains this year, which includes the sale of her property.
- **2026/27:** This is the last year Bridget can claim the foreign income and gains regime.
- **2027/28:** Bridget will be subject to worldwide income tax and capital gains tax from this year, for as long as she is resident in the UK.

REECE: USING THE TEMPORARY REPATRIATION FACILITY

Reece is a resident non-domiciled individual who has been in the UK for the past 20 years (i.e. he is now deemed domiciled). He has claimed the remittance basis historically and has a mixed fund account with the following sources within it:

- Untaxed relevant foreign income (2015/16): £5 million

If Reece remitted the full £5 million to the UK in 2024/25, up to £2.25 million tax would be payable. However, if he can, Reece could defer his remittance to 2025/26, and only be subject to 12% tax under the Temporary Repatriation Facility; i.e. £600k.

LUCIA: PROTECTED TRUSTS

Lucia has been UK tax resident since 2000. As a resident non-domiciled individual, in January 2017 Lucia settled a protected trust with non-UK assets before becoming deemed domiciled. The beneficiaries include Lucia and her husband.

On or before 5 April 2025:

- Foreign income and gains arising in the trust are not subject to UK tax.
- Distributions are matched to stockpiled trust foreign income and gains and are taxable.

From 6 April 2025:

- Foreign income and gains arising to the trust are immediately taxable on Lucia at up to 45% tax.
- Distributions matched to pre-April 2025 stockpiled trust foreign income and gains are taxable.

cases individuals may be subject to inheritance tax on worldwide assets, even if they are non-UK resident for more than 10 years.

It will be interesting to see how this develops as we begin to see further detail trickling through following the consultation.

Inheritance tax and trusts

Another part of the change to be aware of is the inheritance tax impact on trusts. Although this will again be subject to consultation, the current proposal is that the treatment of trusts will now follow the inheritance tax status of the settlor at the time of each potential inheritance tax event (such as settlement and 10 yearly charges).

Helpfully, the government has clarified that non-UK assets in trusts settled by non-doms before 6 April 2025 should continue to be excluded from inheritance tax. There is, therefore, still an opportunity for current non-doms to protect their non-UK assets from inheritance tax permanently, by settling onto trust. However, the settlor may then be subject to tax on the trust's foreign income and gains as it arises after 6 April 2025.

Summary

Whilst the changes are fundamental for all non-doms and connected structures, there is a lot of uncertainty on the exact operation of the rules, particularly relating to inheritance tax. Importantly, the general election, which is due before January 2025, is likely to have a bearing on the final form the non-dom changes take.

It is not quite the 'end of the line' for non-doms and their families, but it is certainly a more challenging and uncertain tax landscape.

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Reverse charge accounting
When is it relevant?

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The use of the ‘reverse charge’ has become an important part of the VAT legislation and is relevant to both domestic and international supplies. We explore when and how it is applied.

by Neil Warren

Many advisers will agree that a fundamental weakness of the VAT system is that 5% or 20% tax will be charged by some suppliers who will not declare or pay it on a return submitted to HMRC. However, VAT registered customers will still pay the invoice and reclaim input tax, meaning that HMRC is out of pocket. A big tax leakage has taken place. It is therefore logical to adopt an alternative system for some supplies, so that VAT is not charged by suppliers in the first place to those businesses or organisations that can claim input tax. Welcome to the reverse charge!

In this article, I will consider the main situations when reverse charge accounting must be adopted by a business and the boxes that must be completed on VAT returns in each case.

How does it work?

The reverse charge works as follows:

- It is only relevant to supplies that are subject to 5% or 20% VAT.
- Instead of the supplier charging VAT and accounting for output tax in box 1 of their next return, the customer makes the box 1 entry instead and therefore the supplier does not charge VAT on their sales invoice(s).
- The customer will reclaim the same amount of input tax in box 4, subject to the usual rules for input tax deduction; i.e. adjusting for any exempt, private or non-business use.
- The benefit to HMRC is that the risk of VAT being charged by a supplier and never declared or paid on a return is removed.

Note: The only time that a reverse charge type entry is made in box 2 of a VAT return – rather than box 1 – is for a Northern Ireland based business that accounts for acquisition tax on goods purchased from suppliers based in EU countries. Box 2 is no longer relevant to a business in Great Britain.

Imported goods

A major VAT change took place on 1 January 2021 – the day after the UK’s final departure from the EU – which means that the reverse charge now applies to all imports of goods into Great Britain from abroad if the importer elects for this option and instructs its customs agent or freight forwarder accordingly. A business based in Northern Ireland can use it for non-EU imports.

The use of postponed VAT accounting is a ‘win win’ scenario. It is better to not pay VAT in the first place and carry out a reverse charge entry than pay VAT to HMRC and wait up to three months to claim input tax on a return. It is a cash flow winner!

To use postponed VAT accounting, an importer must be registered for VAT and also have an Economic Operator Registration and Identification (EORI) number. An importer that does not meet these conditions must pay VAT when the goods arrive at the border.

Key Points

What is the issue?
The reverse charge is an important part of HMRC’s anti-fraud strategy. It was extended to include many supplies in the construction industry from 1 March 2021 and it also applies to sales and purchases of ‘specified goods and services’ between VAT registered suppliers and customers. The article gives practical examples of how the reverse charge works in practice.

What does it mean to me?
It is sensible for UK importers to have an EORI number from HMRC and elect for postponed VAT accounting on all imports. It is a cash flow winner to not pay VAT in the first place – and account for the reverse charge – rather than pay VAT and wait up to three months to claim input tax.

What can I take away?
If a business is not registered for VAT because its sales are exempt from VAT or its taxable sales are less than compulsory registration threshold, it must include the values of services purchased from abroad as part of its taxable turnover figure.

In terms of VAT accounting, the reverse charge will produce entries for output tax and input tax in boxes 1 and 4 of each return (which depends on the VAT rate for the goods in question) and the total cost of the import is recorded in box 7, the inputs box.

Buying services from abroad

If a business buys services from abroad, it will not be charged VAT by the overseas supplier in most cases because the supplier will not be registered for UK VAT. An overseas supplier must usually have a UK fixed or business establishment before it can get a VAT number. See VAT Notice 741A s 3. However, the place of supply for most business to business services will still be the UK, where the buyer is based, so the reverse charge will be carried out on the buyer's next return. See ***Services purchased from abroad: reverse charge accounting.***

The entry that often gets forgotten by accounting staff is the outputs declaration in box 6 – because it seems illogical to make a payment to a supplier and then record it in an income box. However, this is because if an overseas supplier registered for UK VAT, it would charge 20% VAT and make entries in boxes 1 and 6 of its next return; with the reverse charge, the buyer takes over the responsibility to make entries in those boxes. Job done!

VAT registration trap

There is a quirk in the legislation about buying services from abroad that has caught out many small businesses over the years – and also some big entities that only make exempt supplies. This is the need to treat purchases of services from abroad as taxable turnover as far as the registration threshold is concerned.

If the value of VATable services purchased from abroad – plus income from UK taxable sales – exceeds £90,000 in any rolling 12 month period, or will exceed £90,000 in the next 30 days (£85,000 in both cases until 31 March 2024), the UK business has a liability to register for VAT. See ***Education provider: compulsory VAT registration.***

Reverse charge for builders

Reverse charge accounting was introduced for certain supplies in the construction industry as an anti-fraud measure on 1 March 2021. The *raison d'etre* for the legislation is to prevent builders charging VAT and failing to pay output tax to HMRC, the exact scenario I considered in my opening paragraph.

The end result is that some supplies between builders will not be subject to a VAT charge by the supplier because the customer will do the reverse charge instead:

- The services must come within the Construction Industry Scheme (CIS) and the buyer will be registered for both VAT and the CIS.
- The supplier is registered for VAT and their services are subject to either 5% or 20% VAT rather than zero-rated.
- The buyer sells on the construction services in question; i.e. they are not classed as an 'end user'.

SERVICES PURCHASED FROM ABROAD: REVERSE CHARGE ACCOUNTING

Marie is VAT registered from her hairdressing salon in Manchester and completes calendar quarter returns. She uses the services of two overseas suppliers: a software business based in India; and a hairdressing consultant in France.

She has received:

- a purchase invoice for £5,000 from the Indian supplier (dated 23 February 2024); and
- a purchase invoice for £10,000 from the French consultant (dated 21 March 2024).

Marie paid both invoices in April 2024.

The relevant date for reverse charge accounting is the invoice rather than payment date, even if Marie uses the cash accounting scheme. She will include both invoices on her March 2024 return:

- **Box 1:** £5,000 + £10,000 x 20% = £3,000
- **Box 4:** Input tax is claimed for the same amount because her business is fully taxable and not partially exempt. There is no private or non-business use with these expenses that would also require an input tax restriction.
- **Box 6:** outputs less £15,000
- **Box 7:** inputs less £15,000

Note: This example highlights the fact that the reverse charge applies to services purchased from **abroad** and not just the EU. That outcome also applied before the UK left the EU.

EDUCATION PROVIDER: COMPULSORY VAT REGISTRATION

Averitus Ltd has annual turnover of £3 million from vocation training fees which are exempt from VAT. Its only VATable income is £60,000 per annum earned from food and drink sales in a staff canteen, which is below the annual threshold of £90,000 (it was £85,000 in both cases until 31 March 2024), so the company is not registered for VAT.

The directors have agreed a deal to use an overseas auditor in the future that will charge an annual fee of £40,000. Annual taxable turnover will be £100,000 so the company will need to register for VAT at some point in the future.

Note: The best way for Averitus to avoid a VAT problem is to continue to use a UK based auditor. The UK company will charge 20% VAT but this will avoid a registration problem because annual taxable sales are now £60,000.

JOINER JOHN: REVERSE CHARGE FOR BUILDERS

Subcontractor John is VAT registered and doing joinery work for Contractor Mike on two jobs:

- The first relates to work on the premises of a hotel, where Mike is working for the hotel.
- The second job relates to work on a house that Mike owns and rents out to tenants on a buy-to-let basis.

Mike is registered for both VAT and CIS.

The reverse charge will apply to the hotel job because Mike is selling on the construction services supplied by John. However, John will charge 20% VAT for the house work because Mike is an 'end user'; i.e. he is not selling on the services.

Note: Mike must tell John in writing that he is an end user for the house job and that John should charge 20% VAT on his invoice(s).

> If a business buys services from abroad, it will not be charged VAT by the overseas supplier in most cases because the supplier will not be registered for UK VAT.

- The reverse charge applies to both labour and materials provided by a builder on a job by job basis.

In terms of accounting for VAT, the relevant boxes for the buyer doing the reverse charge are boxes 1,4 and 7. There is no box 6 entry, as there are with services purchased from abroad, because the builder selling the services will make a box 6 entry instead. Entries are again based on invoice rather than payment dates, even if the buyer or seller uses the cash accounting scheme. See ***Joiner John: reverse charge for builders.***

Other reverse charge supplies

The other reverse charge scenarios also relate to anti-fraud strategies and are explained in HMRC's well written VAT Notice 735. The notice gives clear advice on when it applies to certain domestic sales, described in the notice as 'specified goods and services'. For example, the reverse charge will apply to any business that sells mobile phones or computer chips to a VAT registered customer where the sales invoice value exceeds £5,000 excluding VAT. It also applies to supplies of wholesale gas and electricity between VAT registered entities.

The specified services are:

- emission allowances;
- wholesale telecommunications; and
- renewable energy certificates.

There is no de minimis threshold for these supplies or the wholesale supplies of gas and electricity.

Note: The word 'wholesale' takes its everyday meaning; i.e. supplies are B2B and the buyer intends to sell on the goods or services in question.

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Sole traders and SMEs
Better business structures

We consider the pros and cons of small business models and ask whether more sole trader businesses should focus on becoming partnerships or limited liability partnerships.

by Nichola Ross Martin

Key Points

What is the issue?
In terms of actual businesses operating in the UK, there are many more sole traders than companies. We have 3.1 million sole traders, representing 56% of all businesses. Just 7% of businesses, so around 365,000, are run as partnerships.

What does it mean for me?
The Enterprise Management Incentive scheme is highly attractive to smaller companies because the criteria for the issuing company is that it has gross assets of less than £30 million and fewer than 250 full-time equivalent employees.

What can I take away?
The recent reduction in the rate of NICs, coupled with an unfavourable main rate of corporation tax, now surely mean that a partnership or the limited liability partnership will become the business model of choice for ambitious small businesses.

According to government statistics, there are 4.8 million companies on the Companies House register that have a shareholder who has an interest of 2.5% or more in the company. Of these companies, 2.1 million are actively trading. The government estimates that there are between 6.4 million and 10.9 million non-corporate shareholders.

In terms of actual businesses operating in the UK, there are many more sole traders than companies. We have 3.1 million sole traders, representing 56% of all businesses. Just 7% of businesses, so around 365,000, are run as partnerships.

We really are a nation of small businesses but the fate of the small business barely features in the news. Judging by the recent Spring Budget, it is far from the chancellor's mind.

Small business models

In this article, I am weighing up the pros and cons of small business models and wondering whether more sole trader business should focus on becoming partnerships or limited liability partnerships rather than companies, if they have growth in mind.

Making Tax Digital (MTD) for Income Tax is now just two years away. It commences on 5 April 2026 for self-employed businesses and landlords with business turnover above £50,000 and on 5 April 2027 it will be extended to self-employed businesses and landlords with business turnover above £30,000.

MTD for Income Tax comes at a financial cost: will this lead to a surge in cost-motivated incorporations? It is easy to forget that for the smallest business, an extra 'couple of hundred quid' is a material sum.

What business structure might be preferable for those who are determined to maximise their cash savings and avoid quarterly reporting? One suggestion, if the business owner has an 'available' spouse or partner, is to transform the business into a partnership or limited liability partnership, instead of following the more typical company incorporation route.

SHARE SCHEME OPTIONS

The UK government offers four share schemes that have tax-advantages to both employers and their employees. Save As You Earn and Share Incentive Plans are for all employees. Company Share Options Plans and Enterprise Management Incentives are for certain employees at the discretion of the employer.

- **Enterprise Management Incentive scheme:** This scheme is the largest contributor to tax relief, and the average value of Enterprise Management Incentive scheme options in the 2020-21 tax year was £11,650, reflecting the significantly higher limits on the maximum value of options that can be granted under the scheme. Also, Enterprise Management Incentive scheme options may be offered to select employees (rather than all employees).
- **Company Share Option Plan:** Larger companies may favour the Company Share Option Plan to incentivise key staff. This is limited to £30,000 per employee. The average value of scheme options in 2020-21 was £5,290.
- **Save as You Earn:** £2.59 billion in Save as You Earn (SAYE) options were granted for the tax year 2020-21, which is the largest aggregate value of tax-advantaged employee share schemes. However, the average value per employee for SAYE was £6,720 (due to SAYE having a large number of participants as the scheme is available to all employees).
- **Share Incentive Plans:** The average value of a Share Incentive Plan in 2020-21 was just £210 per person.

But first, a question then arises as to what to do about VAT.

Value added tax

The chancellor's decision to increase the VAT threshold, after it was frozen for six years, was well overdue. It is disappointing, however, in terms of the economy at least, that it only increased by £5,000 as it holds businesses back.

Often small business owners are locked in the 'small business mentality' whereby they take extreme actions to avoid costs and bureaucracy. This means (and this is a real example) that a sole trader might elect to only open a café at lunch times, three times a week to remain under the VAT threshold. This all comes at the cost of leaving a perfectly good business premises vacant for the other four days and a gradual running down of the customer base. There are other good reasons for not opening all week, such as excessive energy costs.

As small business rates relief presently applies, there are no rates demands and thus no incentive to work to pay that overhead. There is such a huge step up required in terms of the business owner's effort that if he or she opens for an extra day per week, they run the risk of exceeding the VAT turnover threshold, potentially resulting in a 20% hike in prices, depending on the extent to which input VAT is recovered. A price increase may well affect competitiveness, besides which additional staff may be needed!

Rewarding employees

Despite the negative effects of a decade of 'fossilised' tax allowances, it is a fact of life that some small businesses never want to grow, while others dream of bigger things. To grow, you need to employ staff, or else you must outsource. In terms of employees, government statistics show us that large companies, which account for less than 1% of total businesses, employ 40% of workers. SMEs account for 99.2% of business by number (although not turnover or profits) and they employ around 60% of staff.

When it comes to rewarding and incentivising staff, an effective way to retain staff is through an employee share scheme. The statistics reveal that only a very few employers offer share schemes; in fact, just 16,330 by the end of 2021. Use of these schemes has grown by 6% in the tax year ending 2020, and has grown by a total increase of 88% since the tax year ending 2010.

Larger companies tend to offer more complex share schemes such as Save As You Earn schemes and Share Incentive Plan schemes. Unlike the Enterprise Management Incentive, these schemes must be offered to all employees.

The Enterprise Management Incentive scheme

The Enterprise Management Incentive scheme is highly attractive to smaller companies and of little use to large corporations because the criteria for the issuing company is that it has gross assets of less than £30 million and fewer than 250 full-time equivalent employees.

One of the main drawbacks to an Enterprise Management Incentive scheme is that the company must satisfy the 'qualifying trade' test. A trade will not qualify if one or more excluded activities together amount to a substantial part of it. Excluded trading activities include:

- dealing in land, commodities or futures, or shares, securities or other financial instruments;
- dealing in goods, other than in the course of an ordinary trade of wholesale or retail distribution;
- banking, insurance, moneylending or other financial activities;
- leasing;
- providing legal or accountancy services; and
- property development, farming or market gardening.

This means that a vast number of smaller businesses cannot use a scheme designed for smaller businesses. I do not know the legislative background as to why there are quite so many excluded activities when it comes to the qualifying activities criteria for Enterprise Management Incentive schemes. It does seem that government could review the rules with a view to changing them for a modern financial and serviced-based economy.

