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August 2015

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TAX Adviser

The big question?

Peter Vaines highlights some issues with the statutory residence test, page 48

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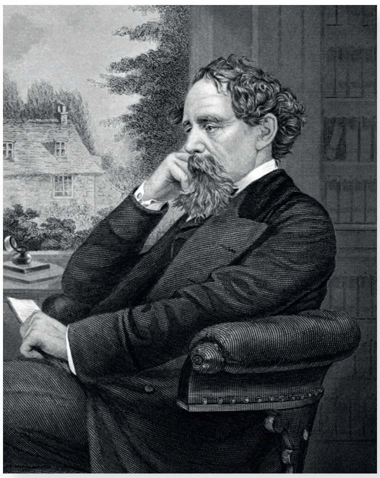

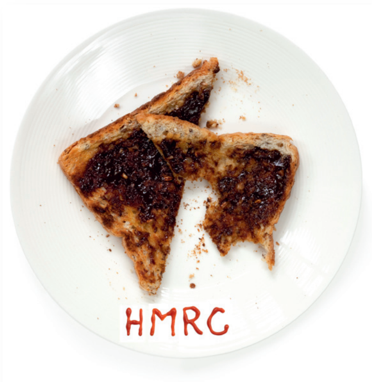
HMRC

Welcome from the editor

chris.mattos@lexisnexis.co.uk
Editor, *Tax Adviser*

Pre-nup tax

Imagine the scenario: your client tells you about their fabulous holiday with their new partner. 'It's only been six months but it's like I've known them for ever,' they say. In the past I may have exchanged warm pleasantries and wished them all the best but now I'm conscious that I need to highlight the possible tax skeletons that may affect my client. As Peter Vaines explains on page 48, there may be implications from the statutory residence test in that you need to consider whether your new partner was resident in the earlier years by reference to their own circumstances. Some think that they do not need to consider the residence of a spouse before marriage. Not so.

Advising the not-for-profit sector

Not-for-profit bodies come in many sizes, but a not-for-profit motive does not equate to a tax exemption. On page 24 Graham Batty considers some of the tax issues facing practitioners dealing with not-for-profit organisations.

R&D expenditure credit

On page 28 Kathie Haunton and Sarah Goodman explain the practical considerations of claiming the research and development expenditure credit. They explain how submitting an RDEC claim has an impact on both the tax computation and the statutory accounts.

Uniformed VAT

Many HMRC officers apply checks to staff-related issues on compliance visits so it is important to be aware of the rules and the correct treatment to adopt. On page 62, Neil Warren reviews the *French Connection* case which considered the issue as to whether free clothing given to employees represented a supply for VAT purposes.

Long Budget speeches

George Osborne's summer Budget speech was long when compared with his previous efforts, but a mere toast when set against William Gladstone's in 1853. On page 22 Bill Dodwell considers the main points from 2015, while on page 18, in the first article in a new series looking at some historical aspects of tax, Helen Thornley reflects on Gladstone's 1853 Budget.

HMRC powers

On page 20, Stephen Barnfield reviews the results of February's CIOT and ATT members' survey which examined how HMRC applies legislation on penalties, enquiries, information powers and reviews. Overall, the survey reveals that the system for penalties and compliance checks is not operating as well as had hoped.

Chris Mattos
Editor, *Tax Adviser*

> "Some think that they do not need to consider the residence of a spouse before marriage. Not so

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EDITORIAL
Editor Chris Mattos
Deputy Editor Stefan Black
Publisher Chris Jones

ADVERTISING & MARKETING
Head of Sales Nick Lee (tel: 020 8662 2065)
Head of Marketing Sanjeeta Patel

PRODUCTION
Production Manager Angela Waterman
Production Assistant Nigel Hope
Design Manager Elliott Tompkins
Designer Jo Jamieson

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President's page

president@ciot.org.uk
Chris Jones

Tax simplification: a fresh approach

On 29 June I chaired a round table at Artillery House after a request the previous week from the newly re-elected chair of the Treasury Select Committee, Andrew Tyrie MP, to discuss the future role of the Office of Tax Simplification (OTS). I was very impressed with how, at such notice, the CIOT was able to bring together in one room senior leaders of the tax profession to share their views and provide valuable input to parliament. It is pleasing to see the announcement in the July budget that the OTS is to be established permanently with an expanded role and capacity. The OTS will have its work cut out, given the raft of measures announced on the same day that add a whole layer of additional complexity to the tax code!

Discussion at the roundtable is summarised on page 15, but the key takeaway for me was how we measure 'simplification'. The metric that is often used to measure the complexity of the tax code is the number of pages in the tax legislation but, as one of our attendees pointed out, is this really the right way to look at it? Parliament could embark on a major project to take an axe to large parts of the tax code which may well, from a technical perspective, deliver a stunning result for those of us who live our lives in the geeky technical detail. An alternative metric on simplicity could be based on the ease at which citizens and corporations understand and interact with the tax system, so is there merit in focusing on this aspect in relation to the 4.6 million self-employed businesses in the UK?

As we are all aware, the rules for calculating business profits for a window cleaner or mobile hairdresser apply equally to large multinational corporations. Self-employed individuals in the UK pay income tax and NICs on their profits. But, because they are subsumed into the business tax system, there is a disconnect between them earning the profit and paying tax on it. By way of illustration, Bernard is a self-employed gardener. He makes up his accounts to the end of April each year. The income that he earned last month, July, will form part of his accounts for the year to 30 April 2016. Those accounts will be used to determine his income for the tax year 2016/17. The return for that period will not be due until 31 January 2018 and, subject to payments on account, tax on those profits will not be payable until then either.

I can envisage an end state in the new digital agenda where this gap could be closed by allowing the self-employed to choose to declare their income and expenditure on a monthly basis in real time, and possibly settle the liabilities arising on an ongoing basis. It will never be that straightforward, and provisions for repayments where losses are declared in a month and annual reconciliations will need to be factored in. But the one thing we do need to acknowledge is that the direction of travel towards creating simpler interactions with the tax system has been set. The introduction of the savings income exemption in the March budget, coupled with the new £5,000 dividend exemption announced on 8 July, is testimony to this because these measures remove an administrative burden for both taxpayer and HMRC for relatively low levels of income. I am not saying that this new digital end state will, or even should, happen; I am saying that the tax agent community and HMRC need to work closely together to ensure the system we end up with is fair and workable. There is a long journey ahead.

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I was delighted to see the redesigned *Tax Adviser* website go live at the beginning of July. Although most members still prefer reading *Tax Adviser* in its paper format, there is a growing number that prefer a mixture of media. Many of the improvements on the new website take account of feedback from our *Tax Adviser* surveys: the site is now faster, the reading experience is better and it is easier to find content. Since the introduction of the new contents tags in April, the site is structured with these in mind. So if you want to find all the feature articles on indirect tax, you just need to click on the purple indirect tax tag. After you have read an article, you can find a list of others written by the same author or navigate to another article from the same issue.

There is so much to keep on top of!

The summer budget was a bumper pack of new measures affecting almost every area of tax. What better way could there be for you to keep on top of all of these changes than by attending the CIOT's autumn conference in Warwick (see page 47) The leading lights in tax will be sharing their knowledge and views with you, ably chaired by our Vice President, John Preston, whom you will also be hearing from in next month's *Tax Adviser* as I hand over my page to him.

Until October, dear friends. Sorry to wish the summer away!

Chris Jones
President, CIOT
president@ciot.org.uk

"Simplicity could be based on the ease at which citizens and corporations understand and interact with the tax system

ATT Welcome

page@att.org.uk
Ralf Pettengell

A warm welcome

This is an exciting month for all ATT members as we look forward to the presidential tenure of Michael Steed to steer us towards a most robust defence of tax planning. This is also an exciting month on a personal level as I take the reins as Deputy President and I look forward to sharing this journey with you on these pages in the months ahead.

Working alongside former President Natalie Miller has been hugely beneficial. Over the past year, I have gained a broad insight into the demands and expectations of the ATT President.

One thing that became increasingly clear to me, and what members expect, was the need for vision. Over the next few months, I will be pulling together my thoughts to ensure that I present a coherent sense of direction for all our members.

For those of you I've not met, a brief introduction: I will be the first ATT President working full time in the financial services industry as a financial adviser regulated by the Financial Conduct Authority (FCA). In my day job, I provide financial advice and wealth management to business owners, families and trustees; tax plays a prominent part in the advice process. For me, a typical day would include advising on estate planning, inheritance tax, taxation of trusts and pensions planning, the latter having become, perversely, more complicated after pensions *simplification* in 2006.

In the year ahead, I am keen to become more involved in helping practitioners to avoid some of the regular tax traps and demystify some of the pensions jargon. I am also deeply involved in the taxation of investments and tax privileged investment schemes such as ISA, VCT and EIS.

Financial services is an industry I fell into. I left school in the early 1980s when unemployment exceeded three million and universities were for the academic high-fliers. At that time there was little computerisation in the financial services world and I spent the early years of my career filling in paper forms. It soon became clear that the key to career progression was to start studying for professional qualifications.

I studied the Associateship of Chartered Insurance Institute (ACII), pensions route, comprising nine subjects including law and taxation followed by more specialist subjects. I spent three years dedicating my evenings and weekends to study, passing my exams in 1988. The career progression doors suddenly opened for me and I also got the bug for studying; I am now a member of four professional bodies.

It quickly became evident that I would need a better understanding of tax to help me appreciate the needs of business clients. This would enable me to work more effectively with the accountants who were referring clients to me.

I chose to study for the ATT in the early 1990s when I was providing financial advice. Most of my referrals came from accountants who respected the fact that I was one of few people in the financial services industry who was professionally qualified.

The ATT gave me a fantastic grounding in, and knowledge of, tax. There is no question to my mind that the qualification gave me a competitive advantage over my fellow financial advisers in the industry.

I am a strong believer in the value of professions working together, which is what gives clients the best outcomes. I am blessed that I have built up a trusted network of some excellent accountants, solicitors and tax advisers.

I became more involved in the ATT when I answered an advertisement in this magazine for someone with investment management experience to join the Financial Advisory Group (now the Financial Steering Group). It was my job to bring some expertise to the group on the ATT's investment portfolio and help develop the compliance and governance aspects of trustee duties in relation to their investments, such as the overhaul of the investment policy. I was invited to observe Council in 2005 and was invited to join the ATT Council in 2006.

Involvement in the ATT has thus far been hugely rewarding in terms of furnishing my own knowledge and being able to contribute to the continued success of the ATT to the benefit of its family members and wider society.

Ralf Pettengell
Deputy President, ATT
page@att.org.uk

"I am a strong believer in the value of professions working together, which is what gives clients the best outcomes

ATT

ATT President's acceptance speech

AGM 2015

Ralph Pettengell (Deputy President) Michael Steed (President) and Graham Batty (Vice-President)

It seems but yesterday when I agreed to come on to ATT Council and in those hectic years we've all been through quite a lot, dealing with the opportunities and challenges that have arisen.

What has been remarkable is the skill, experience and diplomacy that has been exercised by our Council members and our Officers as they have walked along the pilgrim path. It is also great that we have the backing of the wonderful staff at Artillery House, who have smoothed our way and sometimes our brows!

So, I inherit an organisation that owes a debt of gratitude to the past, but we are not afraid to accept the challenges of the future.

No president comes in cold to the role. He or she draws support from the previous presidents who have taken on the mantle of responsibility and I would be negligent not to mention those who marched before me into battle, upholding the honour of the ATT and sometimes in trying circumstances.

On my officer trajectory I have been ably led by Yvette and Natalie and Stuart too, all of whom have given heart and soul to making this work.

I am also most grateful to Kaplan for fully supporting and encouraging me over my years on Council and my forthcoming presidential year.

Today, we also say goodbye to Stuart McKinnon and Simon Braidley, former presidents, and Simon Groom, all of whom have given years of exemplary service and good counsel. We wish them well for the future.

On my watch, we also will be bidding farewell to Andy Pickering, our formidable Executive Director, and the search is already on for his successor in title.

I very much look forward to working with Andy and to tap into his elephantine memory and his wise counsel too.

When you take on a role like this, there is a real sense in which you hope that you don't break it, or drop it, or let the side down. It's a bit like picking up a priceless Ming vase.

And only then can you think about your stamp, your theme and how to help shape the future.

I did think about education as I have spent many happy years as a consultant with Kaplan, as well as running my own practice, but that theme has already been taken by the current CIOT president who comes from the same *milieu* that I do.

So when I began to think about alternative themes, what struck me was the make-up of our members.

For a long time, it appears to have been settled wisdom that most of our members work for the big four, but the statistics belie that – the actual number is around 20%.

So what about the rest?

An awful lot of our members work either for small firms or are in business on their own account, and they are not just doing tax compliance work; they are actively engaged in the giving of tax advice.

This point was reinforced for me this year at our annual tax conferences; over 500 members came and I was struck by the quality of their grip on tax issues that we face as ATT members on a day-to-day basis. They certainly are engaged in the giving of tax advice.

So I laid that next to the current hot topics of tax planning and avoidance and an idea came to me; that I would take as my theme, 'Occupying the responsible centre ground of tax planning'.

I think this is the right time to take up such a theme. It reflects what our members actually do. In a very real sense, it reflects that the ATT has come of age.

We are daily bombarded by media comment on 'tax dodging' by either individuals or multinationals; our job as an educational charity, together with the CIOT, has never been in sharper focus or more needed.

We need to engage, inform and educate the public about what we do and who we are as the ATT and not to be afraid to say that we are not mere tax collectors in our compliance role, but *de facto* tax advisers to a wide range of individuals and businesses.

So, in that context, our members need to know that we as the ATT are and will be engaged in the debate about what is acceptable and what may be professionally unacceptable advice.

Tax is complicated. It is full of traps for the unwary – things you might do today that could inadvertently give you an unnecessary tax bill in a few years' time; and also opportunities – reliefs and incentives – wholly intended by government but often under-publicised or fiendishly hard to fit into – or both!

That's why government incentives are often woefully undersubscribed.

And that's why people hire ATT members and other tax professionals to help them plan their tax affairs.

I am clear that we would never condone evasion and everything that we do as ATT members would be within the scope of the PCRT, published in May 2015.

But we do need to ensure that taxpayers are aware of the full tax consequences of their actions. Because the business or individual taxpayer that doesn't plan ahead opens themselves up to tax consequences that are not just unexpected, but unnecessary, unintended and frequently downright unfair.

I personally take inspiration and lead from Graham Aaronson QC, who said in his seminal GAAR report:

> 'I have concluded that introducing a broad spectrum general anti-avoidance rule would not be beneficial for the UK tax system. This would carry a real risk of undermining the ability of business and individuals to carry out sensible and responsible tax planning … such tax planning is an entirely appropriate response to the complexities of a tax system such as the UK's.'

Of course, this is not just an ATT issue; all the professional bodies will be looking at this. With my fellow officers and our brethren at the CIOT, we will be engaging HMT and HMRC in a polite but robust way to attempt to determine what they and we mean by such phrases as 'avoidance' and 'tax planning' over the coming months.

I will also be lending support to the 'family of ATT qualifications' as we seek to broaden our offering to members.

I need say no more.

Thank you for electing me to officer status in this organisation and thus ultimately to President. I will work to ensure that your trust was and is well placed.

CIOT

New CIOT Council Members

COUNCIL


Alexander Garden


Paula Tallon

Alexander Garden was co-opted to Council on 7 July 2015. He is a Scottish solicitor and a partner of Turcan Connell working out of their Edinburgh and London offices. He heads the firm's tax and succession group and specialises in trusts, asset protection, tax and estate planning for individuals and family businesses and advises on Scottish charity law.

Alexander has been a Member of the CIOT Scotland Branch Committee for some years, and is now Chair of the Scotland Hub Committee. He has also been involved in the new Scottish Technical Committee and has given evidence on behalf of the Institute to the Finance Committee of the Scottish parliament after the *Smith Commission* report on further devolution was published. He also sits on the Institute's CGT and Succession Taxes Committee. He is accredited as a specialist in trust law and private client tax law by the Law Society of Scotland and sits on its Tax and Private Client Tax Committees. He co-authored the tax annual *Trusts and Estates in Scotland* (Bloomsbury Professional).

Becoming a charity trustee is not new to Alexander since he has held various charity trusteeships over the years and is now a Governor of Kilgraston School in Perthshire and a trustee of the Edinburgh Botanic Garden (Sibbald) Trust.

Paula Tallon was co-opted to Council on the same day. She is a CTA (Fellow), FCA, ADIT and the founder and managing partner of award-winning tax consultancy firm Gabelle LLP.

Paula has spent more than 20 years advising on tax. Her tax expertise has a particular emphasis on owner-managed businesses. Her areas of interest include property taxes, entrepreneurs' relief, business reorganisations and reconstructions, employment related securities and venture capital schemes. Tax is her passion and when she is not solving tax problems she is writing or lecturing on tax.

Before establishing Gabelle LLP, Paula was on the board of Chiltern plc, where she was head of tax support for professionals. She became a partner at BDO in 2008 when BDO acquired Chiltern. Before joining Chiltern, Paula was a partner and head of tax for Numerica's southern region.

Paula is a Past Chairman of the CIOT London branch and is a member of the Membership and Branches Committee. She has written a number of industry publications including *Tolley's Tax Planning for Owner-Managed Businesses 2014-15*.

In her spare time Paula enjoys running. With Gabelle's move to new offices in Finsbury Square, Paula will need to devise a new route around the City's streets.

CIOT

Members voting at the 22nd Annual General Meeting

Past President Anne Fairpo presenting Nigel Eastaway with his Past Council Member's badge

Past President Anne Fairpo presenting Mohammed Amin with his Past Council Member's badge

Past President Anne Fairpo presented Nick Goulding with his Past President's badge

Minutes of the 22nd AGM

CIOT AGM

Minutes of the 22nd Annual General Meeting of Members of the Chartered Institute of Taxation held at One Great George Street, London SW1P 3AA on Tuesday 12 May 2015 at 16.15. Present: The President, Anne Fairpo in the Chair; 53 Members. The Secretary was in attendance.

1.	**APOLOGIES** The Secretary reported that apologies had been received from 12 Members.
2.	**NOTICE CONVENING THE MEETING** At the invitation of the President it was agreed that the Notice convening the meeting be taken as read.
3.	**MINUTES OF LAST MEETING** The President reported that the Minutes of the last Annual General Meeting were approved and the minute book copy signed as a correct record by the President at the meeting of the Council held on 1 July 2014. The President reminded those present that only members who had paid their 2015 subscriptions were permitted to vote.
4.	**ORDINARY BUSINESS**
4.1	**ANNUAL REPORT AND FINANCIAL STATEMENTS** No questions were raised on the Annual Report and Financial Statements. On the proposal of Chris Brydone, seconded by Yvette Nunn, it was RESOLVED that the Annual Report and Financial Statements for the year ended 31 December 2014 be received and adopted.

4.2	**ELECTION OF MEMBERS OF COUNCIL** The President explained that, although Stephen Coleclough had been named on the Notice of the AGM as standing for re-election, he has had to retire from Council and so will not be standing. a)On the proposal of Keith Bell, seconded by Keith Gordon, it was RESOLVED that a single resolution be put to the meeting for the re-election of all the under-mentioned members of Council, and b) On the proposal of Keith Bell, seconded by Keith Gordon, it was further RESOLVED that the under-mentioned members of Council, all of whom retired under Members' Regulation 30 and offered themselves for re-election, be and were thereby re-elected members of the Council, namely: Chris Brydone, Emma Chamberlain, Bill Dodwell, Ian Hayes, Moira Kelly, Yvette Nunn, Anthony Thomas and John Voyez
4.3	The President explained that three proxy voting forms had been received requesting a poll in relation the re-election of Ian Menzies-Conacher and that three is the number of votes that triggered the holding of a poll so this would therefore be done. The President further explained that as Chairman she had discretion to choose the appropriate way to hold this poll and she was proposing to do this via a show of hands. In addition she explained that she held 157 proxy votes in favour of the re-election of Ian Menzies-Conacher and three votes against. Those present were reminded that they should not vote if they had already voted by proxy, as those votes would be included in the 157 already held. On the proposal of Mohammed Amin, seconded by John Dewhurst, it was RESOLVED that Ian Menzies-Conacher, retiring under Members' Regulation 30 and offering himself for re-election, be and was thereby re-elected a member of Council (counting those votes in the room and the proxy votes held by the Chairman).
4.4.	On the proposal of Bill Dodwell, seconded by Glyn Fullelove, it was RESOLVED that the under-mentioned member of Council, who had been co-opted to the Council since the last Annual General meeting and retired in accordance with Members' Regulation 29 and offered herself for re-election be and was thereby re-elected as a member of the Council, namely: Jennie Rimmer
5.	**APPOINTMENT OF AUDITOR** On the proposal of Anthony Thomas, seconded by Nick Goulding, it was RESOLVED that BAKER TILLY UK AUDIT LLP be and were thereby re-appointed auditor to the Institute to serve from the termination of the meeting until the termination of the next succeeding Annual General Meeting.
6.	**SPECIAL BUSINESS** The President explained that the three items of Special Business were the amendments to the Institute's governing documents. She explained that they had been drawn up in consultation with the Privy Council and its special advisers, including the Charity Commission. The amendments are intended to improve the accessibility of the governing documents and facilitate the day-to-day administration of the Institute for the advancement of its charitable purposes. Cross-referencing between the documents has been improved during this process. The President explained that copies of the Charter, Byelaws and Members' Regulations had been provided for members in the room. The President further explained that the Council Regulations had also been provided, along with the other documents for information, but the Council Regulations were not being voted on today. **SPECIAL RESOLUTION: AMENDMENT TO ARTICLE 10 OF THE CHARTER** The President clarified that the proposed change to the Charter was intended to facilitate member participation through electronic voting. The President asked if there were any questions. None was raised. On the proposal of Natalie Miller, seconded by John Preston, it was RESOLVED that the Resolution set out in Item 6 of the Notice of the Meeting, having been put to the meeting, be passed as a Special Resolution..
7.	**SPECIAL RESOLUTION: DELETE THE EXISTING BYELAWS AND REPLACE THEM IN THEIR ENTIRETY WITH THE NEW BYELAWS** The President explained that the revisions to the Byelaws are intended to focus their scope on the high-level matters delegated to the Byelaws by the Charter. The President asked if there were any questions. None was raised. On the proposal of Chris Lallemand, seconded by Andrew McKenzie-Smart, it was RESOLVED that the Resolution set out in Item 7 of the Notice of the Meeting, having been put to the meeting, be passed as a Special Resolution.
8	**SPECIAL RESOLUTION: DELETE THE EXISTING MEMBERS' REGULATIONS AND REPLACE THEM IN THEIR ENTIRETY WITH THE NEW MEMBERS' REGULATIONS** The President explained that the operational details of the matters set out in the Byelaws are delegated to the Members' Regulations (and Council Regulations as appropriate). The President asked if there were any questions. None was raised. On the proposal of Keith Bell, seconded by Nigel Eastaway, it was RESOLVED that the Resolution set out in Item 8 of the Notice of the Meeting, having been put to the meeting, be passed as a Special Resolution.
9	**RETIRING PRESIDENT'S ADDRESS** The President delivered an address, the text of which appeared in the July issue of Tax Adviser and presented Mohammed Amin and Nigel Eastaway with their Past Council Member's badges engraved to reflect their years of Council service, and Nick Goulding with his Past President's badge endorsed to reflect his years of service as a Council Member.
10	**INVESTITURE OF NEW OFFICERS** Anne Fairpo, the retiring President, invested John Preston as Vice-President, Bill Dodwell as Deputy President and Chris Jones as President. Chris Jones then took the chair.
11	**INCOMING PRESIDENT'S ADDRESS** The incoming President, Chris Jones, presented an illuminated scroll and a Past President's badge to the retiring President, Anne Fairpo, as a mark of the Council's appreciation of her services to the Institute. Chris Jones delivered an address, the text of which appeared in the June issue of Tax Adviser.
12	**VOTE OF THANKS** A vote of thanks was proposed by Andrew McKenzie-Smart and seconded by Chris Siddle. It was RESOLVED that the thanks of the membership be accorded to the Officers and the Council of the Institute for their work during the past year.

ATT

Past President Natalie Miller presenting Simon Braidley with his Past President's badge endorsed to reflect his years of service as a Council Member

Past President Natalie Miller presenting Stuart McKinnon with his Past President's badge endorsed to reflect his years of service as a Council Member

Past President Natalie Miller presenting Simon Groom with his Past Council Member's badge engraved to reflect his years of service as a Council Member

Minutes of the 26th AGM

ATT AGM

Minutes of the 26th Annual General Meeting of the Members of the Association of Taxation Technicians held at Broadway House, Tothill Street, London SW1H 9NQ on Thursday 9 July 2015 at 16.00.

1.	**APOLOGIES** Apologies for absence were received from nine members.
2.	**NOTICE CONVENING THE MEETING** At the invitation of the President it was agreed that the notice convening the meeting be taken as read.
3.	**MINUTES OF LAST MEETING** The President reported that the minutes of the last Annual General Meeting held on 8 July 2014 had been approved and the minute book copy signed as a correct record by the President at the meeting of the Council held on 25 September 2014.
4.	**ANNUAL REPORT AND FINANCIAL STATEMENTS FOR 2014**
4.1.	No questions were raised on the Annual Report of the Council and the Financial Statements for 2014.
4.2	Upon the proposition of Stuart McKinnon, seconded by Tanya Hiscock, it was RESOLVED that the Annual Report of the Council for 2014 be adopted.
4.3	Upon the proposition of Simon Groom, seconded by Julian Millinchamp, it was RESOLVED that the Financial Statements for the year ended 31 December 2014 be adopted.
5.	**ELECTION OF COUNCIL MEMBERS** Upon the proposition of Simon Braidley, seconded by Jeremy Coker, it was RESOLVED that Ronnie Fell, Steve Holden, James McBrearty, Julian Millinchamp and Hayley Perkin, having retired from the Council in accordance with Regulation 38 and having offered themselves for re-election, be and were thereby re-elected as members of Council.
6.	**ELECTION OF COUNCIL MEMBERS** Upon the proposition of Jane Ashton, seconded by Ralph Pettengell, it was RESOLVED that Jeremy Coker, Tracy Easman and Yvette Nunn having retired from the Council in accordance with Regulation 43, and having offered themselves for re-election, be and were thereby re-elected as members of Council.
7.	**APPOINTMENT OF THE AUDITOR** Upon the proposition of Graham Batty, seconded by Michael Steed, it was RESOLVED that BDO LLP be and was thereby reappointed auditor to the Association to serve from the termination of the meeting until the termination of the next succeeding Annual General Meeting.
8.	**RETIRING PRESIDENT** The retiring President, Natalie Miller, delivered an address at the end of which Simon Braidley and Stuart McKinnon gave valedictory speeches
9.	**INVESTITURE OF NEW OFFICERS** Natalie Miller, the retiring President, invested Graham Batty as Vice-President, Ralph Pettengell as Deputy President and Michael Steed as President.
10.	**INCOMING PRESIDENT** The incoming President, Michael Steed, delivered an address.
11.	**VOTE OF THANKS** Upon the proposition of Hayley Perkin, seconded by Ronnie Fell, it was RESOLVED that the thanks of the membership be accorded to the Officers and the Council for their work during 2014.

CIOT

Parliamentary reception

EVENTS

More than 170 people attended the parliamentary reception on the Commons' terrace

David Gauke MP, Financial Secretary to the Treasury, (left) with Chris Jones, CIOT President

Sweltering humidity on the hottest day of the year so far did not prevent record attendance at the CIOT's annual Parliamentary reception. More than 170 people, including tax advisers, politicians, judges and journalists, converged on the House of Commons' terrace to discuss salient issues in the tax world. Speeches were delivered by Institute President Chris Jones and Financial Secretary to the Treasury David Gauke MP.

The event is a key forum for engagement between tax professionals and government, allowing the Institute to promote its work not just as a professional body but as a charity working for public benefit. Further, it is an opportunity to remind parliamentarians and their staff that we are a resource of technical expertise, always ready to engage, whether that is with select committees or in elucidating the more complex details of the Finance Bill to individual MPs.

We were especially delighted to be joined by parliament's newest chartered tax adviser, Craig Mackinlay who, with colleague Karen Bradley, maintains our CIOT MP quota at a healthy two!

Chris Jones used his speech to focus on the key theme of his tenure: education. He said the Institute would seek to educate the public on how the tax system works, including exploring getting more tax education into schools. The Institute would also aim to educate its members on the scale of change that the increasing digitisation of HMRC's services will bring.

He said: 'If the new digital tax account is delivered as promised it will have a substantial impact on our profession.

Less processing of data, more provision of proactive ongoing advice.

Practitioners will need to adapt. Professional bodies should be helping them. Third, the Institute would aim to educate HMRC and others who make tax policy that they need an honest friend to help them on this digital journey. Driving the digital agenda forward needs the trust of taxpayers – that will only happen where service is put first in the list of priorities. As last week's figures on call answering showed, some elements of that service are just not good enough at the moment.'

The Financial Secretary to the Treasury, now in his sixth year of responsibility for the UK tax system, focused on the importance of political engagement with the tax profession. He reminded the audience that at the heart of his department's work stood a simple notion: that a simplified tax policy will lay the foundation for sustained economic growth.

Simplification has been one of HMRC's flagship areas of focus and he praised the work of the Office for Tax Simplification; almost half of its 400 recommendations have been implemented and others are being considered.

David Gauke promised that the government would deliver on its commitment to expand the OTS's role and capacity. An effective, competitive tax system 'depends not just on tax policy, but also on how it is made', the minister said. He outlined measures taken to produce a more robust consultative process. He acknowledged unease among business that the volume of change in the tax system remains too high and was creating uncertainty. However, he argued that 'long legislation is not necessarily an indication of growing complexity', although he accepted that there was more work to do on simplification. The minister concluded his speech on an optimistic note. The principle of a tax system that rewards hard work had been enshrined in his government's triple tax lock, he said. Beyond our own shores, the government is 'committed to maintaining the most competitive tax regime in the G20, reforming international tax rules and clamping down on avoidance and evasion'.

CIOT/ATT

Winners

SCOTLAND

Anderson Anderson & Brown has won, for the second year running, the Scottish tax team of the year award sponsored by the CIOT in Scotland. The shortlist for 'Excellence in Taxation' at the Scottish Accountancy and Finance Awards in Glasgow in June included large Scottish accountancy firms Chiene & Tait and Henderson Loggie.

Gill Pryde CTA, partner in charge of the Taxation Department at Anderson Anderson & Brown, accepted the award, which was presented by CIOT immediate past President Anne Fairpo.

Guests, who included representatives of some of the largest companies in Scotland, said it was a great evening and that the event was a great way to recognise the performances of firms and individuals in the wider Scottish tax and accountancy sector. With more than 400 people attending, the excitement of the evening began with a fire alarm during the drinks reception when everyone had to leave the building! Luckily, the lure of the dinner and awards drew everyone back into the venue and the merriment continued.

Guests from some of Scotland's largest companies were in attendance

Anne Fairpo, Gill Pryde and Sheena Anderson

WCOTA

News from the Worshipful Company of Tax Advisers

WCOTA

Alison Lovejoy pieces together recent WCOTA events

City walk

Morag Loader, Chairman, Social Committee, writes

Members of the Company joined a blue badge guide for a City Walk themed around medieval and Tudor London. The walk, in May, included some of the ancient livery company halls, Shakespeare's City, the City's early publishing trade and some of the important characters from the recent *Wolf Hall* TV series. Starting at Blackfriars, near where a previously unnoticed roundel of Tudor king Edward VI can be seen, our guide shared some of London's hidden nooks and crannies and, for us, previously undiscovered gems. The walk was followed by a convivial supper at El Vino in the Barbican.