Exercising Enterprise Management Incentive scheme options

Statistically, companies are most likely to grant options under the Enterprise Management Incentive scheme. However, although a lot of options are being granted, not that many are ever exercised and result in employee share ownerships. It is worth asking why that is.

Enterprise Management Incentive scheme options vest – in other words, they become exercisable – when certain conditions as laid down in the scheme are met. Typically, there might be performance targets; for example, if you remain in the employment for a specified number of years or if you achieve another key performance indicator.

Many Enterprise Management Incentive schemes are drafted as 'exit based'. This means that the employee is only able to exercise their options (to buy shares) when there is a sale of the company's shares. The advantage for the issuing company is that it does not need to rewrite its articles to add leaver clauses for employee shareholders. More is the pity; it is surprising how many companies formed with model articles never actually read those articles and reflect on their meaning.

The disadvantage for the employees of a scheme which only permits exit-based vesting is that they may have an exceptionally long wait for any exit event. That event may never happen or, worse still, the employer may go out of business.

It is obvious that many employees in Enterprise Managing Incentive schemes are getting a bad deal: if you are granted Enterprise Management Incentive scheme options, it is most likely that you are never going to be able to exercise them. Perhaps one answer is that company owners could be more inventive when it comes to creating such schemes, such as creating schemes that tie into key performance indicators.

The power of partnerships

All companies considering share-based rewards must consider the Employment Related Securities anti-avoidance rules in Part 7 of the Income Tax (Earnings and Pensions) Act 2003.

Small companies often do not intentionally set up a share scheme for reward but rather out of necessity when the owner is considering succession planning. Herein lies the rub: is it not better in terms of succession to have been trading all that time as a partnership or limited liability partnership and thus avoid the Employment Related Securities anti-avoidance rules?

This is where partnerships become more attractive. Succession planning and promotion is far more flexible with a partnership (or limited liability partnership) because there is no share capital, so partners do not have to worry about Employment Related Securities. There is no need for an Enterprise Management Incentive scheme, and no prohibition in your types of trading activity will defeat your staff incentive planning. There are no close company distribution rules either.

It's not all win-win. Partnerships and limited liability partnerships must consider the anti-avoidance rules that potentially apply to them. These are the salaried members rules and the mixed members rules in the Income Tax (Earnings and Pensions) Act 2005 Part 9.

The salaried members rules are the partnership equivalent of 'IR35' by trying to tax 'disguised remuneration'. They work as follows: if a limited liability partnership has a member who is in reality only an employee, because they are paid a fixed salary, they have no significant influence over the affairs of the partnership; nor have they made any financial contribution to the business. That employee's 'share' partnership income will be taxable under PAYE.

If a partnership or limited liability partnership has 'mixed members', further anti-avoidance rules cut in when: there is a combination of individual and non-individual members (i.e. corporate members or trustee members); and profit allocation is such that a non-individual member receives a greater share of the profits than is reasonable given their input into the business. The arrangement must be such that an individual member is able to enjoy those profits in some way. If so, the mixed membership rules apply to redirect the taxable profits allocated to the non-individual to the individual instead.

A disadvantage of trading as a partnership may be that sizeable chunks of tax reliefs only apply to companies. You can solve that to an extent by including a corporate partner, which may benefit from reliefs such as full expensing for capital allowances and even research and development relief.

Looking at a 'tax-motivated' choice of business vehicle, the recent reduction in the rate of National Insurance contributions, coupled with an unfavourable main rate of corporation tax, now surely mean that a partnership or a limited liability partnership will become the business model of choice for ambitious small businesses.

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Topsy Turvy

If profits are overstated

We consider a case in which HMRC believed that a cash-based business had overstated its takings, and argued for a reduction of declared profits.

by Keith Gordon

Key Points

What is the issue?
In April 2021, HMRC started to investigate a claim made by Café Jinnah under the Eat Out to Help Out scheme. It complained that the appellant had failed to provide evidence to substantiate the number of diners, and the total value of food and drinks sold under the scheme.

What does it mean to me?
The taxpayer did not even need to go to the stage of disproving HMRC's assessment. The assessment was fundamentally flawed because of HMRC's apparent predisposition to the idea that the taxpayer had made an excessive claim, and fell at the first hurdle.

What can I take away?
HMRC's investigation into a cash-based, fast-moving business and its apparent refusal to accept any evidence other than electronic records is unrealistic. There is a difference between 'evidence' and 'evidence which HMRC accept' – and the tribunal will be looking for the former.

Having just passed the 20th anniversary of the first of my monthly case reports and seeing that the official publication date of this article is 1 April, I thought I would write about a case in which HMRC investigated a cash-based business and argued that the business's profits had been overstated.

I wish to make it clear at this stage that I have not taken leave of my senses (or, if I have, that the previous paragraph is not proof). In the last week of February, the First-tier Tribunal published a decision in a case in which this is what actually happened.

The case is *Café Jinnah LLP v HMRC* [2024] UKFTT 159 (TC).

The facts of the case

In the summer of 2020, the country was in the middle of the Covid pandemic. The government decided to announce a scheme to generate business in one of the many sectors particularly blighted by the lockdown, the hospitality industry. The 'Eat out to Help Out'

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scheme offered discounts to 'eat-in' diners on Mondays, Tuesdays and Wednesdays in August 2020 (13 days in total) worth up to 50% of the food cost (including non-alcoholic drinks) or £10 (whichever is the lower). The discount would be reflected as a discount on the bill, with the restaurant (or similar establishment) then claiming that discount from the government.

The appellant operated a restaurant in Bradford. Unsurprisingly, the restaurant's business had been badly affected by the Covid pandemic. The scheme offered what the tribunal described as a 'lifeline' to the business. So far as existing customers were concerned, many switched to eating on scheme days rather than weekends, so as to take advantage of the government-backed discounts on offer. The scheme also attracted new customers to the restaurant, many of whom came from the local area. This was a community where many individuals did not have bank accounts or credit cards and therefore many customers paid for their meals using cash.

According to the restaurant's proprietor (the designated partner of the appellant), people were queuing outside the restaurant for hours in order to participate. He had to recruit family members to assist with the increased business – there were 12 individuals employed by the restaurant during August 2020. Furthermore, there were difficulties attending the local bank in order to deposit cash and physical dangers in queuing outside a bank with substantial amounts of money. As a result, the business retained the cash in a large safe it had on its premises and paid its staff and many key suppliers using this cash.

The proprietor advised that, even with social distancing restrictions, large family groups were able to sit together at a single table (strictly, tables being bunched together) so some groups were up to 30 in size. The restaurant was open for 12 hours on each day of the week, except Friday when shorter hours were worked.

The restaurant did not use a till. All orders are recorded on paper, with the top copy being left with the customer until it is presented to the cashier at the end of the meal. That top copy is then either retained by the restaurant or (if kept by the customer) the details are then added to an A4 spreadsheet which, at the end of the day, is bundled up with any of the remaining top copies of the order records.

In the weeks during which the scheme operated, average daily discounts totalling between £6,000 and £9,000 appear to have been claimed. For the first four weeks, the tribunal's decision shows these in three-day batches representing each of the Monday to Wednesday periods covered by the scheme (thus, weekly totals of between £18,842 and £26,579). For the final week/day of the scheme, the Bank Holiday Monday 31 August, a discount of £9,461 was claimed. The total discount claimed under the scheme was £103,351.

In April 2021, HMRC started to investigate the appellant's claim. This led to the appellant's adviser sending in sample bills, records of daily takings (with table numbers and covers), table plans, etc. The adviser acknowledged that there had been an overclaim of £671.

Correspondence continued, during which the HMRC officer complained that the appellant had failed to provide evidence to substantiate the number of diners/covers who had used the scheme, and the total value of all eat-in food and non-alcoholic drinks sold. In particular, the officer was concerned about the lack of cash deposits into the business's bank account so as to substantiate the appellant's argument that there had been some cash sales.

> **HMRC investigated a cash-based business and argued that its profits had been overstated.**

As a result, the officer decided that the claim should be restricted to the amount of the credit card takings for the month, which were £28,984.71. The difference of £74,366.30 was the subject of an assessment made on 4 April 2022. In the course of an internal review, this was revised downwards by £10,600.

The appellant then notified the appeal to the tribunal.

The First-tier Tribunal's decision

The appeal was heard by Judge Nigel Popplewell and Member Mohammed Farooq. It referred to the power to assess any 'amount of a coronavirus support payment [received by a person] to which the person is not entitled' in the Finance Act 2020 Sch 16 para 9(1). The test for the exercise of that power is that there has to be 'an officer of Revenue and Customs [who] considers' that there has been an overpayment of a coronavirus support payment. When that test is met, an assessment may be made 'in the amount which ought in the officer's opinion to be charged'.

The tribunal considered that, despite the different statutory formulations, this involved the same test as applicable to discovery assessments, as summarised by the Upper Tribunal in the case of *Anderson v HMRC* [2018] UKUT 159 (TCC). That has two elements. First, it means that the officer has to have the subjective belief that the assessment is justified. Secondly, that belief has to be objectively reasonable.

The tribunal considered that the officer, who was described as 'a truthful and reliable witness', did have the subjective belief that the coronavirus support payments had been overclaimed.

So far as the requirement that the belief be objectively reasonable, the tribunal noted the following aspects of the officer's approach:

- It necessitated every discount meal to have been paid for by credit card rather than by cash.
- HMRC emphasised the fact that the sample bills provided did not contain a note of the date to which they related. The tribunal could not see how adding a date would have proven their authenticity.
- The officer ignored the evidence as to the change of eating habits that the scheme had led to. (As the tribunal said, 'the scheme was having precisely the desired effect'.)
- The officer ignored the appellant's real-time information (RTI) records showing the wages paid to staff in August 2020 and the fact that these were paid in cash (without any corresponding withdrawal from the appellant's bank account).
- The officer ignored the fact that the appellant had paid VAT and income tax on these takings that HMRC now argued had not been received (although the tribunal noted that these could have related to non-scheme days).
- The officer ignored the fact that the appellant's accounts showed an increase in cash in hand over the period.
- The officer did not take into account the food purchases, which showed a higher supply of food than would be justified by merely the meals that could be supported by the credit card purchases.

In conclusion, the tribunal felt that the officer 'started off from the position of suspecting that the appellant was not telling the truth and he was not prepared to accept the appellant's position unless some form of empirical documentary evidence provided a smoking gun ... He seems to have come to the decision that in the absence of dated and timed bills, there was nothing that the appellant could do to justify the additional cash takings ... [and] did not seriously consider other matters which could have supported claim.'

For these reasons, the assessment was not objectively reasonable and the taxpayer's appeal was allowed.

Commentary

This is a further case where the taxpayer did not even need to go to the stage of disproving HMRC's assessment. Because the assessment was so fundamentally flawed, it fell at the first hurdle. As a result, even the admitted £671 overclaim could not be recovered by HMRC.

What appears to have been fatal to HMRC's approach was an apparent predisposition to the idea that the taxpayer had made an excessive claim. I doubt that that was necessarily the officer's view at the beginning of the investigation (although HMRC's selection of the case might not have been entirely random and could have had an influence on the officer's thinking).

HMRC's stated position to the tribunal was that it was not alleging any impropriety by the appellant and that there were no suggestions of falsification or fabrication of documents by the appellant or its members, staff or agents. However, as the tribunal pointed out, impropriety was the essence of HMRC's case. It had refused to accept that the sample bills it had been provided with could be married to the sales records and this was because the officer did not believe that the daily takings records were accurate. As the tribunal continued to observe, that carried an implication that those daily records were compiled in a deliberate attempt to inflate the claim.

Although this is probably the first case to consider the Eat Out to Help Out scheme and possibly the first involving HMRC arguing that a taxpayer has over-declared its income, the underlying themes of the case are depressingly familiar. We have an HMRC investigation into a cash-based, fast-moving business and an apparent refusal to accept any evidence other than the gold-standard, date-stamped electronic records. That is unrealistic and means that taxpayers are forced to incur costs defending themselves against baseless assessments (and public funds are wasted as these cases are litigated).

There also appears to be a complete disregard of the promise within HMRC's charter which says (with my emphasis added): 'We'll assume you're telling the truth, **unless we've good reason** to think you're not. '

It is inevitable that any organisation, which relies on individual officers to make decisions, is going to make mistakes from time to time. However, this was a case where the assessment had been subject to an internal review and was then taken over by a litigation team. There were plenty of opportunities for common sense to prevail. Is this evidence of a wider problem within HMRC involving a predisposition to disbelieving what taxpayers are saying or does it simply mean that one should not expect these separate stages to amount to a proper review of the strength of HMRC's case?

We have an apparent refusal to accept any evidence other than the gold-standard, date-stamped electronic records.

Another point that might be worth reflecting is the fact that these businesses are typically (and possibly disproportionately compared with the wider population) run by members of ethnic minorities. Indeed, over the last few years, the published decisions of over-reach by zealous HMRC officers in relation to cash-based businesses predominantly involve such taxpayers (at least if one is to use the taxpayer's name as an indicator of ethnicity). I do not suppose for a moment that there is any deliberate targeting of such groups by HMRC. However, if there are systemic problems with how HMRC investigates such businesses, that could amount to indirect (albeit unintentional) discrimination.

There is a small point, however, where I respectfully disagree with the tribunal's approach – although I suspect the disagreement is possibly more one of form than of substance. When stating its (correct) conclusion that the approach it should take to para 9(1) was akin to that taken in relation to discovery assessments, the tribunal said that this conclusion is 'supported' by the fact that the procedural provisions governing discovery assessments and appeals against them are expressly imported into the para 9 rules for recovering excessive coronavirus support payments.

As noted, I fully agree with the tribunal's interpretation of para 9(1) as it represents a sensible reading of the provisions there (i.e. the fact that it imports both subjective and objective elements). Furthermore, it is possible that the tribunal was saying no more than that it gained comfort for its conclusion by the fact that, in practical terms, a para 9(1) assessment would be treated in the same way as a discovery assessment and, therefore, it would not be unreasonable to assume that they would be subject to similar tests.

However, if the tribunal was actually saying that the invocation by para 9(3) of parts of the Taxes Management Act 1970 into the para 9 process is itself a reason contributing to its interpretation, then this is where I do depart from the tribunal's approach. In my view, para 9(3) is not actually importing the rules in s 29(1) but other more generic aspects of the Taxes Management Act 1970 governing assessments more generally.

Secondly, and perhaps more importantly, para 9(1) contains its own test as to when and how an assessment may be made. Although para 9(1) does not use the word 'discover', ultimately it turns on the same key requirement of a discovery assessment being that an officer must form an opinion that there is something to assess. It is for that reason that I believe (in agreement with the First-tier Tribunal) that this requires there to be both subjective and objective aspects to the officer's conclusion.

As I have said, this is a minor point. I consider the rest of the First-tier Tribunal's decision unimpeachable.

What to do next

It is possible that the taxpayer's arguments with HMRC in the course of the investigation were not helped by the paucity of conclusive records that could persuade HMRC that the discounts claimed were (on the whole) ones to which it was entitled. However, taxpayers should remember that there is a difference between 'evidence' and 'evidence which HMRC accept'. It is the former which the tribunal will be looking for.

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Local authorities
VAT on income generating activities

We consider how the 'special legal regime test' and the 'significant distortion of competition test' apply to take local authorities' income generating activities outside the scope of VAT.

by Ian Harris

In 2020, the First-tier Tribunal handed down its initial decisions in three linked appeals: *Chelmsford City Council* (2020) UKFTT 433 (TC); *Midlothian Council* (2020) UKFTT 434(TC); and *Mid-Ulster District Council* (2020) UKFTT 432 (TC). The three local authorities argued that their provision of sports services should fall outside the scope of VAT under Article 13(1) of the EU Principal VAT Directive (now transposed into the VAT Act 1994 s 41A).

These represent the most important cases on Article 13(1) and the VAT liability of local authorities' services since the Court of Appeal's judgment in *Isle of Wight Council* (2015) EWCA (Civ) 1303, in which the Court of Appeal upheld the Upper Tribunal's finding that non-taxation of local authorities' provision of off-street car parking would lead to significant distortion of competition.

Article 13(1) lays down three tests. The activity must be:

- delivered by a body governed by public law (this is taken as read for a local authority);
- subject to a special legal regime only applicable to bodies governed by public law; and
- such that non-VATable treatment would not cause significant distortion of competition.

Although the ultimate outcome of the litigation post-dates the UK's departure from the EU, the outcome is equally applicable under s 41A.

HMRC rejected the local authorities' arguments and the three appeals proceeded to the First-tier Tribunal as 'test cases' covering the three jurisdictions of the UK: *Chelmsford* for England and Wales; *Midlothian* for Scotland; and *Mid-Ulster* for Northern Ireland.

The First-tier Tribunal

The local authorities proffered three arguments as to why their sports services should fall outside the scope of VAT under Article 13(1):

1. Their provision does not constitute an economic activity within the meaning of Article 9. The tribunal rejected this argument.
2. If an economic activity, provision is made under a special legal regime and non-VATable treatment would not cause significant distortion of competition. This was upheld by the tribunal subject to hearing further evidence, if necessary, on significant distortion of competition.
3. The tribunal was not persuaded by the third argument, relating to the discretion afforded member states by Article 13(2) to treat such services as outside the scope of VAT, which is beyond the scope of this article.

The tribunal first concluded that three factors are irrelevant to determining whether local authorities' activities are subject to a special legal regime: the subject matter of the activity; the purpose of the activity; and the fact that private providers are capable of carrying out similar activities.