City & Guilds of London Art School Graduate Show

Ian Somerville, Court Member, writes

A group of tax advisers visited the show in Kennington in June. The school, ranked in the top three UK art schools, was founded by the City & Guilds of London Institute in 1879 and maintains close links with the City and the livery.

After an introduction from the school's vice-principal, we were guided around the exhibitions of fine art painting and sculpture, historic wood and stone carving and conservation by student ambassadors from the different departments who told us about their courses and external projects. The visit concluded with refreshments in the school's garden surrounded by works of sculpture, old and new.

His Master's Voice

Michael Godbee, Master, reports on a selection of events

The past few months have been particularly busy with many lunches, lectures, receptions and dinners hosted by other liveries.

The friendships that develop between masters are among the great pleasures of the year.

This becomes a particular focus at the Ironbridge weekend for masters and their partners attended by the Lord Mayor and sheriffs at the beginning of June.

Despite a horrendous journey owing to traffic jams, it was a great weekend.

The day spent on a whistle-stop tour of some of the museums on site was tiring, but certainly encourages a longer stay to visit the Blists Hill Victorian village, the Coalport museum and everything else.

More particularly, the two evenings cement the social bonds that have grown up between the masters and leads naturally into the formation of annual informal associations – perhaps unsurprisingly, this year's groups will be known as the Magna Masters and the Carta Consorts.

This has been a year of anniversaries and I was privileged to attend the Magna Carta celebrations at Runnymede in Surrey. Caroline and I were invited to the Inn Holders' dinner at Guildhall to celebrate their 500th, and to the Plumbers' service at Temple church as part of their 650th. Unexpectedly, I found that I was invited on the evening of our Civic and Charities lunch to celebrate the London Mathematical Society's 150th at Goldsmiths' Hall, together with the masters of the other liveries considered to be numerate!

As I mentioned in my last His Master's Voice, one of the most satisfactory pleasures of a master's year is to see the impact of the City's charitable giving. Another is the involvement with our service affiliations. Caroline and I were invited to an enjoyable 101 squadron dinner at the end of June. The camaraderie and humour of the services are coupled with a clear sense of purpose, and it is marvellous to be able to let them know how much we in the City, and indeed in the country, owe them.

We have also been reminded of the importance of the St John Ambulance. Our Civic and Charities lunch was held on HQS Wellington on the 200th anniversary of the Battle of Waterloo. We support the City of Westminster St John Ambulance cadets and were delighted to welcome Anton Cornibert who had not only won the Cadet of the Year award for London but also for the country. He demonstrated his skill before lunch by performing CPR on a runner who had collapsed on the Embankment. The ambulance team said when they arrived that his actions had undoubtedly saved the man's life. What a prelude to an enjoyable lunch of beef Wellington, of course.

The lunch marked my last opportunity to host an event for the company but, apart from the continuing attendances at events organised by other companies, the army cadet camp in August, I am looking forward to my master's weekend in Lille at the beginning of September. We elected my successor, Anthony Thomas (well-known to most readers) on the *Wellington*; I wish him as happy a year as I have enjoyed.

FURTHER INFORMATION

Anyone who would like to join the WCOTA should contact our Clerk, Paul Herbage on promaconsultant@btinternet.com and/or visit our website www.taxadvisers.org

CIOT

Down tax memory lane

FILMS

Memories and experiences of tax may fade with time – yet they represent views and knowledge that would contribute to our understanding of today's system. Plus, the insights of the many leading practitioners who are members of CIOT and ATT are, not to put too fine a point on it, quite interesting! Peter Fanning had the idea of capturing memories of key tax issues and developments to make them available more widely. That led to an experiment of filming interviews with John Avery Jones talking about the Keith Committee (among other things) and John Kimmer on how he found starting in tax many years ago.

These were conducted by John Whiting and each produced around 20 minutes of fascinating anecdotes, insights and historical detail. Emboldened, John has now interviewed Nigel Eastaway, who focuses particularly on the coming of capital gains tax in the 1960s; and Erica Stary, who looks back to when it was difficult for her as a woman to get established in tax.

The films are being hosted on the Worshipful Company of Tax Advisers' website at www.tinyurl.com/no522jm

Four additional films are in production, featuring Leonard Beighton, John Andrews, Richard Mannion and Bruce Sutherland.

We would welcome feedback on the project and would be delighted to hear from anyone who would be willing to do a film and share their memories of tax. Email Peter Fanning at pfanning@ciot.org.uk

CIOT/ATT

Michael Steed, Chris Jones and Michael Ashdown

At the London Branch Annual Dinner

Michael Ashdown with Caroline Miskin

London branch annual dinner

BRANCHES

CIOT President Chris Jones kicked off London branch's annual dinner on Thursday 11 June 2015 at the RAF Club on Piccadilly with an excellent one-hour talk on Finance Act 2015.

Branch speakers and members then mingled at a drinks reception before a three-course silver service dinner. William May, a 'rat pack' singer, provided the entertainment and Jolyon Maugham QC delivered an after-dinner speech that picked up the theme of merging income tax and national insurance, something that was mooted at a recent CIOT/IFS joint event. Read his speech at www.tinyurl.com/psd5t3q

The branch was also proud to use the dinner to raise money and awareness of the Bridge the Gap campaign, a joint initiative between TaxAid and Tax Help for Older People featured in the June issue of *Tax Adviser* (www.tinyurl.com/ouw48xv). The article, by Rosina Pullman and Graham Sherburn, showed the importance of a safety net for taxpayers who need tax professional help but who cannot afford the fees.

London branch speakers and members raised a fantastic £786 for Bridge the Gap on the night, which branch chairman Michael Ashdown presented to Caroline Miskin from TaxAid the next day.

Any branch wishing to promote Bridge the Gap should email Rosina Pullman at rosina@taxaid.org.uk

CIOT

Simplification roundtable discussion

More than 30 leading tax professionals from business and academia attended the discussion

EVENT

This June the CIOT hosted a roundtable discussion on tax simplification after a request by the chair of the Treasury Committee, Andrew Tyrie MP. Thirty leading tax professionals from business and academia attended the event, which was chaired by CIOT President Chris Jones.

Discussion centred on the commitment in the Conservatives' general election manifesto to establish the OTS permanently and expand its role and capacity – which has since been confirmed in the July Budget.

Tyrie told the roundtable that he had already written to the Chancellor setting out his suggestions for accomplishing the manifesto commitment. He said that the aim of the OTS should be to improve the efficiency of the tax system by simplification. The three principles of certainty, stability and coherence would be crucial to this. He wanted to seek the views of tax professionals on the future role of the OTS before the Treasury made a final decision. His view was that the OTS needed 'demonstrable independence' and should act as a counterweight to politicians' 'natural urge to complicate'.

Tyrie suggested that the OTS might need some additional resources such as more secondments from HMRC and the private sector. In terms of the benefits from future work of the OTS, he said that we should not expect dramatic changes due to the pressures faced by the Chancellor, particularly those deriving from the deficit, which leave little fiscal wriggle room.

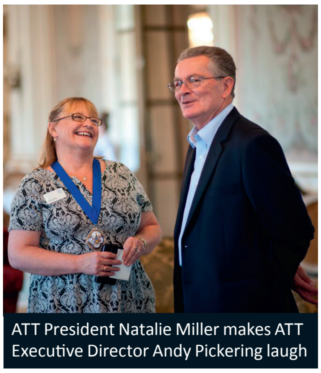
The consensus was that the OTS should continue and be put on a statutory footing, but it must remain independent.

It was acknowledged that the OTS had produced some good reviews, which had produced tangible results, such as the recent one on expenses and benefits.

However, some participants felt the OTS should set bolder ambitions for the future. One attendee commented that the OTS had started looking at SMEs, but the work was 'lost in the system'. Several participants wanted the OTS to have the power to follow through on its proposals and ideas.

CIOT/ATT


Tessa Russell (Deloitte) receives her special prize from Dave Wright (Bloomsbury Professional)


ATT President Natalie Miller makes ATT Executive Director Andy Pickering laugh


Patricia Caputo enjoys a joke with Keith Gordon


Keith Gordon takes delegates through the Ramsay case

A grand afternoon at Luton Hoo

BRANCHES

Delegates gathered at the splendid Luton Hoo Hotel in June for a special event organised by Mid-Anglia branch to mark the ATT's 25th anniversary. Some will know that the Wernher family bought the Luton Hoo estate in 1903 and tax scholars should know that Lady Wernher, or rather her beloved horses, were the subject of the famous *Sharkey v Wernher* case.

The afternoon turned out to be action-packed, with delegates first being treated to a guided tour of the grand house before moving on to Peter Rayney's entertaining quiz, which included a special tax round: 'Do you know the highest rate of VAT ever enforced in the UK?' (Answer: 25%.)

Keith Gordon, from Temple Tax Chambers, proved to be the day's highlight. He expertly took us through an examination of 'Recent tax cases relevant to individuals and owner-managed businesses'. These included *McLaren Racing Ltd* (deductibility of fines), *Healy* (actor's accommodation costs) and *Ramsay* (whether property-letting was a business for CGT incorporation relief purposes). Those who have heard Keith before will know that he presents valuable insights into tax cases in a clear and enjoyable matter – and he was on top form!

Natalie Miller gave a short address on ATT's achievements and its vision for the future. Deloitte's Tessa Russell and Steve Young received awards for their ATT exam performances, with each being given a prize presented by Bloomsbury Professional's Dave Wright.

Branch chair Patricia Caputo, who hosted the event, said: 'It was great to see everyone enjoying Keith's remarkable tax case anecdotes and also having fun.'

ATT

ATT Vice-President Graham Batty

AGM 2015

Graham is an Associate Director, specialising in the taxation of charities and other not-for-profit bodies, at Baker Tilly. Although officially based in Birmingham, he works with clients from Cornwall to Shetland. He is Honorary Treasurer, Chairman of the Finance Steering Group, a member of the Technical Steering Group and represents CIOT on the Charity Tax Forum.

Graham has been involved with three branches over the years, starting in Sheffield and becoming chairman at Leeds and Birmingham as his career took him around the country. He joined Council in 2011.

After graduating from the University of Liverpool in 1978 with a degree in zoology, Graham originally worked as a fisheries biologist, so tax is really a second career. However, having seen the light, he qualified as a chartered accountant in 1983, becoming an Associate of the Institute in 1986 and a member of the Association in 2005.

The one thing that working in tax has not been, though, is boring. Starting by working on owner-managed businesses, Graham progressed to large corporates, a secondment as technical manager that turned into five years' running technical training and support, before he was poached to return to mainstream practice in Birmingham. This last move resulted in the unexpected bonus of working with Jan, whom he married.

Away from tax, for many years Graham spent most of his free time motor racing, but retired as a driver after losing an argument with the scenery at Cadwell Park and as a marshal when pushing cars in the rain began to feel too much like hard work. He now spends his time shooting clay pigeons and enjoys good food and wine. This once led to him cooking in the main kitchen at Raymond Blanc's Le Manoir aux Quat'Saisons – but that is another story.

Scotland Branch

Annual Conference 2015

Friday 6 and Saturday 7 November 2015

Stirling Court Hotel

Book now at:
www.tax.org.uk/scotland2015

Lecture topics include:

- **Employment tax tips**
  Paul Tucker, *Smith & Williamson*
- **Tax planning ideas for SMEs and their owners**
  Robert Jamieson, *Mercer & Hole*
- **PSst ...it's Professional Standards**
  Heather Brehcist, *CIOT*, and Charlotte Ali, *ATT*
- **Patent Box**
  Nicola Gallagher, *HMRC*
- **Research & Development – RDECs for Large Businesses**
  Steven Fraser, *HMRC*
- **Finance Acts 2015 – the good , the bad and the complex!**
  Chris Jones, *Tolley*
- **Discovery, DOTAS and all that!**
  Ray McCann, *New Quadrant Partners LLP*
- **Corporation Tax update: developments and curiosities in 2015**
  Pete Miller, *The Miller Partnership*
- **Family investment companies as an alternative to Trusts**
  Sarah McKinlay, *HBJ Gateley*
- **Taxation of the private rented sector: latest developments**
  Carl Bayley, *Bayley Miller Ltd*

Full Conference: (both days plus accommodation on the Friday night and dinner) **Members £400; Students £250**

Conference: (one day only) **Members £170; Students £100**

European Branch

Amsterdam Conference 2015

Monday 28 September 2015

IBFD, Rietlandpark 301,
1019 DW Amsterdam, The Netherlands

Book online at:
www.tax.org.uk/amsterdam2015

European Branch
in association with the
Dutch Association of
Tax Advisers (NOB)

Programme:

- **Introduction**
  Mark Stepleton, *Dechert LLP* and
  Vice Chair, European Branch
- **Diverted profit tax**
  Paul Morton, *Head of Group Tax, RELX Group*
- **State aid-cases**
  Nick Saunders, *Barrister, Brick Court Chambers London*
  Ben Kiekebeld, *EY*
- **C(C)CTB**
  UK speaker to be confirmed
  Hans van de Hurk, *Professor, University of Maastricht*

Conference co-ordinator: Bartjan Zoetmulder, *President International Affairs Committee, NOB*

Follow us on our website www.tax.org.uk and Twitter @CIOTEuropeTax for the latest updates on topics and speakers or join our Facebook group. We also have a group on LinkedIn.

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Permanently temporary

Helen Thornley reflects on Gladstone's Budget of 1853

'Under this proposal, on the 5th April 1860, the income tax will expire.' These are the words of William Gladstone in 1853 from his first budget. A dominant force in Victorian politics, he still holds the record for the most budget speeches by a chancellor, making 12 over a 60-year career in politics. He held the office four times.

Such forward planning was unusual at the time, and Gladstone explained his thoughts at length. Fortified by sherry and beaten egg, his first Budget speech lasted four hours and 45 minutes, and is usually remembered as the longest one without a break – though he did apologise for this. His great rival, Benjamin Disraeli, had spoken for longer the previous year, but he included an interval.

Sherry and beaten egg aside, Gladstone's stamina was doubtless bolstered by his hobby of felling trees. His other hobby was walking the streets of London to find fallen women and persuade them to change their ways.

On that day in 1853 he was able to range widely – from military expenditure to duties on dogs and musical instruments. But his main theme was how to tackle the tricky question of income tax.

For a Budget given more than 160 years ago, you might expect it to have little in common with present discussions of income tax. But covering topics from whether 'the foreigner' should be subject to income tax, popular with the public, but not with MPs, to public concerns over equality and issues of fraud, Gladstone's concerns are surprisingly familiar.

One area he covered in depth was the point at which the tax should start to bite; a familiar theme today. Increasing the personal allowance was a key policy of our previous, coalition, government and we have been promised further rises to lift minimum wage earners out of income tax.

In 1853, incomes of less than £150 a year were exempt, so most people were unaffected by the tax. Gladstone wanted to extend the franchise of income tax by reducing the exemption to £100. He didn't want to lower it so much it would 'trench on labour', but he did want to increase the number of people who paid the tax. He believed this would increase the number of people who would, in due course, vote for its repeal.

It is the concept that the tax was temporary and could realistically be repealed where differences to today's views emerge.

Gladstone's view was that it was 'perfectly plain' that income tax was unsuitable as a long-term source of government revenue. This attitude made him reluctant to tinker with it too much. The tax system was 'vast and complicated', and it had its faults, but Gladstone felt strongly that it was impossible to reach fairness with further exceptions. To his mind, each new exemption created three or four more inequalities that combined to weaken the overall system. He preferred to accept the known inequalities and look to abolish income tax instead.

For Gladstone, income tax was at its heart a war tax, 'a mighty engine … for the defence and the salvation of the country'. It had been introduced by William Pitt the Younger in 1799–1800 to fund war with France. It was repealed in 1802 after the Treaty of Amiens, but was revived in 1803 when hostilities resumed. It was repealed again in 1816 after Napoleon had been sent packing again, at Waterloo. Then it lay dormant until 1842 when Sir Robert Peel brought it back in peacetime.

We no longer consider income tax a temporary arrangement, making up as it does about one-third of government revenue. But it does retain that character of impermanence as an annual tax that must be reinstated each year.

When Gladstone rose for his 1860 Budget, he was not able to repeal the tax due to the costs of the Crimean war. In fact, he had to put the rate up from 7d to 10d in the pound – roughly from 3% to 4%. He tried again in 1874, standing in the general election on the platform of income tax repeal, but lost to Benjamin Disraeli.

Although income tax defeated him in the end, Gladstone did manage to finish off some taxes in 1853. He repealed the duties on 123 items as part of a shift away from expenditure. He also wiped away the much-hated soap duty.

PROFILE

Name Helen Thornley
Position Tax Consultant
Company Armstrong Watson
Email helen.thornley@armstrongwatson.co.uk
Profile Helen Thornley MA(Cantab) ACA CTA TEP is based in Cumbria and specialises in private client work. She writes, blogs and tweets on the interesting aspects of both old and new taxes.

Stephen Barnfield reviews the results of February's CIOT and ATT members' survey

KEY POINTS

- **What is the issue?**
The joint CIOT and ATT survey looks at how HMRC applies legislation on penalties, enquiries, information powers and reviews
- **What does it mean for me?**
The survey reports on the views of CIOT and ATT members on HMRC's application of these everyday tax compliance issues
- **What can I take away?**
Members think some penalties are unfair and disproportionate and their comments highlight some inconsistent legislative application by HMRC

The CIOT and ATT's survey of members in February 2015 was their first in five years to seek views on on *HMRC Powers: Penalties, Compliance Checks and Reviews*. The survey asked a number of questions about the operation of the powers in practice and asked for comments.

This survey follows our first into HMRC powers in March 2010 – *HM Revenue and Customs Modernising powers, deterrents and safeguards* (see www.tinyurl.com/ptvhoma) – shortly after the commencement of the new legislation on penalties for incorrect returns, late filing and late payment of tax and HMRC's information powers.

Summary

Overall, the survey reveals that the system for penalties and compliance checks is not operating as well as we had hoped. Due to the nature of such a survey, it is inevitable that the detailed comments tend to focus on problems rather than positive experiences. In particular, members' responses and comments highlight inconsistent legislative application by HMRC. Also, some penalties are seen as unfair and disproportionate.

Many answers and comments support the HMRC's review of penalties now under way, and we have fed the results of the survey into our responses to that consultation.

Penalties for incorrect returns: failure to take reasonable care

Many respondents think HMRC are too quick to conclude that there has been a failure to take reasonable care – see ***Table 1***. Indeed, many believe that HMRC's default position is to charge a penalty regardless of the circumstances. As one respondent said:

> '[The] penalty can seem very high for what clients see as an oversight. HMRC does not seem to accept that mistakes can be made and always argue reasonable care has not been taken. HMRC does not accept that completing a tax return fully and accurately is quite an onerous task for almost anyone who does not have a tax background.'

The range of experience illustrated by ***Table 1*** is so wide that further research is needed. Perhaps some of the divergent experiences are due to differences in the type of work respondents take on, in particular the profile of their clients, since some taxpayers are more likely to make mistakes than others.

Penalties for incorrect returns: suspension

Fully 72% of respondents believe that clients who have had suspended penalties for incorrect returns have improved their compliance processes as a result – see ***Table 2***. Also, 73% of respondents say that the HMRC decisions they have seen on suspended penalties are, by and large, fair and that the conditions imposed are appropriate. However, some comment that HMRC practice in this area can be inconsistent.

The responses reveal a variety of experiences with suspension of penalties, illustrated by the following comments:

> 'HMRC do not apply the penalties consistently – we had two identical cases; both ideal cases for suspension. In one circumstance, HMRC offered a suspension; in the other, HMRC imposed the penalty and would not oblige to suspension.'
>
> 'You have to fight to ridiculous

TABLE 1 – FAILURE TO TAKE REASONABLE CARE

Where your clients have made an error how often have HMRC treated this as a failure to take reasonable care?

More than 75%	31.1%
Between 50% and 75%	15.6%
Between 25% and 50%	18.8%
Less than 25%	21.8%
0%	12.6%

lengths to get a penalty suspended.'

The last comment is supported by some of the survey responses. For example, a small majority of respondents say that suspension was secured in 50%, or less, of cases where it was possible. A similar proportion reports that HMRC have disagreed with them over whether a penalty should be suspended.

Respondents say that, in general, suspension was suggested by the taxpayer or agent instead of HMRC. When the guidance on suspension was first drafted the CIOT expressed concern that it was difficult to see who would be eligible for suspended penalties. Competent tax advisers will know to ask about suspended penalties, but unrepresented taxpayers may not. It would appear that HMRC could do more to raise awareness of the suspension process and to ensure its consistent application.

Late filing and late payment penalties

Some respondents thought it was unfair that normally-compliant taxpayers are penalised for making one-off mistakes and are not treated any differently from those who repeatedly file or pay late.

'I have a client who is about to be surcharged £250 for late payment of £5,000 2013/14 tax, and is upset about it. This is a very willingly compliant taxpayer, who only missed paying the tax by accident (who happened to be using her professional medical expertise, gratis, in a Delhi slum during half of February).'

Several respondents noted that they often encountered penalties issued in error by HMRC. One particular problem is that penalties for late corporation tax returns are often incorrectly imposed in respect of periods of account in excess of 12 months.

Penalties for late self-assessment income tax returns

Many respondents observed that the automatic late filing penalties for missing the self-assessment tax return filing deadline is disproportionate if there is no outstanding tax liability. Before 2012, this penalty was cancelled if no tax was owed. HMRC's published statistics show that, since this change, on-time filing has improved. However, it penalises taxpayers if no tax is at risk.

Alternatively, some respondents felt that the late filing penalty is not a strong enough incentive for some taxpayers to file on time.

PROFILE

Name **Stephen Barnfield**
Position Director
Company Deloitte
Tel 020 7007 0614
Email sbarnfield@deloitte.co.uk
Profile Stephen works in Deloitte's tax policy group, in particular on tax administrative law. He is Vice-chair of CIOT's Management of Taxes sub-committee.

Compliance checks

In the past, HMRC's approach to enquiries caused them to be excessively long, so there was strong support for a change in direction.

This survey showed that 45% of respondents reported an increase in informal HMRC requests for information outside a formal enquiry. Not all respondents preferred HMRC's use of informal checks, as indicated by the following comment:

'I wish HMRC would stop asking for information on an informal basis whilst implying that not providing that information on an informal basis is not cooperative behaviour.'

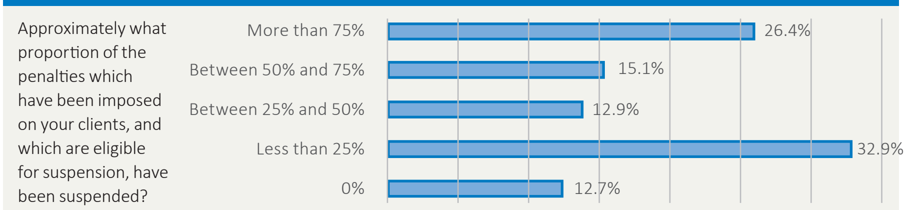
Many comments concerned the relevance of the questions being asked and the information being sought.

'Increasingly finding one has to send all that is asked for in by the date stated, but when able to speak to someone more senior a different approach is seen and more reasonable demands agreed. I very much dislike the letters which are clearly standard ones, covering all possible scenarios and requiring a lot of work which may well not be warranted.'

That is one of several comments suggesting that many questions are not well directed. A few concerns were also raised about the attitude of some HMRC staff when conducting enquires.

Most respondents told us that, when they had been involved in a compliance check HMRC had explained the rules clearly, had applied them appropriately and had acted reasonably.

TABLE 2 – SUSPENSION



Discovery assessments

Responses to the survey accord with feedback received from members that use of this provision is not as exceptional as it once was. Some 37% had experience of discovery assessments and, of those who had challenged them, 48% were successful.

As with our 2010 survey into HMRC powers, the CIOT and ATT are concerned that the law on discovery is unbalanced. The 2015 study reiterates the previous recommendation that this area needs to be reviewed.

HMRC's internal statutory review process and alternative dispute resolution (ADR)

Respondents had contrasting experiences of these two. Roughly half of the members who had used internal review found the process fair and reasonable. Comments were mainly negative. For example:

'I have never experienced or heard of any [cases] where an internal review process changed the original decision. It is therefore seen by most clients as irrelevant and merely delaying any tribunal procedure.'

On the other hand, out of the respondents who had experience of ADR, 72% found it fair and reasonable. Many positive comments were made about the process:

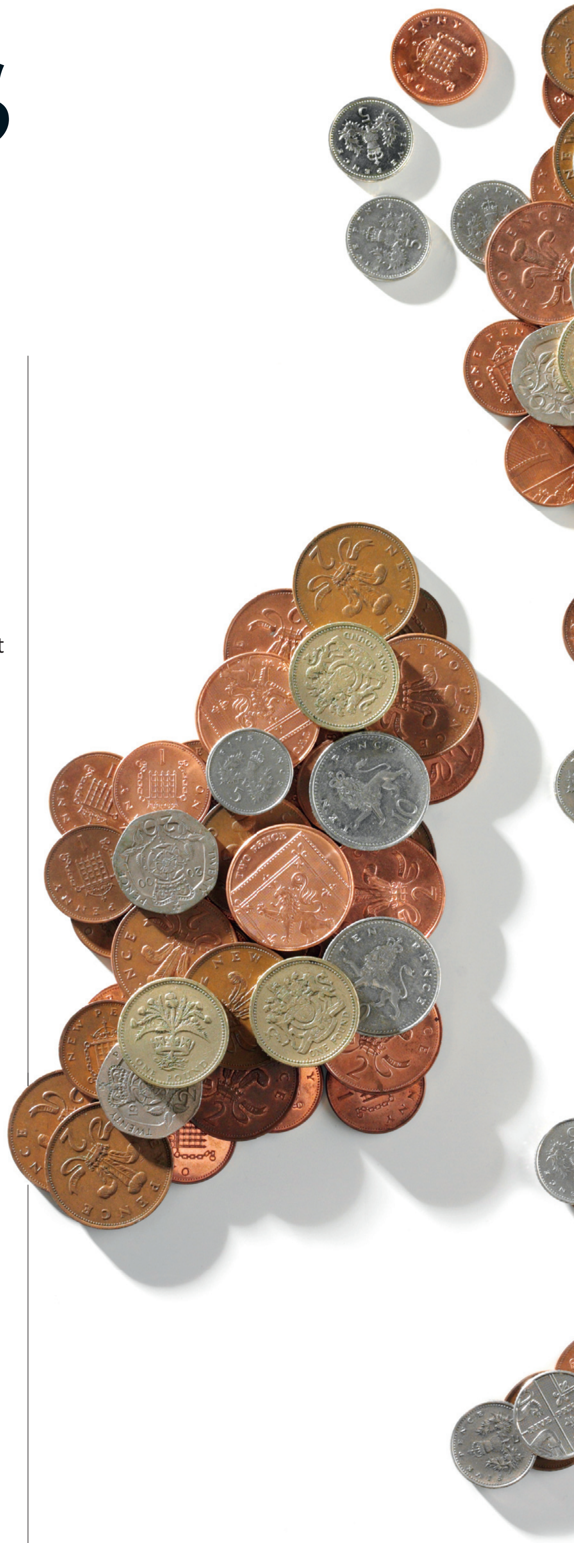
'The facilitators, in my experience, are well trained, knowledgeable and scrupulously fair.'

'ADR was excellent, impartial and fair. Reviewer went to some length to distance himself from the caseworker and came across as unbiased.'

FURTHER INFORMATION

Read the survey results in full at www.tinyurl.com/om5cvs7

Raising taxes



Bill Dodwell considers the main points of the Conservative government's first Budget for 18 years

Slowly the word crept out that there would be a great deal in the summer Budget – although details of the content remained closely guarded until 8 July. The Chancellor's speech was longer than many, as he outlined tax increases, welfare cuts and the parameters for public spending cuts in the autumn spending review. Perhaps most surprising was the plan for a national living wage, which will apply from April 2016 to those aged 25 and older – and is an 11% increase on the national minimum wage. The Chancellor envisages that the living wage will increase to 60% of median earnings – expected to be £9.35 an hour by 2020.

The net tax increases are huge – more than £33 billion over the parliament, according to the red book. They lift the tax burden from 35.9% of GDP now to 36.8% of GDP in 2020/21, with the biggest year-on-year increase from this year to next. Public sector net debt is forecast to reduce to 68% of GDP by 2020/21 as the Budget moves into a small surplus.

Insurance premium tax

There are three large tax-raising measures. Insurance premium tax rises from 6% to 9.5% – which will pull in £8 billion over the parliament. It's true, as the Chancellor noted, that the UK level is below the EU average, but the increase will cost the average two-car family about £37 a year. Unsurprisingly, insurers immediately said they would pass on the costs to consumers and businesses.

Corporate focus

The second major increase comes from the simple expedient of asking some companies to pay their corporation tax wholly during the accounting year, rather than half during the year and half afterwards. The measure will apply from 1 April 2017 to companies with profits of £20 million or more – with the limit split between group companies. Since red book accounts follow the cash basis, this acceleration should bring in £8 billion in 2017/19. Companies, of course, have to finance the earlier payments, but their accounting follows the accruals basis – so it's not a tax increase to them, but a rather more modest financing cost. Details of exactly how the measure will operate will have to await the draft clauses for Finance Bill 2016, no doubt due in December.

Companies will probably have been surprised by the announcement of new reductions in the rate of corporation tax. It drops to 19% from 1 April 2017 and then to 18% from 2020. The legislation for this is in the summer Finance Bill, so it will be enacted in the autumn.

The timetable for the Finance Bill isn't yet known, but there have been suggestions that it might receive royal assent by the end of October. This will affect the 2015 financial statements for calendar year companies, potentially reducing deferred tax assets and liabilities. No doubt the government will use the rate cut to repeat the message that the UK is 'open for business' as we reach conclusions in the G20/OECD Base Erosion and Profit Shifting project and some multinationals start to consider possible relocation of some of their activities. It is an expensive policy, though, costing some £6.5 billion over the parliament. The figures certified by the Office for Budget Responsibility make a pretty modest allowance for additional business in the UK; no doubt the government will have more significant ambitions in attracting investment.

There were no announcements on the BEPS project, presumably because we are about to enter the final intergovernmental negotiations on the outcomes before public release at the G20 meeting in Lima on 8 October. The OECD secretariat's webcast in June alluded to the possibility of changes to the closure of existing patent box regimes. The forum on harmful tax practices has not released any updates, which suggests that the group continues to work through the open issues.

There are a few other corporate tax changes, though. First, the government has decided to abolish allowances for purchased goodwill and customer-related intangibles. The measure applies to new acquisitions from 8 July; existing amortisation is unaffected. It's not obvious why the relief introduced in 2002 is now considered unnecessary, but its abolition is predicted to raise £200 million a year. The change does still leave goodwill as an income asset, rather than a capital gains asset, which is an unhelpful complexity. It would surely be best to return goodwill to the class of capital gains assets so that we no longer need to worry about when pre-2002 goodwill and customer intangibles magically mutate into new goodwill.

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PROFILE

Name Bill Dodwell
Position Leader of Deloitte's Tax Policy Group
Company Deloitte LLP
Tel 020 7007 0848
Email bdodwell@deloitte.co.uk
Profile Bill Dodwell leads Deloitte's Tax Policy group, which is responsible for knowledge, training and representations to HM Treasury and HMRC. He is Chair of the Technical Committee and the *Tax Adviser* sub-committee.

The second change is to provide that profits apportioned to UK companies under the controlled foreign companies rules can no longer be offset by UK losses and reliefs. Again, there seems no point of principle here beyond raising some £150 million a year. Perhaps the change will support the retention of the UK's partial finance company regime, since it will be clear that it raises UK tax.

The other obvious case where profits are apportioned is from captive insurance companies. They are commonly used to access third party reinsurance and many are based outside the UK since insurance regulation here is not designed to accommodate captives. It is unfortunate that something intended for commercial reasons may now trigger tax charges without the benefit of using existing losses. The change applies to profits accruing from 8 July and there are apportionment provisions for straddling accounting periods.

The corporation tax cut was facilitated by the third major tax increase – an unexpected change to the taxation of dividends.

From 6 April 2016, the dividend tax credit is abolished. In its place, an individual will receive a £5,000 exempt allowance and dividends above this amount will be taxed at new, higher rates. These are 7.5% for basic rate taxpayers; 32.5% for higher rate taxpayers and 38.1% for additional rate taxpayers.

The main target must be owner-managed companies which typically pay dividends to their owner-managers in place of salary. This has meant that a self-employed individual pays more tax and national insurance if the services are provided as a sole trader or partnership rather than through a company. The change will narrow the gap. A self-employed person with net income of £40,000 will in future pay an extra £1,300 if a company is used – but the effective tax/NIC rate will still be just 19.2% compared with 21.7% for a sole trader. The breakeven point is quite high, at £140,000, where both routes carry a 39% tax burden. At higher income levels, the company route costs more. The estimated yield is £8.5 billion, plus a further £2 billion through discouraging further incorporations. Some people will benefit from the change – after all, the dividend yield on quoted shares is about 2.5%, implying that investors would need a share portfolio worth more than £200,000 to trigger any additional tax.

Inheritance changes

Older individuals may welcome the forthcoming inheritance changes, although these will not take effect until 2017. Currently about 5% of estates are liable to inheritance tax but this is expected to increase substantially due to rising property prices. The new relief is targeted, in that it applies only to residential property left to children and grandchildren. There are provisions to protect the value of the relief where the house is sold (downsizing relief) which naturally adds to complexity. The relief is expensive – costing £940 million in the final year of the parliament but it is being phased in over four years to manage cost.

Pensions

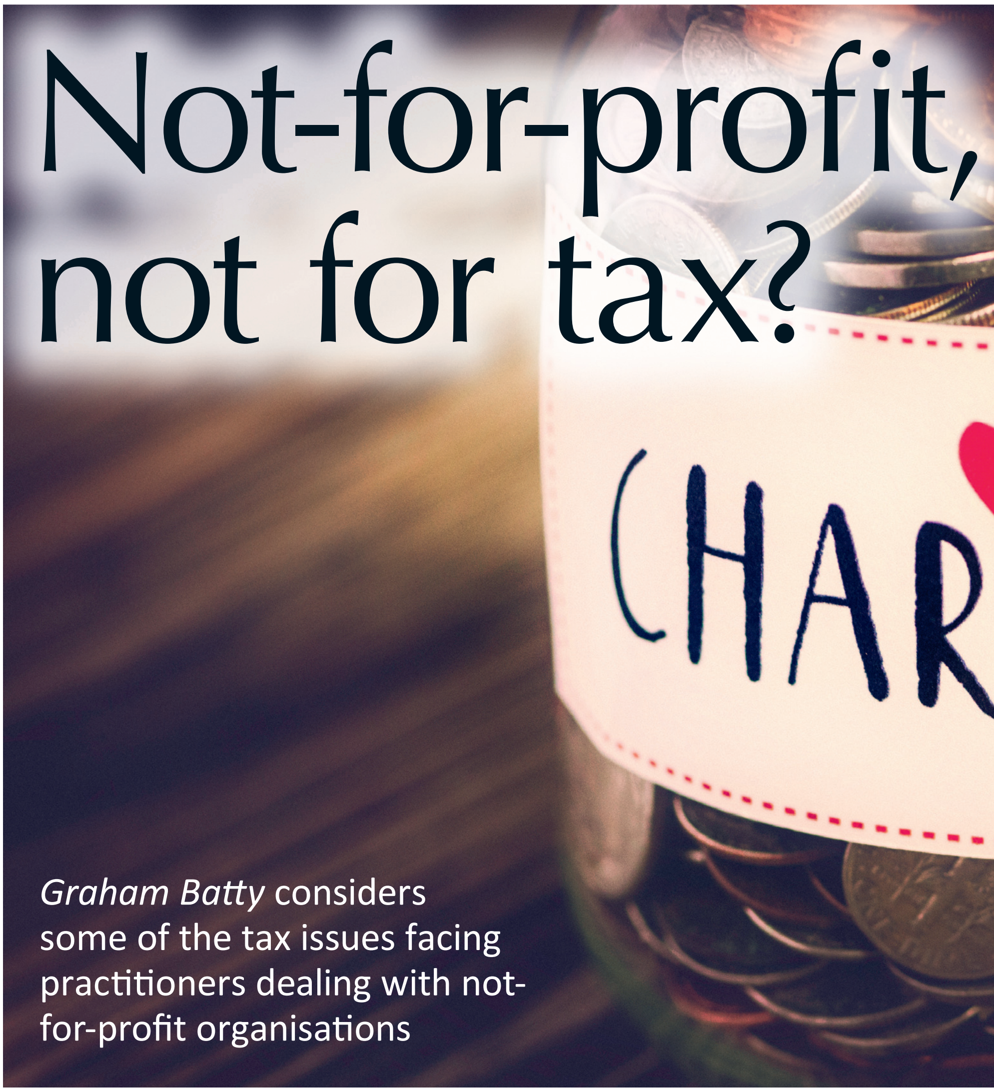
Pension changes finance the inheritance tax cut. Additional rate taxpayers will find their annual pension contributions limited to £10,000 if income exceeds £210,000. There's yet another high marginal rate, as relief is gradually cut from £40,000 when income exceeds £150,000. Pension tax relief is costly, so cutting the benefit for the wealthiest 1% is understandable but we are left with a less coherent and more complicated system.

Perhaps we should welcome the 'blue-sky' consultation on pension tax relief, which asks whether contributions should become more like ISAs by removing tax relief for contributions in return for tax exemption on payout. The unnecessary complexity of the pension input period finally disappears when the period aligns with the tax year, after a transitional year in 2015/16.

Other announcements

Other changes included withdrawal of non-domiciled status after 15 years of UK residence and the forthcoming basic rate limit for buy-to-let interest expense. While private equity specialists will note the changes to carried interest where concessional rules introduced in 1987 have been withdrawn, increasing the tax charge on disposal.

This summer Budget sets the tax framework for the 2015/20 parliament.



Not-for-profit, not for tax?

Graham Batty considers some of the tax issues facing practitioners dealing with not-for-profit organisations

KEY POINTS

- **What is the issue?**
Not-for-profit bodies come in many sizes, but a not-for-profit motive does not equate to a tax exemption
- **What does it mean for me?**
You need to be able to ask the right questions to decide what type of not-for-profit body you are dealing with and what its tax position is
- **What can I take away?**
An overview of the principal not-for-profit bodies and their normal tax treatment

One challenge for the tax adviser working in the not-for-profit (NFP) sector is the assumption that because an organisation's intention is to plough any profits back into its activities excuses them tax. Nothing could be further from the truth. The other complication is the variety of organisations that are typically regarded as NFP bodies and the fact that some benefit from specific statutory tax exemptions (***Table 1***), while others do not (***Table 2***) and have to depend on case law and general principles.

Non-charitable registered social landlords and arm's length management organisations (ALMOs) are few and are unlikely to cross the average tax practitioner's desk. What, then, of the other NFP bodies?

Charities

Charities are perhaps the most common NFP organisations that the tax practitioner must deal with, although there is a popular misconception that charities enjoy a blanket tax exemption. The reality is that they have a series of specific tax exemptions and, as long as they work within these and any surplus is applied for charitable purposes only, they should not suffer a tax charge. In particular, charities have specific tax exemptions on the profits of any property rental business, interest income and capital gains. However, trading activities are an area in which charities may face difficulties. Tax exemption is restricted to profits arising from a trade carried on in the delivery of a charity's charitable objects, as set out in its constitution, or which are directly ancillary to them. These are normally referred to as primary purpose trading.

A common problem area is the letting of charity premises for meetings, conferences, weddings and such like. This is normally not a property business. The charity remains in occupation and the hirer does not acquire any rights over the premises, but a hotel-type activity involving the provision of additional services, such as catering and event management, is a taxable non-primary purpose trade. It is sometimes argued that the service elements can be invoiced separately by a non-charitable trading subsidiary, leaving the rental element in the charity. However, the reality is normally that the hirer has no option to acquire the services other than as part of a composite package.

TABLE 1 – NFP BODIES WITH TAX EXEMPTION

	Typical activities	Exemption
Academies	Publicly funded independent primary and secondary schools	Charity
Colleges	Provision of education – sixth form, Further Education (FE), or Higher Education (HE)	Charity
Charities	Delivery of charitable purposes under Charities Act 2011 (or Scottish or Northern Ireland equivalent) for the public benefit as set out in their constitution	Charity
Charitable registered social landlords	Provision of housing for those in need	Charity
Community amateur sports clubs (CASC)	Community-based sports clubs	Limited

Community amateur sports clubs

The community amateur sports clubs (CASC) scheme was introduced in April 2002. CASCs are companies or unincorporated associations established to provide facilities and promote amateur sports recognised by the National Sports Councils to the whole community. Like charities, they must have fit and proper management and be established in the UK, Norway, Iceland or Liechtenstein.

CASCs are members' clubs established for their members' social

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PROFILE

Name **Graham Batty**
Position Associate Director
Company Baker Tilly Tax and Accounting Limited
Email graham.batty@bakertilly.co.uk
Profile Graham has been dealing with the tax issues facing charities and other not-for-profit organisations for almost 20 years. He advises mutual, educational, religious, social, scientific, heritage, cultural and professional bodies. He is ATT Vice President and represents CIOT on the HMRC Charity Tax Forum.

and recreational purposes. As such, transactions with members do not amount to the carrying on of a trade within the charge to corporation tax since they lack the necessary degree of commerciality (BIM24205). However, if services are provided to non-members, such as visitors or temporary members, any surplus is liable to tax as trading income. Other income of a members' club, for example savings, investment income and gains, are chargeable to tax in the normal way.

However, unlike normal members' clubs, CASCs can claim a limited range of tax exemptions and gift aid, are eligible for the gift aid small donations scheme and are entitled to 80% mandatory business rates exemption. Although there is no limit on the income – other than property income – that a club can generate from members to remain in the CASC regime, the gross trading and property income from a non-member must be below £100,000 a year.

The tax reliefs a CASC can claim are:

- exemption from corporation tax on UK trading profits if the turnover from that trade is less than £50,000 a year (£30,000 a year before 1 April 2015);
- exemption from corporation tax on UK property income if the total income from property is less than £30,000 a year (£20,000 a year before 1 April 2015);
- exemption from corporation tax on interest received; and
- exemption from corporation tax on chargeable gains.

The exemption for chargeable gains can prove particularly useful because many CASCs have town centre grounds that are prime development sites that can be sold to fund a move to new and better out-of-town facilities. This would satisfy the condition, mirroring the similar condition for charities, that all income and gains must be applied for qualifying purposes.

The exemptions for trading and property income available to CASCs are limited. If the income limits are exceeded, the whole of the profit is taxable. There is no taper relief. In this case, it will be necessary to calculate the trading profit attributable to non-members. A typical club will have income and expenses that fall into three broad categories:

- attributable wholly to members (wholly exempt);
- attributable wholly to non-members (wholly taxable); or
- attributable to members and non-members (mixed).

In apportioning mixed activities, for example a bar, it will be necessary to take a supportable 'just and reasonable' approach that can create practical problems. It is also important to remember that, if services or facilities are provided gratuitously or at undervalue, it may be possible to claim a deduction for the full commercial cost of these following the *Peterhead* principle (*British Legion, Peterhead Branch, Remembrance and Welcome Home Fund v CIR* [1953] 35 TC 509).

Community interest companies

A community interest company (CIC) is an asset-locked body that must ensure any profits or assets are used principally for the benefit of the community. Unlike a charity, a CIC is not entitled to any specific corporation tax exemptions. Accordingly, a CIC's profits are fully taxable unless it can be shown that the terms of the contract are such that, in tax law, the organisation does not amount to a taxable trade.

Whether a CIC is carrying on a trade is a question of fact that is difficult to prove in practice.

A trade for corporation tax purposes is only briefly defined in statute as 'including any venture in the nature of trade' (CTA 2010 s 1119). This is unhelpful and, not surprisingly, there is considerable case law (the badges of trade cases) on what does and does not characterise a trade for tax purposes. However, in recent times the courts have taken a fairly broad view and regarded the essence of trading as a commercial relationship in which the trader provides

TABLE 2 – NFP BODIES WITHOUT TAX EXEMPTION

	Typical activities	Normal tax status
Non-charitable registered social landlords	Provision of housing for those in need	Fully taxable
Arm's length management organisations (ALMOs)	Management and improvement of properties for their parent council	Contract with parent council not a taxable trade
Community interest company (CIC)	Various but generally with a social purpose	May on individual facts not be carrying on a taxable trade.
Mutual	Various	Trading with members not taxable

goods or services to a customer for reward (*Ransom v Higgs* [1974] STC 539).

Given that, in most cases, a CIC will be entering into a contract with an independent party to provide goods or, more commonly, services, it is difficult to see the contract as anything other than a commercial arrangement freely entered into. This leaves the question of whether the services are provided for reward or, perhaps more meaningfully, with a view to profit. The crucial issue is whether any surplus for the year is attributable to the customer or the CIC. If a surplus must contractually be rolled forward and applied to providing services under the contract in future years, or alternatively be refunded, it will be attributable to the customer and no profit can arise to the CIC (*BBC v Johns* [1964] 1 All ER 923).

A CIC is, of course, required under its articles of association to apply any profits for the benefit of the community. However, this not-for-profit motive does not affect the corporation tax position on earning profits; it merely directs how those profits are to be applied. A CIC's not-for-profit motive does not, therefore, affect its corporation tax status.

Mutuals

Mutuals are perhaps the most widely misunderstood of the NFP bodies. Mutuality is a legal concept with a rich case law based on the principle that it is not possible to trade with oneself (*Dublin Corporation v M'Adam* [1887] 2 TC 387). Mutual 'exemption' applies only to the extent that a body is carrying on a trading activity with its members. If it is not carrying on a trade, an organisation cannot be a mutual. The flip side is that a mutual body cannot claim the benefit of losses or capital allowances on the mutual trade. Mutuals are fully taxable for all other income and gains.

Identifying that a body trades with its members is often as far as many practitioners go in claiming mutual status but additional, more complex, structural requirements are often overlooked. To be a mutual trade:

- There must be complete identity, as a class, between the contributors to the mutual surplus and the participators in it. This is not the same as the members at the date of dissolution because there will be contributors who are not now members. It is not, though, necessary to trace back to everyone who has ever been a member as long as the return takes into account current contributors and those who ceased to be contributors in the previous five years.
- The surplus must ultimately find its way back to the contributors and nobody else. It is surprising how often the constitution of a supposed mutual provides that any surplus on a winding-up is to go to charity or another body with similar aims rather than its members.
- There must be a reasonable relationship between a person's contribution to the surplus and the amount distributed to them on winding up. This can be complex where a range of goods or services with different profit margins is provided.
- The contributors to the common fund must control it.

Conclusion

NFP bodies are a diverse and interesting sector to work in, but there is an assumption that a not-for-profit motive means that you can forget about tax. In approaching any NFP body it is essential to start by asking yourself several basic but important questions:

- What are the sources of income?
- What is the normal tax treatment?
- Is there a specific exemption?
- Does this body qualify?

FURTHER INFORMATION

Read more about CASCs in Richard Baldwin's article 'Howzat for complicated?' from the March 2015 issue of *Tax Adviser* at www.tinyurl.com/nkea3sv

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Taking the credit

Kathie Haunton and *Sarah Goodman* explain the practical considerations of claiming the research and development expenditure credit

KEY POINTS

- **What is the issue?**
Since the introduction of the RDEC in April 2013, claimants are beginning to understand the practical implications and issues arising from the workings of the regime
- **What does it mean for me?**
Submitting an RDEC claim has an impact on both the tax computation and the statutory accounts. Claimants need to be aware of the practical implications for the company's management, the need to track additional tax entries and the adverse cash flow position
- **What can I take away?**
Practical insight of the key points to consider in order to manage the full process associated with an RDEC claim

The research and development expenditure credit (RDEC) was introduced by the Finance Act 2013 and has led to a change in how research and development (R&D) tax relief can be claimed by large companies and, in some circumstances, by SMEs. Two years into the new regime, companies and their advisers are beginning to fully understand the wider implications of claiming the relief. For those claimants yet to elect into the regime, there is an opportunity to learn from others before the rules become mandatory from 1 April 2016.

Background – recap of the regime

The RDEC rules have been inserted into CTA 2009 Ch 6A Pt 3 and claims can be made for R&D expenditure incurred by large companies on or after 1 April 2013. The regime is also applicable to funded or subsidised R&D expenditure incurred by SMEs in the same way the existing large company super-deduction regime can be claimed for such costs. The relief has been structured to allow the credit to be recognised 'above the line', most likely as either 'grant' or 'other' income, in the company's financial statements. This means that the credit increases profit before tax (PBT) and so is more visible to a company's stakeholders.

RDEC continues to use the guidelines produced by the Department for Business, Innovation and Skills to define the activities that constitute R&D, and applies to the same categories of qualifying expenditure as the historic large company regime. A project is therefore eligible for relief when it seeks to achieve an *advance* in science or technology and, in doing so, the project is looking to overcome a scientific or technological *uncertainty*. Revenue expenditure on staff costs, software or consumable items, externally provided workers, payments to the subject of a clinical trial, qualifying expenditure on contracted out R&D and contributions to independent R&D that relate to eligible R&D projects can all qualify as before.

So what's different?

Initially, the RDEC was introduced as a taxable credit calculated as 10% of a company's qualifying R&D revenue spend incurred on or after 1 April 2013. As part of the government's policy to further incentivise R&D in the UK, the rate was increased to 11% for expenditure incurred on or after 1 April 2015. For taxpaying companies, the RDEC benefit reduces the claimant company's corporation tax liability. Since the credit is taxable, the net saving is 8.8% of the qualifying R&D spend, providing an extra 2.8% of relief when compared with claiming the existing super-deduction of 130% (assuming a main rate of corporation tax of 20%) as illustrated in ***Table 1***.

For the first time since R&D relief was introduced for large companies in 2002, there is also the opportunity for large (non-SME) loss-makers to claim the credit, net of a notional tax charge calculated at the current rate of corporation tax, as a cash receipt from HMRC. This means that the RDEC will be of monetary value to claimants irrespective of their tax position. The notional tax deducted can be surrendered to another group company that has a corporation tax liability against which it can be offset, or carried forward for offset against future corporation tax liabilities.

The payment of the cash credit is, however, subject to a cap based on the PAYE and NI paid to HMRC for staff whose costs are included in the RDEC claim. The cap has been designed to avoid cash claims being paid out where there is no significant UK presence, and is in practice unlikely to affect a significant number of companies. Amounts in excess of the cap can be carried forward for use in future periods.

Any value remaining after the notional tax deduction and the PAYE/NI cap can then be used to discharge a corporation tax liability of the claimant company for any other accounting period. Any amount remaining can be surrendered to another member of the group, subject to a number of provisions around overlapping accounting periods that operate much as the group relief rules.

As with the SME regime, there is also a provision to extinguish the credit if the company was not a going when it claimed the relief.

The RDEC delivers a greater monetary benefit than the historic super-deduction regime as illustrated in ***Table 1***.

The RDEC and the large company super-deduction regime will co-exist until 31 March 2016, when the latter will cease. Before then the super-deduction is the default position, but companies can choose to adopt the RDEC by entering into an irrevocable election.

The greater monetary benefit and opportunity for loss makers to claim a cash credit are both value-enhancing changes, but not all companies are making the election because there are practical issues to consider.

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PROFILE

Name Kathie Haunton
Position Director, R&D Tax Services
Company Deloitte
Tel 0118 322 2967
Email khaunton@deloitte.co.uk
Profile Kathie is a key technical lead in the Deloitte R&D tax services group. She is a member of the HMRC's R&D consultative committee and contributed to the consultations on the introduction of the RDEC. Her wide range of experience enables her to assist clients with all aspects of their R&D claims, including identifying qualifying costs, determining eligible activities and discussions with HMRC.

PROFILE

Name Sarah Goodman
Position Senior Manager, R&D Tax Services
Company Deloitte
Tel 0113 292 1433
Email sgoodman@deloitte.co.uk
Profile Sarah advises a variety of companies with their R&D claims from start-ups to large companies. She has worked with companies across a wider range of business sectors including life sciences, food and consumer business, information technology and manufacturing to agree R&D claims with HMRC.

Practical issues

Management information

The RDEC regime was drafted to have the attributes of a grant so that it could be accounted for in profit before tax, rather than as part of the tax charge. This means that the RDEC credit has been 'decoupled' from the calculation of a company's tax liability and does not appear within the taxation line in the financial statements (although the tax charge will be increased by 20% of the credit since it is a taxable amount). Common practice is to record the credit as either grant income or other income in the profit and loss account but the precise treatment will need to be agreed with the company's auditors.

Although this treatment has a positive impact on PBT, it does cause an increase in the effective tax rate (ETR). Using the figures in ***Table 1*** and disregarding any other permanent or temporary timing differences, the tax charge after claiming the super-deduction is £140,000 on a PBT of £1 million (an ETR of 14%), whereas when claiming RDEC, the tax charge is £222,000 on a PBT of £1,110,000 (an ETR of 20%).

Also, during the three-year period when claiming RDEC is optional, there can be an issue with claiming foreign tax credits. This occurs if the claimant company is a subsidiary in a US-headquartered group because it will be considered to have elected to pay a higher tax charge than would not otherwise have been the case.

Finance teams may wish to reflect the RDEC in the monthly management accounts to capture the impact on financial measures such as earnings before interest, tax, depreciation and amortisation (EBITDA) and the ETR. If monthly estimates are required, a process will need to be developed to capture the information and may sometimes involve the participation of employees outside the finance department to determine the eligible activities.

The RDEC claim can be a difficult number to budget for and may not have been included previously in the management accounts or reported to the board, since any historic R&D claims will have been accounted for in the tax expense. The challenge is to set up processes to capture and analyse the information without the exercise becoming burdensome. Many companies have already been requested by HMRC to introduce contemporaneous time recordings. Although this can sound onerous, taking steps each week or month to identify eligible projects and the time spent on them will provide companies with the information to prepare robust estimates. At the same time HMRC's increasing desire for more contemporaneous analysis will be met.

Tracking the credit

An estimated RDEC claim amount is often recorded in the statutory accounts because they may need to be finalised before the work to calculate the actual amount has been completed. In the early years of RDEC a company may file its accounts with no RDEC included at all if, for example, the decision as to whether to claim it had not been made when the accounts were finalised. In the tax computation, however, the finalised claim must be included and any differences, together with any adjustments made due to HMRC enquiries, can lead to reconciliation

TABLE 1 – RDEC MONETARY BENEFIT COMPARISON

	Super-deduction	RDEC
Turnover	£5,000,000	£5,000,000
R&D expenditure	(£1,000,000)	(£1,000,000)
RDEC @ 11%		£110,000
Other expenditure	(£3,000,000)	(£3,000,000)
Profit before tax	£1,000,000	£1,110,000
Super-deduction @ 30%	(£300,000)	
Taxable profit	£700,000	£1,110,000
Tax charge @ 20%	£140,000	£222,000
RDEC		£110,000
CT payable	£140,000	£112,000
Tax saved*	£60,000	£88,000
Net benefit	6%	8.8%

* compared with CT Liability of £200,000 (PBT of £1m @ 20%)

TABLE 2 – FIRST-TIME CLAIMANT

- Standalone company in the manufacturing industry
- Accounting period end 31 March 2014
- Tax paying at the main rate of corporation tax
- £1 million spent on qualifying R&D in APE 31 March 2014 and the first claim made under RDEC
- £1.5 million spent on qualifying R&D in APE 31 March 2015

between the RDEC figure in the statutory accounts and that in the tax computation.

Further adjustments to reflect RDEC costs included in intangibles for accounting purposes and reversing the associated amortisation can lead to an even more complex position. It is therefore vital that companies track the details of the RDEC entries each year to ensure that the credit has been taxed only once in the company's tax return.

Let's take the example of a first-time RDEC claimant with the fact pattern shown in ***Table 2***.

At the time the company identifies that it is eligible to make an RDEC claim, its statutory accounts for the year ended 31 March 2014 have already been filed at Companies House. Consequently, the credit income relating to the RDEC of £100,000 has not been reflected in the statutory accounts. When the tax computation is prepared it will be necessary to make an adjustment to profit before tax to reflect the additional RDEC income of £100,000.

This will increase taxable profits by £100,000 and in turn, the company's tax liability by £23,000 (assuming a main rate of corporation tax of 23%), delivering a net benefit to the company of £77,000. In year two (APE 31 March 2015), the company will record £250,000 of income to its profit and loss account to reflect the £100,000 RDEC for the year before, as well as the £150,000 of income relating to the current year estimated RDEC. It will be necessary to deduct £100,000 in the adjustment to profit in the tax computation because this amount was taxed in the earlier year and would otherwise be taxed twice. A further adjustment will be required in the following year if the 31 March 2015 RDEC is settled at an amount other than the estimated £150,000.

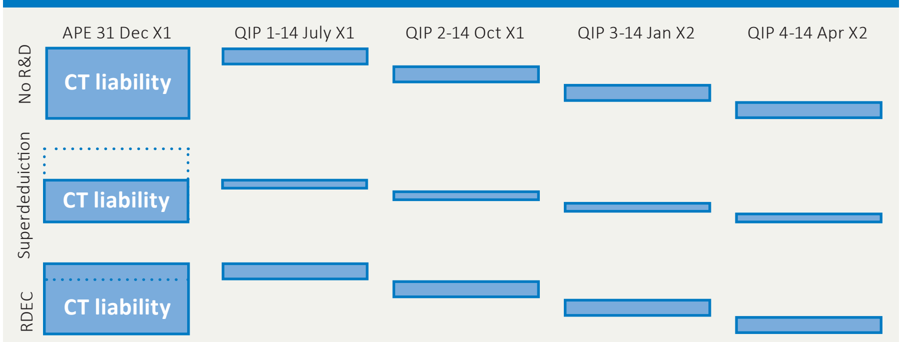
As well as tracking the income posted to the statutory accounts it is also important to track any unused elements of the credit that are carried forward because they cannot be used, claimed in cash or surrendered to another group company. The best way to ensure that these amounts are tracked is to include them in a schedule in the tax computation.

Cash flow

As noted above, the gross RDEC credit is included in the claimant company's computation of taxable profit, giving rise to an increased corporation tax liability compared to if the company had continued to claim under the super-deduction regime. This will result in a greater cash outflow at the corporation tax payment date, either nine months and one day after the accounting period ends or under the quarterly instalment regime as illustrated in ***Table 3***.

Because the RDEC is a credit that is offset against, rather than a deduction that reduces, the company's corporation tax liability it is not deducted in the calculation of the quarterly instalment payments. The implications of claiming RDEC on a company's cash flow position will need to be factored in and a process developed for estimating the likely quantum of the tax credit in advance of the first quarterly instalment payment date so that the additional taxable income it generates can be included. Given that the regime becomes mandatory in less than 12 months, this is a consideration that most claimants will need to think about soon. This will be particularly important for those large corporates that need to manage their investors' expectations of their cash position.

TABLE 3 – THE RDEC WILL HAVE AN ADVERSE IMPACT ON CASH OUTFLOW



HMRC have not set a framework for the timing of repayments under the RDEC, either for loss-makers claiming the cash credit or taxpayers that may have settled their corporation tax in advance of submitting their RDEC, resulting in an overpayment. Claimant companies expecting cash from HMRC should contact their customer relationship manager or HMRC R&D specialist unit on how they want RDEC amounts to be treated and expected timings for repayment.

For first-time RDEC claimants, providing information to HMRC to enable them to understand how the credit has been used will be helpful. For example, if the company is due a repayment and the PAYE/NIC cap is not applicable, a note could be included in the tax computation to show that this step has been considered, along with details of why the cap does not apply. Companies operating under a group payment arrangement need to be sure before they contact HMRC about RDEC claims that the arrangement for any particular accounting period has been closed and payments have been allocated to participating organisations, otherwise this will hold up the cash.

Conclusion

Most companies have welcomed the introduction of the RDEC regime, but many have found that the tracking the entries through the tax computations and statutory accounts is more complicated than it would at first appear. This, coupled with the negative impact on cash flow, has led to some companies delaying adoption until the RDEC is compulsory.

Actions to take away

The historic definition of R&D for tax relief continues to apply for the RDEC regime. Companies and their advisers should continue to think as widely as possible about the application of this definition to the R&D activities.

Claimant companies and their advisers should understand the implications of the RDEC on key performance metrics and their financial statements. They should consider developing a real-time basis for capturing costing information relating to the RDEC claim to improve the accuracy of estimates.

Tracking the amount and use or surrender of RDEC through the company's statutory accounts and its corporation tax computation is important. Clear records should be kept.

Companies should model the impact of RDEC on their quarterly instalment payments and engage in an open dialogue with HMRC on the timing of cash payments due.

Where EU policies collide

Anne Fairpo reviews the recent ECJ cases on the VAT treatment of electronic books

KEY POINTS

- **What is the issue?** The concept of electronic books was still in the realm of science fiction when the UK introduced VAT in 1973. Back then, the UK was permitted to zero-rate some types of supply – one of them being information
- **What does it mean for me?** Electronic books are established as a service for VAT purposes. If you pay for an electronic book, access to it generally involves acceptance of a user licence agreement
- **What can I take away?** Electronic books aren't physical and so cannot be 'books' for the purposes of VAT – so a supply of an electronic book is standard-rated

When the UK introduced VAT in 1973, it was permitted for some types of supply to be zero-rated if this was considered desirable for defined social purposes and to the benefit of the consumer.

One accepted purpose was the supply of information – particularly through books, newspapers and periodicals. The UK has continued to zero-rate information produced in physical form. But over the past 10 years or so information has become increasingly incorporeal and so the question of VAT treatment has been tested – and not just in the UK; many other European countries have a lower (not always zero) rate of VAT for books.

Reduced VAT rates – when are they permitted?

In 1991, the EU agreed to harmonise VAT rates to an extent. This agreement set a minimum VAT rate of 5% , but allowed countries to continue charging lower rates, including zero rates, that were in place on 1 January 1991 – and permitted by EU law – for a 'transitional period' (Directive 2006/112/EC, Arts 98 and 110). There is no specific date when this period will end: it will be whenever 'definitive arrangements' are agreed by member states (Directive 2006/112/EC, Art 402). No new types of supply can be brought within the zero rate, however.

Member states are allowed to apply one or two reduced rates of VAT, but only to specific categories of goods and services (Directive 2006/112/EC, Annex 3) – this includes the supply of 'books on all physical means of support'.

VAT treatment of electronic books – why the problem?