In essence, the dispute over the 'special legal regime test' distilled to HMRC's assertion that whilst a mandatory obligation placed upon local authorities requiring them to carry out a specified activity does amount to a special legal regime (and that there can then be no significant distortion of competition if simply fulfilling their statutory obligations), a discretionary power enabling local authorities to carry out an activity is not enough unless

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Key Points

What is the issue?
The decision in the joined cases of *Chelmsford*, *Midlothian* and *Mid-Ulster*, and ensuing policy updates by HMRC, are significant developments in defining the scope of VAT for local authorities.

What does it mean for me?
The cases clarify how both the 'special legal regime test' and the 'significant distortion of competition' test apply to take local authorities' income-generating activities outside the scope of VAT.

What can I take away?
Although concerned with local authority sports provision, the outcome could have much wider implications wherever a special legal regime exists and there is an already significantly distorted market.

accompanied by further prescriptions, proscriptions and constraints laid down by accompanying statutory or regulatory provisions.

The existence of mandatory obligations on local authorities to provide sports services in Scotland and Northern Ireland made the outcome in *Midlothian* and *Mid-Ulster* almost a foregone conclusion. However, in England and Wales, the Local Government (Miscellaneous Provisions) Act 1976 s 19 provides that 'a local authority may provide … such recreational facilities as it thinks fit'.

The tribunal nevertheless concluded that a special legal regime does exist governing local authorities' provision of sports services in England and Wales, and that there are clear differences between the legal conditions under which local authorities do so compared to private sector suppliers of sports services.

The tribunal thus concluded that in all three jurisdictions local authorities provide sports services under a special legal regime and that consequently their provision of sports facilities falls outside the scope of VAT, providing that would not cause significant distortion of competition.

Whilst accepting the decisions on the existence of a special legal regime in Scotland and Northern Ireland, the finding in England and Wales reportedly caused alarm in HMRC at the apparently wide interpretation of the 'special legal regime test'. If left undisturbed, it was felt that it could lead local authorities to argue that all their activities are subject to a special legal regime. HMRC therefore appealed *Chelmsford* to the Upper Tribunal.

Chelmsford at the Upper Tribunal

In June 2022 the Upper Tribunal (2022) UKUT 149 (TCC) dismissed HMRC's appeal on the 'special legal regime test' and upheld the First-tier Tribunal's decision that local authorities in England and Wales provide sports services under a special legal regime. HMRC had appealed on the ground that the First-Tier Tribunal had erred in law by failing to draw a distinction between 'sovereign powers', which are needed to exercise certain specified activities, and 'statutory powers', which merely authorise the carrying out of such an activity. HMRC's argument was that Article 13(1) only applies to public bodies acting under 'sovereign powers'. The Upper Tribunal, however, could find nothing in the case law to support such a distinction.

Ultimately, the Upper Tribunal accepted that the Local Government (Miscellaneous Provisions) Act 1976 s 19 does amount to a special legal regime when taken together with the multitude of other statutory and regulatory prescriptions, proscriptions and constraints with which local authorities in England and Wales must comply when delivering sports services.

These include requirements for local authorities to prepare strategies for promoting or improving the economic, social and environmental wellbeing of their area (under the Local Government Act 2000 s 4); and an obligation to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of children (under the Children Act 2004 s 11). Clearly, no private sector supplier of sports services is required to comply with these constraints and hence they must contribute to the existence of a special legal regime.

The 'significant distortion of competition test'

Although HMRC appealed the First-tier Tribunal's decision in *Mid-Ulster*, the Upper Tribunal remitted the case back to the First-tier Tribunal on the grounds that its previous decision had conflated the 'significant distortion of competition test' with the 'special legal regime test', holding that the statutory obligations placed on Northern Irish local authorities mean that in practice there can be no competition, as no private sector provider would be required to comply with the same obligations.

It thus seemed that the First-tier Tribunal would be required to rule on the 'significant distortion of competition test' in all three cases.

The onus would then fall on HMRC to prove that there would be significant distortion of competition by reference to an economic analysis of the market to demonstrate that: there would be competition; that competition would be distorted; and that distortion would be significant (i.e. more than negligible when judged on a nationwide basis). However, HMRC's economic analysis, somewhat surprisingly, concluded that no significant distortion of competition would be caused by treating local authorities' provision of sports services as falling outside the scope of VAT. HMRC confirmed this in Brief 3(2023) 'Changes to VAT Treatment of Local Authority Leisure Services'.

The outcome of HMRC's economic analysis is probably the most important development on Article 13(1) since the *Isle of Wight* judgment, laying down a fundamental caveat to the 'significant distortion of competition test'.

The nationwide market for sports services is already significantly distorted, as sports services are provided by:

- local authorities able to treat their provision as exempt from VAT but still fully recover associated input VAT incurred under their advantageous partial exemption regime;
- trusts and charities able to treat their provision as exempt from VAT but unable to recover associated input VAT incurred due to the private sector partial exemption rules; and
- commercial providers whose supply is subject to VAT and so who can fully recover associated input VAT incurred.

The conclusion reached by HMRC's economic analysis was that where the market is already significantly distorted, treating local authorities' provision within that market as outside the scope of VAT with full VAT recovery under Section 33, rather than exempt from VAT but still with full VAT recovery, would not further significantly distort competition.

The agreed position

The agreed position on local authority sports provision therefore is that to be treated as a non-business activity outside the scope of VAT, the activity must:

- be the subject of a special legal regime; specifically that the statutory provision, as a discretionary power, is underpinned by other statutory or regulatory constraints that impinge upon how the activity is performed, with which the local authority must comply and which do not apply to private sector providers; and
- have previously been treated (or should have been treated) as a VAT-exempt supply: while this explicitly includes the sports services held to be exempt from VAT when delivered by a local authority in *London Borough of Ealing* (Case C-633/15), other statutory exemptions relating to sports and leisure services may be acceptable, such as sporting tuition and sports-related education.

To be treated as a non-business activity outside the scope of VAT does not require the sports services in question to have previously been treated as exempt; rather that they could have been, even if the authority chose not to for other reasons, notably due to adverse partial exemption implications.

Updated guidance

HMRC has now confirmed in updated guidance at VATGPB8410 that the following sports activities are accepted as being non-business and so outside the scope of VAT:

- sports lettings: the hire of a sports facility for sports use, including under a recurring series of lets;
- lettings of sports facilities by a business such as an aerobics instructor or a five-a-side football league, providing the business uses the facility for the benefit of individuals taking part in sport;
- lettings of non-sports facilities for sports use such as a community centre or school assembly hall, providing the local authority has set up the space for use as a sports facility prior to the hire;
- 'long-term leases' of sports facilities such as by a football or cricket club where the venue is a local authority maintained and managed sports facility (though this does not include the simple lease of a sports facility under which the tenant club takes responsibility for its maintenance and management);
- letting a park for a sports event, providing it is set up for such use by the local authority;
- sports tuition such as swimming lessons and sports coaching courses;
- 'sporting goods': the hire by a local authority of appropriate sports equipment such as badminton rackets and floatation aids (though not where a local authority sells 'sporting goods' such as tennis balls and swimming goggles); and
- outdoor pursuits centres where the supply is of expressly sports and leisure activities, such as canoeing and climbing, with instruction and/or equipment provided.

Wider implications

Whilst HMRC expressed concern that local authorities would try to apply more widely the decision on the 'special legal regime test' in *Chelmsford* unless 'constrained', in fact its conclusion in Brief 3(2023) (and confirmed in VATGPB8410) and its rationale on the 'significant distortion of competition test' seems to be of even more wide-reaching consequence.

If an already significantly distorted nationwide market cannot be further significantly distorted by treating local authorities' provision in that market as falling outside the scope of VAT, what other such markets do local authorities participate in where they are currently required to treat their supplies as within the scope of VAT?

One that is immediately apparent is cultural activities, such as theatres and concert halls.

It seems clear that non-business treatment should now apply to local authorities' provision of cultural activities in Scotland and Northern Ireland, given that their respective special legal regimes encompass the mandatory provision of both sports and cultural activities.

In England and Wales, however, the position is less clear. The primary law governing cultural activities in England and Wales is the Local Government Act 1972 s 145(1)(b). This is directly analogous to that governing sports services in being merely an enabling power. Arguably there are equivalent additional statutory and regulatory constraints, such as were agreed in *Chelmsford*, which constitute a special legal regime.

HMRC has generally always accepted that treating local authorities' cultural activities as VAT-exempt does not cause a distortion of competition.

However, it would still require a further economic analysis to address the 'significant distortion of competition test'. This is because the provision of sports services is a relatively easily defined market for which the VAT treatment of the various participants is clear. This is not the case with cultural activities, which is a more diverse market, including both cultural performances and admission to museums and galleries (and in respect of the latter is further complicated by VAT recovery permitted to certain 'national museums' under Section 33A).

Furthermore, the 'significant distortion of competition test' is a different and wider test than that applicable to public bodies' treatment of cultural activities as exempt from VAT, which is directed at the local market and commercial providers required to charge VAT. Rather, it requires a more than negligible distortion of the overall market that is sufficient to be felt nationwide, as held in *Isle of Wight*.

Postscript: On 27 February 2024, the Court of Appeal handed down judgment in *Northumbria Healthcare NHS Foundation Trust* [2024] EWCA CIV 177. HMRC had been assuaged over the potentially wide definition of special legal regime when the Upper Tribunal [2022] UKUT 267 TCC) agreed with the decision in *Chelmsford* that the additional constraints necessary to constitute a special legal regime must be in statutory or regulatory provisions. The Court of Appeal, however, has held that Northumbria Healthcare's provision of hospital parking subject to a special legal regime as binding guidance, with which a public body must comply, meets that criterion. The implications of this could be profound.

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High income child benefit charge

Common misconceptions

The changes to the high income child benefit charge in Spring Budget 2024 only serve to emphasise some of the difficulties taxpayers can have with compliance.

by Ray Magill

Key Points

What is the issue?
From 6 April 2024, the tax charge is to be 1% of the child benefits received for every £200 that the adjusted income of the recipient or that of the higher 'earner' of a couple exceeds £60,000. The high income child benefit charge will therefore equal the child benefits received once the adjusted income exceeds £80,000.

What does it mean to me?
Most, if not all, tribunal cases referring to the high income child benefit charge are concerned with whether the taxpayer had a reasonable excuse for not declaring their liability.

What can I take away?
The high income child benefit charge remains a confusing tax charge, where HMRC's guidance does not always explain adequately how the charge applies, or the options around not receiving child benefit.

The many tribunal decisions on the high income child benefit charge, mostly concerned with 'reasonable excuse', reflect HMRC's inadequate and potentially misleading 'guidance', and the difficulties taxpayers can have with compliance. Perhaps the guidance will be reviewed and improved, following the changes proposed in the Budget on 6 March.

The high income child benefit charge was introduced by the Finance Act 2012 as a tax charge equal to 1% of the child benefits received for every £100 that the adjusted income of the recipient, or that of the higher 'earner' of a couple, exceeded £50,000. Thus if the adjusted income exceeded £60,000, the high income child benefits charge equalled the child benefits received.

There were many protests about the anomaly that a couple with income of £30,000 each would have no liability for the high income child benefit charge, whereas a couple where one partner had no income and the other partner had income of £60,000 would have the full liability.

The Chancellor said on 6 March: 'Today, I set out plans to end that unfairness. Doing so requires significant reform to the tax system, including allowing HMRC to collect household level information.'

From 6 April 2024, the tax charge is to be 1% of the child benefits received for every £200 that the adjusted income of the recipient or that of the higher 'earner' of a couple exceeds £60,000. The high income child benefit charge will therefore equal the child benefits received once the adjusted income exceeds £80,000.

Many taxpayers have been caught out by this novel tax charge. Most, if not all, tribunal cases referring to the high income child benefit charge are concerned with whether the taxpayer had a reasonable excuse for not declaring their liability.

Information deficits

Judge Nigel Popplewell has decided a number of these cases in favour of the taxpayer and he set out a summary of the circumstances in which a taxpayer is likely to have a reasonable excuse at paragraph 38 in *W Shahid v HMRC* [2023] UKFTT 716. In particular, the judge sets out that there are circumstances when ignorance of the law can be a reasonable excuse.

That summary did not refer to the effect of partners not sharing information about their finances. Nor did it mention the possible inadequacy of HMRC's advice.

Judge Popplewell at paragraph 26 of *W Shahid* says: 'If the partner exercises the right to decline to give this information [i.e. are you claiming child benefit and do you have an adjusted net income of over £50,000?], HMRC have a mechanism to allow them to obtain it. It seems that in these circumstances HMRC are prepared to waive the cloak of confidentiality about one spouse's tax position and provide details of it to the other spouse.'

The example of **Gillian and Herbert: lacking information** shows the difficulties that can emerge.

Tax Return notes SA150 do no more than recognise the possibility that a couple may separate, without discussing the difficulties. They simply give the following instruction:

> 'Put the total amount of child benefit payments you or your partner got for the 2022 to 2023 tax year.
>
> 'If you and your partner commenced or ceased living together during the tax year, their income was over £50,000 and greater than your income [*note: not 'adjusted net income'*], then enter the amount of child benefit you received whilst you lived alone. Your partner will need to enter the amount of child benefit received when you lived together on their tax return.'

Common misunderstandings

A misunderstanding of the law remains with many, even after sight of the information provided by HMRC.

GILLIAN AND HERBERT: LACKING INFORMATION

Consider the position for a tax year during which a couple, Gillian and Herbert, cease to live together. The two parted on 5 October 2022.

- Gillian's adjusted income in 2022/23 is £45,000.
- Herbert's income in 2022/23 is £65,000, of which £20,000 was in the first half of the tax year and £45,000 in the second.

Herbert is completing his return. He suspects that his wife receives child benefit but cannot require Gillian to say the amount she received while they were living together. He can't know whose adjusted net income is the higher, as he is no longer in touch with Gillian.

How should he complete his return, as his adjusted net income exceeds £50,000? He must tell HMRC that he doesn't have the necessary information to complete that section of his return.

Gillian knows she is in receipt of child benefit, and of course knows her own income. But she can't know if Herbert's adjusted net income is greater than hers. How should *she* complete her tax return? As her income doesn't exceed £50,000, she can ignore that part of her return, but if her adjusted net income *had* exceeded £50,000, she would have to do the same as Herbert.

If neither has been required to complete a tax return, has adjusted income over £50,000, and knows or suspects that child benefits have been received by the other, they should have advised HMRC by 5 October 2023 that they *might* have a liability for high income child benefit charge but don't have the necessary information to determine the amount.

The same issues arise in a year when two individuals marry, enter into a civil partnership or begin to live together as if married or as civil partners.

The proposal that HMRC might gather details of household income might not help in the situations described.

Judge Popplewell incorrectly states at paragraph 22 of *W Shahid* that the appellant's wife 'knew that if her husband's adjusted net income was more than £50,000, she should not be claiming'.

Judge Popplewell also partly misstates the position in *D Lakeland v HMRC* [2023] UKFTT 978, where he says: 'She had received no notification that she was not entitled to claim child benefit or that by doing so, she or her husband might become liable to the HICBC.' In fact, the claimant's entitlement remains, regardless of whether high income child benefit charge is due.

This misunderstanding may come from so many people referring to the high income child benefit charge as a withdrawal of child benefit. Even the Chancellor George Osborne said in his Budget Speech on 7 December 2012: 'The benefit will be withdrawn when someone in the household has an income of more than £50,000.' And Chancellor Jeremy Hunt said on 6 March: 'We currently withdraw child benefit when one parent earns [sic] over £50,000 a year.'

Actually, the Child Benefit claim form CH2 correctly says:

> 'If you or your partner have an individual income of:
> - more than £60,000 a year a tax charge equal to the child benefit payment will apply, so you **may not want** to be paid child benefit; and
> - between £50,000 and £60,000 a year a tax charge of less than the child benefit payment will apply, so you may **want** to be paid child benefit.'

The true position needs to be made clearer in HMRC's guidance at: tinyurl.com/zfd4hhyj.

Furthermore, HMRC's Guidance should include fuller definitions of 'partner' and 'adjusted net income'.

Definition of 'partner'

Income Tax (Earnings and Pensions) Act 2003 s 681G provides:

1. For the purposes of this Chapter a person is a 'partner' of another person at any time if either condition A or condition B is met at that time.
2. Condition A is that the persons are married to, or civil partners of, each other and are neither:
   a) separated under a court order; nor
   b) separated in circumstances in which the separation is likely to be permanent.
3. Condition B is that the persons are not married to, or civil partners of, each other but are living together as if they were a married couple or civil partners.

HMRC's guidance briefly states: '"Partner" means someone you're not permanently separated from who you're married to, in a civil partnership with or living with as if you were.'

Definition of 'adjusted income'

The definition of 'adjusted net income' in s 681H(2) refers to the Income Tax Act 2007 s 58. In brief, this provides that the individual's adjusted net income is net income, less the grossed-up equivalent of qualifying gift aid donations and the grossed-up equivalent of pension contributions paid net of tax, but adding back otherwise tax-deductible payments to trade unions and police organisations.

In the guidance on high income child benefit charge, HMRC only says: 'Your adjusted net income is total taxable income before any allowances and not including things like gift aid. Your total taxable income includes interest from savings and dividends.'

The choice of the phrase 'not including things like gift aid' is not at all clear. HMRC has now introduced a high income child benefit charge tax calculator (see tinyurl.com/sbxm4cft). This gives more explanations but still does not explain how to gross-up gift aid, or explain about the savings and dividend allowances. The Notes to the Child Benefit claim form CH2 say it's 'total taxable income, including any taxable benefits you get from your job minus certain tax reliefs such as payments made gross to pension schemes.' It is doubtful if the claimant would realise that the grossed-up amount of pension contributions paid net of tax is also deductible, as well as gift aid donations. And, of course, there is no mention of the need to add back any otherwise tax-deductible payments to trade unions and police organisations.

The Child Benefit claim form CH2 does at least indicate the wider meaning of partner in seeking details of the claimant's marital or civil partnership status, including 'living with a partner as if you are married or a civil partner'.

> **HMRC's guidance does not always explain adequately how the charge applies, or the options around not receiving child benefit.**

Among the many possible changes in circumstances which might occur following completion of a Child Benefit claim form, the Payment Advice Notes CH1715 tell claimants to advise changes in partners. One wonders how many child benefit claimants regularly consult a copy of the notes.

In conclusion

It is notable that the recent changes to top-slicing relief did not address the high income child benefit charge position. A change might be to revise the definition of 'adjusted net income' to exclude an appropriate portion of the income resulting from a 'chargeable event'.

The high income child benefit charge remains a confusing tax charge, where HMRC's guidance does not always explain adequately how the charge applies, or the options around not receiving child benefit. It is to be hoped that more attention will be paid to improving the guidance and taxpayer notifications.

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Disclosure to third parties
When should you share?

When you are asked to disclose information to third parties, we consider the risks involved and how to avoid them.

by Karen Eckstein

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Key Points

What is the issue?
An area that is causing increasing and ongoing problems for advisers is the thorny issue of the provision of information to parties other than the client.

What does it mean to me?
It is important to remember that confidentiality to clients remains following the termination of the engagement with the client.

What can I take away?
It can be possible to help a client if they would like your work to be disclosed to third parties. However, the issue is risky and advice should be taken.

Tax practitioners should be aware of risk issues that can arise in their professional practices, and they should avoid the unseen 'potholes in the road' that may cause difficulties further down the line. Many issues can be prevented with the use of carefully drafted engagement letters, making it clear what the adviser is and is not doing.

However, an area that is causing increasing and ongoing problems for advisers is the thorny issue of the provision of information to parties other than the client. Obviously, HMRC is one of the main bodies requesting the disclosure of third party information. Some of the other key situations include the provision of information to:

- new tax advisers after the existing relationship ends;

- banks and other lenders seeking information to assist them in relation to finance decisions; and
- other parties (including advisers) in relation to work undertaken by the current adviser but for a different transaction.

All of these scenarios can give rise to tricky issues of confidentiality, reliance and risk. The issues to consider are listed below to help the professional facing a request work out what to do and avoid problems with their client and regulator.

Professional clearance letters

One common problem arises when advisers receive a letter from a former client's new adviser seeking professional clearance and further information to enable the new adviser to take up the appointment.

It is important to remember that confidentiality to clients remains following the termination of the engagement with the client. Advisers should not simply reply to the request for clearance but need full written consent (which can be by email) from their former client to respond to the request. That consent is not implied by the receipt of the request for clearance.

Providing information to the new adviser is a breach of confidentiality if the client has not consented that it may be so supplied. The safest thing to do, therefore, is to send the request to your former client and ask for written confirmation that you may respond to it. When that confirmation is received, you have consent not only to provide information to the new adviser but also regarding the extent of the information to be supplied.

This issue gets more complex when there has been a dispute between the adviser and their former client. This could arise if the relationship broke down due to contentious reasons. We consider a few scenarios below:

- **A refusal to pay fees:** In this scenario, it is acceptable to advise the new advisers that you have outstanding fees that remain unpaid. Take care not to become hostile in the correspondence in that respect.
- **A failure to correct errors in the reported tax position:** Great care has to be taken in this scenario. A money laundering report may have been made but, of course, you must take care not to alert your former client that a money laundering report has been made ('tipping off'). However, you have to give correct information to the new adviser. It would be sensible in this scenario to take legal advice as to the extent of the information to provide to the new adviser about any contentious issues.

Requests for information from HMRC

This is another area where we see problems arising. Too many advisers respond to requests for information from HMRC where the request is informal, so that client information is provided when HMRC has no statutory right to that information. It may well be that it is in the client's best interests for the information to be provided but it should not be provided without formal informed consent.

If HMRC does make an informal request for information relating to a client, it is perfectly acceptable to advise HMRC that the information can only be provided under the appropriate statutory notice.

Provision of information under a statutory notice does not require client consent. However, the adviser does have a duty to check whether the notice is valid, both in terms of the extent of the notice and procedurally. Again, it may be in the client's best interest to provide information under a notice that is procedurally invalid or where a challenge could be raised as to the extent of the notice but the client would have to give informed consent before doing so.

Failure to consider these issues and advise the client accordingly means that client confidentiality could be breached and a claim could follow. All too often, we see advisers providing information to HMRC under requests which are invalid, out of time or excessive, which should not have been supplied.

The adviser must consider whether it is appropriate to supply the information and whether client confidentiality is being breached, and take specialist advice if they are unsure whether or not they should comply with the request.

Requests for information from banks

We frequently see requests from banks, lenders and other organisations for an 'adviser's certificate' or letter. These are made out to be very simple documents and are intended to support clients when they are seeking to enter into financial transactions such as a mortgage, a loan or other financial situations, perhaps to guarantee care home fees for a family member.

Often, the request will be made to secure a loan by the client's business, and the loan in question will be sought by the client, a director or a shareholder.

Usually, the adviser is not told the purpose of the loan, the amount of the loan or the amount of any equity against which it is being secured, and so cannot assess the risk. They may not even be told the name of the entity granting the loan, so do not know who is going to rely on the information they are being asked to provide.

The adviser may be asked to complete a certificate, which is effectively being used to guarantee the underwriting of the loan. The certificate normally has tick boxes and does not allow for caveats to be added. It can ask the adviser to confirm facts which they cannot know for certain, as they may relate to issues that the advisor has only been informed of by their client.

The adviser will first have to identify whether they are acting for the person who is taking out and is responsible for the loan. If the adviser decides to help the individual taking out the loan by providing information to the bank, they must think about what they know, as opposed to what they have been told. For example, they know what is in the filed tax return (if they filed this) but they do not know what assets the client holds.

Even if the client supplies a bank statement, they do not know if funds were removed after the bank statement was supplied. The adviser cannot say that the client has a certain amount of funds in their account; only that they have been supplied with a bank statement by the client, copy attached. Great care should be taken over the drafting of these statements. Legal advice should be sought to ensure that the adviser does not end up effectively being a guarantor for the loan.

My rule of thumb is that if you are so confident that what you are saying is right that you are prepared to lose your home over it, then sign the letter. But don't sign if you have any doubt whatsoever because you could end up being liable. If you are unsure, seek advice on how to draft the letter.

Supplying information to new advisers for unintended purposes

You may be asked to disclose work that you have undertaken for one purpose, and which will be used by new advisers for another purpose. This can be a thorny area and advice should be sought.

Perhaps you carried out work for a client who purchased a business in year one. In year three, that same client wants to sell the business and the buyer's advisers are interested in the work you carried out as part of their due diligence.

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It would be normal to ask the buyer's advisers to sign 'hold harmless' letters before supplying copies of that work. These in essence allow them to see the work but they confirm that the work was done for one purpose and not the purpose the buyers intend; therefore, the buyers will not rely on the work and will bring no claims on the work.

Legal advice will be needed to ensure that you are protected from claims in relation to the provision of this work. Don't rely on any drafts provided by the buyer!

You may also be asked to allow a third party to see ongoing work at the time that work is being done. In this case, you should allow that third party to be provided with the work on consideration that they become a party to the engagement letter and be bound by all the terms. Legal advice will be needed to ensure that the contract is effective to protect the release to the third party.

If the third party wants to be able to rely on this information, a 'reliance letter' will be required, and a fee is usually charged to reflect the risk. Again, this requires legal advice to ensure that the appropriate caveats are put in place with the relevant protections. Don't rely on the draft provided by the other side!

It can therefore be possible to help a client if they would like your work to be disclosed to third parties. However, the issue is complex and risky. Advice should be taken before allowing third parties to be supplied with the advice given to a client for one purpose, to be used for another, thereby increasing your risk profile significantly.

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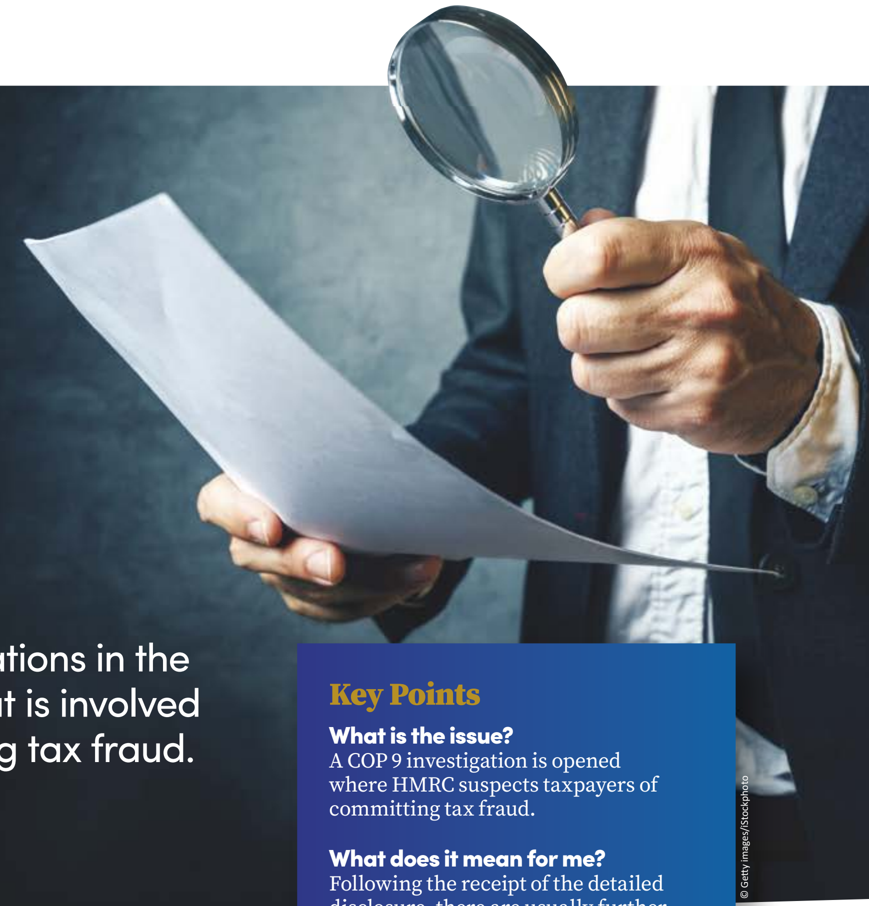
COP 9 investigations
Suspected tax fraud



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As HMRC opened 417 COP 9 investigations in the year to March 2023, we examine what is involved for taxpayers suspected of committing tax fraud.

by Steven Porter and Sophie Warren

Key Points

What is the issue?
A COP 9 investigation is opened where HMRC suspects taxpayers of committing tax fraud.

What does it mean for me?
Following the receipt of the detailed disclosure, there are usually further discussions and negotiations with HMRC to finalise the technical detail and agree the amount of tax due, which will go back up to 20 years where there has been deliberate behaviour.

What can I take away?
An attitude of collaboration and co-operation is the best way to ensure the maximum reduction in penalties.

The latest figures for serious civil tax investigations show HMRC's continued action against potential tax fraud. In the year to 31 March 2023, HMRC opened a total of 1,091 Code of Practice (COP) investigations, split between 674 COP 8 and 417 COP 9 investigations. As at the same date, HMRC had a total of 3,300 of these COP 8 and COP 9 investigations under way. For the investigations that closed during the same year, COP 9 investigations generated £89 million for HMRC and COP 8 investigations generated £72.4 million.

A COP 8 investigation is launched where HMRC suspects a taxpayer of artificially lowering their tax bills through the use of tax avoidance schemes; whereas a COP 9 investigation is opened for taxpayers suspected of committing tax fraud.

Contractual Disclosure Facility

Where HMRC launches a COP 9 investigation, it will send the taxpayer an offer to participate in the Contractual Disclosure Facility. If the taxpayer accepts this offer, they must make an admission of all losses of tax and duty brought about by their deliberate conduct and provide an outline disclosure.

This outline must give details of the fraud, the period over which it took place and an estimate of the amounts involved, alongside all other irregularities in their tax affairs, including those that are not deliberate.

Where the taxpayer meets all the terms of the Contractual Disclosure Facility, HMRC commits not to pursue a criminal investigation against the taxpayer. In order to maintain this protection from prosecution, the taxpayer is expected to be open and honest and make a full disclosure. Where HMRC finds that there has not been absolute candour, a criminal investigation becomes much more likely.

When HMRC receives the outline disclosure, the relevant officer will then proceed to investigate the information provided, comparing it against the records it already holds (which will usually be the records that triggered the suspicion in the first place). The taxpayer is also usually interviewed face to face. Finally, the taxpayer produces a detailed disclosure report, usually with the support of professional advisers, to a timetable that must be agreed with HMRC.

Penalties

Following the receipt of the detailed disclosure, there are usually further discussions and negotiations with HMRC to finalise the technical detail and agree the amount of tax due, which will go back up to 20 years where there has been deliberate behaviour. Once the amount of tax has been settled, the penalties will also need to be agreed.

The taxpayer will be expected to sign a contract settlement called a Certificate of Full Disclosure and agree to pay the tax, interest and penalty due to conclude the investigation.

Penalties for inaccuracy are based on the behaviour of the taxpayer and whether the disclosure is prompted or unprompted. A disclosure will be unprompted where the taxpayer tells HMRC about an inaccuracy before they have any reason to believe that HMRC has or is about to discover the inaccuracy.

The following table shows the penalty ranges:

Type of behaviour	Unprompted disclosure	Prompted disclosure
Reasonable care	No penalty	No penalty
Carelessness	0% to 30%	15% to 30%
Deliberate	20% to 70%	35% to 70%
Deliberate and concealed	30% to 100%	50% to 100%

If the matter involves offshore liabilities, the penalty can be as high as 200%. This percentage is applied to the lost revenue that has arisen from the inaccuracy.

Taxpayers can seek to obtain penalties at the lower end of these ranges through the timing and quality of their disclosure. The lowest end of the range is available to taxpayers who make an unprompted full disclosure and then co-operate fully with HMRC's investigation. In a COP 9 investigation, this is only likely where the taxpayer has voluntarily made a disclosure before any involvement from HMRC. However, taxpayers that are brought into the investigation by HMRC can still secure lower penalties by ensuring that their disclosure is complete and they assist HMRC to quantify the under-assessment and provide access to their records.

Assisting in the investigation

Tax advisers who are supporting taxpayers with a COP 9 investigation should ensure that their client understands the importance of absolute candour, both to their adviser and to HMRC. Keeping information back or assuming that something isn't relevant can lead to a flawed disclosure, which in turn could result in criminal investigation, which no client wants.

Similarly, an attitude of collaboration and co-operation is the best way to ensure the maximum reduction in penalties. However, a note of caution should be observed here that the taxpayer does not end up giving what amounts to an informal witness statement at an early stage without getting appropriate advice.

An investigation that goes back a possible 20 years can create problems when trying to retrieve documents for the early periods and where taxpayer recollection of the purpose and nature of certain transactions is less clear. Often discussions and negotiations are needed with HMRC to reach a reasonable solution on how to proceed with the absence of information and an adviser can help ensure that the taxpayer's position isn't jeopardised.

Some investigations can be incredibly complex with a significant number of documents and thousands of transactions to review. This can take a lot of time to work through and HMRC needs to be regularly informed of progress, or it may decide to take over the investigation.

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Capital interests
Mixed member partnerships

Boston Consulting Group considered how to tax proceeds relating to a 'capital interest' when there is no link between the capital interests and the value or balance sheet of a mixed member partnership.

by Ceinwen Rees and Loviisa Langdon

Key Points

What is the issue?
The case of *Boston Consulting Group UK LLP and others vs HMRC* considers the tax status of payments for the sale of 'capital interests' of individual members of a UK LLP. It is one of the first cases to consider the mixed member partnership rules.

What does it mean for me?
Calling something a capital interest in a partnership does not make it a capital interest.

What can I take away?
In a mixed member partnership, even if there is a deferral of profit or an excess allocation to a corporate member, there still needs to be overall less tax paid by the individual member for the mixed member rules to apply.

In January, the First-tier Tribunal handed down its decision in *Boston Consulting Group UK LLP and others v HMRC* [2024] UKFTT 84. The case is particularly interesting because it is one of the first considering the mixed member partnership rules. The decision also delves into the nature of partnership interests and (as is a popular sport these days) concludes that the miscellaneous income rules apply.

Various procedural points are considered by the tribunal but they are not explored in this article. It is, though, interesting that the First-tier Tribunal allowed written appeals to be submitted by the parties as late as seven months after the oral hearing in light of decisions handed down by the Upper Tribunal.

A brief overview

A brief overview of the facts are as follows:

- Boston Consulting Group is a global management consulting business headquartered in the United States.
- BCG Ltd, a wholly owned subsidiary of the global parent company The Boston Consulting Group Inc, carried out the UK business.
- In 2010-11, the UK business was restructured. BCG Ltd contributed the business to a limited liability partnership in exchange for a partnership interest, which entitled it to a fixed margin and any residual profits. Senior individuals at BCG Ltd, known as managing directors and partners, became members of the limited liability partnership and were granted 'capital interests'.

Managing directors and partners were entitled to sell their capital interests to BCG Ltd in certain conditions and, unsuccessfully, claimed gains tax treatment on the proceeds.

Capital interests

Managing directors and partners worldwide were compensated using the same 'framework'. In addition, the framework provides for an 'equity' element – known as the lifetime custom value (LTCV). This element was designed, according to Boston Consulting Group, to allow managing directors and partners to participate in the growth of the global

business.