The concept of electronic books was still – in practical terms – in the realm of science fiction when the UK introduced VAT. Even *The Hitchhiker's Guide to the Galaxy* by Douglas Adams was five years away.

As a result, it's not startling that the question of how to treat an electronic, downloadable, book did not feature in VAT rate considerations in 1973.

The first main consideration of how to deal with electronic books comes in the Annex to the VAT on E-Commerce Directive (2002/38/EC), published in 2002, which includes 'the digitised content of books and other electronic publications' as an

PROFILE

Name Anne Fairpo
Position Barrister
Company Temple Tax Chambers
Email anne@fairpo.com
Profile Anne Fairpo MA(Oxon) ATT CTA (Fellow) is a senior tax lawyer with substantial and diverse experience of tax matters in law and accounting practices. Anne was called to the bar in 2009 after 15 years as a solicitor. She has a particular interest in intellectual property taxation and UK-US cross-border tax planning with regard to direct and indirect tax matters. She is the immediate past president of CIOT.

example service at Item 3 (B) of the table of electronically supplied services. This treatment predates the first mainstream electronic book reader, the Sony Librie, introduced in 2004. Perhaps a different treatment might have been envisaged if the member states had been playing catch-up on electronic books. The VAT on E-Commerce Directive was, however, concerned only with the place-of-supply rules, not how the VAT rate for the service should be determined.

So, electronic books are established as a service for VAT purposes. Arguably, that makes sense from a legal perspective. If you pay for an electronic book, the access to it generally involves acceptance of a user licence agreement. That agreement will often include substantial restrictions. You can't give away an electronic book since access may be restricted to a single device. Some electronic books depend on an online service to authenticate access – if that service stops, access is blocked.

Buying access to an electronic book is similar to entering into a rental agreement – buying a service. Ultimately, the publisher can remove access, as Amazon did in July 2009 when it deleted George Orwell's *Nineteen Eighty-Four* from purchasers' accounts and electronic book readers. Of all the texts that this power could have been demonstrated on … you couldn't make it up. The file was removed because it was apparently an unauthorised edition and Amazon did credit purchasers' accounts, but it still demonstrates the point – electronic books are usually something that the purchaser has access to, not something that the purchaser owns. Some publishers do not restrict rights in that way for electronic books that they sell directly, but they are relatively uncommon.

Given, then, that electronic books are a service for VAT purposes, and not a supply of information, that's where the VAT issue kicks in.

A supply of goods or services is subject to VAT at the standard rate *unless* a reduced rate applies to the supply, or the supply is treated as exempt (VATA 1994 s 2). Zero-rating is permitted by VATA 1994 s 30, but applies only to supplies within Sch 8 – and Grp 3 of Sch 8 covers books.

'Book' isn't defined in statute, so the term has to take its ordinary meaning. The ordinary meaning of 'book' for VAT purposes in the UK was established in *C & E Commrs v Colour Offset Ltd* [1995] STC 85 – where May J held that the term 'always refers to an object whose necessary minimum characteristics are that it has a significant number of leaves, now usually of paper, held together front and back by covers usually more substantial than the leaves'. This was in 1995, and the courts do acknowledge that 'when a word is given its ordinary meaning, that meaning may change over time in accordance with common usage and understanding' (*Magic Memories Group (UK) Limited v HMRC* [2013] UKFTT 730) – so perhaps the ordinary meaning of 'book' might come to include an electronic book, but that hasn't happened yet.

The European Court of Justice (ECJ) had, until recently, similarly left open the question of whether things might change. In September 2014, in *K Oy* (Case C-219/13), it held: 'It is for the referring court to ascertain … whether books published in paper form and books published on other physical supports are goods which are liable to be regarded by the average consumer as similar.' However, the recent cases against Luxembourg and France have made it clear that the ECJ isn't about to equate electronic books and physical books.

So far, electronic books aren't physical and so cannot be 'books' for the purposes of VAT – so a supply of an electronic book is a standard-rated supply because it is not a supply that is within the reduced rate rules or exempt from VAT. As noted, the zero rate in the UK cannot be extended to supplies that were not zero-rated in January 1991.

Fiscal neutrality

In general, the EU isn't in favour of differing rates for similar transactions: '[T]he common system of VAT should, even if rates and exemptions are not fully harmonised, result in neutrality in competition, such that within the territory of each member state similar goods and services bear the same tax burden, whatever the length of the production and distribution chain.' So says paragraph 7 of the preamble to Directive 2006/112/EC (the main VAT Directive).

This is 'fiscal neutrality', derived from one of the main principles of VAT within the EU, and is intended to ensure that – as set out in the preamble – VAT should have the same impact on substantially similar transactions. The principle from which it is derived is that of the European single market, and the prevention of the proper working of a free market. Without fiscal neutrality, one transaction could have a higher burden of VAT in comparison with a functionally similar transaction. This would distort competition and harm the proper working of a free market in goods and services.

As a result, the ECJ will usually not permit actions that create a difference between functionally similar transactions – regardless of national law – unless the Directive creates the difference itself. In this case, the ECJ will usually attempt to narrow the range of transactions affected. For example, the Directive creates exemptions from VAT for some financial services; similar services are not exempt, and the ECJ in this instance would interpret the law narrowly to ensure that the exemption applies only to transactions that are clearly within the scope. Functional similarity is not enough to extend exemption. Whether this is useful depends on a business's VAT recovery position.

For books and electronic books, the ECJ has been reluctant to specifically apply fiscal neutrality to such transactions, as noted in *K Oy*. Having in effect referred that decision back to the national courts, in March the ECJ also considered the cases of *European Commission v Luxembourg* (Case C-502/13) and *European Commission v France* (Case C-479/13). Both countries had introduced reduced rates for electronic books – 3% in Luxembourg, 5.5% in France – and, this time, the court took a strict and narrow interpretation of the legislation by following the principle set out above.

Luxembourg had decided that the term 'book' should be broadly interpreted so that sales of electronic books came within their existing 3% rate for books (a reduced rate permitted, as with the UK's zero rate, by the transitional provisions of the VAT Directive). France had specifically introduced a statutory provision equating electronic books with physical books, which were also within an existing reduced rate. It was, in the case of France in particular, argued that electronic books fell within the scope of the supplies permitted to be subject to VAT at a reduced rate (in Annex 3, as above), on the basis that some physical support is needed to read an electronic book such as a computer, phone or electronic book reader.

The ECJ decided that, as the physical support required was not included in the sale of an electronic book, Annex 3 does not cover electronic books and that '[t]he principle of fiscal neutrality cannot extend the scope of reduced rates of VAT to the supply of electronic books'. The support for this was stated by the ECJ to be the *Zimmerman* case (Case C-174/11), which found that fiscal neutrality 'is not a rule of primary law against which it is possible to test the validity of an exemption provided for [by the Directive]'.

The digital single market – the future?

In December 2011, the EU issued a communication on the future of VAT, which stated: 'The issue of equal treatment for products which are available in both traditional and online formats provoked considerable reactions in the public consultation. Those issues need to be addressed.'

In May this year, the EU issued a communication on a digital single market strategy: this includes a proposal to take legislative steps to modernise and simplify consumer rules for online and digital purchases. The communication envisages a digital single market 'where individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition'.

This is, of course, in line with long-standing EU principles such as fiscal neutrality, but glosses over some of the problems that arise with VAT and with the issue of electronic books in particular. The 'issues [that] need to be addressed' in 2011 remain open and – given the recent decisions of the ECJ – may need to be addressed by the EU in some statutory form.

Chartered Institute of Taxation

Results and prizes

May 2015

Congratulations to all those who have achieved success in the May 2015 CTA exams. Those who have now met the examination requirements for membership of the CIOT are listed below. Full details of those who have achieved distinctions, obtained certificates of competency, etc can be found on the CIOT website at www.tax.org.uk.

Chartered Institute of Taxation

The Chartered Institute of Taxation, the principal body in the United Kingdom concerned solely with taxation, announced on 22 July 2015 the results from its examinations taken by 1,189 candidates on 6 and 7 May 2015.

The Institute President, Chris Jones, commenting on the results said:

'I would like to offer my congratulations to all 907 of the candidates who have made progress towards becoming a Chartered Tax Adviser as a result of passing one or more papers at the May 2015 examination. 235 candidates have now successfully completed all of the CTA examinations and we very much look forward to them becoming members of the Institute in the very near future.'

CTA prizes and awards

The Institute Medal for the candidate with the best overall performance attempting the Awareness Paper and two Advisory Papers (all at the same sitting).
The medal has been awarded to **Daniel Pople** of Bristol, where he is employed by Deloitte LLP.

The Gilbert Burr Medal for the candidate with the highest mark in the Advisory Paper on Taxation of Owner-Managed Businesses.
The medal has been awarded to **Ian Kent** of Maidstone, where he is employed by Crowe Clark Whitehill LLP.

The Spofforth Medal for the candidate with the highest mark in the Advisory Paper on Inheritance Tax, Trusts & Estates.
The medal has been awarded to **Fiona Louise Walker-Buckton** of Ely, who is employed by PEM in Cambridge.

The Ronald Ison Medal for the candidate with the highest mark in the Advisory Paper on Taxation of Individuals.
The medal has been awarded to **Elizabeth Anne Fisher** of Chesterfield, where she is employed by Mitchells Accountants.

The Victor Durkacz Medal for the candidate with the highest mark in the Advisory Paper on VAT on UK Domestic Transactions, IPT & SDLT.
The medal has been awarded to **Natasha Siddiqi** of Radstock, who is employed by EY in London.

CTA distinctions

Distinctions are awarded to candidates for the following papers:

Fiona Louise Walker-Buckton
(PEM, Cambridge)
(Advisory – Inheritance Tax, Trusts & Estates)

Aleksandr Firsov (Barking)
(Advisory – Taxation of Individuals)

Elizabeth Anne Fisher
(Mitchells Accountants, Chesterfield)
(Advisory – Taxation of Individuals)

Harry Warren (Deloitte LLP, Cambridge)
(Advisory – Taxation of Individuals)

Laura Wycherley (Stockport)
(Advisory – Advanced Corporation Tax)

Distinctions are awarded to candidates whose answers reflect an exceptional level in the Advisory Papers and the Application and Interaction Paper. Distinctions are not awarded for the Awareness Paper.

The John Wood Medal for the candidate with the highest mark in the Advisory Paper on Advanced Corporation Tax.
The medal has been awarded to **Laura Wycherley** of Stockport.

The Ian Walker Medal for the candidate with the highest mark in the Awareness Paper.
The medal has been awarded to **James Pestell** of Haverhill, who is employed by BDO in London.

The Avery Jones Medal for the candidate with the highest mark in the Application and Interaction Paper.
The medal has been awarded to **Stephanie Court** of Southampton, where she is employed by HSBC.

The LexisNexis Prize for the candidate with the highest total marks in two Advisory Papers (taken at the same sitting).
The prize has been awarded to **Daniel Pople**, winner of the Institute Medal.

The CCH Prize for the candidate with the highest distinction mark.
The CCH prize has been awarded to **Elizabeth Anne Fisher**, winner of the Ronald Ison medal.

The Medals, Prizes and Distinctions are awarded for each examination paper subject to the discretion of Council and the attainment of a satisfactory standard, regardless of whether the examination requirements for membership have been met.

CTA results

In addition to success in the required papers and E-Assessments the criteria of experience must be satisfied to be eligible for membership of the Institute. The following candidates have met the examination requirements for membership.

+ = Award Winner
* = Distinction
These are awarded on a per paper basis.

A
Adams V C S (Melton Mowbray)
Agarwal M (London)
Ahmed F (Woking)
Akram M J (Cheadle)
Allen E T S (London)
Alliott H L (Birmingham)
Angove A J (Falmouth)
Appleton S (Harrogate)
Arthur V (Benfleet)

B
Barron J (Douglas, Isle of Man)
Batham-Tomkins K R (Sheffield)
Benchis L (London)
Berman A (London)

Bharmal Z (London)
Bhudia B (Harrow)
Bidgood C G (Great Yarmouth)
Blades S M (Goole)
Boardman R (Manchester)
Bonner C (Milton Keynes)
Bourke J L (Turleigh)
Brassey J H (Ilford)
Brecker J (London)
Brodie K R (Sheffield)
Brown S (Preston)
Brownlee L D (Dudley)
Burnside C (Bristol)

C
Calloway T (Petersfield)
Cansdale L (Andover)
Carr S (London)
Carter B R (Orpington)
Chalk F (London)
Chappell L E (Melksham)
Christopher V L (Poole)
Chundydyal P (Mitcham)
Claridge J (Cheltenham)
Clark D (Kent)
Cooke M N (Burton-upon-Trent)
Coulson M (Bushey)
Coupe E (Preston)
+Court S (Southampton)
Coward H (London)
Crabtree D (London)
Crean H (London)
Currie D (Edinburgh)
Cussons-Mercado S A (Tunbridge Wells)

D
Davis G (Maidenhead)
Dewes S (London)
Dhanda S K (Sutton Coldfield)
Dhar H S (Pinner)
Dickie R J (Eastleigh)
Dickson A J R (Sundridge)
Dipple S (Cambridge)
Donnellan A (London)

E
Eastham P (Sale)
Easton K (Bedlington)
Emery S (Rushden)
Eseimokumoh K (Newcastle upon Tyne)
Evans N A (Bronte, Australia)

F
Falder A I (Leatherhead)
Fenton A (Hailsham)
Fyfe J (Exeter)

G
Ganz R (London)
Gibbs A (Chichester)
Gibson H (Grantham)
Golden K (London)
Gorman H E (Bramhall)
Gorst A L (St Neots)
Goulding J (Liverpool)
Gowrinath A (Tadworth)
Graham D (Carlisle)
Graham M (London)
Graham M (London)
Greenwood A (Colchester)

H
Halls C (Epping)
Hards J D (Ramsgate)
Harlow K (Derby)
Harper L (Warrington)
Harvey J S (Bridgwater)
Hawkings S E (Beckenham)
Hazell S E (Swindon)
Heinsar E (Edinburgh)
Helliwell R A (Carshalton)
Hemsley B (Oxford)
Henley-Marshall M (Nottingham)
Henry C J (Belfast)
Henshaw A (Leicester)
Hidovic-Rowe D (Birmingham)
Hollingsworth G K (Peterborough)
Hoodless S (Guildford)
Howarth N (Southampton)
Howker T (London)
Hui J (Brentwood)

I
Ismail F F (Coulsdon)

J
Jamieson K A (Lerwick, Shetland)
Jarrett J L (Rochester)
Jepson T W (London)
Jones D J (London)
Jorgensen V (York)

K
Kaur R (Walton on Thames)
Kelly J G (Newry)
Kelsey S E A (Nottingham)
Kennedy J (Pirbright)
Kerry J (Durham)
Keylock R W I (London)
Khan R (Osterley)
Khilji Z (Burton-upon-Trent)
Khin T (Watford)
King R (Derby)
Klyman G (Southend-on-Sea)
Knight D A (Chichester)

L
Lane C (High Wycombe)
Ledgerwood-Evans K L (Plymouth)
Leeman T G (Chesterfield)
Lindfield A J (Salisbury)
Lines L J (Ivybridge)
Loveless C (Guildford)
Lowery R (Sheffield)
Lundin M B (London)

M
Maan K (Walsall)
Mackie S C (Prestwick)
Madhok K (London)
Maher C J (Braintree)
Main L C (Burnham-on-Crouch)
Mangarudova K (Ilford)
Manley C (Canterbury)
Martin B (Bridgend)
McCulloch E J (Luton)
McDonald B (Leeds)
McGehee W (London)
McIndoe D R (Perth)
McVittie H E (London)
Meos H (London)
Millington F (Stoney Stanton)
Modrea I M (London)
Moore T K (Spalding)
Morris B J C (Malvern)
Moverley E L (Manchester)
Mulodjanov M (London)
Murkin C (Watford)
Musgrove T R (Sowerby Bridge)
Mustafa A (London)

N
Nash A (Southampton)
Norwood E P (Willesden Green)
Nwobodo A (London)

O
O'brien C (London)
O'Leary J (Chichester)
Oliver S J (Leeds)
O'neill S C (Nottingham)
Oram J (Southampton)
Orgill A R (Birmingham)

P
Pajaujyte K (London)
Parkin R (London)
Patel B (Wellingborough)
Patel G (Harrow)
Patel S (Southampton)
Payling H C (St Albans)
Payne E (Bolton)
Payne N T (Grantham)
Percy R H (Bournemouth)
Perkin K A (Sittingbourne)
Perry S V (Rainham)
+Pestell J (Haverhill)
Petre L (Hoddesdon)
Petty A (Long Eaton)
Phelan J J (Richmond)
Picciano G (Birmingham)
Poon A A J (London)
+Pople D (Bristol)
Potter E C (Sawtry)
Powell A (Stafford)
Powell B (Kidderminster)
Pritchard A M (Newport)
Purnell J (Bristol)

R
Raguszewska A B (London)
Rahmatova N (London)
Rawlinson O (Oldham)
Regan K A (Hassocks)
Regnier J C (Harrogate)
Reynolds B (Godalming)
Richards J P (Blackpool)
Rickman C (Bournemouth)
Roberts H J (Northampton)
Robinson R S (Brackley)
Rose A (Horsham)
Rowland M (Ingatestone)

S
Sami J (Birmingham)
Sandell P (Leatherhead)
Seewooruttun R (Frome)
Shah A (Northwood)
Sher M (Woking)
Shooter C R (Leicester)
Short C (Haslemere)
Simper T (Ely)
Smales J (Barnsley)
Smith K (Northampton)
Smith R (Tunbridge Wells)
Smith T (London)
Soni M (London)
Spark K (London)
Springett S J (Dartford)
Stevenson C B (Ashford)
Stevenson M W (Newtownards)
Surtees G (Leeds)
Sutton D I (Sheffield)
Swift D (Stockport)

T
Teal L (London)
Thomas C (Leeds)
Thompson A (Worthing)
Tiell K J (London)
Timms I J (Banbury)
Tollefson A (Tunbridge Wells)
Trill R (Harpenden)
Trower A (Abingdon)

V
Varma A (Oldham)
Vijayakumar A (Woking)
Vink A L (London)
Vithlani R (Cheadle)

W
Wall K (London)
Walsh R J (Warrington)
Watt R (London)
Way E (Derby)
Webb S (Reading)
Whiteley T W (Telford)
Whittome T (Manchester)
Wiklund A (Cobham)
Williams D J (Torquay)
Williams S (Frome)
Wilson S (Crawley)
Wilson S (London)
Witchell D E (Aberdyfi)
Withers A (Exeter)
Wright H (Salford)

Y
Yirrell C (Sydenham)
Youssouf Z (St Helier, Jersey)

Z
Zaheer Q (Horsham)

Practical Tax People
Association of Taxation Technicians

Chartered Institute of Taxation

Results and prizes

May 2015

Congratulations to all those who have achieved success in the May 2015 ATT exams. Those who have now met the examination requirements for membership of the ATT are listed below. Full details of those who have achieved distinctions, obtained certificates of competency, etc can be found on the ATT website at www.att.org.uk.

Association of Taxation Technicians

The Association of Taxation Technicians, the oldest and largest body concerned solely with tax compliance, announced on 22 July 2015 the results of its examination taken by 1,054 candidates on 6 and 7 May 2015. The Association reports that a high standard of performance was achieved by many candidates. The Association President, Michael Steed, commenting upon the results said:

'It gives me great pleasure to congratulate the successful candidates from the May sitting of our exams. In total candidates sat 1,540 papers and 1,067 passes were achieved with 88 distinctions awarded for exceptional performance.

Our modular system allows candidates to study at their own pace. Whether they are working towards full membership by sitting the two compulsory and one optional paper together with our two E-Assessments or simply wish to obtain one or more Certificates of Competency in their specialist area. The flexibility continues to be popular.

As a result of the examinations 123 candidates have now completed the examination requirements for membership and a further 197 candidates have completed the examination requirements for membership by passing the two E-Assessments since the last pass list was issued in January 2015. I look forward to meeting as many as possible at our popular admission ceremonies held at the House of Lords.'

ATT prizes and awards

The Medals and Distinctions are awarded for each examination paper subject to the discretion of Council and the attainment of a satisfactory standard, regardless of whether the examination requirements for membership have been met (with the exception of the Association Medal).

The Association Medal for the best overall performance taking three written papers at one sitting, including having passed both E-Assessments in Professional Responsibilities & Ethics and Law. **Shrenee Patel** (Deloitte LLP, London)

The Ivison Medal for the highest mark in the paper on Personal Taxation. **Edward Andrew Symons** (Walker Moyle Chartered Accountants, Penzance)

The Jennings Medal for the highest mark in the paper on Business Taxation & Accounting Principles. **George Edmondson** (Deloitte LLP, London)

The Collingwood Medal for the highest mark in the paper on Business Compliance. **Ahmad Ali Qasim** (PwC, Manchester)

The Stary Medal for the highest mark in the paper on Corporate Taxation. **Edward Andrew Symons** (Walker Moyle Chartered Accountants, Penzance)

The Kimmer Medal for the highest mark in the paper on Inheritance Tax, Trusts & Estates. **Stephanie Daniel** (OneE Tax Ltd, Bolton)

The Gravestock Medal for the highest mark in the paper on VAT. **George Massey-Reed** (PwC, London)

The Johnson Medal for the best overall performance when passing both the Professional Responsibilities & Ethics and Law E-Assessments within a six month period. **Dabeluchukwu Onugha** (KPMG, Aberdeen)

The LexisNexis Prize for the highest total marks when taking three written papers at one sitting and obtaining the highest total marks on those three papers. **George Edmondson** (Deloitte LLP, London)

The President's Medal is awarded at the discretion of the President to an outstanding candidate or candidates not otherwise eligible for a prize. **Alicia Shrimpton** (Deloitte LLP, St Albans)

ATT results

In addition to success in the required Certificate papers and E-Assessments the criteria of experience must be satisfied to be eligible for membership of the Association. The following candidates have met the examination requirements for membership.

+ = Award Winner
* = Distinction
These are awarded on a per paper basis.

A
Allen S (Uxbridge)
Amersi N Z (Northwood)
Anderson C A (Ramsey)
Ashton K (Chelmsford)
Ayles L (Sidcup)

B
*Barnes L (Gravesend)
Beciri L (London)
Beever A (London)
Berkley S (Warrington)
Bode P (London)
Boothman L (Welling)
*Brand J (Broadstairs)

Brown L (Bury St Edmunds)
Busuttil J M (Bury St Edmunds)

C
Chan S (London)
Chime S (London)
Chivindika K (Leeds)
*Clarke J (Shepperton)
Coppin N (London)
Cottier-Brown D (Blackpool)
Cross O (Hednesford)
Curless M (London)
Currie F R (Motherwell)
*Currie R (Preston Brook)

D
Da Silva M (London)
+*Daniel S (Warrington)
*Davami C (Gerrards Cross)
Duckling A (London)

E
+*Edmondson G (London)
Evans A (Cardiff)

F
Farmer G (Maidstone)
Forsey L (Bristol)
Francis L (Chelmsford)
Friend C (Bromley)
Fry H (Castletown)

G
Gilbert S (South Woodham Ferrers)
*Grimes E (Glasgow)
*Grimes P (London)

H
Harding R (Hemel Hempstead)
Harrison B B B (Witham)
Haughey K (Weston-super-Mare)
Hippolyte-Mccarthy T L (Redhill)
Hirani D (Pinner)
Hodgson N (Wakefield)
Holgate I (Reading)
Holtom L K (London)
Hooper C (Chester)

J
Jhite S (Hendon)
*Johnson D (London)
Jones E (Chirk)

K
Kahwati J (Enniscorthy)
Kaur V (Leicester)
Kelland S J (Harrow)
Kemp J (Coventy)
Kim S (London)
Knowles J S (Douglas, Isle of Man)
Kular J (Grays)

L
Leech G (Birmingham)
*Liu L (London)
Lyttle R (Craigavon)

M
Mackay A (London)
Markham R (London)
Marks L (Leeds)
Martinez C (Aberdeen)
*Massey J (Hornchurch)
+*Massey-Reed G (East Ham)
Masters T (Berkhamsted)
Maxwell R (Dumfries)
McClelland S (London)
McKenzie J (Canterbury)
McKerron N (Truro)
*Millett K (Wellington)
Minar J (St Neots)
Mohindroo R (Greenford)
*Morales C (Donaghadee)
Morrison N (Stanmore)
Mowatt C (Manchester)
Mulholland E P (Newtownabbey)
Murray B (London)

N
Negentsova D C (Enfield)
Nolan J J (Luton)

O
O'Neill J (Berkhamsted)
+*Onugha D (Aberdeen)

P
Parker J (Bristol)
+*Patel S (Harpenden)
Peck A (Winchester)
Powell M (London)
Price A (Swansea)

R
Ramshaw J (Gosforth)
Randle M (Rugby)
Ridley G (East Village)
Robinson C (Selby)
*Robinson K (Buxton)
Robinson L (London)
Rudling A (Greenwich)
Ruzgyte I (Bristol)
Ryan C (Milton Keynes)
Rzeznik I (Edinburgh)

S
*Sadheura J (Northwood)
Sands A (Heathfield)
*Shakir N (Birmingham)
Sherwood C (Cambridge)
+*Shrimpton A (Bedford)
Skrzypczak B (Petersfield)
Souter O (Southampton)
Speller H (Leeds)
Spencer A (Reading)
Sukumaran L (Slough)
Suresh O (Birmingham)

T
Tang L M (London)
Thomas G (Bristol)
Thompson B (Mirfield)
Thompson E (Belfast)
Travis J (Nottingham)

V
Veck J (Reading)

W
*Warren N F (Brentwood)
*Watkins S (Teynham)
Watson M L (Bristol)
*Webster P (Wolverhampton)
White S (London)
Wilkins S E (Gerrards Cross)
Wilmott S M (Rossendale)

Y
Young J E (Ripley)

Since 1 January 2015 the following candidates have completed the ATT examination requirements for membership by successfully passing the E-Assessments in Professional Responsibilities & Ethics and Law, having previously passed the three required written papers.

A
Ahmad S (Gravesend)
Akwah M (London)
Alderson M (Leyburn)
Anderson S (Cheltenham)
Andrews S K (Newcastle upon Tyne)
Asante-Wiredu K (Basingstoke)
Atkinson K L (Grimsby)

B
Bailey P A (Southampton)
Barr A (Ratho)
Baxi J (Harrow)
Beck V (Jersey)
Bees H (London)
Bennett J E (Exmouth)
Birtwell S (Preston)
Botterill S (Gateshead)
Bradley D (Selsdon)
Briggs E J (Leyland)
Buist S (Newton Aycliffe)
Bunney C C (Leigh-on-Sea)
Burrows S (Leeds)
Burt E (Chobham)
Butt T W (Sherborne)

C
Calver A (Wimborne)
Carrie P (Beauly)
Cheetham T (Preston)
Chhaniyara D (Teddington)
Choudhury A T (London)
Clark B (Broxbourne)
Clarke E R (Leicester)
Clibbens C (Leigh-on-Sea)
Connor J J (Chorley)
Cooper M R (Southampton)
Crane S L (Gloucester)
Cranfield B S (Ipswich)
Crawford J (Oswestry)
Crookes K (London)

D
Dale A J (Oldham)
Daly A (Donaghcloney)
Davis R (Bristol)
Devine G (Strabane)
Dhanani J (Thornton Heath)
Doherty P (Dungannon)
Donald N (Aylesbury)
Dunbar S M (Elgin)
Duncan S M (Longmorn)

E
Enright A (Glasgow)

F
Farnham C L (Yeovil)
Ferguson S P (Upper Poppleton)
Fernandes J S M (Loughton)
Finch D (Blackpool)
Freeman D (Ripon)
French M (Nuneaton)

G
Gaselee D J (London)
Gaulton T L (Weston-super-Mare)
George S (Hereford)
Ghatoray J S (Uxbridge)
Gibbs A (Salford)
Gilliam A (Newton Abbot)
Graham C (Stoke-on-Trent)
Green C (Headley)
Greenwood W A (Mill Hill)
Gundes I (Enfield)
Guppy R J (Dorchester)

H
Halifax C (Watford)
Haque S S A (London)
Harris R A (Southampton)
Hassall L (Manchester)
Hay B R (Aberdeen)
Hogbin E (Bexleyheath)
Holland R (Burton Latimer)
Howell K (Wrexham)
Hughes B (Cambridge)

I
Isakova A (Bromsgrove)
Ismailova S (London)

J
Jackson S (Purley)
Jackson V (Lanchester)
Janda P (London)
Jenkins K A (Brockenhurst)
Johnson L A (Newark)

K
Kainth K (Leicester)
Kan M S M (Basingstoke)
Karania P (Harrow)
Kasama M (Twickenham)
Kawazoe K (West Kensington)
Keefe E J (Basildon)
Kingham C (Harrow)
Kirman J W (London)
Krezlewicz M (London)
Ku T L W (London)
Kunwar S (Harrow)

L
Lawrence K (Gloucester)
Leech D (Hove)
Lindon R D (Walsall)
Litherland K (Wigan)
Little N (Craigavon)
Lloyd N (Cowbridge)
Lock S J (Manchester)
Logaraja S (Pinner)

M
Mackay C (Hove)
Marshall T (Llantwit Major)
Matthews H (Leeds)
Matthews R (Larne)
McManus B (Hunton Bridge)
McNeill M B V (Edinburgh)
McToal S M (Ballymoney)
Meade L (Kenilworth)
Meir S J E (London)
Miller O (Watford)
Milliner K (Bristol)
Moon S E (Stockport)
Moore C (Kidderminster)
Morris C D (Bromley)
Mortland J (Alfreton)
Moshiri M (Worthing)
Moss M J (Bristol)
Mulcahy K (Folkestone)
Murphy B M (Chislehurst)

N
Nash V (Southampton)
Nicholls S (Woking)
Noble-Brown M (Weston-super-Mare)

O
Oba S (London)
Offner S R (Thamesmead)
Oliver S (Chester)
Oozeerally R O B (London)
Outram J (Dartford)
Ouyang Q (Bristol)

P
Palacin J (London)
Panta N B (London)
Parker-Hodds L A (Newbury)
Parmar N (Luton)
Parnham R (Ashby-de-la-Zouch)
Pascoe L A B (Marlborough)
Patel N (Enfield)
Patel R (Glasgow)
Paterson D (London)
Paterson R (London)
Paterson R (Newcastle upon Tyne)
Porteous J (Aylesbury)
Portokalaki A (London)
Potter J (Clogher)
Purcell A P (Preston)
Purewall A (Chippenham)

R
Rai K (West Bromwich)
Ralph C (Bexleyheath)
Rogers B A (Stevenage)
Roncoli C E (London)
Rushton S (Caversham)
Russell T (St Albans)

S
Sahney N (Huntington, York)
Saunders J M (Wantage)
Schofield R (Rotherham)
Seeley V (Rickinghall)
Seeruthun-Kowalczyk M (Edinburgh)
Selfe J (Tring)
Shah J (Stanmore)
Shah S V (Wembley)
Shanks A P (Carlisle)
Sharland F A (Wellington)
Shaw A (Shrewsbury)
Shimmin M J (Douglas, Isle Of Man)
Sin G (London)
Sivalingaratnam K (London)
Smith R M (Reading)
Speight S E (Norwich)
Spriddle J D (London)
Springett M (Dartford)
Stanfield W (Armagh)
Stokes H (Caerphilly)
Swinton C G (Swansea)

T
Taylor R (Exeter)
Thang D K Z (Luton)
Thomas H (Rochford)
Thompson S (Consett)
Thomson J S (London)
Tien M (London)
Tilburn K A (Harrogate)
Todd M (Hull)
Totty M P (Bunbury)
Trace D (Bridgwater)
Tran M (London)

U
Usmanova Z (London)

V
Vedie-Lorge L C Y (London)

W
Wade L (Teignmouth)
Walmsley H J (Preston)
Ward D (Gillingham)
Warne M (Wantage)
Waskar L (London)
Watson J L (Poole)
Weeks M (Bexhill-on-Sea)
White K (Bedford)
Whitlocke M (Southampton)
Williams K E (Altrincham)
Wolodzko U (Reading)
Woodfall C T J (West Malling)
Wright A J (Hoddesdon)

Y
Ye L (Barking)

Z
Zishiri B (Kettering)

The following candidates have also completed the ATT examination requirements for membership.