Before the 2011 restructuring, the UK LTCV programme was implemented using a specific share class in The Boston Consulting Group Inc. After the formation of the limited liability partnership, the UK LTCV programme was converted to capital interests in the limited liability partnership.

Boston Consulting Group's intention was for the capital interests to replicate the structure of the old UK LTCV programme; and, accordingly, the capital interests were accounted for as share-based payments by the limited liability partnership and BCG Ltd.

Unlike in the case of The Boston Consulting Group Inc shares, however, the UK managing directors and partners did not buy the capital interests, nor did any new joiners to the LTCV pay a price upfront for the capital interests.

The curious and crucial factor underpinning the operation of the capital interests is that their 'cash out' value was designed to track the global value of the business; in other words, the value of The Boston Consulting Group Inc (as it had done using the old programme). This meant that the value of the UK business could fall but, provided the value of The Boston Consulting Group Inc had grown, a UK managing director or partner could 'sell' their capital interest profitably.

There was no link between the capital interests and the value or balance sheet of the limited liability partnership. Despite this disconnect, Boston Consulting Group claimed that the capital interests were a means for UK managing directors and partners to participate in the goodwill of the UK limited liability partnership.

Faced with these facts, the First-tier Tribunal held that capital interests did not reflect interests in the underlying assets and that the managing directors and partners 'consequently did not have any interest in any profits arising from the disposal of capital items'.

This conclusion was supported by the accounting treatment adopted by the limited liability company; by the internal communications made regarding the capital interests; and by the descriptions of the arrangements used by external advisers. The decision is a useful reminder that calling something a spade does not always make it a spade.

Income tax treatment

Following the decision that the capital interests were not taxable under the capital gains regime, the next question was on what basis the proceeds should be taxed.

HMRC put forward three suggestions:

1. Tax as the value accrues
The capital interests formed part of the limited liability partnership's profit sharing arrangements and were therefore taxable as trading income. Profits allocated to BCG Ltd, as corporate member, possibly needed to be re-allocated to the managing directors and partners under the mixed member partnership rules (Income Tax (Trading and Other Income) Act (ITTOIA) 2005 ss 850 and 850C).
This suggestion was not successful.

2. Tax on disposal of the capital interests (Option 1)
The disposal of capital interests gave rise to taxable miscellaneous income (ITTOIA 2005 s 687).
This suggestion was successful.

3. Tax on disposal of the capital interests (Option 2)
The disposal of capital interests should be chargeable to income tax under the sale of occupational income provisions (Income Tax Act 2007 Part 13 Chapter 4).
This suggestion was successful (except trumped by the miscellaneous income option above).

Taxation on disposal

Taking first HMRC's winning argument, the First-tier Tribunal determined that disposal proceeds in relation to the capital interests fell to be taxed as income under the miscellaneous income provisions. Although this is the winning argument, it is the least interesting part of the decision. This is partly because it is not a surprising result once it had been determined that the capital interests were not interests in capital. Also, there has been a recent swathe of decisions on the miscellaneous income rules and this really only serves to bolster those decisions.

The initial reaction to this case may be one of concern for other equity incentive arrangements existing in both a corporate and a partnership context. However, the facts of this case are fairly unusual in the way that the capital interests do not provide any rights to underlying assets and don't even have a value that is tied to the business that they purport to provide an interest in.

The case does, though, serve as a reminder when setting up structures to consider how they are presented internally (and externally) and to ensure that the substance of arrangements and their form are aligned and coherent.

The First-tier Tribunal also determined that if the miscellaneous income rules had not applied, the payments would be taxable as income under the sale of occupational income provisions. The tribunal determined that there was evidence that obtaining capital rather than income tax treatment was one of the reasons for moving from a share based scheme to a capital interests scheme. Therefore, the First-tier Tribunal found fairly quickly (especially in the context of a 71 page judgment) that the arrangements were tax motivated and that the sale of occupational income rules would therefore apply.

Taxation on an accrual basis

HMRC's unsuccessful argument was that the capital interests formed part of the limited liability partnership's profit sharing arrangements and therefore that the managing directors and partners should have to be taxed as profits arose to the business. However, the First-tier Tribunal disagreed because of the absolute disconnect between the limited liability partnership's profits and the capital interests (discussed above).

The First-tier Tribunal further noted that BCG Ltd was not a mere conduit for transferring profits to the managing directors and partners. Prior to the reorganisation, BCG Ltd had carried on the UK business and the profits that it received were used to support Boston Consulting Group's group treasury function.

In considering whether the mixed member rules altered this conclusion, the First-tier Tribunal again found in favour of the taxpayer. The mixed member rules aim to prevent partnerships allocating profits to corporate members instead of individual members, where the arrangements are set up to give such individual members the benefit of lower corporate income tax rates.

There are two circumstances where the rules can apply:

- where profits to an individual partner are deferred and instead allocated to a corporate member and overall less tax is paid by the individual **(Condition X)**; and
- where the corporate member is allocated more than their 'appropriate notional profit' and an individual has the power to enjoy such excess amount and consequently less tax is paid by the individual **(Condition Y)**.

Condition X

The First-tier Tribunal concluded that amounts allocated to BCG Ltd were deferred profits because the profits allocated to BCG Ltd were used to purchase capital interests. This is interesting because the tribunal applied a broad interpretation of the meaning of deferred profit, holding that deferral needs to be determined applying a simple dictionary definition: 'put off to a later time; postpone'. In other words, even though the payment made for a capital interest would not be known until the actual sale, 'there is no requirement that there is an entitlement which is crystallised'.

Despite this unhelpfully wide decision, overall the First-tier Tribunal decided that Condition X was not satisfied because even though there was a deferral, there was not a corresponding reduction in any managing director and partner's profit allocation; the profit allocations were determined based on Boston Consulting Group's global compensation framework.

To have allocated BCG Ltd's profits to the managing directors and partners would mean that they would receive compensation in excess of their entitlement and out of step with their Boston Consulting Group peers globally.

This is a helpful conclusion for many mixed member partnerships sitting within global groups where global compensation frameworks are common.

Condition Y

Condition Y follows a similar analysis. There was an excess allocation made to BCG Ltd. The managing directors and partners did have the power to enjoy those excess profits but there was not a reduction in either the allocation to them or their tax bill. Therefore, Condition Y was not satisfied.

In considering whether an excess allocation had been made to BCG Ltd, it was necessary for the First-tier Tribunal to determine what the appropriate notional profit allocation to BCG Ltd should be based on its capital contribution.

The value of this capital contribution was subject to debate. The taxpayers argued that it was the market value of the business contributed to the limited liability partnership during the reorganisation, with annual increases. HMRC stated that it was the (much lower) book value of the business at the time of the contribution.

Interestingly HMRC's position contradicts its view expressed in the Partnership Manual. In disregarding this contradiction and finding in favour of HMRC's argument, the First-tier Tribunal delivers our favourite statement in the judgment, which feels like a good place to end this article: 'HMRC's manuals are not law. They set out HMRC's opinion and therefore must be viewed as no more than that.'

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Restricted stock units
The cost of vesting

We consider the impact of vesting restricted stock units for UK based employees.

by Jon Golding

Key Points

What is the issue?
Restricted stock units are a promise to issue stock units in the future to employees by a company. The granting of restricted stock units has no effect but the 'vesting' of units has tax reporting requirements for UK based employees.

What does it mean for me?
A tax advisor needs to know the UK tax reporting and compliance obligations when advising on restricted stock units.

What can I take away?
Reviewing foreign restricted stock units vesting to a UK resident are complex with UK multi-tax reporting requirements; i.e. PAYE, capital gains tax and NICs.

Often shares or units in an employing company abroad, say the US, are granted to their UK resident employees, who may hold these grants until a 'vesting' date in the future when certain UK taxes are often due under compliance requirements.

The grant itself is not a UK taxable event, although certain US Internal Revenue Service requirements should be adhered to by US based employees. However, we are dealing here with staff on a UK based payroll in the examples.

The completion of Form W-8BEN (Certificate of foreign status of beneficial owner for US tax withholding and reporting) by the UK taxpayer informs the US agent (usually a US broker) that a foreign person is claiming a reduced rate of tax withholding in the US or an exemption from withholding taxes. This goes to the agent or broker to handle.

This then applies the double tax treaty relief rate withholding rate and reporting of dividends applying to UK individuals in respect of their restricted stock unit payments.

RESTRICTED STOCK UNITS

HMRC Employment Related Securities Manual explains the function of restricted stock units:
Long term investment plans frequently use what are known as restricted stock units, or restricted share units. A restricted stock unit award is normally an agreement to issue stock or shares at the time the award vests. An award will vest when all the conditions laid down to be satisfied before the stock or shares may be issued have been met, such as the required duration of time, period of employment or performance criteria. Again, the particular facts of any award, rather than its label, will determine the correct tax treatment.

No shares are delivered until the employee satisfies the vesting schedule. The vesting schedule will set out when, and to what extent, the restricted stock units will vest: for example, 20% per year over five years. At each vesting date, employees will receive company stock equal to the net value of the restricted stock units which have vested. Companies use units instead of the actual restricted stock or shares, because they can:

- postpone shareholder dilution until the time of vesting;
- get consistent tax treatment and timing internationally; and
- even if the share price falls after the award date, the restricted stock unit still retains some value, unlike a market value share option.

US and other foreign corporations, in particular, like to structure their incentive plans using them.

Market value of shares

The market value of the shares is determined as the closing quoted share price on the vesting day. If the vesting date is a weekend or holiday, the previous day's closing price is taken.

The agent can and usually does sell sufficient of the vested shares to ensure that the UK payroll tax and NICs liability is met, as vesting is treated as UK employee pay rather than capital gains at this stage.

The spot exchange rate on the vesting date is used by the agent in conversion from $ to £, taking into account a standard withholding rate deduction of 47% by the agent to cover the UK additional rate tax (45%) and NICs (2%). Credit is then given in the UK payroll against the actual PAYE and NICs for the amount withheld by the US agent.

There may be a balancing refund due to the UK employee whose marginal rate is less – say, 40% not 45% – which is settled by a further payment by the UK

EXAMPLE 1: BALANCING REFUND

Grant, a UK resident employee of Acme Corp, had restricted stock units of 40 shares vesting in 2023. They had a market value on vesting day of $200 each ($8,000). Grant's US broker sells 19 of the vesting shares at $201 each (total $3,819) to cover the required US withholding maximum of 47% on the 40 vested shares:

$8,000 x 47% = **$3,760**

UK payroll then calculates the individual's actual UK tax and NICs deduction at, say, 42% (i.e. 40% income tax and 2% NICs).

$8,000 × 42% = **$3,360**

The spot exchange rate for $ to £ is, say, 1.25 which means UK payroll tax deduction is:

$3,360 × 80% = **£2,688**

£2,688 is needed by payroll to settle the UK tax element. Credit is given for the excess US withholding of:

$3,760 - $3,360 = $400

This means $400 × 0.8 has been over-withheld and is repaid by UK payroll to Grant in the sum of **£320**.

EXAMPLE 2: CAPITAL GAINS

Grant later decides to sell his remaining vested restricted stock units. He therefore advises his appointed US broker to sells the balance of his 21 remaining vested shares at the market value of $250 each at that time. This creates a capital gain on the vesting price which must be accounted for on Grant's UK self assessment tax return. Any gain would be taxable at 10% or 20% depending on Grant's marginal UK tax rate.

In this case, Grant has made a capital gain of:

21 × ($250 - $200) = **$1,050**

On conversion of $ into £ at, say, 1.25, this gives **£840**. As this is below the annual capital gains tax exemption threshold of £6,000 threshold for 2023/24, the gain on sale does not need reporting. Also, it is below the multiple annual exemption threshold for reporting (i.e. 4 × £6,000 = £24,000), so no reporting of the disposal is required.

If a loss occurred on sale, Grant would have four years in which to claim the loss.

EXAMPLE 3: INTERNATIONALLY MOBILE EMPLOYEES

Grant has been resident in the UK since 6 April 2023, but he was previously working for the company in Singapore when shares were granted. The shares were vested on 5 February 2024.

As a UK resident on vesting, Grant will be subject to tax and NICs on the apportioned award based on the period spent in the UK from 6 April 2023 to the vesting date. The foreign tax position will not be of concern to UK payroll.

payroll. See ***Example 1: Balancing refund***.

Capital gains

The remaining shares vesting are held by the US agent until they are subsequently sold, which will give rise to a capital gain or loss (see ***Example 2: Capital gains***).

A capital gain results in a UK tax charge of 10% or 20% when added to the UK resident employee's marginal rate of tax. Losses carried forward or arising in the same tax year and the annual capital gains tax exemption are taken into account.

Dividends and dividend equivalents

A distinction should be made between 'dividend equivalent' payments and 'dividend' payments.

Dividend equivalent payments

'Dividend equivalent' payments are payments made in respect of unvested shares following grant but which have not been issued. See HMRC's Employment Related Securities Manual ERSM20193.

Such 'dividend equivalent' payments are treated like salary and are taxed in the UK as in Example 1.

Dividend payments

Dividend payments are made in respect of already vested shares, following the correct submission of Form W-8BEN attracting a US 30% withholding tax, which is shown subsequently on IRS Forms 1042-S. There are usually four of these in a year as US companies typically pay dividends quarterly.

The UK reporting of such dividends and withholding tax are reported on the foreign pages of SA106 and the UK return noted accordingly.

International issues

As international companies may have internationally mobile employees working in various of the company's overseas jurisdictions, there may be a gap between grant and vesting, so that the employee was in foreign jurisdictions on the shares being granted but resident in the UK on the vesting date.

In cases such as these, the vesting award should be apportioned for only the days that the employee has spent in the UK (see ***Example 3: International issues***).

Sometimes employees on the UK payroll working are seconded to, say, the overseas head office and this may require a change in payroll administration. Since 2006/07, payroll can operate modified NICs in cases of employees who:

- are seconded abroad;
- are non-resident in UK for tax;
- pay NICs on earnings above the upper earnings figure; and
- receive part of their earnings from the payroll.

The UK payroll pays the NICs on a best estimate until the exact figures of NICs and earnings are known, which is then reported on a NIC Settlement Return.

In summary

It is clear that restricted stock units are a good, if complicated, way of inspiring employees to engage with employers. However, like all employee benefits they come with a price and tax deduction.

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WELCOME

April Technical newsdesk

This month I am going to reflect on some recent experiences which have made me think about the 'health' of the tax system.

Late in February, along with the ICAEW, we spoke to nearly 800 HMRC staff about Professional Conduct in Relation to Taxation (PCRT) (see tinyurl.com/59ja5dr7) and the standards expected of tax agents, and explained how the agent/client relationship typically works and the pressures agents are under.

It was really well received by those attending, and was the second time we have run the session for HMRC, with a third to follow in April. The purpose of these is to demonstrate the similarities between us, while also helping HMRC staff to understand more about the world in which agents operate.

Shortly after that, I joined many other professional and representative bodies, agents and others at HMRC's annual stakeholder conference, which was again a useful event.

Meeting people and discussing issues in the flesh (as opposed to online) really helps to crystallise working relationships. We also heard from HMRC about some of the pressures they are under, and in break-out sessions we discussed several key topics such as tax simplification and moving people online. The keynote speeches are available on YouTube (see tinyurl.com/cavtdsn7).

As a result, I ended February very much 'glass half full'.

I then had the opportunity in early March to join a large number of our volunteers at our annual branches conference. Unsurprisingly, one of the biggest concerns I heard was around HMRC's customer service – timeliness, accuracy, access to the right people, and so on – to the extent that I am worried about the impact all of this is having on members' physical and mental health.

We have raised these concerns with HMRC before, and I shall be doing so again. Members who might need support through a challenging situation can access our free Members' Support Service (email membership@ciot.org.uk or membership@att.org.uk, stating Member Support Service in the heading).

Just yesterday, we closed the survey which will help us to evaluate HMRC's performance against their charter. We had 1,647 responses, mainly from agents, but also a large number from taxpayers too.

The results will be incorporated into the Charter Stakeholder Group's report to HMRC, which itself will form part of HMRC's charter annual report 2023-24. (The 2022-23 report can be found at tinyurl.com/42ce22wd.) I cannot share the results until they are published in the 2023-24 report, save to say that they reflect many of the concerns we have been hearing from members.

In the light of these experiences, and likely the further challenges to come, it's not easy to remain glass half full. It is clear that we will need to continue to work closely with HMRC and others to improve customer service and ease the pressure on all parties.

Digitalisation is going to be one of the key factors in delivering improvements, but we need to ensure that those systems are working as planned. We remain keen to receive your feedback, particularly where HMRC's digital services need improving.

NEWSDESK ARTICLES

Contact

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MANAGEMENT OF TAXES
GENERAL FEATURE

HMRC call for evidence: enquiry and assessment powers, penalties and safeguards

HMRC have published a call for evidence which is inviting views on how certain aspects of the tax administration framework might be reformed. A summary of the document is provided below. We would like to receive your views.

The call for evidence (see tinyurl.com/2p9km4sz) is extensive and wide-ranging, comprising 22 'opportunities for reform' and 31 questions. Because the enquiry is at Stage 1 of the consultation process, it is an opportunity for the CIOT, ATT and LITRG to express our views and any concerns about the ideas contained in the document before any decisions are made by the government about whether to implement some, or all, of them.

Some of the reform opportunities include, for example, the alignment of HMRC powers across direct and indirect taxes, penalty reform, and the alignment of appeals processes and payment requirements. Such reforms would result in fundamental changes to the status quo, so it is important that we hear your views about them. What would you support and what wouldn't you, and why? What are the risks and benefits of these ideas? Do you have any alternative suggestions?

We appreciate that members may not have time to look at each individual reform opportunity or question. We will, of course, welcome and value your input on any aspects where you can provide feedback.