Baker N (Beresfield)
Clarke R (Ulverston)
Devine A (Etchingham)
Greiff J (Holmfirth)

Those eligible to apply for a Certificate of Competency for individual papers passed in the examinations held in May 2015:

1 – Personal Taxation
2 – Business Taxation & Accounting Principles
3 – Business Compliance
4 – Corporate Taxation
5 – Inheritance Tax, Trusts and Estates
6 – VAT

+ = Award Winner
* = Distinction
A list of candidates achieving a Distinction in one or more papers is attached.

A
Abrahams N (Par) (2)
Abusweder S (Windsor) (2)
*Adams S (Leigh) (5)
Afzal M A (London) (1)
Agnew S (Ballyclare) (1)
Ahmed Azahari T (London) (2)
Akhtar W (Leyton) (1)
Ali Z (Newownabbey) (1)
Alimohamed A (Stanmore) (3)
*Allen M (Bristol) (1,2)
Allotey M A (Langley) (4)
Alom J (Birmingham) (4)
Andrews H (Bradford) (1,2)
Andrews J (Gillingham) (1,4)
*Annand K L (Edinburgh) (2,6)
Anstee H M (Coventry) (1,2)
Arkhipova E (London) (5)
Armsby J (Broxbourne) (2)
Armstrong J (Luton) (1,2)
Arnold R (Wells) (1)
Ashby L (Cheddar) (2)
Ashcroft E (Hartley Wintney) (1)
Ashworth M (Hereford) (1)
Atkey A (Bournemouth) (1,2,4)
Auburn D (Stevenage) (1,3)
Aust C J (Bath) (1)
Austin K (Orpington) (2,3)

B
Bannon C (Belfast) (1)
Beaumont A (Polmont) (1)
Belkarty J (London) (1)
Bennett K (Watford) (2,4)
Bennington J P (Canterbury) (2)
Bentham J (Leyland) (1,2)
Besztroova L (Orpington) (6)
Bethwaite P (Westlea) (1)
Betts C (Leicester) (1)
Bhana A (Batley) (2,4)
Bhudia R (Gants Hill) (1,2)
Bills L (Aberdeen) (1,2)
Bird T J (Exeter) (2,3)
Blair A C (Belfast) (1,2,4)
Blake A (Sunderland) (1,2,3)
Blundell A N (Gillingham) (1)
Blyth A (Bonnyrigg) (1,2,3)
Blyth A (Didsbury) (2)
Bolaji A (Newcastle upon Tyne) (1,2,3)
Bond R J (Plymouth) (1)
Bonell A P (London) (2)
Bowen N (Pembroke Dock) (6)
Bowyer C (Devizes) (1,4)
Boyle H (Coventry) (1)
Bozian F (Maidenhead) (2)
Bradbrook J (Dereham) (3)
Breen L (St Clement, Jersey) (6)
Broadhurst C (Sevenoaks) (1)
Brodie D R (St Johns, Isle of Man) (5)
Brogan K (Ashford) (2)
Broughton R (London) (2,5)
Brown C L (Laurencekirk) (3)

Brown E L (Stevenage) (1)
Brown G (Crumlin) (1)
Brown G A (Glasgow) (1)
Brown I R C (Manchester) (2)
*Brown M (Basingstoke) (1,2,4)
*Brown R (Birmingham) (1,2,3)
Buckland J A (Wirksworth) (2)
Bulvinaite I (Grays) (2)
Bunce M (Clavering) (1)
Burgess S (Ashford) (2)
Butterworth J A (Nottingham) (1)
Bygrave J (Coulsdon) (1,2)

C

Carman R (Ashford) (1)
Carp M (Didcot) (2)
Carroll L (Carrickfergus) (1)
Carruthers W K (Upton-upon-Severn) (6)
Carter J (Tewkesbury) (2)
Cartwright P (East Guldeford) (1)
*Carvill S (Downpatrick) (1)
Cavenagh C (London) (2)
Cawley R (Dungannon) (1)
Cawsey K J (Holcombe) (2)
Chadwick I (Edinburgh) (1,2)
Chadwick L (Trowbridge) (1,5)
Chaloner M B (Christchurch) (2)
Chan E K S (Morden) (2)
Chandrappa S (Bangalore, India) (1)
Chaplow A (Petersfield) (2,4)
Charlesworth L (Hungerford) (5)
Chatha S K (Grays) (1)
Cheema R (Derby) (2,3)
Cheung P G F (Derby) (4)
Chew Z B (London) (2)
Choi L (London) (1)
Chowdhury M (London) (1)
Chowdhury S (London) (3)
Chriss H (Stourbridge) (1)
Christodoulides E (Limassol, Cyprus) (6)
Christopher H J (Wareham) (1,3)
Chrysostomou P (London) (1)
Clark D (Hockley) (1)
Clarke A J (Abingdon) (1)
Clarke D (Upminster) (5)
Clarke H (Windsor) (1)
Clarke J G (Harrogate) (1)
Clayton P (Sevenoaks) (1,2)
Clifford O (Gloucester) (1,2)
Clifton W (Croydon) (1)
Clinton L (Glasgow) (1,2,5)
Co K (London) (1)
Cochrane L (Peterborough) (1)
Cocks J (Eltham) (1)
Cohen S M (Lincoln) (1)
Collins C (Ryde) (1)
Collins N (Witney) (1,2)
Collins T (Grays) (1)
Commander Z L (Plymouth) (6)
Connolly S (Bangor) (2)
Constantakis A (Fleet) (1)
Cook T (Ashington) (1,2,3)
Corcoran A (Manchester) (1)
Cotter J J (Chingford) (1)
Cowan A (Dundee) (2,4)
Coward R J (Kirkby-in-Furness) (1)
Cox M (Leicester) (2,4)
Crapper S (Wakefield) (1)
Cripps A (Norwich) (2)
Csicsak A (Newry) (1)
Cubitt C (Acton) (1)
Curtis C (Brierley Hill) (2,4)
Curtis S (Wells) (1,2)
Cushnahan A (Belfast) (1,2)

D

Dale R (Sittingbourne) (2)
Dance J (Rochester) (3)
Darby E (Leigh On Sea) (2)
Dark D (Chelmsford) (2)
Dattani C (London) (1)
Davies B D (Manchester) (2)
Davies C I J (Crawley) (2)
Davies G M (Porthmadog) (1)
Davies K T (Tonypandy) (4)
Davis B (St Helier, Jersey) (1)
Davis B D (Newcastle upon Tyne) (1,2,3)
Davoren S M (London) (1)
Dawe S J (Maidstone) (1)
De Rozarieux C (Eastbourne) (2)
De Souza M (Sheffield) (1)
Dean M (Cambridge) (1)
Degen W (Woodford Green) (1,2)
Del Valle P (London) (4)
Dent L (London) (1)
Devenney E (Carrickfergus) (1)
Dharamsi S (Watford) (3)
Diamant R A (Sandy) (2)
Dickens C (St Neots) (1)
Dodge I T (London) (1,2)
Donegan F (London) (4)
Donnelly R (Glasgow) (1)
*Dosanjh N (Southampton) (1,2,4)
Drake L R (Southampton) (4)
Dueck H (Swansea) (1,2)

E

Ebrahim Y (Harrow) (1)
Edwards M (Tonbridge) (1)
Edwards R M (St Albans) (1,2)
Edwards-Hughes K (Leeds) (1,2)
Egner J (Colchester) (1,2)
Eldridge S J (Luton) (2)
Eluwade K O (London) (1)
English E (Shoreham By Sea) (3)
Evans C (Bishops Stortford) (2,4)
Evans E E M (Cynwyl Elfed) (3)
Evdokimou S (London) (1)
*Everson K (Plymouth) (1)

F

Fairhall M (Sutton) (1,4)
Farook Gafoor F A (Wembley) (1,4)
Fellows C (Epsom) (2)
Fielding A (Altrincham) (2,4)
Fisher R (Amesbury) (4)
Fletcher H (London) (1)
Forden C (Burwell) (1)
Fort L (Burnley) (1,2)
Foster R (Dartford) (2,4)
Foulis L (Kirkwall) (1,6)
Fowler D J (Preston) (2)
Frazer S J (Liverpool) (1,2,4)
Frost S (Henlow) (2,3)
Fry L (Bristol) (1,2)
Fry S (Bristol) (4)
Futter C S (Great Yarmouth) (1)
Fynney C (Chorley) (4)

G

Gainham L (Kingswinford) (1)
Gallagher-Kennett G (Kidderminster) (1,4)
Gallikova M (St Madoes) (1)
*Galloway H (St Helier, Jersey) (1)
Garfitt J S (Swinton) (1)
Gathercole A D (Bristol) (1)
Gendall E S (Helston) (3)
Gharu R (London) (2,4)
*Gibson S (Ashford) (1,2)
Gifford J (Rochester) (1)
Gilbey J (Brentwood) (1,2,4)
Gillard V J F (Honiton) (1)
Gipps A J (Cheshunt) (2)
Giralt Arres S (London) (1,5)
Gohil A (Ilford) (2)
Goodman J (London) (1,2,4)
Gor N (Finchley) (1,2)
Graham L (Glasgow) (1)
Green S (Southampton) (4)
Greenwood B (Stanford-le-Hope) (5)
Greer A (Motherwell) (1,2)
Grice A (St Annes-on-Sea) (1)
*Griffin H (Reading) (1,3)
Gupta M (London) (2)
Gurung P (Camberley) (1,2)
Guy P (Sedgefield) (2)

H

Hack H (Colchester) (5)
Haile E (Bristol) (2,5)
Hainsworth D (Tewkesbury) (2,3)
Hall L M (Norwich) (5)
Hall R W (Bromley) (5)
Halliday J (Southsea) (1)
Hamilton A (Bolton) (1)
Hamilton S (Braintree) (1)
Hamze C L (London) (1)
Hardiman N R (Ware) (4)
Harding J (Houghton-le-Spring) (2)
Hardy C L (Barnsley) (4)
Harris D (Maidstone) (6)
*Harris K (Tunbridge Wells) (1)
Harvey J A (Dymchurch) (5)
Haryott C M L (London) (4)
Hassan N (Ilford) (2,4)
Haverson C (Ashford) (1)
Hawkins J (Stoke-on-Trent) (1)
Hawthorne A (Dundonald) (1)
Heaney J W (Dinnington) (1)
Hemming S (Bromsgrove) (4)
Henry N (Ruislip) (1,5)
Herbert K (Bournemouth) (1,3)
Hibbins S M (Thatcham) (1,2)
Hill S (Sunbury-on-Thames) (1,2)
Hillier E (Stonesfield) (2,4)
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Hitchen-Gibbon E C (Luddenden Foot) (4)
Hoaglin A F (Longfield) (2)
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Hodgson B (Southampton) (2,3)
Hodgson J (Wigan) (1,2)
Hook C T (Stratford) (1,2)
Hotchen B J (London) (1)
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Hughes A (London) (1)
Hughes H A (Greenock) (1,2,4)
Hughes M N (Maidenhead) (1)
Hume J (London) (5)
Hume L (Livingston) (1,2)
Hussey J (Hull) (1)
Hutchings C A (Weston-super-Mare) (5)
Hutchison J (East Kilbride) (3)

I

Iachetta B I (Ipswich) (1)
Ingham J (Canterbury) (1,2)
Ingilby J (Harogate) (2)
Irons S (Ingatestone) (5)
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Islam S (Chafford Hundred) (1,3)

J

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*Javid M Q (Newport) (1)
Jeffs J (Swansea) (1,2,4)
Johnson A C (Newton Abbot) (1)
Johnson N (Ely) (1)
Johnson S (London) (4)
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Jones M (Salisbury) (1)
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K

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Kalyal H (Ilford) (1)
*Kaur H (Hanworth) (1,2)
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Koppel M (Birmingham) (1)
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Landscheit R (Alton) (1)
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Lawrence-Mcintosh S (London) (4)
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Lecrivain C (St Helier, Jersey) (2)
Lee S Y (Dartford) (5)
Leitch M A (Taynuilt) (4)
Levy M (London) (5)
Lewis T (Calne) (1,4)
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Lister N (Belsize Park) (1)
Loak O (Birmingham) (2,6)
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*Malone K (Cardiff) (1,5)
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*Markova N (London) (2,4)
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McGee K (Glasgow) (5)
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McKechnie J L (Brentwood) (2)
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McKillop N (Edinburgh) (1,2)
McMillan A (Dundee) (2)
Mead K E (Winchester) (1)
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Menzies N J (Silsden) (6)
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Miller E (Chester-le-Street) (4)
Mina M (London) (1,2)
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*Modi I (Harrow) (2,6)
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Molnar E N (Budapest, Hungary) (4)
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*Nicholson L (Stafford) (1)
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O
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Odeleye E (Hyde) (1)
O'dell A (Bedford) (3)
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Orr D (Oldham) (1,2)
*O'sullivan M (Bolton) (5)
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P
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*Panton I M (Ashbourne) (1,2)
Partsioja K (Southampton) (1,2)
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Patel Z (Ilford) (5)
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Phillips L R (Swindon) (3)
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*Pinniger L (Beckenham) (2,3)
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Podger E (Devizes) (1)
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+*Qasim A A (Manchester) (2,3)
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Romanczuk I (Harrow) (2)
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Ryan E (Chingford) (1)

S
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Sanusi R O (London) (1)
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Saud M (Whitefield) (1)
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Tomlinson J E (Dawlish) (6)
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Tóth Á (Budapest, Hungary) (4)
*Trimble C M (Annalong) (1,2,4)
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Turner C (Maidenhead) (2)
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Tyler G (London) (1)
Tyler-Squires R (Abingdon) (1)

U
Ubbey G (Birmingham) (1)
Uddin K (Inverness) (1,2,4)
Uttley P (Southport) (1)

V
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Vassell S (London) (1)
Venugopalaiah S (London) (4)
Viney L (Dukinfield) (1)
Visram S (Southampton) (4)
Volckman R (Purfleet) (1)
Vuong T (Guildford) (1)
Vyas P (London) (2)

W
Waine E P (Ashford) (2)
*Walker M (London) (1,5)
Walker M (Nr Kidderminster) (5)
Walmsley L (Sunderland) (1)
Wamala A (Manchester) (1)
Warren C D (Slough) (1)
Warren H (Bristol) (1,2,4)
Warwick M (London) (1,2,5)
Washington G (Fleckney) (4)
Waters J G (Hatfield Heath) (4)
Waters R (Stockport) (2,4)
Watson J (Gateshead) (2)
*Watson K (Orphir, Orkney) (1,4)
Watson T (Solihull) (1,2,4)
Webb B T (Romford) (2,4)
*Welch W S C (St. Albans) (1,2)
*Whalley A (London) (1)
Whelan S (Blackpool) (3)
Whittaker H (Fareham) (1)
*Whyte N (Houghton-le-Spring) (1,2)
Wicks L (Dunstable) (1)
Wild R (Norwich) (4)
Wilde K (Houghton-le-Spring) (1,6)
Wilkes R (Chesterfield) (1)
Williams C (Bromley) (2)
*Williams F (Barnet) (1)
Williams M J (Edenbridge) (1)
Williams R (Swindon) (3)
*Wilson C (Oxford) (1)
Wilson G (Liss) (5)
Wilson R (London) (1,5)
Wimborne S (London) (1)
Wingfield D (Walton-on-Thames) (1)
Wise L (Wellingborough) (2)
Wood A L (Leicester) (1)
Wood J (Wigan) (3)
Woodburn R (Kendal) (1)
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Wright J (Scunthorpe) (5)

Y
Yacoobali S (Dewsbury) (1)
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York S E (Kettering) (2,5)
*Yu M (London) (1,2,5)

Z
Zaman A (Sheffield) (1,2)

ATT distinctions

1 – Personal Taxation
Matthew Allen (Baker Tilly, Bristol)
Matthew Brown (Basingstoke)
Rachael Brown (EY, Birmingham)
Sinead Carvill (KPMG, Belfast)
George Edmondson (Deloitte LLP, London)
Kayleigh Everson (Crowe Clark Whitehill LLP, Reading)
Hannah Galloway (The Taxes Office, St Helier, Jersey)
Sophia Gibson (Ashford)
Heather Griffin (EY, Reading)
Elizabeth Grimes (Deloitte LLP, Glasgow)
Patrick Grimes (Deloitte LLP, London)
Katie Harris (Tunbridge Wells)
Mohammad Qasim Javid (Quantum Advisory, St Mellons)
Daniel Johnson (Frank Hirth, London)
Harpreet Kaur (Brebners, London)
Lucy Liu (Deloitte LLP, London)
Katherine Malone (PwC, Cardiff)
Alex Martin (Winchester)
Liam Nicholson (Baker Tilly, Stoke-on-Trent)
Dabeluchukwu Onugha (KPMG, Aberdeen)
Shrenee Patel (Deloitte LLP, London)
Graham Payne (BDO, Birmingham)
Emily Phelps (PwC, London)
Mario Raffa (Epsom)
Lucy Jane Rees (Grant Thornton UK LLP, Gatwick)
Jemma Renton-Rose (Zurich Financial Services, Swindon)
Jennifer Reynolds (EY, Newcastle upon Tyne)
Kyle Robinson (Deloitte LLP, Birmingham)
Kelly Scrutton (BDO, London)
Nicholas Shakir (Deloitte LLP, Birmingham)
Alicia Shrimpton (Deloitte LLP, St Albans)
Laven Sivarajah (PwC, London)
Edward Andrew Symons (Walker Moyle Chartered Accountants, Penzance)
Sophie Theodosiou (Mazars LLP, Milton Keynes)
Alice Whalley (London)
Nicola Whyte (PwC, Newcastle upon Tyne)
Fay Williams (BDO, London)
Christopher Wilson (HMG LAW LLP, Oxford)
Mengjie Yu (EY, London)

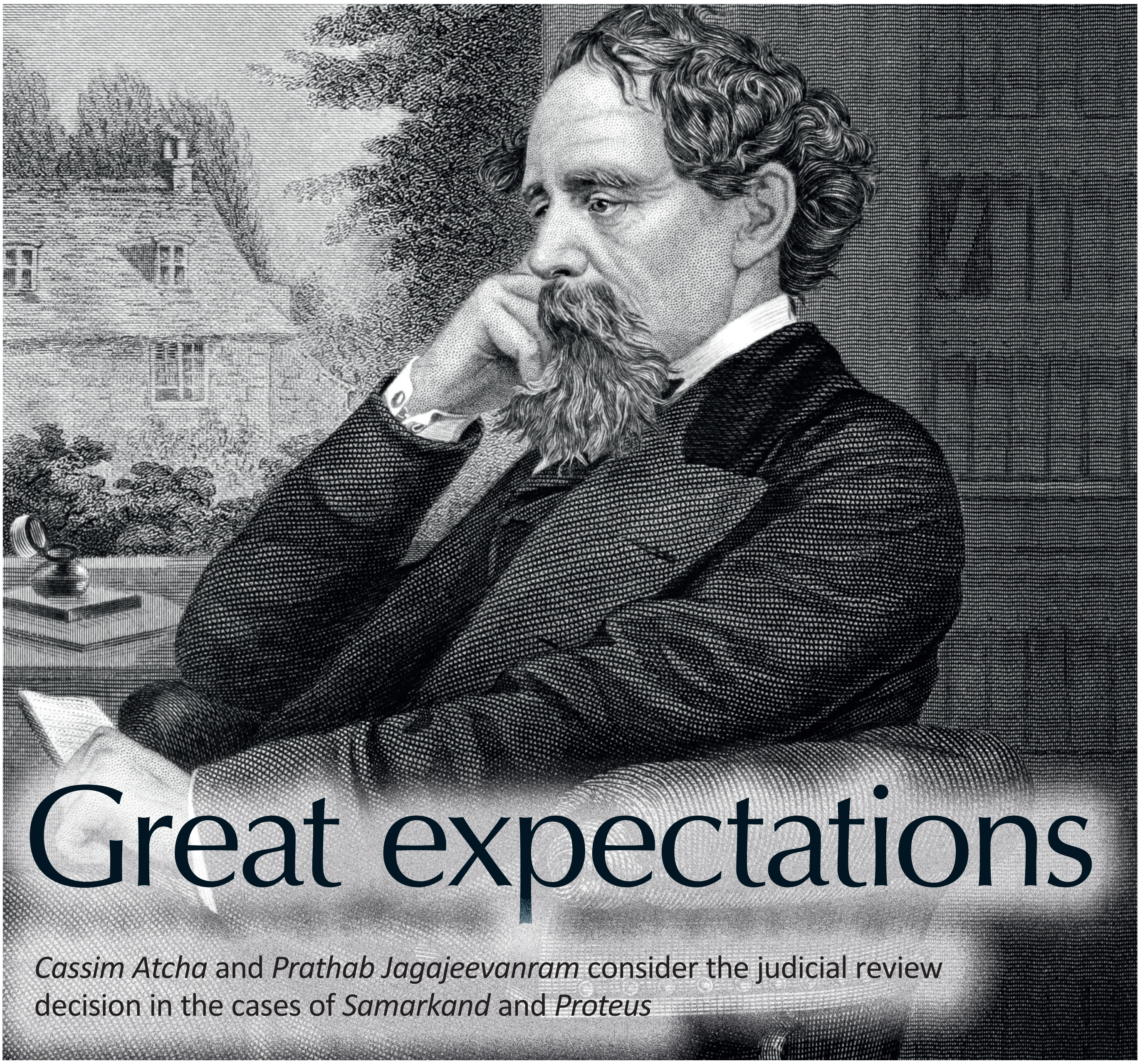
2 – Business Taxation & Accounting Principles
Liam Barnes (Deloitte LLP, London)
Matthew Brown (Basingstoke)
Rebecca Currie (Mitchell Charlesworth, Liverpool)
Cyrus Davami (Deloitte LLP, London)
Navpreet Dosanjh (BDO, Southampton)
George Edmondson (Deloitte LLP, London)
Patrick Grimes (Deloitte LLP, London)
Daniel Johnson (Frank Hirth, London)
Rachael Kieran (Aberdeen)
Emma King (PwC, London)
Christina Morales (PwC, Belfast)
Dabeluchukwu Onugha (KPMG, Aberdeen)
Iain Michael Panton (Ashbourne)
Shrenee Patel (Deloitte LLP, London)
Joel Pearson (Reading)
Ahmad Ali Qasim (PwC, London)
Kyle Robinson (Deloitte LLP, Birmingham)
Jamie Sadheura (Deloitte LLP, London)
Nicholas Shakir (Deloitte LLP, Birmingham)
Alicia Shrimpton (Deloitte LLP, St Albans)
Sam Watkins (Deloitte LLP, London)
William Samuel Christopher Welch (Mercer & Hole, London)

3 – Business Compliance
Jessica Clarke (EY, London)
Heather Griffin (EY, Reading)
Christina Morales (PwC, Belfast)
Luke Pinniger (PwC, London)
Ahmad Ali Qasim (PwC, London)

4 – Corporate Taxation
George Edmondson (Deloitte LLP, London)
Nora Markova (EY, London)
Shrenee Patel (Deloitte LLP, London)
Joel Pearson (Reading)
Alicia Shrimpton (Deloitte LLP, St Albans)
Edward Andrew Symons (Walker Moyle Chartered Accountants, Penzance)
Ciara Maria Trimble (Flannigan Edmonds & Bannon, Belfast)
Kazia Watson (Orphir, Orkney)
Patrick Webster (PwC, London)

5 – Inheritance Tax, Trusts and Estates
Stuart Adams (Leigh)
Stephanie Daniel (OneE Tax Ltd, Bolton)
Emma MacEy (Clarke Willmott LLP, Taunton)
Kayleigh Millett (Wellington)
Michael O'sullivan (Bolton)
Alicia Persaud (Northwood)
Marnie Walker (Smith and Williamson, London)
Natasha Faye Warren (Brentwood)

6 – VAT
Kerry Louise Annand (Edinburgh)
Jayne Brand (DSH Accountants, Maidstone)
Jason Massey (PwC, London)
George Massey-Reed (PwC, London)
Isha Modi (Harrow)



Great expectations

Cassim Atcha and *Prathab Jagajeevanram* consider the judicial review decision in the cases of *Samarkand* and *Proteus*

KEY POINTS

- **What is the issue?**
What is judicial review and when is it appropriate? How does one apply the doctrine of legitimate expectation in tax law? Can taxpayers rely on HMRC's *Business Income Manual*?
- **What does it mean for me?**
The doctrine of legitimate expectation may assist taxpayers in sustaining claims for tax relief even when the courts decide that the tax relief in question is not strictly due in law
- **What can I take away?**
Subject to HMRC's interpretation and despite the decision going against the relevant taxpayers, it may assist taxpayers in negotiating favourable settlements on outstanding film sale and leaseback enquiries

The acquisition of an asset and its subsequent lease back to the vendor is known as a sale and leaseback (S&L) transaction. A film S&L transaction – where the asset acquired is a film – will typically display these traits:

- the acquisition of the film and its lease, in exchange for periodic rental payments, are undertaken simultaneously – there is no acquisition without agreed lease terms and vice versa;
- the lessee provides security for the periodic rental payments (which are generally fixed); and
- the net present value of the periodic rental payments is lower than the purchase price of the film.

The Upper Tribunal (UT) dismissed the appeals by Samarkand Film Partnership No.3 and Proteus Film Partnership No.1 (together the Partnerships), which undertook film S&L transactions, against an earlier decision that they were not carrying on a trade and, even if they were, not doing so on a commercial basis. This decision was discussed in our article 'Substantive appeal' in the July 2015 issue of *Tax Adviser.*

The UT upheld the FTT's decision because the acquisition and subsequent lease of a film was a composite transaction, the commercial reality of which was the acquisition of a fixed income stream rather than a speculative trading transaction. Such a composite transaction could not be said to be on a commercial basis if the net present value, calculated using the interest rate inherent in the transaction, did not produce a positive result. The consequence of the UT's decision (which is subject to further appeals by the Partnerships) is that the statutory film reliefs accessed at partnership level, and interest relief claims made by the partners personally on loans taken out to subscribe to the Partnerships, are denied in full.

If the decision is not overturned on any further appeal, typical S&L transactions, particularly film S&L transactions undertaken by partnerships where tax reliefs were made available by parliament, could be viewed strictly in law as uncommercial non-trading transactions and will not attract those reliefs.

This brings us to a consideration of the statements made by HMRC in their *Business Income Manual* (*BIM*) and the practice of giving relief to sale and leasebacks before the Partnerships' appeals.

The Partnerships had, along with their substantive appeal, applied for the judicial review of HMRC's decision to deny them statutory film relief. The primary ground for challenge was their legitimate expectation that relief would be given, founded on the *BIM*.

What is judicial review?

A claim for judicial review is defined in the Civil Procedure Rules (CPR) Pt 54 as 'a claim to review the lawfulness of (i) an enactment; or (ii) a decision, action or failure to act in relation to the exercise of a public function'. In essence, the lawful and fair exercise of public law functions is supervised by the courts by way of judicial review proceedings.

Leave for permission to apply for a review must first be sought from the administrative court. It is unlikely to be granted if the applicant has not exhausted other avenues of challenge. Judicial review should therefore be seen as a last resort. A prime example is the challenge to accelerated payment notices, where taxpayers have no statutory right of appeal – albeit, they can make written representations to HMRC – and many are hence seeking remedy through judicial review.

Legitimate expectation

The doctrine of legitimate expectation is well established as a distinct ground for judicial review in tax law. A legitimate expectation arises when the claimant expects to be treated in a particular manner by a body exercising a public function as a result of their words or conduct. Such an expectation is protected by law and it would be an unjust exercise of power for that body to frustrate the claimant's expectation.

Applying this doctrine to the words and conduct of HMRC, it is understood that, if HMRC issue a ruling on the application of the law to a taxpayer's personal circumstances, that taxpayer acquires a legitimate expectation to be treated in accordance with that ruling, as long as it is 'clear, unambiguous and devoid of relevant qualification' (*R v Inland Revenue Commissioners, ex parte MFK Underwriting Agencies Ltd and related applications* [1989] STC 873).

The Supreme Court, in considering statements from IR20 (a booklet on residence which has now been superseded by HMRC6), ruled that a legitimate expectation could also arise from statements published by HMRC (*R (Davies) v R & C Commrs* [2011] UKSC 47).

The Partnerships in this case relied on statements in HMRC's *BIM*. Crucially, the doctrine of legitimate expectation was accepted by HMRC in *Samarkand* as being equally applicable to the *BIM*. HMRC's case was instead built around the *BIM* being 'read as a whole'.

Business Income Manual

The guidance in the *BIM* relating to film and audio products is found at *BIM* 56000 *et seq*.

The *BIM* states that the purpose of statutory film reliefs was to encourage investment in qualifying British films to build a profitable and self-sustaining industry. It is acknowledged that the reliefs are rarely accessed directly by film producers themselves, but are usually claimed by financial intermediaries – for example, banks or partnerships of wealthy individuals – who have taxable income to shelter.

The *BIM* notes that the most common arrangements are S&L partnerships, *BIM* 56455 provides a 'simplified' worked example of a 'plain vanilla' S&L transaction, which includes the lessee placing enough funds on deposit to guarantee the periodic rental payments, with the net present value of those being inherently less than the purchase price of the film. The *BIM* states that 'the experience of anti-avoidance group is that schemes that depart radically from the structure described, and in particular are more complex, are likely to carry a high risk of tax avoidance'. The *BIM* also contains the following 'health warning': '...readers may assume that the guidance given will be applied in the normal case; but where HMRC consider that there is, or may have been, avoidance of tax the guidance will not necessarily apply.'

The Partnerships argued that they had a legitimate expectation that HMRC would not fail to grant relief on the basis that the Partnerships were not trading or trading commercially, based on structural features that are implicitly present in the plain vanilla example in the *BIM*, such as an uncommercial return or risk-free guaranteed returns. HMRC, on the other hand, contended simply that, when you read the manual as a whole – inclusive of the health warning that must be considered as a relevant qualification – HMRC are free not to apply the guidance in the *BIM* when tax avoidance is suspected.

The UT accepted HMRC's submission

The UT considered whether HMRC were reasonable in concluding that there might be tax avoidance. HMRC referred to various 'offshore' structural features that led the inspector to suspect that the Partnerships may migrate from the UK at a later date to allow non-resident or non-domiciled partners to then avoid tax on subsequent rental payments. His investigations led him to discover correspondence which he believed reinforced his view. The UT accepted that it was reasonable for the

PROFILE

Name **Cassim Atcha**
Position Managing Director
Company Atcha & Associates Limited
Tel 020 3780 0811
Email cassimatcha@aatax.com
Profile Cassim leads a team of tax dispute specialists and has broad experience in corporation tax and private client tax matters. He has negotiated numerous substantial settlements with HMRC, particularly for partnerships involved in complex transactions, and managed the litigation of a number of high-profile cases to the Supreme Court.