The consultation closes on 9 May 2024, but to give us sufficient time to prepare our written responses, please would you send any comments you may have to technical@ciot.org.uk or atttechnical@att.org.uk (or email the relevant technical officer) as soon as possible.

Summary of the call for evidence and opportunities for reform

HMRC's enquiry and assessment powers (questions 1 – 10): This section discusses the potential opportunities and risks of streamlining HMRC's powers, whether there are areas of the tax system which could potentially benefit from HMRC taking a different approach, and modernising how HMRC sends statutory notices to taxpayers and agents. Various reform opportunities are discussed:

A: Consistent powers across tax regimes
B: Aligning powers and addressing gaps
C: Consequential amendments and assessments across periods and across taxes
D: Conditions for assessment
E: Tailoring HMRC's powers
F: Modernising administration and communications

Penalties (questions 11 – 21): This section explores the benefits and challenges to increased alignment across different tax regimes, whether there are specific penalties which could be simplified, and the role of penalty escalation for continued and repeated non-compliance within the design of UK tax penalties. Various reform opportunities are discussed:

G: Aligning penalties across tax regimes
H: Simplifying individual and related penalties
I: Reforming the use of penalty suspension
J: Proportional fixed penalties
K: Penalty escalation for continued non-compliance
L: Penalty escalation for repeated non-compliance
M: Designing new penalties to discourage undesirable behaviour
N: Modernising administration and communications
O: Regular uprating of penalties
P: Transparency

Safeguards (questions 22 – 31): This section considers the potential for aligning the processes for direct and indirect tax appeals, expanding the use of statutory reviews and alternative dispute resolution, and making greater use of digital appeal routes. Various reform opportunities are discussed:

Q: Aligning how appeals are made
R: Aligning payment requirements
S: Improving access to alternative dispute resolution and statutory review
T: Mandating statutory reviews in certain circumstances
U: Withdrawing the option of statutory reviews in certain cases
V: Digital administration

Annex A sets out HMRC's Tax Administration Framework Review's objectives and design principles for reform (which stem from the 2005–12 review of HMRC Powers).
Annex B provides some examples of enquiry and assessment powers, penalty regimes and safeguards in other jurisdictions.

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GENERAL FEATURE PERSONAL TAX
MANAGEMENT OF TAXES

Simplifying and modernising HMRC's income tax services: summary of responses

HMRC have published their summary of responses to their wide-ranging consultation 'Simplifying and modernising HMRC's income tax services', issued as part of the Tax Administration Framework Review.

The consultation sought views on three main areas: increased digitalisation of HMRC correspondence; improvements to the flow and timeliness of PAYE information; and reviewing the Income Tax Self Assessment (ITSA) criteria. HMRC also sought views on mandatory digital registration for self-assessment.

The CIOT, ATT and LITRG each responded to the consultation (see tinyurl.com/py754npw), highlighting a range of issues, including the necessary prerequisites before HMRC can achieve their desired 'digital channel shift', a suite of suggestions to improve the operation of PAYE, and priorities in resolving the issues related to HMRC's ITSA criteria. On the final point, all three responses suggested proper alignment between published ITSA criteria and the underlying legislation.

HMRC's summary of responses (see tinyurl.com/5n765zvb) states that they 'will not require digital interaction until a service is of suitable standard' – reflecting the feedback provided by stakeholders. However, when HMRC measures the standard of a digital service, it is not always clear what assumptions are made and whether they are reasonable. For example, HMRC say that 62% of the 3.5 million interactions with HMRC's Digital Assistant service in 2022/23 'did not require any input from an HMRC adviser'. However, there is no published data on whether those who were not routed to an HMRC webchat adviser actually received a satisfactory resolution to their issue under the Digital Assistant.

The consultation also set out a number of high-volume paper forms, notifications and letters, and invited stakeholder feedback on the suitability of moving those forms to a digital-by-default model. Most stakeholders expressed varying degrees of concern with such a move, depending on the correspondence in question. It was felt that the correspondence may be overlooked by the taxpayer if issued digitally, which could have significant

GENERAL FEATURE

Land transaction tax relief for Welsh freeports

The CIOT responds to the Welsh government's consultation on a land transaction tax relief for Welsh freeports.

The CIOT and the Stamp Taxes Practitioners Group made a joint response to the Welsh government's consultation on providing a relief from land transaction tax (LTT) for qualifying transactions within a designated Welsh special site. The stated policy intent is to help the sites attract private investment and deliver the policy objectives of the Freeports Programme in Wales.

The Welsh government intends that the LTT relief will be broadly equivalent to the stamp duty land tax (SDLT) relief. However, unlike the SDLT relief, LTT relief will only be available for land wholly within the designated site. In terms of the wider policy intent of the measure, we thought it important that the conditions for LTT relief do not distort a buyer's decision to acquire land and buildings that are most suited to their economic and commercial needs.

A further practical consideration is ease of conveyancing where title covers both land in and land outside a designated site. We understand that splitting title before sale would be difficult.

We have concerns about the availability of relief where a buyer enters into a forward funding arrangement to develop the site. This concern applies equally to LTT relief and to the equivalent SDLT relief in England as the proposed LTT legislation is the same (see our earlier submission at www.tax.org.uk/ref1255).

Although we are very much in favour of drawing on existing definitions from a simplification perspective, we have some reservations about incorporating them into LTT legislation by reference to the UK statutory provision instead of including the adopted text in full.

We agree that the claim for relief should be claimed via the LTT return.

We also agree that treating the assignment as the grant of a lease where the actual grant was made with the benefit of relief is generally consistent with the LTT (and SDLT code). However, we note that an assignment may be treated as a grant where it occurs after the LTT relief period has ended, even if the acquisition by the assignee would have otherwise qualified for LTT relief. We observe this treatment may have the effect of rendering the lease unmarketable.

The full CIOT response is available here: www.tax.org.uk/ref1266.

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consequences. For example, in the case of a SA316 'Notice to file', legal obligations created by the issue of the notice could be missed, leading to late filing penalties.

Nevertheless, HMRC said that they will press ahead with changes to allow 'specified' correspondence to be sent to taxpayers digitally by default (though it is not yet confirmed which correspondence this applies to). To facilitate this, HMRC are also considering a requirement for taxpayers to keep HMRC up to date with electronic contact information.

HMRC also explained that they are working on a variety of improvements to PAYE. This will include expanded functionality for the taxpayer to self-serve and adjust their tax code for expense deductions and to code out non-PAYE income, such as dividend income.

On the issues considered relating to self-assessment, HMRC appear to be moving towards mandatory online registration (other than for those who are digitally excluded) once the existing routes to registration have been streamlined and improved. The consultation also mooted the idea of mandatory online filing following such a registration, but LITRG were opposed to this on the basis that it does not follow that a taxpayer is able to (or would wish to) file a full tax return online simply because they registered online several months earlier. HMRC were silent on this point in setting out their next steps.

Finally, regarding the review of the ITSA criteria, HMRC said that their work is continuing in this area. It appears that the important question of the ITSA criteria aligning with the legislation is not a priority at this stage, though it is hoped that once HMRC determine who they would like in self-assessment then the point will be revisited.

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PERSONAL TAX OMB

Uncertainties when applying ESC D32

The CIOT has written to HMRC about uncertainties in the application of extra-statutory concession D32 on the incorporation of a business.

The CIOT has written to HMRC about uncertainties in the application of ESC D32 on the incorporation of a business, where an individual transfers the whole of the assets and liabilities to a company for consideration consisting wholly of the issue of shares by the company, relying on incorporation relief under TCGA 1992 s 162. HMRC's Spotlight 63 and recent articles have highlighted concerns in relation to some property incorporations. This activity seems, in part at least, to be driven by the uncertain application of the concession.

We therefore suggest that the guidance in HMRC's Capital Gains Manual dealing with ESC D32 needs updating and supplementing to reflect modern commercial practice by lenders to include:

- examples of 'business liabilities' for the purposes of ESC D32 and whether 'business liabilities' may include property mortgages where the property letting activities are sufficient to amount to a business for incorporation relief purposes; and
- examples of scenarios where HMRC accepts that business liabilities have been 'taken over' by a company.

The wording of the concession suggests that ESC D32 only applies where business liabilities are 'taken over' by novating the existing debt liability from a sole trader or partnership to the company. However, while this may have been common practice some time ago, when a sole trader and their bank manager could agree to the transfer of business loans to the company, it does not align with current banking practices.

It is understood that banks and other lenders now rarely allow the novation of an existing loan from sole trader to company but usually require a new loan agreement with the company. The new borrowing is used to repay the old borrowing. It is not clear that ESC D32 applies in such cases. While the HMRC manual at CG65745 adds that ESC D32 is also met by the company giving the transferor an indemnity, we understand that this practice is not generally commercially acceptable to lenders.

We noted also that there are wider issues with TCGA 1992 s 162 relief that cause issues in practice and these will be raised via the HMRC stakeholder forum, the Capital Taxes Liaison Group, of which the CIOT is a member.

The full CIOT submission is available here: www.tax.org.uk/ref1269.

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CORPORATE TAX OMB

R&D new merged scheme: CIOT and ATT comment on draft guidance

The new merged research and development scheme will apply for accounting periods beginning on or after 1 April 2024. It will mean significant changes for companies claiming this tax relief. Although some draft guidance has been published by HMRC, full guidance on all aspects of the new rules will not come until later in 2024, after the implementation date of the new scheme.

The start date for the new merged research and development (R&D) scheme was confirmed early in March: the new scheme will apply for accounting periods beginning on or after 1 April 2024. This means that companies with a March year-end will be subject to the new rules by the time you are reading this. The changes in the R&D tax relief available to them will depend on whether the company was previously claiming relief under the R&D expenditure credit (RDEC) or small or medium sized enterprise (SME) scheme, and whether or not it is a loss-making SME.

Whilst the fundamental definition of R&D remains the same, there are other differences to get to grips with, regardless of which 'old' R&D scheme the company was using. Broadly, the new merged scheme follows the existing RDEC regime in terms of the way the relief operates. However, elements of the existing SME scheme (such as the PAYE cap) have been incorporated. In addition, the new restrictions in relation to overseas activity take effect, and there are also new rules for contracted out R&D.

Draft guidance

HMRC published draft guidance ahead of the implementation of the reforms on these last two aspects of the new merged scheme:

- contracted out R&D activities; and
- the overseas rules.

In commenting on this draft guidance, CIOT said that while draft guidance on these two potentially difficult areas of R&D tax relief was welcome, the full guidance for the new scheme will only be available later in 2024, which is after the time at which many companies will be subject to the new rules.

Therefore, we urged an acceleration of this timetable, commenting that full guidance is much needed for certainty, consistency and to enable people to get the application of the new rules right.

ATT echoed these comments, saying that whilst the new guidance was helpful in addressing what are relatively complex areas of the new regime, it was a shame that it was only being published so close to that regime coming into force.

Overseas rules

CIOT and ATT said that the sections in the draft guidance on the overseas restrictions, particularly on contractor payments and externally provided workers, are clear, with good examples. We recognised that this will always be an area of judgement, and said that the discussion in the draft guidance is helpful in recognising that many factors may be taken into account.

CIOT also said that, while it is disappointing that HMRC have not been able to provide any detail or clarity around what documentation needs to be maintained to justify the claim, we understand the reasons given for not doing so. However, we cautioned that, if HMRC are taking an approach that deciding on what documentation is required to evidence the claim is a matter of judgement for the company and for the company's tax team, HMRC must ensure that their approach in the future is not prescriptive as to the evidence that is required.

Contracted out R&D

The guidance is helpful in so far as it clarifies HMRC's interpretation of new legislation at CTA 2009 s 1133 (contracted out R&D), but CIOT said that it is disappointing that the legislation has been drafted very broadly and guidance is relied on to reduce its scope. In particular, the emphasis the guidance places on allowing the decision-maker to claim contrasts sharply with the legislation, which does not introduce this concept.

CIOT remains of the view that the legislation should be amended in a subsequent Finance Bill to provide clarity. The current position, whereby a company's ability to claim R&D tax relief could change in the event that HMRC changes its interpretation, or a court finds HMRC's interpretation to be incorrect, creates uncertainty.

The full CIOT response can be read at: www.tax.org.uk/ref1291.

The full ATT response can be read at: www.att.org.uk/ref452.

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PROPERTY TAX PERSONAL TAX

Transparency of land ownership involving trusts

The ATT has responded to a consultation on increasing transparency for land-owning trusts in the UK, to highlight concerns about proportionality and administrative burdens.

The ATT has responded to the consultation on 'Transparency of land ownership involving trusts', which was issued late in 2023. The consultation sought views on specific proposals to improve public access to data about trusts on the Register of Overseas Interests, and more general views on increasing access to ownership details relating to *any* UK trust which holds land.

The government is of the view that making more details available about the beneficiaries of land-owning trusts will make it easier to deal with various abuses, including avoidance of business rates, failure to complete remediation work and rogue landlords.

The ATT attended a roundtable in January to discuss the measures. The purpose of our short response was to formalise our comments about the implications of increased transparency for the kinds of trusts that our members advise on.

In principle, we have no objections to law enforcement authorities having greater access to information regarding trusts. It is reasonable for government to want to know who owns and controls UK land and property.

We are, though, unconvinced about the extent to which making details of all beneficiaries available would be meaningful to the public. We are also concerned by the potential risks to some beneficiaries of having their details accessible, and the additional cost and administration burdens these measures will impose. Our response also highlights the risk that not all land owning trusts will have funds available to pay for help and advice on these measures.

We did not comment on proposals made in respect of the Register of Overseas Entities.

The full ATT response is available here: www.att.org.uk/ref450.

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GENERAL FEATURE INDIRECT TAX

Scottish aggregates tax and the land and building transaction tax additional dwelling supplement: CIOT responses

The CIOT submitted a response to a consultation from the Scottish Parliament's Finance and Public Administration Committee on a new devolved aggregates levy. In addition, the CIOT provided written evidence to the committee concerning upcoming changes to the land and buildings transaction tax.

Scottish aggregates tax

The CIOT has replied to the Scottish Parliament's call for views on the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill, which creates a new devolved Scottish aggregates tax (SAT). In Scotland, this will replace the existing UK-wide aggregates levy from 1 April 2026. Our response noted that the legislation contained some surprises.

Part 2 of the Bill contained numerous administrative changes giving authorisation for Revenue Scotland to impose penalties, automate some of its work, change how it communicates with taxpayers, and offset devolved tax debits with credits. For a long time, the CIOT has been calling for the Scottish Parliament to have the power to pass annual Finance Bills which can enable changes such as these. The fact that these had to be attached to an unrelated piece of primary legislation highlights the need for a power to make any freestanding changes.

In this response, and others, we have also pointed out that primary legislation should confine itself with *what* is taxed (that is, when an obligation is imposed upon the citizens of a country), whereas secondary legislation should confine itself to powers on *how* the tax is administered. Devolving too much power to the executive via these regulations runs counter to transparency and accountability; by making changes through an annual Finance Bill, these two principles can be more easily upheld.

With respect to the SAT itself, the CIOT expressed approval that many of the elements of the new tax will be similar to the existing UK levy, thus minimising potential confusion and error. SAT payers will be used to the existing tax and compliance framework, thus this approach retains familiarity and aids simplicity.

A concern the CIOT raised, shared by many involved in the devising of the SAT, is that it will not greatly benefit Scotland with aggregates exported from the country. The SAT, like the UK levy, is based upon the situs of 'commercial exploitation', rather than source of aggregate. Therefore, aggregate exported from Scotland to the rest of the UK will only benefit the UK Treasury; only that aggregate imported into Scotland (besides that won from and utilised in Scotland) will be subject to the SAT.

The Scottish government is confined to the provisions of the Scotland Act 2016 so there is little to be done, but given that Scotland exports far more than it imports (around 5.5 million tonnes against 16,000 tonnes), the SAT will not benefit Scotland as much as a tax based upon source. Alternatives involving various forms of double tax relief were considered, but were deemed too complex or impractical.

Land and building transaction tax additional dwelling supplement

Tom Arthur MSP (the Minister for Community Wealth and Public Finance) and Laura Parker from Revenue Scotland appeared before the Finance and Public Administration Committee in February to give evidence on the draft Scottish statutory instrument containing the changes to the land and building transaction tax (LBTT) additional dwelling supplement (ADS), which takes effect from 1 April 2024).

The changes proposed were largely in line with recommendations made by CIOT in the initial 2021/22 consultation (see tinyurl.com/nme2ct8s), which included:

- increasing the 18 month purchase and occupation windows to 36 months;
- applying the £40,000 threshold to a joint-owner's individual share;
- relief in instances of divorce/separation; and
- extension of relief to joint-owners and for inherited property.

However, the criterion for excluding inherited property is very limited (to those properties inherited after conclusion of missives but before completion of purchase on the new property). Our recommendation was that a 'grace period' of three years, mirroring provisions in the rest of the UK, would be more useful.

Besides our objection to this inherited property provision, a longstanding call from CIOT is for Revenue Scotland to have a statutory discretion to waive the ADS in cases of exceptional circumstances. HMRC have the power to extend the 36 month windows in such instances beyond the taxpayer's control where they eventually executed the relevant transactions as soon as they could. Whilst not a frequent occurrence, a taxpayer's having to pay the ADS through no fault of their own can be an injustice to that person; a similar discretionary power would free the hands of Revenue Scotland and the courts.

The possibility of such a power had been raised (and supported by CIOT) within the first ADS consultation, but in their response, the Scottish government concluded that such a power would 'create a significant degree of uncertainty'. We have asked that the matter be reconsidered, but also suggested as an alternative that relief could be confined to specific scenarios (for example, for cladding and fire safety issues, as is available to the Welsh Revenue Authority for land transaction tax).

The full CIOT response to the SAT consultation is available here: www.tax.org.uk/ref1263.

The full CIOT comments on the LBTT ADS evidence session is available here: www.tax.org.uk/ref1285.

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EMPLOYMENT TAX

Calculating PAYE liabilities in cases of non-compliance for off-payroll working

The CIOT has responded to a technical consultation setting out the mechanism by which HMRC will be able to account for taxes already paid by individuals and their intermediary on income received from off-payroll working when recovering the tax due under PAYE from the deemed employer.

The CIOT has welcomed the publication of draft regulations (and associated guidance) which from 6 April 2024 will remedy the situation whereby in off-payroll working compliance settlements the 'deemed employer' (public body or large/medium-sized business) effectively bears all the tax (barring any contractual right of recovery), and the worker (and their limited company) is entitled to reclaim corporation tax, income tax (usually dividend tax) and (in certain circumstances) national insurance contributions they have paid.

The draft regulations make amendments to the Income Tax (Pay As You Earn) Regulations 2003 (PAYE regulations), inserting new regulations regarding the recovery of PAYE following a compliance check into the application of the off-payroll working rules. The amendments set out a mechanism by which HMRC will be able to set-off taxes already paid by individuals and their intermediary on income that is subsequently determined to have arisen from an 'inside IR35' off-payroll working arrangement when recovering the tax now due from the deemed employer.

While supportive of this measure, we have raised a number of concerns with the draft regulations.

New regulation 72GA(2)(a) provides that one trigger event will be HMRC serving notice of a determination under regulation 80 that includes tax in respect of the deemed direct payment. However, under regulation 72GA(1)(e) that trigger event must occur on or after 6 April 2024, so where a protective assessment has been issued before 6 April 2024 it will not be possible to request a set-off.

A similar issue arises where a recovery notice has been issued under Chapter 5 of Part 4 of the PAYE regulations (regulation 72GA(2)(c)) prior to 6 April 2024. We have suggested reframing the trigger events so that only determinations and recovery notices that have become final or are not under appeal are excluded from these new provisions. We also suggested clarifying in guidance that where HMRC has received a letter of offer (under regulation 72GA(2)(b) and (3)) that has not been finalised and accepted by all parties prior to 6 April 2024, the deemed employer can request a set-off under regulation 72GB.

New regulation 72GB(5) provides for one or more directions being combined and issued as a single notice to the deemed employer (or relevant person). However, to make it easier for the deemed employer to check whether the notice is correct and complete we have suggested that separate notices are issued to the deemed employer noting the name(s) of the payee involved, or at least that a supporting schedule is included with the notice confirming the names of the intermediary/worker and their set-off figures.

New regulation 72GC provides the grounds under which an appeal against a direction notice may be made, but only the intermediary/worker has a right of appeal. The payer/deemed employer is excluded from being able to appeal (albeit HMRC will review the amount of set-off if evidence is provided that a different amount is due). We have suggested that since the deemed employer has a financial interest in the set-off amounts, they should also have a right of appeal.

The full CIOT response is available here: www.tax.org.uk/ref1286.

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GENERAL FEATURE EMPLOYMENT TAX PERSONAL TAX

Salary advance schemes: employer considerations

HMRC published a technical consultation last year on proposed amendments in respect of salary advances. These changes were, in part, in response to a growing number of employers using salary advance schemes. In this article, we set out what employers and their advisers should know about these schemes.

Salary advance schemes provide employees with the option to receive a portion of their salary before their regular payday, to help manage their finances. The schemes involve employers using a third party provider, who make advances to employees for a fee. We look in detail at how salary advance schemes work in our blog (see tinyurl.com/3pjkcs9f).

Under current law, the advances are treated as payments on account of earnings and, as such, must be reported via the PAYE system on or before the payment date. However, they have been typically sold by the third party providers as requiring no additional real time information (RTI) payroll returns. Recently, HMRC indicated that they would update legislation around reporting salary advances to ease the administrative considerations (see tinyurl.com/bepx6j76). At the time of writing their response has not yet been published.

In our response to the consultation, we said we thought that schemes will grow in popularity as a result of the changes and more employers will likely consider them. This is because the changes would give certainty that no additional RTI payroll returns are required. However, there are both benefits and drawbacks to the schemes, not least that they are not regulated – although some of the providers in the market have now signed up to a code of practice (see tinyurl.com/y3e2z6h5). It is important to research the position thoroughly.

If you are advising or assisting an employer client on the introduction of such a scheme, it is worth bearing in mind that there may be alternative or additional options which may meet the needs of their employees. For example, tax breaks may be available to employers offering employees counselling with things like debt problems. Further information can be found in HMRC's Employment Income Manual at page EIM21845.

A cheap or interest free loan could be a tax (and universal credit) efficient alternative of helping employees to deal with a financial emergency. Offering weekly pay periods may better match work done with an employee's cash flow needs, although this may also have universal credit implications and increase exposure to RTI penalties for employers. There is further discussion around these and other possible employer cost of living interventions, in our previous *Tax Adviser* feature (see tinyurl.com/55vcsyc4).

The proposed RTI changes apply equally to employers providing advances directly. It may be an obvious point, but it is perfectly acceptable for employers to make salary advances themselves without using a salary advance scheme, which may save both employer and employee fees. Although the employee fee for each transaction is small, repeated drawdowns can lead to them mounting up. Even if employers do go ahead with a scheme, employers can usually choose to absorb this fee each time, making the advance entirely without cost for the employee.

Employers should be aware that any attempt to recoup the fee from the employee may have national minimum wage considerations (see tinyurl.com/tmrm69p7).

We would love to hear what you think and any experiences you have had with salary advance schemes.

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CIOT		Date sent
The Land and Buildings Transaction Tax (Miscellaneous Amendments) (Scotland) Order 2024	www.tax.org.uk/ref1285	31/01/2024
Scottish Parliament call for evidence: aggregates tax and devolved admin (Scotland) Bill	www.tax.org.uk/ref1263	08/02/2024
Land Transaction Tax Special Tax Sites Relief	www.tax.org.uk/ref1266	15/02/204
Calculating PAYE liabilities in cases of non-compliance for off-payroll working (IR35)	www.tax.org.uk/ref1286	22/02/2024
ESC D32 uncertainties	www.tax.org.uk/ref1269	28/02/2024
Draft guidance: Research and Development (R&D) tax reliefs: new contracting out rules and overseas restrictions	www.tax.org.uk/ref1291	01/03/2024
ATT		
Mileage Allowances: Budget Representation	www.att.org.uk/ref441	23/01/2024
High Income Child Benefit Charge – Budget Representation	www.att.org.uk/ref453	24/01/2024
IHT reliefs on shares which have lost value – Budget Representation	www.att.org.uk/ref442	19/02/2024
IHT Simplification – Budget Representation	www.att.org.uk/ref443	19/02/2024
Transparency of land ownership involving trusts	www.att.org.uk/ref450	20/02/2024
R&D Tax Reliefs: New Contracting Out Rules and Overseas Restrictions: Draft Guidance	www.att.org.uk/ref452	28/02/2024
LITRG		
Public Accounts Committee inquiry: HMRC standard report 2022-23	www.litrg.org.uk/10869	08/02/2024
Tipping Act Code of Practice	www.litrg.org.uk/10878	16/02/2024

Legislation

Finance Act 2024: praise to CIOT, ATT and LITRG for their 'invaluable input'

Finance Bill 2023-24, now enacted as Finance Act 2024, contained a number of measures which CIOT, ATT and LITRG have been calling for.

These measures include making full expensing permanent, relaxations to the cash basis to make it more attractive, and enabling taxes already paid by workers incorrectly categorised as outside the scope of off-payroll working rules to be offset against the tax due from their deemed employer.

While welcoming these measures, CIOT, ATT and LITRG also had concerns about some other aspects of the Bill. We raised these in 12 briefings for MPs, to support the scrutiny process. During debate on the Bill, the three bodies were mentioned a total of 25 times, with our evidence cited on 10 different aspects of the Bill.

Discussing full expensing, Shadow Financial Secretary James Murray drew on ATT and CIOT representations to ask the government when it would publish a consultation on leased assets and whether it could clarify the definition of plant and machinery. The Financial Secretary Nigel Huddleston promised the consultation would be launched 'shortly' and that further guidance would be provided on what is defined as plant and machinery.

Murray also raised CIOT and ATT points on the R&D relief changes. These included ATT's concern that new rules to define R&D intensive SMEs could add to the complexity of the regime. However, the minister defended the separate rules as 'promoting the conditions for enterprise to succeed'.

The Bill would enable HMRC to disqualify directors of companies involved in promoting tax avoidance. Murray said CIOT had raised questions about ensuring that this power is used correctly. He added that LITRG had provided 'powerful examples' of where young or vulnerable people can be recruited 'without understanding what they are getting into'.

Discussing the new strict liability criminal offence for failing to comply with a stop notice issued by HMRC in relation to a tax avoidance scheme, Murray highlighted CIOT's concerns about a lack of oversight of HMRC: 'I understand the Chartered Institute has proposed that failure to comply with a stop notice should be a criminal offence only if judicial approval for the issue of the notice has been obtained first.' Responding, the Exchequer Secretary resisted this proposal, telling MPs that there are 'robust governance processes and safeguards in place'.

On extension of the cash basis, MPs heard of the Institute's concern that the cash basis will not be suitable for all businesses. On the off-payroll working changes, Murray asked 'why it has taken

James Murray

the government so long to act after the problem was first identified by a respected industry body'. The minister said there was a need to 'work through' these issues thoroughly.

CIOT's concerns and representations were also reflected in discussion on changes to the construction industry scheme, creative reliefs, VAT and excise law, pension lifetime allowance and provision of information to HMRC.

At the end of committee stage, both the minister and his shadow thanked those who had helped MPs to scrutinise the legislation. Murray said the input of CIOT, ATT, LITRG and ICAEW had been 'invaluable'. Huddleston also thanked stakeholders for their 'invaluable input', adding that he included in this not just the written submissions to MPs but also the extensive formal and informal consultations over many years: 'I put on record our deep gratitude and thanks to all those who have taken their responsibilities and interests incredibly seriously, providing great input into this Bill to date.'

A fuller version of this article can be read on the CIOT website at: tinyurl.com/FinAct24

PAC Report

MPs back advisers' concerns over services

CIOT has welcomed a report from the House of Commons Public Accounts Committee which endorses the concerns of tax professionals about HMRC customer service levels.

The report, 'HMRC performance in 2022-23', quotes CIOT saying that HMRC's service levels are the 'single greatest concern expressed by its members, and that they are having a detrimental impact on cash flow, the costs of doing business, attitudes to tax compliance and trust in the tax system'. Drawing on this and other evidence, the committee concludes: 'HMRC's customer service levels are at an all-time low because of conscious choices made by HMRC and HM Treasury.'

The report notes that while HMRC 'insists' it has good quality digital services for customers, tax professionals felt that HMRC had 'implemented its digital services poorly and with inadequate testing, and that they lacked the functionality needed for taxpayers and agents to use [them] effectively'.

The committee recommends: 'HM Treasury and HMRC should ensure HMRC's customer services are sufficiently resourced in the short as well as the longer-term so that it can meet its service standards until its digital services adequately address the needs of taxpayers and their agents.'

CIOT President Gary Ashford commented: 'The committee has hit the nail on the head… Unless and until automated digital services can be radically improved, HMRC must be provided with the resources to provide all year round, well publicised help and advice to taxpayers from a human adviser over phone and webchat.'

In the news

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

'If you're getting beyond a simple business, that's the time to start thinking about getting professional advice. Software won't make all the decisions, such as can I get an allowance or is this item deductible.'

Emma Rawson, ATT technical officer, in the Financial Times on Making Tax Digital, 9 February. Article also quoted Stuart Miller of CIOT/ATT digitalisation and agent services committee.

'Who would design an income tax system like Scotland's from scratch? ... The Chartered Institute of Taxation warns the new six-band system will make it "more difficult for Scottish taxpayers to easily understand their tax affairs".'

The Herald, 15 February

'Landlords and business owners will have to pay £196 million a year, an average of £110 each, to comply with Making Tax Digital... Richard Wild, of the Chartered Institute of Taxation, said the latest figures are "evidence of a growing recognition by HMRC that the ongoing financial costs of MTD to business are much higher than they originally estimated, and those now in scope should expect to incur ongoing costs rather than generating efficiency savings".'

Daily Telegraph, 22 February

'The freezing of income tax thresholds has been a huge revenue-raiser for the government since the policy was introduced in 2022, having been announced in the previous year's Budget... It would be very expensive for the government to reverse this policy.'

George Crozier of CIOT, speculating on potential Budget tax changes, Daily Telegraph, 26 February

'Customer service at HMRC has reached an all-time low, MPs have warned... Gary Ashford, President of the Chartered Institute of Taxation said: "HMRC's customer service levels remain unacceptably poor and they are being under-resourced for what they need to provide." 'Victoria Todd, Head of the Low Incomes Tax Reform Group, said: "We do not believe HMRC's current digital services, including guidance and the automated digital assistant, are of a sufficient standard to support a forced channel shift to digital."'

Daily Telegraph, 28 February

Budget Reaction

Tax bodies respond to Budget announcements

The March Budget saw the Chancellor announce big cuts to personal taxes, most notably national insurance, partly offset by a series of smaller increases, of which the largest came from changes to the non-dom regime.

Personal taxes

The CIOT said that moving from domicile to residence as the basis for taxing people who are internationally mobile 'makes sense', but warned that a four-year remittance basis window is a 'drastic reduction' from the current 15 years. The Institute's President Gary Ashford regretted that the Chancellor had unveiled this big change without following the government's consultation framework.

The ATT said that sparing basic rate taxpayers from the high income child benefit charge (HICBC) is 'long overdue', while LITRG said the decision to increase the threshold would bring the scope of the charge closer to the original policy intent. However, both bodies, while recognising that it might be fairer to charge HICBC based on household income, expressed scepticism about how easy it would be to deliver. 'The changes required may be costly, complicated and difficult to achieve,' said LITRG's Tom Henderson.

By cutting national insurance rather than income tax, the Chancellor has avoided creating further divergence between Scotland and the rest of the UK, CIOT noted.

Business taxes

ATT said that increasing the VAT threshold does not address wider issues which make businesses reluctant to cross the threshold, inhibiting growth. CIOT suggested that HMRC should consider how to encourage businesses nearing the VAT threshold to continue to grow, possibly by a smoothing mechanism or another simplification.

CIOT welcomed the announcement that the government will seek to extend full expensing to assets for leasing when fiscal conditions allow. However, the Institute said it would still like to see the government look at what is eligible for capital allowances more generally.

The Institute welcomed the announcement of an 'expert advisory panel' to support the administration of R&D tax reliefs, hoping that the role of the panel will go wider and help with the training of caseworkers at HMRC.

Property taxes

CIOT was broadly positive on three property tax announcements in the Budget. There was a particular welcome for the news that the rules for claiming first-time buyers' relief from SDLT will be amended so that individuals buying a leasehold residential property through a nominee or bare trustee will be able to claim the relief, including victims of domestic abuse. This is something CIOT and the Stamp Taxes Practitioners Group have been calling for.

The Institute said the case for scrapping the separate regime for furnished holiday lettings was a strong one; however, while the change is a simplification, it may also increase uncertainty in this area. The Institute said the abolition of multiple dwellings relief was a good example of the tax policy review process working effectively: the government had consulted, evaluated the relief and decided it was ineffective.

> **The changes required may be costly, complicated and difficult to achieve.**

Other issues

CIOT welcomed the announcement that a suite of tax simplification metrics will be introduced, including an estimate of the net change in cost to businesses of meeting tax obligations from tax measures. However, the Institute said it was disappointed by the lack of further investment in HMRC to improve customer service.

ATT welcomed the announcement that the government will be launching a new working group to clarify the tax treatment of several important environmental land management schemes.

Appointment
Vicky Hilpert appointed Chief Finance Officer

The ATT and CIOT have appointed Vicky Hilpert to take over as Chief Finance Officer from March 2024.

Vicky follows in the footsteps of Karl Cerski, who successfully led the Finance function for both charities through a period of transformation during his four plus year tenure.

Vicky is a chartered management accountant and has a wealth of experience across a broad range of commercial, charitable and professional body roles, including most recently as Finance Director at charity PohWER and Chief Operating Officer at the Institute of Occupational Health and Safety, alongside experience gained at FTSE 100s and SMEs.

On her appointment, Vicky said: 'I am delighted to be joining the CIOT and ATT as Chief Finance Officer. It has always been important to me to work within organisations that deliver public benefit and make a real difference to people's lives.'

We would like to wish Vicky a long and successful career with both organisations, and we extend a special thanks and warmest wishes to Karl for his retirement.

Charities
Paul's £1,300 tax nightmare

Read Paul's story to see how Tax Help for Older People can make a real difference to taxpayers on a low income.

Paul came to us stressed, with a high tax bill, and not a clue where to turn. He admitted that he did not understand the letters he was receiving. On our investigation, the tax bill was not the only problem with Paul's tax.

When a brown letter arrived telling Paul that he owed late filing penalties of £1,300, he had no idea what to do next. Paul is employed but is also in receipt of universal credit, without any spare money at the end of each month. Paul was particularly anxious when it came to using the internet to manage his taxes as four years ago he was scammed and all his money drained from his bank account. Understandably, he did not feel confident enough to log into his HMRC account by himself, worried that he would be scammed yet again.

He phoned Tax Help for Older People and spoke with one of our helpline advisers, telling her about his late filing fee and mentioning that he also believed his tax code was wrong. Paul had previously been self-employed but was unaware that he had to file a tax return for his last year of his self-employment as he had only earned £902.77. This is where his late filing fee had come from.