PROFILE

Name **Prathab Jagajeevanram**
Position Manager
Company Atcha & Associates Limited
Tel 020 3780 0814
Email prathab@aatax.com
Profile Prathab manages enquiries into film production and sale and leaseback partnerships, as well as the appeal of a film production partnership to the First-tier Tribunal. He is also experienced in private client tax matters, including the taxation of non-UK domiciled individuals.

inspector to reach that conclusion based on the information available to him.

Although it was left unsaid, the natural interpretation of the judgment is that, where there are no reasonable grounds to suspect tax avoidance, taxpayers ought to be able to rely on the *BIM* if the structural features they have adopted accord with the plain vanilla example. This would apply even if those structural features have been deemed by the UT in the substantive appeal to be indicative of an uncommercial non-trading transaction.

Settled practice

Aside from statements published in the *BIM*, the Partnerships also relied on HMRC's conduct in entering into settlements with other film S&L partnerships where the reliefs were allowed – conduct that they argued amounted to a settled practice.

For a legitimate expectation to arise from settled practice, such a practice must be '… so unambiguous, so widespread, so well established and so well recognised as to carry within it a commitment to a group of taxpayers… of treatment in accordance with it' (*R (Davies) v R & C Commrs* [2011] UKSC 47).

In light of the UT's conclusion that HMRC were entitled not to apply the *BIM* where they suspected tax avoidance, establishing a settled practice would require evidence to show that HMRC had committed themselves not to take any points in a suspected tax avoidance case which it would not take in a straightforward tax deferment case. The UT noted the difficulty in establishing such a settled practice from HMRC's treatment of film S&L partnerships in general and, in light of the UT's view on the health warning included in the *BIM*, considered establishing one to be impossible.

Therefore, the UT dismissed the Partnerships' arguments that they had a legitimate expectation arising from the words (*BIM*) or conduct (settled practice) of HMRC.

Conspicuous unfairness

The Partnerships also argued that HMRC's conduct was so unreasonable so as to amount to an abuse of power (known as 'conspicuous unfairness'). The question was whether no reasonable body acting fairly could have acted as HMRC did.

Given that the UT accepted that the *BIM* must be read as a whole –HMRC were held not to have acted unfairly in this case, let alone so unfairly as to amount to an abuse of power. Hence, this argument was also rejected.

Conclusion

The FTT and the UT upheld HMRC's decision to deny the claims for statutory film reliefs based on certain features of the S&L transactions that the Partnerships had undertaken, features that are common to most, if not all, film S&L transactions in general and features that were included in the guidance in the *BIM*. Further, the application for judicial review was rejected. In the UT's view, the Partnerships could not establish a legitimate expectation because there was enough evidence for the inspector to suspect tax avoidance.

Although HMRC have yet to give a view on their treatment of S&L transactions since this case, members of partnerships which undertook film S&L transactions that follow the guidance in the *BIM*, where there is no evidence to suggest that any subsequent steps will be taken to deviate from that guidance, so as to avoid tax, should be in a position to argue that they had a legitimate expectation that HMRC would grant them the reliefs.

FURTHER INFORMATION

Read 'Substantive appeal' on film reliefs from the July 2015 issue of Tax Adviser at www.tinyurl.com/ozwurdh

The big question?

Peter Vaines highlights some issues with the statutory residence test

KEY POINTS

- **What is the issue?**
The meaning of a 'home' and the circumstances of a spouse can create serious problems when determining an individual's residence
- **What does it mean for me?**
If an individual has a UK home available to them for more than 90 consecutive days, they can become UK resident by spending just 30 days in the country if they spend that time in their home
- **What can I take away?**
Some think that they do not need to consider the residence of a spouse before marriage –not so. The issue is whether they were resident in the earlier years by reference to their own circumstances – irrespective of their marital status at the time

We are gradually starting to understand the statutory residence test (SRT) but, although some of the habitual areas of uncertainty have been clarified, new ones pop up all the time. The meaning of a 'home', for example, is difficult and creates serious problems because it is a fundamental element in determining an individual's residence for the tax year.

The automatic residence test

This is particularly important in connection with the automatic residence test. Under this you will be conclusively UK resident – and can forget about UK ties– if you have a UK home that is available to you for more than 90 consecutive days and you spend more than 29 days in it. So being in the UK for 30 days can be enough to make you resident.

However, this will not apply if you also have an overseas home. If you have a home abroad where you spend more than 29 days during the year, this element of the automatic UK residence test will not apply and you will be back to looking at UK ties and the day counts in the arriver and leaver tables.

The meaning of a home

That seems simple enough until we consider the meaning of a home. However, 'home' is defined neither in the legislation nor in the HMRC guidance, although we have a few pointers. For example, it includes a building, part of a building, a vehicle, vessel or structure of any kind, whether or not the individual holds any estate or interest in it. However, a holiday home or temporary retreat does not count for this purpose (see FA 2013 Sch 45(25)). This is likely to confuse because the accommodation tie, which is often described as having a home in the UK, is not that at all. The accommodation tie merely involves having a place to live, which is a different concept and can include a holiday home as well as a hotel room or the opportunity of staying with friends or relatives.

Putting these things together, if you have a home abroad where you spend more than 29 days and a home in the UK where you spend more than 29 days, you will be safe from the application of the automatic residence test. But, and there is always a 'but' with the SRT, the foreign property must be a 'home'. A holiday home does not count; so if HMRC can argue that your foreign home is only a holiday home, it will not represent a home for this purpose – even though it would be a place to live for the purposes of the accommodation tie. If the foreign holiday home does not count as a home, you have only one home, and that is in the UK where 30 days' presence in that property will make you resident under the automatic residence test. End of story. You can forget about the UK ties

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and whether you are an arriver or a leaver and being here for 90 or 120 days. Thirty days and you are done.

This is clearly a serious trap but at least if you know it is there and can take steps to avoid a difficulty arising – although quite how far you can go without straying into areas of moral repugnance is not clear.

The spouse test

There are some circumstances in connection with the SRT where planning is rather more difficult. If we look at the UK ties, the first is whether you have a spouse who is resident in the country for the year. That creates its own difficulties because you have to investigate carefully the circumstances of your spouse to make sure that you do not inadvertently have an extra UK tie. In fact, it does not have to be a spouse; it can be someone with whom you are living as husband and wife – which is thought to mean that you live together not as husband and wife, but in a way that looks like husband and wife. To whom, I wonder? The man on the Clapham omnibus, the 'officious bystander' suggested by McKinnon LJ, or perhaps the 'moron in a hurry', so beloved by Foster J; or perhaps the latest incarnation from the First-tier Tribunal, the 'intelligent businessman'. Who knows? Similar but more difficult rules apply to those in civil partnerships. Anyway, I digress.

If you have a place to live in the UK and spent more than 90 days here last year, you will have two UK ties. As an arriver, you could spend 120 days in the UK in the tax year without becoming resident. However, it would be a problem if you were to discover that your spouse was UK resident, thereby giving you an additional UK tie and reducing your allowable days to only 90. Clearly, communication between couples takes on a whole new dimension.

Let us look at a straightforward example. You made a capital gain in 2014/15. You were not resident because you had insufficient UK days or ties to become UK resident and, subject to the temporary non-residence rules, the capital gain will be free of tax. However, if your wife was resident during that year, that would give you an additional UK tie which would cause you to be UK resident and a substantial charge to capital gains tax would arise.

The residence of your wife is therefore crucial. Whether she was resident will depend on her day count and this will depend on which day count table applied to her for the year. This in turn will depend on whether she was an arriver or a leaver – that is to say, whether she was resident in the UK for any of the previous three years. Establishing her residence for those earlier years would be difficult under the old rules, but we can make the election under FA 2013 Sch 45(154) to apply the new rules for this purpose. We therefore need to look at her day count for the years 2011/12 and 2012/13.

Before they were married

However, you might not even have met her by then – let alone married her – so your liability to UK capital gains tax for 2014/15 could depend on the number of days that somebody whom you did not know in 2011 had spent in the UK during that year. If she had spent more than the relevant number of days in 2011, that could have made her resident for 2011/12 for the purposes of the statutory residence test which would make her a leaver and subject to the less generous day count table causing her to be resident in 2014/15.

You may think that, because you tend to spend the same number of days in the UK together, if you were non-resident so was she. But not if she is an arriver and you are a leaver. You would be subject to different day count tables.

Of course this is all the fault of her advisers. They should have told her in 2011 to be careful how many days she spends in the UK because in a few years' time she might marry somebody who might make a capital gain and the number of days she spent in the UK in 2011 could cost him millions of pounds in capital gains tax in January 2016. So they should have advised her to keep her UK days down to … well, who knows?

What about your advisers? They are seriously at fault. They should have told you that if you meet somebody you had better find out before you marry, or give the impression of being married, how many days she spent in the UK in the previous three years, just in case you make a capital gain in due course. They should have advised you to insist on a pre-nuptial agreement which included a specific warranty on the days spent in the UK in the preceding three years.

It might be thought that if they were not married in the earlier year it should not matter because she would not have been a spouse in that earlier year and could not therefore represent a family tie at that time. This is not the case. The issue here is whether she was resident in the earlier years by reference to her own circumstances – irrespective of her marital status at the time.

This is all so capricious that one might hope that some amending legislation or concessionary treatment might be forthcoming – but in the current environment I would not hold my breath.

There are many issues like this and we are in for a period of considerable uncertainty until the courts provide the clarification that is so badly needed in this area.

PROFILE

Name **Peter Vaines**
Position Partner
Company Squire Patton Boggs (UK) LLP
Tel 020 7353 7884
Email peter.vaines@squirepb.com
Profile Peter is a chartered accountant, barrister and chartered tax adviser. He is a partner in the international law firm Squire Patton Boggs. *The Legal 500* describes Peter as 'the elder statesman of residence and domicile'. He received the *Taxation* Tax Writer of the Year Award for 2015.

Love it or hate it

Ray McCann believes that the 'rules is rules' culture within HMRC needs to go

We are now several months past what must have rung alarm bells within HMRC, namely, the pre-election promise by Ed Miliband, then leader of the opposition, that a future Labour government would carry out a root and branch review of the department's operations and management. The election result means that no such a review will take place, or at least no obvious review of the sort promised. But what precisely is wrong with HMRC and how does it move forward under the new government?

HMRC criticism

It has been a remarkable ten years since HMRC were set up. It is easy to criticise the Revenue – it is, after all, a very large government department – and whether you love or hate it, you cannot ignore it. So much has their remit been expanded that HMRC are now responsible for almost every feature of life in the UK from cradle to grave.

In 2005 the department employed one-fifth of the entire civil service, since when it has appeared somewhat accident prone. Early on there was the enormous loss of data when some compact discs went missing; there was trouble over the 'PAYE reconciliation'; the 'scandal' of thousands of coding errors; and a senior leadership that appeared out of touch or not to care about the difficulties 'ordinary' taxpayers had. This was compounded by concerns at the other end of the scale over alleged 'sweetheart' deals with large corporates and the tax planning of the super wealthy. There was the HSBC affair and, of course, Goldman Sachs and the controversy stoked by the Public Accounts Committee (PAC).

It was all great stuff for journalists, but it must have been hugely depressing for HMRC staff when the hysteria over the department's performance standards reached extraordinary levels, so much so that a judicial review was launched into HMRC's handling of NIC avoidance schemes. There was an urgent need for balance in the debate which did not come. The resulting low morale within HMRC should be a concern to us all, as should the fact that this is in large part caused by the fact that pay in HMRC and the civil service generally has stood still for years. Telling HMRC staff that they do have at least a great pension is of little consolation since pension rights have been affected too. There is little the profession can do on these issues since they are a matter for government, but the profession and taxpayers need an effective HMRC that can manage the tax system efficiently and HMRC need motivated staff to achieve that.

It is not all gloom within HMRC, however, and those parts that have benefited from the coalition's determination to crack down on tax avoidance and tax evasion are buoyant. But how much of the promoted extra cash to crack down on avoidance and evasion was recycled money, meaning that there is less resource to other just as important, but not as high profile, parts of HMRC, eg customer service?

Culture change

But there is an awareness within HMRC that the significant culture change brought about by the merger of Revenue and Customs has not had wholly positive outcomes. Whether intended or not, it has encouraged too many inspectors to view taxpayers as 'an enemy' to be punished for the most routine failing. As a result, inspectors have pursued issues that are of little interest to anyone other than the taxpayer concerned and in many instances, as matters have dragged on, even they lost interest as the layer upon layer of added governance rendered their efforts uneconomic.

PROFILE

Name **Ray McCann**
Position Partner
Company New Quadrant Partners Ltd
Email ray.mccann@nqpltd.com
Profile Ray is a CTA (Fellow) and ATT. He is a member of CIOT Council. Ray was previously a senior HMRC Inspector and has 40 years' experience of UK and international tax issues.

Ten years on we have a tax system that is less user (customer) friendly, a tax administration that seems to struggle to connect with taxpayers and more discontent, whatever side of the tax avoidance debate you inhabit.

Despite this, HMRC can justifiably hold out example after example of success. On tax avoidance, it is beyond doubt that HMRC has brought under control the worst excesses of the tax scheme promoters. There may still be 65,000 open cases but there was probably a similar number in April 2005, although perhaps it is better to regard them as undiscovered cases. On tax evasion it is difficult to say that HMRC have been particularly effective but look at the scale of the task. HMRC's tax gap number is enormous, no matter how it is broken down, since they produce an annual estimate that does not include tax evaded in previous years; much of which will probably never be collected.

The tax gap

But that tax gap involves an estimate of evasion by thousands, perhaps millions, of individual taxpayers, so the scale of the task was beyond HMRC from the outset and, despite the demands of the 'hawks', prosecution is not the answer. If it were, we would not have thousands of benefit and other cheats being prosecuted each year. Until there is wholescale change in the attitudes of all of us, there is little hope of reducing the tax lost through evasion; much of which is probably not worth HMRC pursuing in any event. Do we really care whether the window cleaner gives a receipt, or the taxi driver hands out a bundle of blank slips? We probably do, but not enough to always make our disapproval clear, and the adverse media attention towards the large companies and the wealthy probably means that many care little about a small amount of tax when 'the rich and big corporates get away with millions'.

The huge criticism heaped on HMRC over its handling of HSBC Switzerland, which prompted Miliband's comments, made clear that few outside HMRC and the tax profession understood the 'rules of engagement' that applied to cases of tax evasion. That HMRC allowed most to settle matters through voluntary disclosure would seem, on balance, the best that could have been done unless the government was willing to change the prosecution policy. And this is the important point: it's not HMRC policy, it is government policy (and has been since the 1920s) not to prosecute a tax evader who makes a full disclosure, and there are significant difficulties in simply changing this approach.

The criticism of HMRC relied too much on an assumption that all Swiss bank accounts were stuffed with the fruits of tax evasion. Such an assumption is as ridiculous as assuming that they are all clean, but the point is how would HMRC be expected to decide who should be prosecuted, given that whatever they received was probably insufficient to prove guilt beyond reasonable doubt and there were thousands of individuals involved, many of whom had committed no offence at all. I expect that some were more clear-cut but you have to justify deviating from the policy, and that is fraught with difficulty. But on the positive, HMRC played a leading international role in opening up the secret world of offshore banking and tax havens.

Tax crime

All tax evasion is a crime of some level although some cases are clearly more aggravated than others. But, without carrying out a detailed *criminal* investigation, how do HMRC determine whether it is a small case or the tip of the iceberg? And, if HMRC take up from the outset more cases as possible tax crime and the Code 9 process is washed away, how do we manage the large number of criminal cases that could follow and what do we do with them once a conviction is secured? Bearing in mind that the burden of proof is 'beyond reasonable doubt' would risk turning one of HMRC's most cost-effective investigative 'tools' into a loss-making venture!

Where do we go from here?

First, HMRC need a clearer strategy. The threats that seem to be a mainstay of HMRC strategy must go; they don't work, or at least they don't work on a sufficiently widespread scale to make them worthwhile.

At a recent conference, a large number of delegates were worried about a client being caught up in a costly investigation; a much smaller number were worried that they would be caught! Kneejerk reactions need to be controlled and existing HMRC structures need time to settle in and recover from the merry-go-round of staff moves. Above all, HMRC need a clearer and more deliverable strategy for its relationship with agents and taxpayers and in how they achieve their objectives, which, crucially, must be realistic. Too often the rhetoric has set an over-ambitious agenda and then failed to deliver (or allowed a perception of failure to exist) resulting in criticism and dismay in parliament and among professional bodies.

It is reasonable to conclude that some of HMRC's objectives were unachievable from the outset. But change is essential and, in my view, in three key areas: institutional attitude, flexibility and communication. Major projects, such as the Agent Strategy, should be moving forward, but at present, too many agents can be forgiven for not understanding what it will involve. HMRC also need to resolve what seems to be an internal struggle as to the value of agents who are vital to the smooth running of the tax system. Yet many fear that HMRC are out to get them – and with some justification – although those within HMRC have to reflect what government expects them to do.

Glimmer of hope

There does seem to be some glimmer of hope. Since the general election we have had the suggestion from HMRC that they will be going easy on the 'little guy'. If true, it is about time; although this may be a reflection of the huge workload that HMRC face from thousands of appeals against disputed penalties for late returns. The extra work involved in HMRC trying to impose and collect a £100 penalty must surely be outweighed by the cost of doing so, especially in appeal cases. Then there is the cost of chasing taxpayers who don't do anything. How many of these penalties were ever collected is anyone's guess and what have HMRC learned from the enormous data gathering that they carry out as to why so many fall foul of complex rules? How much from those penalties that are collected is invested in trying to reduce the number of taxpayers who struggle to comply?

But a broader change in attitude is required. Parliament makes the law but HMRC designs it, and changes to the tax system has made compliance more difficult with too many traps set by HMRC to prevent what it sees as unintended tax breaks. Too many inspectors pay lip service to the views of the taxpayer and agents, and treat everything with suspicion. In part this is understandable, but HMRC must look seriously at how it can restore sufficient discretion to inspectors so that risks that are issues can be dealt with more effectively and less important issues disposed of quickly. This is not going soft on tax cheats, but instead, following Winston Churchill's advice that 'you will never reach your destination if you stop and throw stones at every dog that barks'! Put simply, not every taxpayer who has failed to pay 'the right tax' is a tax cheat and some of the issues that HMRC inspectors have pursued have not been worth the effort.

No one wants a free-for-all, but HMRC need to be able to clear lower-risk issues more effectively. If HMRC genuinely believe they have little or no discretion, they must persuade ministers to address this. The problem has been exacerbated by centralisation of decision-making. A large organisation needs an effective central leadership function, but HMRC have taken centralisation too far and there is an urgent need to move the processes back to local teams and individual inspectors if, for no other reason, than the fact that, despite the various 'panels' within HMRC, similar tax issues have not always been dealt with consistently.

HMRC governance

HMRC's governance arrangements have ensured that any issue of any size now has to be signed off by what would seem multiple layers of panels – and this has at times perfectly justified inertia. Fine, perhaps, in the context of a high value issue with complex points of law, but relatively few issues genuinely create the precedent or consistency risks that HMRC assert justify this approach so widely. Moreover, the enormous backlog of tax scheme enquiries has resulted in the introduction of extraordinary and ground-breaking new laws to persuade thousands of individuals to give up their tax schemes. Relatively few have done so, dumping even more work on HMRC and straining governance further. To deal with tax avoidance it is clear that HMRC needed a modern Taxes Management Act more than a litigation and settlement strategy (LSS).

Communication

Finally there is communication. HMRC should want and encourage taxpayers to contact them for help, not put obstacles in the way. For many taxpayers, HMRC should be the first point of contact and more needs to be done to improve customer service levels to reduce the 18 million unanswered calls. The digital agenda must not leave anyone behind. It is hard enough for many taxpayers to comply and harder still where, increasingly, compliance requires computer access and skills just to perform basic tasks as HMRC's local network diminishes.

The HMRC communication strategy is so poor that the tax office could be next door and you would not know. There needs to be greater use of email and inspectors should be more willing to provide clear and direct contact information to taxpayers and agents so that routine matters can be dealt with quickly. Oddly, contacting HMRC in cases of tax debt and bankruptcy seems to be a difficult process but it is not clear why this should be.

But these are just the practical aspects; a new dialogue is needed that reflects a change in attitude towards the difficulties many taxpayers face when dealing with the tax system and for HMRC to show more empathy. It is incredibly hard for HMRC and tax advisers to fully appreciate how difficult it is for taxpayers because we work with the system each day and have become hardened.

An interesting example

The need for change and the difficulties HMRC create for themselves by a 'rules is rules' approach is clearly evident in the way HMRC have tried to impose an approach that is disconnected from the real world. To take one example, the statutory residence test (SRT). HMRC designed this and, in particular, it restricted the time that can be spent in the UK due to 'exceptional circumstances'. Example B1 on page 98 of HMRC's guidance is quite interesting in how it explains this (I shall leave you to look it up). If you were the unfortunate individual in the example, ask yourself, would you care at all about the SRT?

International exchange

Christopher Lallemand considers recent developments in international reporting of financial information for tax purposes

KEY POINTS

- **What is the issue?**
Regulations issued in April 2015 amended the FATCA reporting obligations to HMRC and covered reporting under the common reporting standard and EU agreement
- **What does it mean for me?**
There is no longer an obligation to file nil returns, though there may be circumstances when this is necessary. Some of the definitions relevant for UK FATCA compliance have changed, although these should, in principle, follow those agreed between the US and OECD in relation to the common reporting standards
- **What can I take away?**
The regulations now clarify that financial institutions retain responsibility for compliance and due diligence obligations when using agents. Although the three types of agreement are not identical, they should generally be consistent in interpreting the terms used

HMRC have changed the way companies must comply with FATCA, clarifying the obligations including those under the common reporting standards and relieving some businesses of the need to file.

In March 2015 HMRC announced that the submission to HMRC of nil returns of FATCA information were no longer required and that the UK regulations on FATCA compliance would be amended. They concluded that ‘relevant holding companies’ and ‘treasury companies’ should not be reporting financial institutions purely as a result of SI 2014/1506 regs 7 and 8.

The updated regulations became effective on 15 April 2015 (SI 2015/878)

PROFILE

Name **Chris Lallemand**
Position National Tax Consultant
Company Smith & Williamson
Email christopher.lallemand@smith.williamson.co.uk
Profile Chris Lallemand is a national tax consultant with Smith & Williamson, a Council member of the CIOT and vice chair of the CIOT Commerce and Industry Group. His practice area covers business, corporate and indirect taxes and his work experience encompasses both practice and industry.

and revoked the previous ones (SI 2014/1506). The reporting information and obligations, due diligence requirements and penalty provisions were clarified for:

- the UK/US inter-governmental agreement (IGA, dated 12 September 2012);
- the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Information signed by the UK and others on 29 October 2014 (CRS); and
- the EU Directive on Administrative Cooperation in the field of taxation ('DAC' – 2011/16/EU, as updated by Directive 2014/107/EU, which in effect implements the CRS in the EU).

Where businesses had based their compliance for treasury and holding companies on the old regulations, this may have implications for their structure. So HMRC issued a further update on 21 May on how groups with these entities could continue with their UK/US IGA obligations with respect to which entity is identified as the lead financial institution (FI). The update is found at www.tinyurl.com/mbcd3sl

The abandoning of the obligation to file nil reports for FATCA purposes and the removal of two categories of FI will be a huge relief to many UK entities with no US connections.

The IGA permits some 'pre-existing accounts' to be ignored in the due diligence procedures (those to identify ultimate account owners or beneficiaries from the US) required under that agreement, unless an election is made to apply due diligence procedures to all accounts. If an account is identified as reportable, specified information will need to be collected and reported.

The old and the new UK regulations referred to above overrode the IGA by requiring an election to be made to ignore due diligence on those pre-existing accounts. The method of making this election is to include it in the annual return for each year that it is applied, so a nil return may still be required.

The first deadline for reporting under the IGA has passed. Reports were due by 31 May 2015 covering the calendar year 2014. Any reporting FIs that have not already filed will need to be ready with their reasonable excuse for not doing so in order to avoid 'failure to comply' and 'daily default' penalties. Uncertainty on the practical application of the rules created by the changes above may provide the background to a reasonable excuse argument. HMRC's August 2014 guidance did also indicate that, in general, those who made good faith efforts despite minor administrative errors would be viewed as compliant.

DAC and CRS

SI 2015/878 takes account of reporting obligations under the DAC and CRS. As for the IGA there is no requirement to submit nil returns. Similarly, an annual election must be made for any exclusion for some pre-existing accounts from due diligence procedures – the statutory instrument overrides the agreements – so a nil return may be required in any event. However, the first reports under the DAC or CRS will only be required by 31 May 2017 for information for the 2016 calendar year. In this context, a reportable account will be a financial account maintained by a UK FI and held by a person, a reportable person or entity, from the relevant foreign jurisdiction or a passive non-financial entity controlled by persons from the relevant foreign jurisdiction. Although the content of the IGA, CRS and DAC is similar, there are some differences.

Where a reporting FI under FATCA may have no reportable accounts under that agreement, due to not maintaining accounts for US persons or entities controlled by US persons, it may well have reportable accounts under the DAC and CRS if persons from the relevant foreign countries hold or have interests in those accounts.

Although the UK is a signatory to the multilateral competent authority agreement, it has still to agree the data confidentiality aspects of exchange of information with the counterparty countries under CRS. These are already agreed for the EU, so there is no barrier to exchange of information under the DAC between the UK and any EU member state.

Definition of investment entity

A 'reporting' FI under all the agreements means one of these categories that is not specifically identified in the agreement and its annexes as a non-reporting FI:

- a custodial institution;
- a depository institution;
- an investment entity; and
- a specified insurance company.

Under the IGA it is no longer necessary to consider whether an entity is a reporting entity by classification as a 'relevant holding' or 'treasury' company, but there is still a need to consider whether it falls under another heading. One category that might be relevant to many UK businesses is 'investment entity'. The IGA defines this as:

> Any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:
> 1. trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc), foreign exchange, exchange, interest rate and index instruments, transferable securities, or commodity futures trading;
> 2. individual and collective portfolio management; or
> 3. otherwise investing, administering, or managing funds or money on behalf of other persons.

The HMRC guidance of 28 August 2014 explaining how the IGA and the related regulations are to be implemented includes this note:

> 'A Financial Institution must apply the UK Regulations in force at the time with reference to the published HMRC Guidance. However, where a Financial Institution identifies an alternative element of the US Regulations or alternative element of a different Intergovernmental Agreement that it feels it would like to apply, then it should contact HMRC to discuss the issue.'

The definitions in IGA are not as comprehensive as in the US regulations (US Treasury Regulations §1.1471 – §1.1474). However, that agreement indicates that any term not otherwise defined in the agreement is interpreted either:

- according to common agreement between the UK and US as permitted by UK law; or
- using UK laws, with tax laws prevailing over other laws.

With the revocation of the old regulations there is now nothing from a UK perspective, other than the current outdated HMRC guidance, to say that an investment entity conducting a particular financial activity as a business is by reference to a 50% or more turnover test for the purposes of the IGA. If one had to rely on the UK tax definition of what is meant by 'conducting as a business', the number of entities classified as an investment entity could be significantly higher.

The OECD CRS and DAC definition of an investment entity uses this 50% turnover test and closely follows the US meaning. Helpfully, the HMRC FATCA team has indicated informally that the CRS is designed to be consistent with FATCA and has been agreed by the US to be so. In its view there is therefore a clear rationale for adopting the CRS approach to the definition of an investment entity for UK purposes in respect of the IGA. It is understood that HMRC will update its 2014 guidance to cover this and other points.

The OECD text and commentary on the model competent authority agreement for the automatic financial account information exchange to improve international tax compliance and the CRS can be found at www.tinyurl.com/pkcvy8x

Holding and treasury companies

Although specific reference to holding and treasury companies as reporting FIs has now been removed, it will be necessary to consider whether these types of entity come within any of the revised definitions of a reporting FI. Where they do not, HMRC has indicated they will be non-financial foreign entities (NFFE) and a decision will need to be made on whether they are active of passive for declarations on W-8BEN-E for certification purposes when dealing with other FIs.

When considering whether a holding company or treasury company falls within the investment entity category, the OECD commentary on the CRS definition of that category indicates it could include, among other entities, those that function or hold themselves out as:

- collective investment vehicles;
- mutual, private equity and hedge funds; and
- any similar investment vehicles established with an investment strategy of investing, reinvesting or trading in financial assets.

Consideration should be given to other categories of FI and also to HMRC's August 2014 guidance and their update on holding and treasury companies issued on 21 May.

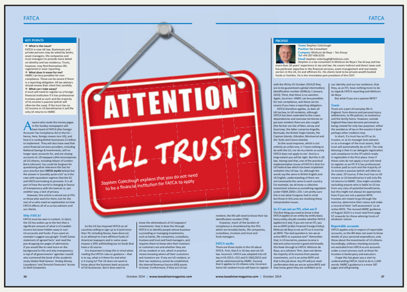
Reporting

An additional provision in the new regulations indicates that, although service providers may be used for due diligence requirements and reporting obligations, responsibility for them remains with the reporting FI. This makes the responsibility issues easier for agents to take on when assisting clients to comply with IGA and CRS, although agents will have some form of duty to their client.

HMRC's online reporting system is relatively simple. Agents can create an HMRC FATCA account, although they will need to include at least one FI in that account. If the data for a reporting FI is relatively small, the information can be entered manually. However, there are facilities for downloading HMRC's FATCA schema to create separate reports or upload the data in an externally prepared file. The online HMRC reporting system will be modified to accept reports due under CRS and DAC in the future.

FURTHER INFORMATION

Read Stephen Coleclough's article 'Attention all trusts' from the October 2014 issue of *Tax Adviser* at www.tinyurl.com/onbllo5



Nuturing growth

Ben Powell provides a refresher of the rules and practicalities surrounding EIS and SEIS

KEY POINTS

- **What is the issue?**
A refresher of the limits, requirements, and practicalities on EIS and SEIS funding
- **What does it mean for me?**
Failure to comply with the schemes can lead to loss of favourable tax treatment, resulting in very unhappy shareholders
- **What can I take away?**
A consolidation of the rules for the EIS and SEIS schemes

While the Enterprise Investment Scheme (EIS) has been with us for 21 years and the Seed Enterprise Investment Scheme (SEIS) has been around since FA 2012, both schemes remain popular with small enterprises. Over the years there have been a number of changes, so this article acts as a refresher of the rules and practicalities surrounding the government's ideas to promote small and start-up businesses to attract funding and nurture growth.

Qualifying company

To issue EIS/SEIS shares, a company must be a qualifying company. For this, it must be a trading company that is not carrying out an excluded activity. These activities include financial, accounting and legal services, as well as farming and property development. For SEIS, this qualifying activity must not be more than two years old, although this does not preclude the company from having undertaken a different activity before this period. The company also needs a UK permanent establishment.

The company must be unquoted, although AIM companies are classed as unquoted for this purpose. It must also meet the financial health requirement, which prevents companies in financial difficulties issuing EIS/SEIS shares. Finally, the company must not be a 51% subsidiary and any 51% subsidiaries of the company must also be qualifying for EIS/SEIS purposes.