We submitted an appeal for the penalties and rang HMRC to ask about his tax code. It transpired that Paul's account had been incorrectly merged with someone else's account through no fault of his own. The £1,300 penalty was remitted and Paul's tax code was corrected, leaving him with more take-home pay.

Paul said: 'Thank you so much. I didn't know where to turn and thought I was going to have to pay another accountant to help me to appeal as the form made no sense. Many thanks for your valuable help.'

Thanks to the support of Tax Help for Older People, Paul is now in a much better situation. He is not worried about paying a tax bill that he cannot afford, he has a clearer understanding of his own tax situation, and thanks to his corrected tax code he now has more money to take home at the end of each month. This is the difference that tax advice can make, even to those on a low income.

Tax Help for Older People

We are a charity providing expert tax help to people over 60 who are on a low income. If you would like to support our work, you can make a one-off or regular donation at: https://cafdonate.cafonline.org/18218

Or visit our website at taxvol.org.uk to find out more about what we do.

Disciplinary reports

NOTIFICATION

Ms Alison Watson

At a hearing on 14 December 2023, the Disciplinary Tribunal of the Taxation Disciplinary Board considered charges against Ms Alison Watson of Burnley, a member of The Chartered Institute of Taxation, namely:

- By virtue of disciplinary and/or regulatory action taken in relation to Ms Watson by ICAEW's Audit Registration Committee on 13 August 2020 and by its Review Committee on 26 March 2021, Ms Watson has conducted herself in an unbefitting manner which tends to bring discredit upon herself and/or may harm the standing of the profession and/or the CIOT contrary to rule 2.6.3 of the PRPG.
- Ms Watson failed to notify the Head of Professional Standards at CIOT within two months of 13 August 2020 and/or of 26 March 2021 of the said regulatory action having been upheld against her by another professional body to which she belonged contrary to rule 2.14.2.

The Tribunal found all the charges proved and made an Order that Ms Watson be censured. It also ordered that she pay costs of £2,755.

NOTIFICATION

Mr Paul O'Brien

At a hearing on 31 August 2023, the Disciplinary Tribunal of the Taxation Disciplinary Board found that Mr Paul O'Brien of Knutsford, a member of The Charted Institute of Taxation, was guilty on his own admission of having conducted himself in an unbefitting manner which tends to bring discredit upon himself and/or may harm the standing of the profession and/or the CIOT contrary to rule 2.6.3 of the PRPG by virtue of having been made subject to disciplinary action by the Disciplinary Committee of ICAEW for dishonestly providing to HMRC a letter he had created knowing it to be false with the intention that they would believe it to be true.

The Tribunal made an Order that Mr O'Brien be censured. It also ordered that he pay costs of £3,306.

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

Technical Spotlight
Spotlight on the Management of Taxes technical committee

The Management of Taxes Committee has a wide and varied remit that includes all aspects of taxes management and administration.

This is an area that has seen a significant amount of change in recent years, which is likely to continue. The committee has been, and will be, at the heart of many of the issues relating to taxes management and administration, liaising closely with HMRC as measures are developed, with a view to ensuring that they are fair, proportionate, appropriately targeted and with adequate safeguards, whilst minimising their impact on the compliant majority of taxpayers.

Committee members come from a range of backgrounds in tax compliance and dispute resolution. Their specialised knowledge and expertise facilitate informed and insightful discussions which provide the basis for the CIOT's engagement with HMRC in this important area.

We devote substantial time to responding to public consultations and commenting on draft legislation; for example, the recent Finance Bill measures enabling HMRC to collect additional information from taxpayers via tax returns and the introduction of a new criminal offence for promoters of tax avoidance.

Last year, we responded to three HMRC consultations connected to their Tax Administration Framework Review, and we will be responding to the latest Call for Evidence on enquiry and assessment powers, penalties and safeguards. All our submissions can be found at: www.tax.org.uk/submissions/1.

The committee's engagement with HMRC encompasses regular interactions through stakeholder groups that focus on policymaking, as well as the day-to-day operation of the tax compliance framework, including HMRC enquiry and assessment powers, penalties, offshore tax compliance, tax avoidance, tax evasion, appeals and tribunals, statutory reviews and alternative dispute resolution. These platforms provide avenues for the committee to raise the concerns of tax professionals and relay feedback on emerging issues, ensuring that the voices of stakeholders are heard in the policymaking process and enabling us to effectively advocate for improvements or reforms where necessary.

Current areas of focus include HMRC's new bespoke disclosure facilities (for crypto assets and electronic sales suppression) and how these fit with existing facilities. The committee also has a constructive ongoing dialogue with HMRC about its increasing use of One to Many 'nudge' letters in its compliance approach.

Regular overlap exists with other technical committees on compliance matters. Recently, this has seen us liaising with the Corporate Taxes committee on HMRC's high volume approach to R&D enquiries.

The committee is currently recruiting for new members. We welcome applications from members who work in tax compliance and dispute resolution.

If you are interested in becoming a member of the committee, please refer to our website for how to join at www.tax.org.uk/our_tcs or contact Margaret Curran for further information.

Margaret Curran
CIOT technical officer
mcurran@ciot.org.uk

Branches
Making Connections in Tax

Networking through our regional branches doesn't only involve technical CPD sessions. There are many more social opportunities on offer. Help us to find the right events for you!


Emma Barklamb

You may well recall an article from last February, where Helen Ballantine and I invited you all to consider your CPD requirements as members. Well, I'm here again – this time to tell you a little bit about how fantastically successful the resumption of in-person events has been in our Regions and to remind you that **Making Connections in Tax** is all about getting involved where you are.

So if you are looking to give your CPD a springboard refresh, why not visit one of our Branches.

Dipti Thakrar, Chair of the East Midlands Branch, recently said that she got involved because the events that we were holding weren't what she wanted to attend. So she thought she'd come along, volunteer and help to change that. And that pretty much sums it up!

> **'If you can't see an event that you want to go to, get in touch. And help shape events by getting involved in your local Branch.'**

Our Branch Committees and the Head Office Team support activities in our Branches in lots of ways. There really is no limit to the sort of activity that we can help you to run, whether it be a social event, a purely technical CPD lecture or a bit of both.

Recent events have included an Escape Room in Sheffield, a Budget lunch at a restaurant in Birmingham, a hybrid half day conference in Norwich, a doughnut and coffee morning for students at a firm in Taunton, a panel discussion on careers in Bristol. And on and on it goes...

AGM

CIOT: Notice of Annual General Meeting

The AGM of Members of the CIOT will be held on Thursday 30 May 2024 at 16.45. The meeting will be held via Zoom. Civica have been appointed as scrutineers for the CIOT AGM 2024. Access to the AGM Notice, Annual Report and Statutory Accounts and information regarding those standing for election to Council will be provided through links in an email, being sent to members by Civica in late April. The Civica proxy voting site can also be accessed via that email, together with information on how to book attendance at the virtual AGM. There will be a reminder email sent in May.

If you prefer a hard copy of the proxy form, email: support@cesvotes.com or telephone: 0208 889 9203 and a form will be sent to you in the post with a reply-paid envelope. You will have until 28 May 2024 at 10am to return the form.

A copy of the proxy form, AGM Notice and Annual Report and Statutory Accounts will also be available on the Institute's website later this month: www.tax.org.uk

We help by managing event logistics and any other formalities.

Our officers – Gary Ashford, Charlotte Barbour, Nichola Ross Martin, Simon Groom, Senga Prior, Graham Batty and our Executive team, Helen Whiteman, Jane Ashton, Andrew Burnett and Ellen Milner – are keen to come along. They know how important it is to meet members and students working in taxation. Andrea Gale and I can also be on hand to meet, greet and make everyone feel welcome!

Making Connections in Tax is the name of the game. If you can't see an event that you want to go to, get in touch – be a Dipti – and help shape events by getting involved in your local Branch. Scan the QR code to add me on LinkedIn or write to us at branches@tax.org.uk. Check who your local Branch Committee is here: www.tax.org.uk/branches and www.att.org.uk/local-branch-events

Emma Barklamb
Head of Member Services, CIOT and ATT

A MEMBER'S VIEW

Malcolm Baines

Head of Tax, Bouygues Construction in the UK and Ireland

This month's CTA member spotlight is on Malcolm Baines, Head of Tax, Bouygues Construction in the UK and Ireland.

How did you find out about a career in tax?

Whilst I was finishing a doctorate in history, I was casting about for a career, including applying unsuccessfully to join the Civil Service. My prospective father-in-law (who was an English teacher) suggested that I look at joining one of the big accountancy firms as a tax specialist.

Why is the CIOT qualification important?

The CIOT qualification gives you a solid grounding in all the different taxes and marks you out as a specialist in a way that a general accountancy qualification does not.

Why did you pursue a career in tax?

Tax attracted me because it involved applying something quite complex and technical to different and sometimes challenging real-world circumstances. I have always enjoyed that tax is an area where law and practice change all the time, and which has an international dimension. As someone interested in politics, I have liked the interaction between public policy, legislation and business.

I also enjoy trying to explain difficult concepts to non-specialists and that's something that working in tax in industry gives you plenty of opportunities to do. I have to say it's one of the best careers there is.

How would you describe yourself in three words?

Determined, approachable and open-minded.

Who has influenced you in your career so far?

I have specialised in property for most of my career, which was thanks to a senior manager mentor who was determined to set up a real estate specialism in Coopers & Lybrand in the early 1990s and was keen for me to be involved with that. My line manager at that time also taught me the mantra 'there are no prizes for surprises', which I have found highly relevant throughout my career.

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

I would recommend doing CIOT straight after any earlier exams. I found that plenty of exam practice was the way to pass, especially if working long hours meant study time was at a premium.

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

Despite hopes for tax simplification, the reality seems to be that tax is becoming more complicated. Specialists will therefore always be needed to help business leaders, as well as ordinary people, to navigate that complexity. I think that a career in tax will remain relevant, will not be superseded by AI, and that the tax industry can continue to add something positive to the sum of human society.

What advice would you give to your future self?

Whatever happens along the way as a result of plans falling through, and circumstances such as changing or losing your job, the qualities that make you a successful tax professional will always be in demand and always lead to new challenges.

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

My wife suffered a severe stroke 16 years ago that left her partially paralysed and as a result I have combined the second half of my career with being her carer. I have been very fortunate that my employers have been supportive of my combined role, and I have been able to pursue a tax career whilst looking after her.

Contact

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

GEORGIANA HEAD
Taxation Recruitment

GEORGIANA HEAD

Director

Tel: 0113 418 0767
Mob: 07957 842 402

georgiana@ghrtax.com

Personal Tax Manager or Senior Manager – Leeds
£excellent

An experienced Private Client specialist with strong personal tax advisory skills is sought by Big 4 firm. It is likely that you will be CTA qualified and will have experience of managing the tax affairs of HNW individuals and families. You will help them with their personal and capital taxes and will enjoy being involved in business development and marketing. As an experienced manager, you will also have proven experience of developing more junior staff. This role can be hybrid worked, part time and flexible hours also considered.
Call Georgiana Ref: 3441

National Tax Role, AM or Manager Lancashire
£excellent

This is a really interesting role in National Tax Advisory Team in a Top 20 firm. Would suit a qualified tax professional (CTA, ATT, ICAS, ACA or equivalent). You may currently work in a more compliance based role and be looking for something with more advisory content. You will work to directors and will help advise tax teams up and down the country, updating them on recent changes to legislation and helping their clients with tax planning projects. This role is based from an office in Apperley Bridge near Wigan. Hybrid working available.
Call Georgiana Ref: 3442

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

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 into 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

Senior Manager/Partner Designate Staverton, Cheltenham
£excellent

Our client is 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. The position is focused on providing tax and business advice to dynamic OMBs – helping them through their life cycle. This role is office based with travel to clients. Excellent prospects!
Call Georgiana Ref: 3432

Private Client Senior Manager Manchester
£60,000 to £75,000 + benefits

Key role in the Manchester office of a Top 20 firm. Our client seeks a personal tax specialist who can grow into a director and potentially a partner role. Day to day, you will manage a team of private client specialists, helping them to develop and managing the running of a private client team. You will be actively involved in advisory work for HNW individuals, families and also owner managers. You will also help oversee the compliance work which is prepared in the office. You will accompany partners to client pitches.
Call Georgiana Ref: 3443

www.georgianaheadrecruitment.com

David Allen
Tax

Dalston, Cumbria and Dumfries, Scotland

With a vision for the Business based on our Core Values of **Ambition**, **Professionalism**, **Knowledge**, **Integrity** and **Respect**, David Allen has grown into a team of over 140 dedicated staff based across 5 offices throughout South Scotland and Cumbria, providing exceptional and quality services to our valued and loyal clients across all financial service specialisms.

Tax compliance is a critical pillar in David Allen's management portfolio of financial risk control & compliance, whilst creating tax savings and tax investment opportunities for both corporate and personal clients.

We have an expert team who deliver in this sector very successfully. From this success comes continued growth which, together with the professional development of our current staff, has led to a number of exciting and developmental tax career opportunities particularly within our **Dalston** and **Dumfries** offices.

Tax Senior
Dalston

For this role, you will be ATT qualified and hungry for the next step in qualifying towards chartered tax status.

In this role, you will provide tax services to a range of clients, working on Inheritance Tax (IHT)/ Capital Gains Tax (CGT) and personal tax advice, with an opportunity to specialise in corporate taxation. You will be responsible for, and assist with both compliance and advisory work, and have the opportunity, with full support, to develop your own portfolio of clients and management expertise. Working towards your qualification, and to the highest technical standards, you will support the Tax Manager to develop the department, helping to train and develop junior staff.

Tax Senior
Dumfries

For this role, you will be ATT qualified working with a focus on personal tax matters. You will run a portfolio of local clients but will also assist the senior staff with their tax and client responsibilities.

Our Offer to You

In return for your experience, skills and talent, we offer a competitive salary, and a generous suite of benefits with plenty of scope to thrive in your personal and professional development. We are always looking for amazing people to join our team.

For further information please contact Georgiana Head at georgiana@ghrtx.com or on 07957 842402 who will be pleased to provide you with a copy of our job description and person specification.

Our website www.david-allen.co.uk contains lots of information about our company, our people and our benefits. We hope to welcome you on board soon.

WE'RE HERE TO BE YOUR MATCHMAKER

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

MAGNETIC NORTH

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

CORPORATE TAX PARTNER

MANCHESTER £negotiable

This Top 10 firm is embarking on an exciting period of growth in the North West (and nationally) and is looking for an experienced mid-market Corporate Tax Partner to play a pivotal role in the leadership and development of the tax practice in Manchester. You will have experience working with large OMB and PE backed clients and be market facing with strong connections in the local market. This is a rare opportunity to join a thriving global business in a career defining role. **REF: A3553**

IN HOUSE DIRECT TAX MANAGER

LANCASHIRE c.£65,000 + bonus

Having experienced significant growth over recent years this large international group are now looking for a new Tax Manager. You will gain exposure to a broad range of UK and international corporate tax matters with excellent opportunities to progress. Work will include managing the compliance process, group reporting and tax disclosures as well as TP, CFC reviews and supporting on transactions. **REF: R3549**

R&D TAX SENIOR MANAGER

MANCHESTER £60,000 to £75,000

Our expanding client in Manchester is seeking an R&D Senior Manager to continue to shape and develop a technically strong team. You should have experience across the full breadth of a claim from technical calls, technical report writing and financial summaries. In this pivotal role you will be the final sign-off on any claims through to mitigating any risk and managing any complex HMRC enquiries. Min. requirements are either ACA, ICAS, CA, ATT or CTA through to comprehensive understanding and application of recent legislation and pending changes. **REF: C3552**

SENIOR TAX M'GER (IN HOUSE CONTRACT)

MANCHESTER £85,000 to £95,000

1-year fixed term contract as the Senior Tax Manager responsible for assisting in all international tax matters including compliance, tax planning and audit support and structuring tax efficient international expansion. You will also manage the external compliance relationship with tax advisors and regulatory authorities. Ideally 1 day a week in the office.

REF: R3550

GROUP TAX MANAGER

SOUTH MANCHESTER £65,000 to £75,000

Having recently brought tax in-house this role will be varied and interesting, taking ownership of all tax activity including compliance, regular tax reviews, keeping abreast of relevant tax changes. The role will be largely focussed on corporate tax but you will oversee other taxes such as VAT and PAYE. This is an excellent opportunity to join a highly successful organisation that will offer continued variety, autonomy and career development. Open to 4 days week and hybrid working. **REF: R3546**

CORPORATE TAX AM/M

LIVERPOOL To £55,000 dep on exp

Our client is a leading independent accounting firm based in Liverpool with a fantastic reputation. Working as part of a friendly and supportive team your main responsibilities will include managing a portfolio of corporate tax clients including overseeing the corporate tax compliance work and supporting the Tax Director with a broad range of corporate tax advisory projects. **REF: A3554**

TAX INVESTIGATIONS SENIOR M'GER

MANCHESTER £80,000 +

Our client is a national specialist advisory firm, and its Manchester office is seeking a Tax Investigations Manager or Senior Manager. Clients include UHNWIs with extremely complex portfolios that generate highly complex work including investigations. This includes COP9, COP8, HMRC Nudge letters and all types of contentious tax disputes and tax resolutions work. In return you will not only have flexible remote working opportunities and a highly rewarding package (including a non-discretionary profit-sharing bonus scheme) there will be many opportunities for career advancement and professional growth. **REF: C3543**

TAX ADVISORY AM/M/SM

CHESHIRE £45,000 +

This unique independent firm is growing a truly unique business focussed on providing tax advisory services. As part of its next phase of growth it is looking to recruit an Assistant Manager, Manager or Senior Manager to join its close knit team. Specialising in purely Advisory work for OMBs and Individuals you can expect to be involved in projects from corporate reorganisations and transactions, succession planning, share incentives and IHT planning. **REF: C3551**

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