For EIS, gross assets must not exceed £15 million before the share issue and £16 million after it. The company or group must not have 250 or more full-time equivalent employees. The limits are smaller for SEIS companies, with gross assets limited to £200,000 before the issue, and employee numbers limited to 25.

Qualifying shares

The equity issued must be ordinary shares, with no preferential rights to assets on winding up or to dividends, and must be paid up in full, in cash, when issued. A common reason for EIS investments failing is where the cash is not received on the same day as the shares are issued. To sidestep this problem, we recommend that solicitors hold cash raised in an escrow account until shares are issued. The investor must also be taking some real commercial risk, so any pre-arranged exit will cause EIS/SEIS investments to fail.

The cash must be raised for a qualifying business activity. This can cause problems with a cash-rich company because HMRC can argue that it does not need the money for a qualifying business activity. The cash raised from the share issue must also then be used for the qualifying business activity within two years of the date of the issue of the shares for EIS shares, and three years for SEIS equity. Shares can be issued before the trade begins, in which case the company has two years from the date of the start of the trade (three years for SEIS) to use the cash. The company must have carried on the trade for four months before an investor is eligible to claim EIS/SEIS relief. Paying dividends is not considered a qualifying business purpose.

For SEIS companies, the amount of cash raised through SEIS investment cannot exceed £150,000 in any three-year period. The company also cannot have previously raised funds through EIS or venture capital trust schemes.

Qualifying investor

Once the company complies, we must decide whether the investor is a qualifying investor in order to obtain income tax relief. This means he must not be connected to the company for two years before the issue and three years after it. To be connected, he or his associates must not be employed by the company; or must not own more than 30% of the ordinary shares, or voting rights in the company. His associates are spouses and linear descendants; but importantly, this does not extend to siblings.

For EIS companies, special provisions allow for a director of a company to be a qualifying investor, despite the directorship making the investor connected to the company. First, if the director is unpaid in the five-year period around the issue, he is still regarded as a qualifying investor. Second, if the director was not connected before the issue and becomes a paid director with reasonable remuneration for the services rendered immediately after the issue, he is still regarded to be a qualifying investor.

For SEIS companies, the rules on directors being connected are relaxed further still. A director is not treated as an employee of the company, and therefore

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PROFILE

Name Ben Powell
Position Manager
Company Ballard Dale Syree Watson LLP
Email ben.powell@ballardsca.com
Profile Ben works in general practice and advises clients on many aspects of accountancy and tax. After qualifying as a chartered accountant, he undertook the Chartered Tax Adviser qualification and won the prize for the highest marks in the November 2014 sitting of the Owner-Managed Businesses Advisory paper. He has been involved with several clients in the technology sector who have successfully sought EIS and SEIS funding.

is a qualifying investor unless they own more than 30% of the company or they are associated to an employee.

Tax relief

For EIS share issues, the investor receives income tax relief to the value of 30% of the amount invested up to a maximum £1 million. For SEIS share issues, the investor receives tax relief at a generous 50% of the amount invested up to £100,000. These reliefs are given as a tax reducer and are deducted from the investor's tax liability for the year. The amount can be used only to reduce the tax liability to zero, although tax deducted at source can be refunded. It is possible for an investor to use both reliefs in the same year.

The EIS/SEIS tax reducer can be carried back one tax year as long as the limit in the preceding year was not exceeded, so that, if the tax liability of the investor is not sufficient in one year to use the maximum relief, he can take advantage of setting this relief against two tax liabilities.

If the investor sells his shares within three years of the issue, some of the income tax relief originally given will be clawed back. The amount of the clawback is the sales proceeds of the shares multiplied by the original rate of the relief given, up to a maximum of the full amount of the relief originally given.

If shares are sold at a profit after three years, the gain is fully exempt from capital gains tax for the investor. Shares sold before then are chargeable as normal and they must have originally qualified for income tax relief to qualify for capital gains tax exemptions. Capital losses on the shares are fully allowable whenever they are sold. An election can also be made to offset any capital loss that may arise on EIS/SEIS shares against net income, which will be attractive to higher and additional rate taxpayers who can shield themselves from much of the financial risk of the investment through significant tax savings. This election is also not subject to the £50,000/25% loss relief restriction applicable to most losses offset against total income.

Reinvestment relief

As well as these tax reliefs, investors can also claim EIS reinvestment relief that defers gains on any assets sold in a similar way to rollover relief. There is no maximum investment for this relief and the amount claimable is based on the gain reinvested rather than the proceeds. Investors can also choose to claim a specified amount to take advantage of the annual exemption and any brought forward losses. The gain is deferred until there is a later chargeable event, at which point it crystallises and is charged to capital gains tax.

The investor must be UK-resident and invest in the EIS shares 12 months before, or 36 months after, the original asset is disposed. The connected party rules do not apply to EIS reinvestment relief and hence, as long as all other conditions are met, the capital gains tax deferral can be claimed even where the investor does not get income tax relief.

Examples of chargeable events include the sale of the shares, becoming non-UK resident in three years, or the shares ceasing to be eligible such as through the cessation of trade. However, flotation of the company on the London Stock Exchange does not crystallise the gain.

For SEIS reinvestment relief, 50% of the gain reinvested is exempted instead of deferred as with EIS reinvestment relief. However, the maximum eligible for relief through this mechanism is £100,000. You will not receive reinvestment relief on a gain or the capital gains tax exemption on the eventual sale of the SEIS shares unless you have claimed SEIS income tax relief on them.

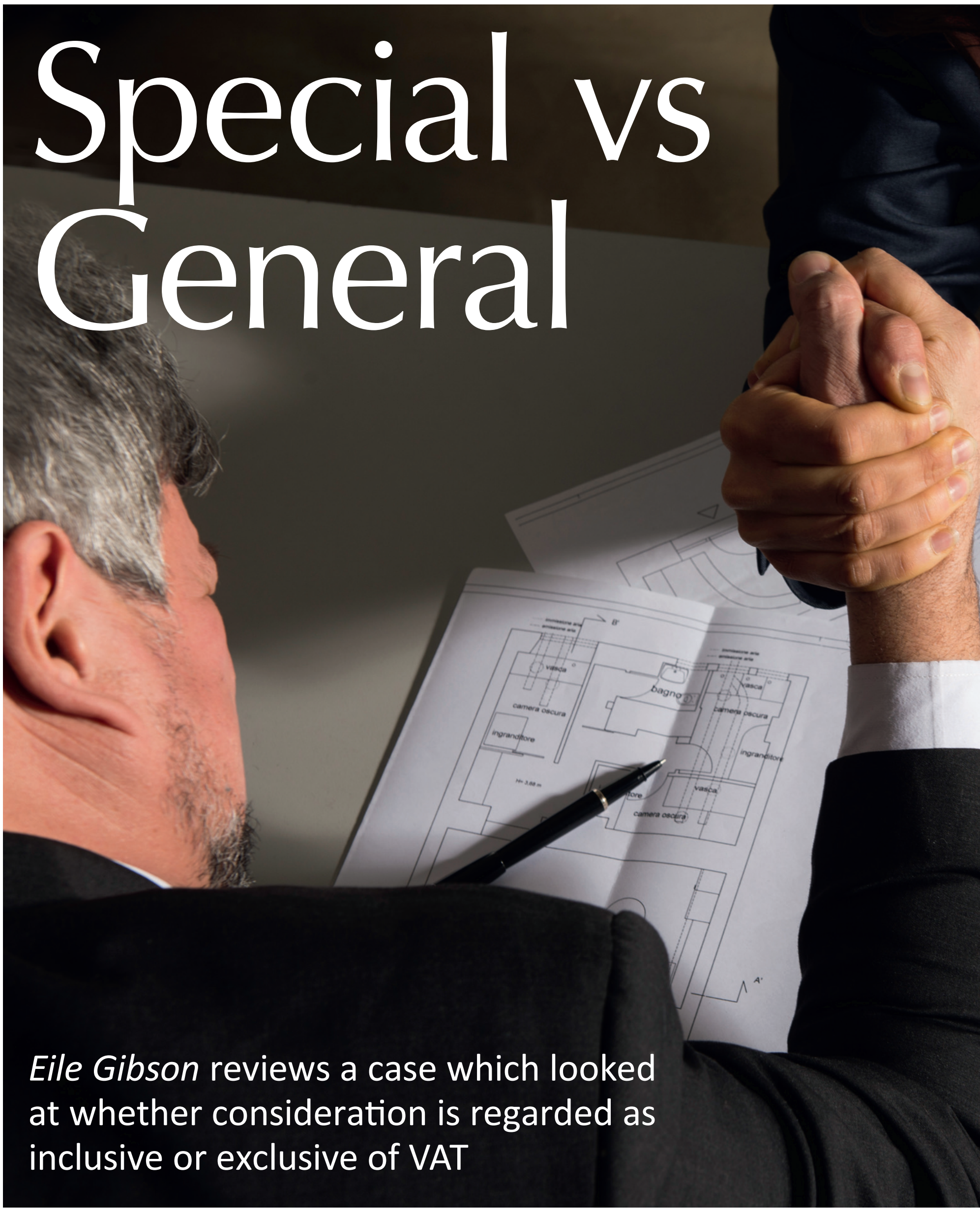
Advance assurance

Practically, the company can apply for advance assurance for EIS/SEIS investment rounds by completing form EIS/SEIS(AA). It is often advisable to draft an accompanying letter with more detail on the company's ownership structure and trade. Also provide a pointer to find more information, such as the company's website. It is useful to provide HMRC with copies of the articles of association, prospectuses and shareholder agreements for them to review and ensure nothing falls foul of the EIS/SEIS rules. HMRC usually take about 30 days to respond. Although the advanced assurance procedure is not mandatory, we have found it to be useful for these reasons:

- EIS certificates can be issued more promptly after the share issue;
- potential investors may request to see the advanced assurance for their own comfort; and
- problem areas that might exist can be flushed out before the funding round begins – we have found HMRC to be helpful on this.

When the shares are issued, a compliance statement EIS1/SEIS1 must be filed. This confirms the exact amount and timing of the share issues to HMRC and the company's fulfilment of EIS/SEIS requirements. At this point, HMRC will confirm that the business has met the requirements and give the issuing company the authority to issue EIS3/SEIS3 certificates to the investors. It is not until the investors receive this that they can claim the reliefs.

The schemes continue to drive investment and growth in SMEs and the real success is demonstrated by the legislation remaining relatively static in recent years. At the smaller end of the corporate world, the schemes have helped to breed innovation and success.



Special vs General

Eile Gibson reviews a case which looked at whether consideration is regarded as inclusive or exclusive of VAT

KEY POINTS

- **What is the issue?**
There are two issues: if there is no reference in a contract in respect of VAT, the price should be treated as inclusive of VAT; and where transferring non-residential property, the parties' advisers need to ask whether VAT is payable on transfer
- **What does it mean for me?**
Best practice is that all references to consideration payable within contract documentation should state whether it is inclusive or exclusive of VAT
- **What can I take away?**
Always review standard form documentation that are part of contractual terms to ensure there are no contradictory provisions

Oh dear! A case involving a dispute over VAT of £22,750 was eventually decided in the Court of Appeal, where legal costs must surely have far exceeded the disputed amount in question. This case was not only about VAT, but a reminder that contractual terms should be clearly expressed between the parties to avoid litigation.

CLP Holding Company Ltd v R Singh & P Kaur [2014] EWCA Civ 1103 involved transferring the freehold of 72 Rolfe Street in Smethwick (the property) for £130,000 in 2006, from CLP Holdings Company Ltd (CLP) to two individuals, Rajinder Singh and Parvinder Kaur (the purchasers and also the defendants and respondents in the Court of Appeal). CLP was registered for VAT and in 1989 opted to waive exemption from VAT on the property. This issue was crucial to the case but appears never to have been raised between the parties and their legal advisers.

Background

The background facts relating to the parties' understanding of what was to be the purchase price are important. In 2002 they agreed a price of £130,000 for the property and a draft contract was initially sent to the purchasers by CLP's solicitors in early 2003. After a delay, negotiations resumed between the parties in December 2005. CLP's solicitors were notified by the purchasers' solicitors that it was their understanding that the price remained £130,000 – which they described as the whole of the consideration – and that it had been paid to the purchasers. The purchase monies were returned to the buyers in summer 2006 with the intention that they would be transferred back to CLP on completion. There was no evidence that the issue of VAT was ever raised and whether a transfer of the property would be subject to VAT.

On 2 March 2006, CLP's solicitors confirmed in writing to the purchasers' solicitors that the contract had been signed by CLP at a sale price of £130,000 and they had received 'all the sale monies of £130,000 'subject to contract'. Shortly afterwards, the purchasers' solicitors sent to the other side the standard requisitions on title that asked for the exact amount payable on completion, to which CLP's solicitors replied 'balance of purchase monies'. Exchange and completion took place on 29 August 2006. The deed of transfer stated that CLP had received £130,000 by way of consideration.

The contract in question was in conventional form and included both special and general conditions. The purchase price in the special conditions was defined as £130,000 and nothing was included in the definition of any 'other payments/allowances'. The agreement incorporated the standard conditions of sale, the 'general conditions', and stated that, where there was a conflict between the general conditions and the agreement, the terms of the agreement would prevail. Such a clause is impossible to ignore and was to prove determinative in the Court of Appeal.

Absence of VAT reference

The absence of any reference to VAT in the special conditions in the definition of the purchase price contrasted with clause 1.4 in the general conditions. Under this there was an obligation to pay any VAT chargeable on the payment and that all sums made payable by the contract were exclusive of VAT. It would appear that CLP had not considered that

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VAT was due at completion, but that it was protected and could rely on clause 1.4. In the absence of the information that any transfer of the property was subject to VAT, the purchasers were clearly relying on the special conditions.

HMRC notified CLP in late 2007 that VAT was due on the transaction and CLP's solicitors informed the purchasers' solicitor in March 2008 that, under clause 1.4 of the general conditions, the purchasers were liable for the VAT, which they disputed. It wasn't until August 2012 that CLP issued proceedings and applied for summary judgment against the purchasers.

The courts' views

CLP was successful in Birmingham County Court, with the deputy district judge concluding that the purchasers had no prospect of successfully defending the claim. He rejected the proposition that the purchase price was inclusive of VAT, based in part that this would conflict with clause 1.4 of the general conditions.

On appeal to the High Court, the judge came to the opposite conclusion – that there was indeed a conflict between the special conditions and the general conditions, but in which case the special conditions must prevail. The appeal was allowed and there was a judgment for the purchasers. CLP took the case to the Court of Appeal where Lord Justice Kitchin referred to *Lancaster v Bird* (1998) 73 ConLR 22 which involved the same issue. In this, the judge confirmed that if a supplier, in this case a builder, fails to make clear that VAT is chargeable in addition to the contract price, the supplier will be left to account for the VAT out of the price which he receives, as required under VATA 1994 s 19(2). This provision states:

> 'If the supply is for a consideration in money, its value shall be taken to be such amount as, with the addition of the VAT chargeable, is equal to the consideration.'

In other words, the consideration is a tax-inclusive amount comprising two elements: the value of the goods and the tax, if any. Thus, the rule is that, if a contract states that the price is exclusive of VAT, the tax is payable in addition to the price. If a contract makes no mention of VAT, the price should be treated as inclusive of it. This principle should be well known among lawyers, regardless of whether they are tax specialists.

In the Court of Appeal, CLP relied on clause 1.4 of the general conditions, stating that it made it abundantly clear that the purchase price of £130,000 was exclusive of VAT. The purchasers argued that clause 1.4 was inconsistent with the special conditions when properly interpreted in the light of the relevant background. Lord Justice Kitchin made these points about the correct approach to the interpretation of a contract:

- the court must have regard to the circumstances of the parties' relationship and the relevant facts surrounding the transactions; and
- the contract must be construed as a whole and every effort must be made to give effect to all its clauses.

He went on to say that there was only one reasonable interpretation of clause 1.4 of the general conditions, namely that any liability for VAT should fall on the buyer, namely the purchasers.

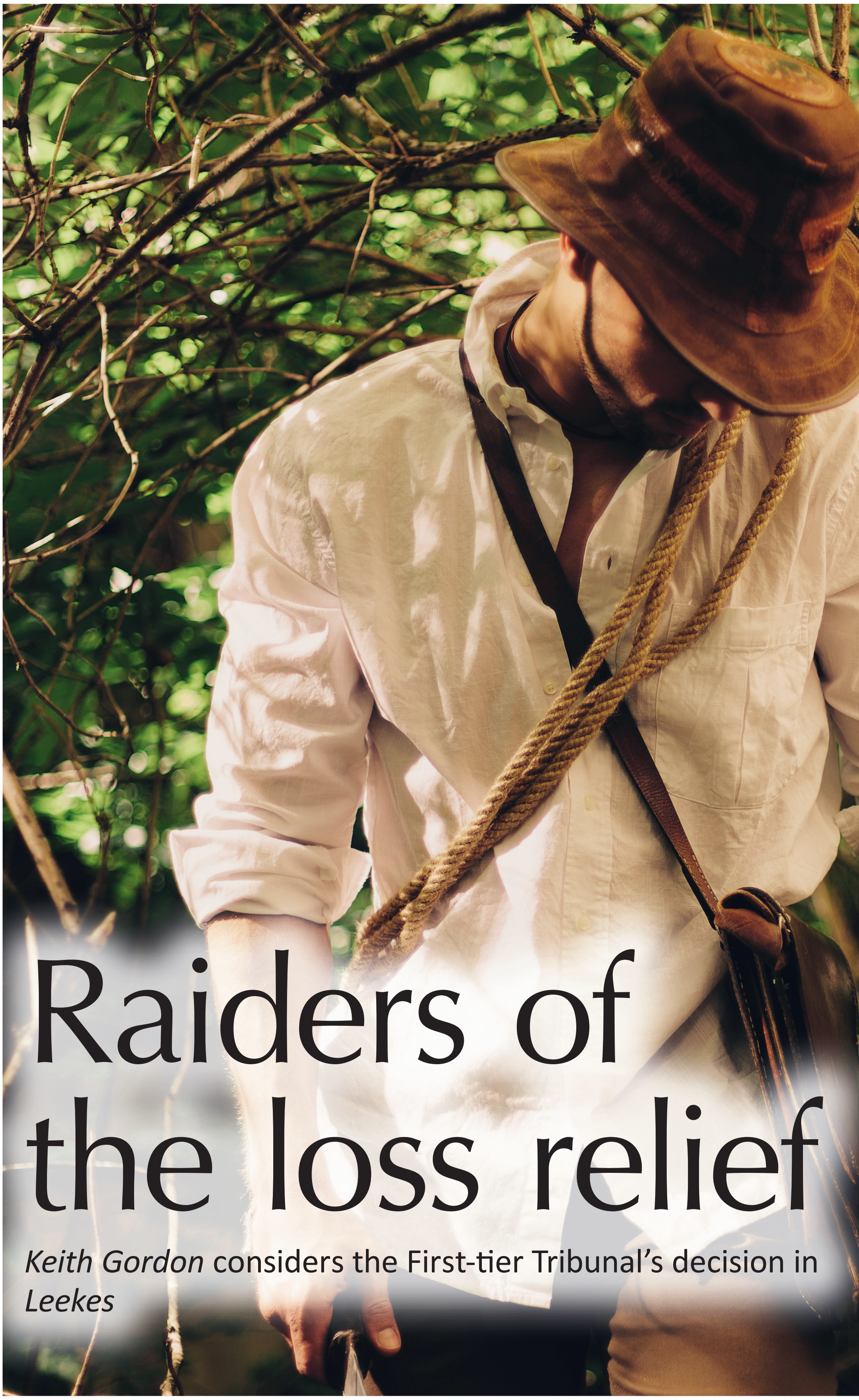
However, he also stated that the contract must be interpreted as a whole in the light of all the circumstances, which included the fact that there was no suggestion that CLP had ever told the purchasers that it had exercised the option to tax on the property. His second point was that there was never any suggestion that the purchasers, who were individuals, were aware or had any reason to suppose that the transaction might be subject to a VAT charge. Third, the purchase price had been agreed in principle a considerable time before completion, the £130,000 having been paid over by the latest in 2005 and with no suggestion that VAT might be payable by the purchasers. He pointed out that the special conditions specified that the purchase price was £130,000 and that no other sum was due on completion.

Lord Kitchin's final point was that clause 2 of the special conditions state that they prevail if there is any conflict with the general conditions. He said it was reasonable to conclude that the parties intended that nothing was, or could become, payable by the purchasers over and above the specified purchase price of £130,000. Therefore, it was held that the special conditions must prevail.

It is assumed that the seller's side had not realised or remembered that there was an option to tax on the property – otherwise a VAT invoice would have been issued at the time of the sale. Is it possible that no one properly read the contract and the parties relied on legal advisers who failed to cross-check the various conditions? Learning points from the case are that, when transferring non-residential property, best practice is to ask whether an option to tax has, or will be, exercised and, if not, ensure the contract excludes any VAT liability on the purchasers.

PROFILE

Name **Eile Gibson**
Position Solicitor
Company Tower Bridge Tax Practice
Email eile@towerbridgetax.com
Profile Eile Gibson was called to the Bar in 1995 and has worked for a number of City-based firms of solicitors. She established her own legal practice in 2008, marketing to law firms that have no in-house tax expertise, as well as directly to corporate and private clients. She specialises in corporate tax, including employment-related issues, the stamp duties and VAT. She is a member of LITRG and CIOT's Property Taxes subcommittee and CIOT Membership Committee, and provides *pro bono* advice through Tax Help for Older People. She is author of *The Tax Schedule*, Second Edition, Spiramus Press.



Raiders of the loss relief

Keith Gordon considers the First-tier Tribunal's decision in *Leekes*

KEY POINTS

- **What is the issue?**
The *Leekes* case concerns a challenge made by HMRC to a company's attempt to apply CTA 2010 s 944 in order that historical losses can be transferred from one company to another
- **What does it mean for me?**
Corporate reconstructions (including mergers and acquisitions) can take place under which loss-making companies can be 'acquired' but do not need to be retained, yet the benefit of any brought forward losses is not necessarily lost
- **What can I take away?**
The First-tier Tribunal rejected HMRC's argument that the loss relief should be available only in relation to profits arising from the merged trade, as opposed to the entirety of the merged trade

In the early days of my tax career, nearly 25 years ago, there was a legislative provision that I thought a very useful relief. ICTA 1988 s 343 (now found in CTA 2010 Ch 1 Pt 22) dealt with 'company reconstructions without a change of ownership'.

Its origins could be traced to anti-avoidance provisions before 1965 when companies were subject to income tax and parliament wished to prevent companies taking advantage of the rules that applied when a trade started or was discontinued. (These anti-avoidance themes can still be seen within s 343(2) (now CTA 2010 ss 948 and 949.) For me, the magic was in the rules that allowed historical losses to be transferred from one company to another, something that seemed to contradict every other rule I was learning at the time about carrying forward past losses. The rule is clearly set out in what is now CTA 2010 s 944 (formerly ICTA 1988 s 343(3)).

To paraphrase the statute, the essential conditions are that a trade that is transferred from one person to another has at least 75% common ownership at some time within two years of the transfer.

One major practical effect of the rules is that corporate reconstructions, including mergers and acquisitions, can take place under which loss-making companies can be 'acquired' but do not need to be retained, yet the benefit of any brought forward losses is not necessarily lost.

A challenge was made by HMRC to a company's attempt to apply these rules in *Leekes Ltd v HMRC* [2015] UKFTT 93 (TC).

The facts of the case

Leekes Ltd carries on a trade of running out-of-town department stores. In 2009, it ran three in Wales and a fourth in Wiltshire. In the November, it purchased the entire share capital of Coles of Bilston Ltd (Coles), a company whose trade at the time comprised three furniture stores, plus warehousing in the West Midlands. At the date of the purchase, Coles had accumulated trading losses of more than £2.2 million, plus a further £950,000 in the eight months until the date of the purchase.

After the purchase, Coles's trade was hived up to Leekes (at fair value to avoid any restriction on the relief from being imposed) and Coles became dormant. The (former) Coles stores were rebranded as Leekes. Over the next four months, these

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outlets sustained a further trading loss of £176,000.

However, Leekes, as a whole, made taxable trading profits of £1.6 million. The company therefore claimed relief in relation to the brought-forward losses (deriving from Coles), with the result that it had no corporation tax to pay on its trading profits for the year ended 31 March 2010.

Although HMRC accepted that the conditions for s 343 to apply were met in the present case, they refused to accept that Leekes could take advantage of Coles's past losses. This was because, HMRC argued, the loss relief should be available only in relation to profits arising from the Coles part of the merged trade, as opposed to the entirety of the merged trade.

The tribunal's decision

The arguments before the tribunal followed two main themes. The first was the meaning of the term 'trade'. Did it mean the trade as previously carried on by Coles, or could it embrace the enlarged trade now carried on by Leekes? Second, the tribunal considered the question of quantum, and whether it was relevant that Coles, which was still loss-making, would not (had it remained in independent ownership) have been in a position to claim relief for its earlier losses.

Judge Rachel Short, sitting with Mr Nicholas Dee, noted with surprise that the legislation, which was at least 50 years old, had not apparently been the subject of prior authority. There was the case of *Falmer Jeans Ltd v Rodin* 63 TC 55, but that concerned a different subsection, what later became s 343(8) and is now CTA 2010 s 951.

The tribunal considered that the natural reading of the legislation was to interpret 'trade' as embracing the enlarged trade (as in the taxpayer's arguments). In particular, it noted that there was no express requirement for the financial performance in the enlarged trade to be streamed (keeping separate the Coles and the Leekes elements of the business), as would have been required on HMRC's interpretation. Further, subsection (8), which deals with a different scenario, does expressly provide for such streaming. Therefore, given that parliament was prepared to allow streaming in one provision, it was considered unlikely that it would have required this only implicitly in another closely related provision.

For similar reasons, the tribunal rejected HMRC's arguments on quantum, favouring commercial reality and the obvious difficulties that would result from trying to keep separate the two strands of a business. It should be noted that, in many cases, activities would often be operationally merged, especially as the amalgamation and associated cost savings would commonly be a principal driver for the merger of the companies in the first place.

As a result, Leekes's appeal was allowed.

Commentary

Having taken the stance to oppose Leekes's claim, I would expect HMRC to pursue this case on appeal to the Upper Tribunal and perhaps beyond.

Nevertheless, this decision provides a common sense answer to a situation that could be encountered. I hope that any future appeal by HMRC would be unsuccessful, given the higher courts' willingness to find a common sense interpretation wherever possible (see *Pollen Estate Trustee Company Ltd and King's College London v HMRC*).

There is nothing obvious from the decision that could give rise to criticism of HMRC's decision to take the case. Nevertheless, I would be interested to ascertain why HMRC have decided to adopt this interpretation after so long. Is it an indication of a reinterpretation by officers with a view to maximising the tax take (as has occurred elsewhere), or have other potential appellants simply not had the stomach to take on HMRC in a tribunal?

PROFILE

Name Keith Gordon
Position Barrister, Chartered Accountant and Tax Adviser
Company Temple Tax Chambers
Tel 020 7353 7884
Email keith.gordon@templetax.com
Profile Keith M Gordon MA(Oxon), FCA CTA (Fellow) is a barrister, chartered accountant and tax adviser and was the winner in the Chartered Tax Adviser of the Year category at the 2009 *Taxation* awards. He was also awarded Tax Writer of the Year at the 2013 *Taxation* awards. He provides litigation support and advises on tax and related matters to accountants, tax advisers and lawyers.

FURTHER INFORMATION

Read Keith's article 'Mind the (property) gap' the Court of Appeal's decision in *Pollen Estate Trustee Company Ltd and King's College London v HMRC* from the November 2013 issue of *Tax Adviser* at www.tinyurl.com/ouuuh3r

Uniformed VAT

Neil Warren considers the VAT position on staff benefits

KEY POINTS

- **What is the issue?**
There are VAT savings to be made on staff benefits and perks, but output tax is due on many supplies of goods given free
- **What does it mean for me?**
Many HMRC officers apply checks to staff-related issues on compliance visits, so it is important to be aware of the rules and the correct treatment to adopt
- **What can I take away?**
It is difficult for free clothing given to an employee to qualify as a 'uniform'

Imagine this: you are a clothes retailer who gives your staff a quarterly allowance of free clothing. They will wear some of the items while on duty and some will be used away from work only. What is the VAT position in relation to these free supplies of stock? The answers may be sought in a First-tier Tribunal case involving a major high-street retailer. However, other staff perks common in the business world may also be liable to VAT.

Business gift rules

A gift of goods or services takes place if no payment is received from the recipient. It should always be remembered that payment can be in a non-monetary form as well as cash. Nearly 30 years ago as a Customs and Excise officer I visited a window cleaner who was plying his trade in return for free golf club membership, free meals at restaurants and even the free use of a car from a local hire company. There was no gift situation here and there was an output tax liability on the value of the benefits he had received from all of these customers.

The good news is that a business providing free services does not usually have an output tax liability. But the rules are different for goods. In such cases, no output tax is due if the value of the gift, including the total of all other gifts to the same person in any 12-month period, is less than £50 and the gift was given for business purposes, perhaps to reward a loyal customer or staff member. The £50 limit is VAT exclusive and is based on the cost of the item to the business when it bought it, rather than the retail price. The bad news is that, if the £50 limit is exceeded, the earlier gifts also become subject to output tax. See ***Example 1***.

As a final twist to the tale, what would be the situation if Bill bought a case of wine for his friend Steve's birthday, with whom he has no business dealings, and paid for the wine through his business bank account? In this situation, the input tax on the purchase should be blocked because it is not relevant to taxable supplies, or if Bill is diverting existing stock where input tax has already been claimed, he should account for output tax on the day the wine is given to Steve.

What is a uniform?

The issue in the case of *French Connection Ltd* (TC43467) was whether free clothing given to employees represented a supply for VAT purposes and therefore a liability for output tax purposes. Each employee receives a quarterly clothing allowance. This is free unless the employee leaves the company within three months of receiving the items, in which case they are charged an amount equal to 30% of their annual allowance through their salary and output tax is paid on these deductions.

The taxpayer agreed that the supply was subject to output tax if the annual value of the gift exceeded £50 but claimed

EXAMPLE 1 – OUTPUT TAX ON GIFTS

Bill is VAT-registered as a wine merchant and completes his returns on a calendar quarter basis. He has a very good customer called Mike, and he gives him the following free gifts from his stock (all figures are at cost price excluding VAT):

- January 2015 – a vintage bottle of champagne worth £30.
- July 2015 – a bottle of red wine worth £10.
- Christmas 2015 – a bottle of white wine worth £15.

The total value of gifts to Mike in the 12 months to Christmas 2015 exceeded £50, so Bill should account for output tax of £11 on his December VAT return – £55 x 20%. (HMRC Notice 700/7 para 2.3)

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PROFILE

Name **Neil Warren**
Position Independent VAT consultant and speaker
Company Warren Accounting Services Ltd
Profile Neil Warren is an independent VAT author and consultant, and was the *Taxation* Awards Tax Writer of the Year in 2008. Neil worked at HMRC for 13 years until 1997.

that the items relating to store staff were for a business purpose – as a uniform – so no output tax was payable. However, the tribunal disagreed and felt that there was no difference between a non-business or business purpose for the supply. If input tax had been recovered on the initial purchase of the goods, there was an output tax liability when they were given to the employee, adjusting for the £50 gift allowance. To quote from the report:

'The wide variety of clothing which staff members may select, particularly to assist in promotion of the French Connection brand, means that in formal terms the description of such clothing as a "uniform" is not appropriate. The adjective "uniform" as defined in the *Concise Oxford English Dictionary* is: "The same in all cases and at all times; not varying." We do not consider that the clothing is "uniform" in that sense.'

The taxpayer's final argument was that the key date for output tax purposes was three months after the supply, at which point the employee would not be required to make any payment for the goods received if they were still in the company's employment. The tribunal rejected this approach and confirmed that the relevant date was when the items were first supplied to the employee. HMRC's assessment was therefore correct.

So the conclusion from this case is that it is difficult for an item of clothing to qualify as a 'uniform' if it can be used personally by employees when they finish work.

Food and drink for staff

Let us imagine another situation: a business wants to celebrate its trading success by hiring a private box at a football ground. The day's festivities, including free food and drink, will be enjoyed by a 50-50 split of ten staff and ten customers. What is the input tax treatment on the costs?

The bad news is that there is an input tax block on the costs relevant to the customers under the business entertaining rules (HMRC Notice 700/65, para 2.1) but the position for the employees depends on their role at the game. If they are to act as hosts for the customers, to ensure they have a good day and place lots of orders with the company, the input tax is also blocked on their costs. But if they are able to enjoy the day without any hosting function, a claim on 50% of the costs is fine (HMRC Notice 700/65, para 3.3). This is because free supplies of food and drink to staff is considered to be a legitimate business expense as long as there is no hosting of non-staff involved.

Supply of mobile phones

A new employee has started work for a local firm of estate agents, and has been given a free pay-as-you-go mobile phone by his very generous employer. He will use the phone for business and private purposes and, as long as the monthly cost of the calls does not exceed £100 plus VAT to the employer (deemed to be the business use each month), the employee need not make a financial contribution. But if the bill exceeds this figure, the employee must pay the difference by a payroll deduction. What is the VAT position here?

The VAT rules on mobile phones supplied to employees are explained in VAT Notice 700, section 12A. In the situation above input tax can be fully claimed by the employer on the payment to the phone company, but output tax is payable on the contributions from the employee. If the employer allowed the employee to make unlimited private calls without payment, the employer would need to apportion input tax to reflect the non-business use. However, the commercial reality is that most employers allow employees to make a small number of private calls without charge, and HMRC demonstrate a common sense approach at para 12A.2.1:

'We realise that in practice businesses… tolerate a small amount of private calls. We are prepared to treat such minimal use as being insignificant for VAT purposes and it will not prevent a business treating all the tax it incurs on calls as input tax.'

Final example – lease car and payroll deduction

Here is one of my favourite VAT tips because it is one that often causes confusion among advisers. In ***Example 2***, there is no need to account for output tax on the £100 payments received from John because this would in effect give HMRC a double tax windfall if the input tax was also apportioned.

As a final reminder, remember that, if an employer claims input tax on road fuel bills where part of the fuel is used for an employee's private travel, the easiest way to deal with the VAT challenge is to account for output tax with the scale charge system based on the CO2 emissions of the vehicle – see HMRC Notice 700/64, section 9.

EXAMPLE 2 – CAR LEASING ARRANGEMENT

John is an estate agent employed by ABC which provides him with a company car in return for a payment of £100 a month through a payroll deduction to cover the cost of his private motoring. ABC leases the car from DEF for a monthly payment of £300 plus VAT and claims 50% of the input tax on each payment in accordance with HMRC Notice 700/64, section 4.

The good news is that no output tax is due on the payments from John – the input tax block applied by ABC on the leasing costs deals with the VAT issues and no further action is required.

Collective gain

Julie Butler explains the taxation considerations for investment clubs and other collective management schemes

KEY POINTS

- **What is the issue?**
With the rise in investment clubs and other collective management schemes, professional advisers are increasingly being approached to provide tax advice on these entities
- **What does it mean for me?**
The approach required for investment clubs is often unique and requires attention to detail so that the correct gain is calculated
- **What can I take away?**
A basic understanding of what investment clubs are, how they operate and what legal and taxation requirements a professional adviser may come into contact with when acting for such an entity

Collective investment schemes have operated in the UK since the early 1900s. The basic premise then remains true today: that a group of individuals pool resources to reduce risk, combine their knowledge and increase buying power. In an age of austerity, this pooling has become an attractive alternative to running an investment project single-handedly. This, coupled with the strong gains in the stock market since 2013, has attracted new investors wanting to share the responsibility of investment ownership. Professional advisers are often turned to for advice on issues from administrative and legal process to taxation implications.

Most investment clubs focus on the stock market, but others look to property, foreign exchange dealing and even rare artworks.

Similarly, other collective management schemes, such as racehorse share syndicates and flat management companies, are run on that premise of pooling resources and knowledge. However, many of these do without a profit-seeking motive and therefore, some may argue, generally fall outside the UK tax system. Stock market investment clubs, however, are different.

Day-to-day club operations and management

Club members vary significantly, with people taking part from all walks of life and being allocated roles depending on their personal strengths and weaknesses. Usually, the club will be managed by a constitution because a set of operational

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rules is vital for the entity's long-term success. These rules will be used to allow members to join and leave, settle disputes, choose an investment strategy and set a stop-loss to ensure the club doesn't lose large quantities of funds if an investment fails.

Members usually pay a regular 'subscription' into the entity, which may vary depending on individual circumstances, in return for 'units' issued by the investment club. This means that most clubs have bank and brokerage accounts through which to manage these funds. Members can also buy additional units or redeem present holdings while the club's exists. Typically, clubs meet monthly to make investment decisions, review performance and perhaps trade club units.

Management roles involved within an investment club are likely to include:

- chair: coordinates the club members, and ensures the constitution is implemented fully;
- treasurer: manages monthly member subscriptions and withdrawals, manages unit valuations, is responsible for bookkeeping and submitting each year an accurate form 185 to HMRC and club members; and
- secretary: keeps a record of meeting minutes and general club administration.

General taxation implications: an overview

After an investment club has been formed, HMRC must be notified immediately. HMRC should invite all clubs to the standard terms of agreement and provide assistance in setting these up. From this point, all club undertakings are taxable. Subject to common misconception, investment clubs do not pay corporation tax because they are not normally an incorporated entity. Instead, at the end of the financial year, the club treasurer must issue each member with an investment club certificate, HMRC form 185, which details his or her proportion of the interest and dividend income earned over the previous 12 months, which will be added to the individual income tax computation, and any capital gain on loss on the shares. Sales and transfers of ownership 'units' will also fall within the scope of CGT, a feature often overlooked by club members.

If the total capital gain is more than £11,100, the current exemption limit, or if proceeds exceed four times the annual exemption, this figure too will have to be added to the individual tax return for

PROFILE

Name **Julie Butler FCA**
Position Managing Partner
Company Butler & Co Chartered Accountants
Tel 01962 735544
Email j.butler@butler-co.co.uk
Profile Julie Butler is a farm and equine tax specialist. Her articles are published in the national accountancy and tax press and she is the author of *Tax Planning for Farm and Land Diversification*, *Equine Tax Planning* and *Stanley: Taxation of Farmers and Landowners*.

that tax year, alongside the income tax entry for dividend income. Investment club capital gains on shares and units can be tricky to calculate given there could be hundreds of transactions in a tax year, and it is important to follow the correct processes to compute the right gain per club member, and therefore what to declare on form 185.

Capital gains and investment clubs: complicated apportion of gains

The capital gain on the sale of shares owned by an investment club is, in theory, easy to calculate because the computation is produced in the normal way in ***Table 1***.

TABLE 1

Net sales proceeds	
Sales proceeds	X
Less sales dealing costs (Brokerage, stamp duty etc)	(X)
Less total cost	**X**
Share purchase costs	(X)
Less sales dealing costs (Brokerage, stamp duty etc)	(X)
Net taxable gain/loss	**X**

Each capital gain, once calculated, must then be apportioned to members depending on their unit holdings at that time. It is here that things become complicated. Members' holdings vary depending on their current rate of subscriptions, any additional units that have been purchased or sold, and the current value of other unsold investments. It is therefore vital for the treasurer or management committee to keep on top of who owns what, when. This is the first issue that can make a straightforward gain more complicated, particularly when transactions of units are unrestricted.

Some clubs adopt the strategy of only counting subscriptions and allowing redemptions and purchases of club units at each meeting, so that any apportionment for share sales in the intervening period can be calculated on the basis of the holdings at the end of the previous meeting. In other clubs, the administrative burden is a lot higher because percentage allocations need to be calculated at the precise moment shares are sold if units in issue have altered between meetings. This can cause a major difficulty for the professional adviser because multiple capital gains in the same month may have to be divided according to two or more ownership structures. Advisers will, however, be thankful that indexation allowance and taper relief have long since been abolished, which removes the potential to have a different rate of taper relief applying to each shareholding.

Once the capital gains have been apportioned between each member, the treasurer will fill out form 185 on behalf of each individual unit holder and issue this for each tax year, ready to be included on their tax return.

Redemption of ownership units: another CGT headache

There are two options when calculating capital gains on redemption of shares. If a member is exiting the club entirely, the calculation is significantly different from redemption of one share.

On leaving an investment club, it is necessary to calculate the gain or loss from the member's overall holding. In most cases, the club will be continuing, and will therefore redeem the units at their individual value, multiplied by the number of units held. This is worked out using the formula in ***Table 2***.

TABLE 2

(Money held by club + current market value of share portfolio: (outstanding brokerage liabilities)	(X)	Number of units held
Total number of units in issue by the club		

This gives a total value at which to redeem the units. On receiving the net proceeds from this transaction, the

TABLE 3

Net sales proceeds	X
Add	
Any other money received from club (Not reported elsewhere)	X
Less	**X**
Capital gains/losses reported elsewhere	(X)
Dividend income	(X)
Any other payments in, including monthly subscriptions	(X)
	(X)
Net taxable gain/(loss)	x/(x)

member can then calculate his capital gain on the transaction. This, of course, excludes any dividend or interest income, or any capital gains that have already been accounted for.
The computation is therefore as set out in ***Table 3***.

On transferring one unit to another member, or redeeming one unit within the club itself, HMRC deem an individual to have 'sold' their units. The tax inspectorate advises that individuals need to declare these unit gains alongside their form 185 certificate returns in the year in which they occur to avoid complications later. The unit value at the date of redemption will be calculated as before, which should then form the basis of the sales or the value of the transfer transaction. The base cost, for CGT purposes, will be computed using the pooling technique to value the member's holdings against the total amount invested in the club as a whole – see ***Example 1***.

EXAMPLE 1

Member A joins an investment club, purchasing six units at £240 at the outset. The member then spends £30 on one unit every month for the next 14 months. He redeems two units at the end of the 12-month period, for £50 each – £100 cash. The gain would be calculated as follows:

Unit pool:

Units	Cost per unit	Total cost
6	£48.00	£240.00
14	£30.00	£420.00
20	**£33.00**	**£666.00**

Gain:

Net sales proceeds	**£100.00**
Less	
Two units at average base cost of £33.00	**£66.00**

Conclusion

Investment clubs are seemingly on the rise, with more individuals looking to spread financial risk and pool knowledge to create a new investment strategy to generate future returns. In some circles the sums invested in the clubs has increased significantly. Such clubs do not fall under the usual partnership or limited company trading vehicles, but are instead taxed on an individual member basis. So professional advisers engaging in work with these entities must be aware of what administration must be filed with HMRC each year, and also how to compute and proportion capital gains on share sales, and redemption values on unit trades within the club. Such calculations can be messy and complicated, and the investment club treasurer, be they experienced or amateur, may need significant help.

Branch events

Where do you get your CPD?

AUG-SEP 2015

Know better

Does your firm provide your CPD needs? Have you tried a local Branch event before? Would you like the opportunity to meet CTAs, ATTs and other professionals in your local network? Why not go along to a local Branch event? Below we have listed Branch events until 14 September. However, visit your local branch website because there may be some events that have been planned since this list was sent to print. For a full list of branches, visit the CIOT and ATT websites www.tax.org.uk/branches and www.att.org.uk/branches, where you will find information about each event and where you will be able to book online.

East Midlands
Tuesday 8 September
Branch AGM
Personal tax update
Michael Steed
Loughborough
13.30 – 17.30

Harrow and North London
Thursday 10 September
Pension changes post-April 2015
Bob Trunchion
17.30 – 20.30

Leeds
Thursday 10 September
Presentation skills
17.00 – 19.00

Manchester
Monday 7 September
Finance Acts 2015 update
Robert Jamieson
13.30 – 18.00

Mid-Anglia
Wednesday 9 September
Inheritance tax planning
Peter Legg
Cambridge
14.00 – 17.00

Northern Ireland
Friday 11 September
Tax planning for the family business
Pete Miller
Belfast
09.15 – 13.00

Sheffield
Wednesday 2 September
Branch AGM
International tax update
Anne Fairpo
18.15 – 19.45

South London and Surrey
Monday 7 September
Budget
Michael Steed
Guildford
18.30 – 20.00

Suffolk
Tuesday 8 September
Finance Act (No 2) 2015
Malcolm Greenbaum
Ipswich
16.30 – 20.00

Thames Valley
Wednesday 9 September
Death, taxes and Brussels IV – a reflective look at the future
Peter McGeown
Reading
18.15 – 19.30

Branches Programmes 2015/16

Andrew McKenzie-Smart, Chairman of Branches Forum and the Joint Branches Sub-Committee, gives us a taster of the forthcoming branch programmes.

Included in this month's *Tax Adviser* is this year's *Branches Programme* booklet, which details all branch events in the 2015/16 season. These events will also be listed in the branches sections of the CIOT and ATT websites from September.

I recommend that you check the website before the event to confirm that it is still to take place at the same venue and time. The *Branches Programme* is published almost a year in advance of some of the events and these may be altered. I bookmark the South London and Surrey branch pages so that I know the forthcoming events for my local branch, and I try to attend as many of these as possible. They offer great value as well as the chance to network and meet up with former colleagues.

Over the past couple of years we have set a theme for the branches that have covered areas such as how to improve branch events, succession planning and press and publicity. This year's theme ties in with Chris Jones's for his presidential year; so, over the next year, the branches will be focusing on newly qualified members as well as student members of the ATT and the CIOT. Events and activities will reflect this. Some of these are already in the *Branches Programme*, but others were unable to be confirmed before the publication deadline.

Looking at the *Branches Programme* draft copy, I am grateful for the efforts put in by the branch committees to ensure that seminars and conferences cover areas that are relevant and of practical use to members. We are all keen to ensure that you can obtain training and assistance relevant to your work at a local level. To help with this, we held a couple of pilot webinars and extended pilot series of webinars with East Midlands branch to explore whether online seminars are beneficial.

All branches aim to provide information and expertise on the major changes in tax legislation. I am sure that some additional seminars will be arranged to cover the planned digital tax accounts, which will affect all of us professionally and personally.

If you have any matters to raise about your local branch, your training needs or other related issues, contact your local branch chairman, me or email head office at branches@tax.org.uk

Chris Brydone, my predecessor as Chairman of the Branch network, has recently become Chairman of the CIOT Membership and Branches Committee; Tanya Hiscock from Sussex branch has become Chairman of the ATT Member Steering Group. It is a pleasure to see those who oversee the membership and branches in both organisations have been so closely involved in the network and understand the issues facing members in practice.

Finally, I am delighted to have Malachy McLernon from Northern Ireland branch as my deputy, and having Jo Routier from Jersey branch as Vice-Chairman of the Branches Forum. I believe that Malachy and Jo have the expertise to continue developing what's on offer to members on a regional basis.

OECD BEPS Project – latest round of stakeholder input

INTERNATIONAL

The latest (and final?) round of OECD discussion drafts for public comment on the BEPS project were released in May and June. Several of these were second, or even third, discussion drafts focused on a particular action. The CIOT submitted responses to the discussion drafts which looked at BEPS action 7: preventing the artificial avoidance of PE status, following on from an earlier consultation and public meeting, and action 8: hard-to-value intangibles.

Action 7: preventing the artificial avoidance of PE status

We confirmed that the CIOT supports the aims of the OECD to tackle artificial avoidance of PE status in the areas identified. However, we stressed that the downsides (being much higher compliance costs for taxpayers, administration costs for tax authorities and more disputes) should not outweigh any benefits (being a re-allocation of tax base to the state where the sales and/or activities took place).

Although, generally, the OECD has adopted our preferred options from the first discussion draft, we explained that we would have preferred an approach to tackle artificial avoidance of PE status through *commissionaire* arrangements targeted at artificial structures only. While the proposed revised commentary is likely to address BEPS concerns, the proposals also amount to a broadening of the PE concept. This is likely to lead to more disputes over whether a PE exists, more PEs of low value in non-abusive cases and, consequently, an increased compliance burden for taxpayers and higher administration costs for tax authorities.

Our concerns about the prospect of more disputes over whether a PE exists, more PEs of low value in non-abusive cases and the increased compliance and costs burden for taxpayers and tax authorities also arise in relation to the decision by the OECD to recommend Option E to tackle artificial avoidance of PE status through the specific activity exemptions. We recognised that the proposal would significantly reduce BEPS activity aimed at exploiting the specific activity exemptions, but suggested that the cost of achieving this would be increased compliance for companies with a small presence in territories. In particular, the revised guidelines do not satisfactorily address the issue of what is an 'auxiliary' activity, and it is likely that some countries will regard a long-term presence involving one or two people undertaking a support activity as creating a PE, even if the profit attribution is small or even non-existent.

This is why we repeated the suggestion in our earlier response that there is a monetary threshold for sales, below which a PE will not arise. In our view a threshold and a *de minimis* level should be considered.

We also reiterated our hope that governments will provide enough resource to ensure effective and efficient resolution of the greater number of disputes that will arise. Having robust processes to solve disputes effectively and efficiently is vital to ensure that the objective of the BEPS process to tackle profit shifting does not lead to a damaging increase in double taxation.

Our full response can be found at: www.tinyurl.com/q862rws

Action 8: hard-to-value intangibles (HTVI)

We acknowledged that stakeholders in the BEPS project are aware that the pricing of inter-company transfers of intangibles has been a significant concern of tax authorities for some years. Tax authorities have, in public forums, shared examples of 'mispricing' of intangible transfers, where an enterprise has transferred an intangible at a low value which has subsequently generated a substantial income stream. It is a clear concern of tax authorities that multi-national enterprises can erode tax bases through moving intangibles to low-tax territories.

We agreed that it is a legitimate goal of the BEPS project to develop ways to prevent such behaviour. In our response, considering the proposals for the use of ex-post data in valuations put forward in the discussion draft, we focused on whether they succeed in doing so without affecting commercial transactions not motivated by achieving tax reductions.

We said it was crucial that the proposals should not introduce into the international tax system the ability for tax authorities to open transfer pricing disputes or re-open agreed positions based solely on the application of hindsight where the authority simply does not like the ultimate outcome of the transaction. Business transactions involve an element of risk, and in commercial situations sometimes matters will not turn out as expected.

We also noted that the proposals would inevitably mean that tax positions remain open longer. For multi-national enterprises that remain unchanged for the period of uncertainty, the implications will not be too serious. However, these open tax positions will create difficulties and complications for any form of group restructuring or third party merger and acquisitions activities.

In terms of the behavioural response of taxpayers, we suggested that the proposals would lead to taxpayers choosing not to transfer intangibles within a group if there is any material degree of uncertainty over value – whether or not the transfer may be base-eroding, or how well the taxpayer believes it can justify its approach to valuation – as the tax result of such transactions would be uncertain as a result of the increased ability of tax authorities to consider ex-post data.

Further, we suggested that it follows that, given taxpayers will recognise that it will be difficult to transfer intangibles with certainty of tax treatment until they are sufficiently well developed for future income to be reasonably well measured, where intangibles are developed will become of greater significance. It would be rational for taxpayers to expand the development of intangibles in low-tax territories, and within regimes such as patent boxes to optimise the tax treatment of the future income derived from these intangibles.

In conclusion, we accepted that ex-post data is useful in some circumstances in the pricing of HTVI, and is likely to assist in preventing base erosion. However, we said its use should be restricted to cases where taxpayers cannot provide reasonable justification for *ex-ante* projections. In any event, it is likely to lead to a concentration of development of intangibles in low-tax and tax-favoured regimes.

Our full response can be found at www.tinyurl.com/pelvoqk

Sacha Dalton
sdalton@ciot.org.uk

Current VAT property issues

INDIRECT TAXES

Key points

- The CIOT has been inputting into European Commission work on the place of supply of land-related services
- HMRC are examining various issues on what can be zero-rated as a dwelling

The Indirect Taxes Sub-Committee has been working on VAT issues relating to property. They include working with the

European Commission on defining what are and are not 'land-related services'. In addition, we are commenting to HMRC on various contentious issues relating to what is a dwelling.

The place of supply of land-related services

Changes to the Implementing Regulation introduce new rules on the place of supply of land-related services from 2017. We have participated in the drafting of explanatory notes that will be published by the European Commission. The notes will not be binding but should help harmonise the way in which different member states address the question of what is and is not a supply in their territory.

Several non-tax problems have emerged, which we suggest is a continuing issue with EU law: countries understandably use their own terminology, and that does not always translate well into English. Consequently, we have emphasised the need for any English (as well as any other language) version of guidance to be examined for usage before the guidance is issued.

HMRC to give its views on some problem areas

Readers may recall that we wrote to HMRC some time back about the meaning of the term 'dwellings', as used in legislation zero-rating certain work relating to them following the tribunal decisions in *Catchpole v R & C Comrs* [2012] UKFTT 309 (TC) and *HMRC v Fox* [2012] UKFTT 264 (TC). Both cases dealt with the question of whether a dwelling may comprise two separate but related buildings. HMRC have indicated that they now accept that in some circumstances zero-rating may apply and will issue guidance.

They are also looking at other issues relating to work carried out on existing buildings:

- What is a façade and when does its retention as part of a new building not prevent zero-rating of construction work done.
- What is permitted development? This question is important in deciding whether works involving the conversion of certain buildings into dwellings can be zero-rated.
- The treatment of annexes following the case of *Colchester v R & C Comrs* [2014] UKUT 0083 (TC).

We welcome the development of clearer policy, which is at least in part a result of work with HMRC by the CIOT and other bodies, both directly and through our representation on the Land and Property Liaison Group.

Maric Glaser
mglaser@ciot.org.uk

Option to tax: have you experienced delays?

INDIRECT TAXES

We have received reports from members of continuing delays by the Option to Tax National Unit in responding to options that have been notified. With examples of it taking upwards of 30 working days and HMRC acknowledging a peak of 30–60 days, we are to write to HMRC to understand why these delays are occurring and, ultimately, improve response times for taxpayers.

Obtaining acknowledgement of an option to tax (OTT) can be crucial to property deals and transfers of going concerns in particular. Delays can jeopardise transactions, given the

Technical Team

sdalton@ciot.org.uk
Sacha Dalton, Technical Newsdesk Editor

Contents

In this month's Technical briefings we provide a summary of our submissions to the OECD and Scottish government.

We provide an update on Working Together and also cover other work carried out by the Technical Teams of the CIOT, ATT and LITRG.

sdalton@ciot.org.uk
Sacha Dalton,
Technical Newsdesk Editor

understandable reluctance to complete contracts without certainty on VAT and many sales contracts will require confirmation that the OTT has been notified and is not dis-applied because of anti-avoidance. This is especially true in cases requiring permission from HMRC or belated notifications. We are also aware of HMRC issuing rulings and approvals of standard OTT notifications in situations that do not require an approval. There is only an approval process for an application for an OTT to apply because of extenuating factors, not for standard notifications when permission is not needed.

In the past, HMRC have had a target of 15 working days to respond to notifications, but this has slowly increased and the situation now is, we believe, causing excessive delays. We are aware that, having taken 20–30 days to look at a notification and request further information, taxpayers have been told that they would have to wait another 27 days for their reply to be looked at again.

To assist with our submission to HMRC, we are asking for brief (anonymised) examples of delays that you and your clients may have experienced so that we can evidence our concerns. It would be helpful to provide some context of whether the OTT is a standard or complex situation and to explain what impact the delay has had. Email brief details to indirecttax@ciot.org.uk by 31 August 2015.

Angela Fearnside
afearnside@ciot.org.uk

Free cyber-security course: help protect yourselves and clients from cyber-attacks

GENERAL FEATURE

Tax advisers deal with sensitive client information daily and can be a target for cyber-attacks. The Information Security Breaches Survey 2014, commissioned by the Department for Business, Innovation and Skills (BIS), found that 81% of large organisations and 60% of small businesses had suffered a security breach in the previous year.

A free online training course has been developed by government and industry (including ICAEW and the Law Society) for lawyers and accountants to help raise awareness and understanding of this area. It provides guidance on how companies can better protect their data and tackle the risks associated with information security. There are four modules:

1. an introduction that describes the risks and impacts on business and individuals;
2. responsibilities and legal requirements (such as data protection);
3. how to manage the cyber risk, including where businesses can find help from government and the private sector; and
4. scenarios, including best practice responses to cyber incidents and risks associated with new technologies.

Understanding, anticipating and managing cyber-security risks is crucial for all advisers, so the CIOT and ATT recommend completing this course. It can be accessed at www.tinyurl.com/nrn6khd

Charlotte Ali
cali@ciot.org.uk

The Commission on Local Tax Reform in Scotland

MANAGEMENT OF TAXES, GENERAL FEATURE

LITRG and CIOT have made submissions in response to the call for evidence issued by the Commission on Local Tax Reform set up by the Scottish government. The Commission is exploring alternative forms of local taxation to council tax, with the aim of delivering a 'fairer' system in Scotland.

The CIOT had previously published an online survey to gather the views of members in Scotland. Responses informed the CIOT's written submission.

Neither CIOT nor LITRG recommended any particular system of local taxation in their submissions, but they identified general issues for consideration and explored possible options. In particular, LITRG noted the importance of taking into account interactions of local taxation with national taxation, tax credits, universal credit and other welfare benefits. Both CIOT and LITRG also noted the need to consider the impact of any changes to local taxation on charging for household water and sewerage.

The two groups pointed out the difficulties entailed in trying to define the subjective concept of 'fairness' and suggested that it would be better to aim for a progressive system: one that recognises that society as a whole has to pay for people with care needs and that the cost should fall more on those who can afford it than on those who cannot.

Among the options considered by the CIOT were a reformed council tax, a local income tax, a land value tax, consumption and environmental taxes and hybrid systems. It noted a tendency to focus on income as a measure of the ability to pay, but it suggested that a more holistic approach might be to take into account not only income but also the resources available to a person. Ideally one would also take into account necessary outgoings, such as those relating to dependants. The CIOT concluded that it was unlikely that any single system would achieve a proper balance between reflecting the use of services and paying proper regard to the ability to pay.

LITRG noted that the council tax system already takes account of disability and suggested that any reformed system of local taxation should do likewise. The charity noted that take-up of council tax reduction could be improved by improving awareness of entitlement, making it easier to claim and perhaps changing its nature. It also raised the issue of high marginal deduction rates, in particular the situation where one government department pays a credit only for another to claw it back through a reduction in a benefit. LITRG suggested the use of a consistent measure of income across all systems.

Both CIOT and LITRG emphasised the importance of considering administration and collection of local taxes at the outset, and noted that the system of local taxation should be transparent.

In June, LITRG and CIOT participated in roundtable discussions organised by the Commission in Scotland for representatives of low-income groups and those from professional bodies respectively. The discussions considered principles and parameters for a local system of taxation. The discussions were broadcast live as webcasts on the Commission's website.

The CIOT submission is available at www.tinyurl.com/pr7rjxo

The LITRG submission is available at www.tinyurl.com/q69gf5k

Joanne Walker
jwalker@litrg.org.uk

Scottish Fiscal Commission

MANAGEMENT OF TAXES, GENERAL FEATURE

The CIOT has submitted a response to the Scottish government consultation on the Scottish Fiscal Commission, which was set up on a non-statutory basis in June 2014. The consultation included a draft Bill to establish it as an independent statutory body. It also set out proposals to enhance the functions of the Commission, with the aim of strengthening the scrutiny of Scotland's public finances.

The CIOT supports the proposal to establish the Commission on a statutory basis, assisting it to be permanent. We noted the importance of the Commission being directly accountable to the Scottish parliament.

The response welcomed the proposed enhancements to the Commission's functions and remit. We noted that the Commission not only has a role on devolved taxes, but also with partly devolved and assigned taxes. In this regard, co-ordination with HMRC and the Office for Budget Responsibility will be key.

The CIOT raised a concern that the draft Bill only appears to make provision for the Commission to employ staff. We recommended that the provisions be expanded to give the Commission the power to hire consultants or subcontractors and commission reports from third parties. This would give it more flexibility and a greater ability to cope with spikes in demand for its resources. It would also be better able to access the services of specialists.

The CIOT submission is available at: www.tinyurl.com/p94be2x

Joanne Walker
jwalker@litrg.org.uk

Scottish rate of income tax

PERSONAL TAX, EMPLOYMENT TAX

HMRC and the Scottish government continue with their preparations for the Scottish rate of income tax (SRIT), which will take effect from 6 April 2016.

HMRC

HMRC published their first set of guidance in June – this is draft technical guidance on Scottish taxpayer status aimed at HMRC officials and tax advisers. Comments were invited on whether the guidance provides clarity on how HMRC will interpret the legislation. The ATT, CIOT and LITRG are submitting comments and attending stakeholder meetings arranged by HMRC.

HMRC have indicated that they are preparing a range of simpler, general guidance products for the public. In addition, they are working with the Ministry of Defence on the creation of specific guidance for service personnel.

The guidance on Scottish taxpayer status is available on GOV.UK www.tinyurl.com/nmh8yym

HMRC have also used recent editions of their *Agent Update* and *Employer Bulletin* to raise awareness of the SRIT. In late autumn 2015, Scottish taxpayers can expect to receive letters from HMRC, indicating that HMRC believes the SRIT will apply to them. HMRC will start to send out 'S' codes to PAYE Scottish taxpayers in early 2016 as part of the normal tax code cycle.

Scottish parliament

The Finance Committee of the Scottish parliament has issued a call for evidence on the Holyrood government's proposals in relation to the SRIT.

This is in view of the fact that the Scottish government will propose its initial SRIT when it publishes its draft budget for 2016/17 in the autumn. The Finance Committee is seeking views on what the rate should be, how additional funding should be allocated and how a reduction should be funded. These are questions of policy on which CIOT and LITRG would not normally offer comment. The final question concerns whether the introduction of SRIT has been sufficiently publicised to employers and taxpayers. The CIOT and LITRG responses will focus on this issue.

The call for evidence is available on the website of the Scottish parliament www.tinyurl.com/omzpnhx

Joanne Walker
jwalker@litrg.org.uk

Tax-free childcare: delay provides opportunity for improved guidance

PERSONAL TAX

Tax-free childcare (TFC) was due to be implemented in October 2015 but the government announced on 1 July that implementation will be delayed until early 2017.

The government attributed the delay to a legal challenge which focused on the decision to appoint National Savings and Investments (NS&I) as the childcare account provider. Since NS&I uses Atos – a private company – to run its operations, it was argued that the government should have put out the running of the childcare accounts to open tender. The Supreme Court ruled on 1 July that the government's decision was not unlawful, and set aside an interim order which prevented implementation of the scheme.

TFC – the basic rules

TFC is a new system of support for working families who are saving to meet childcare costs for a child under 12 (or under 17 if disabled). Note that a child may cease to qualify several months before their 12th (or 17th) birthday based on the precise rules. HMRC will top up payments made into a childcare account to be used to meet the cost of 'qualifying childcare'.

Users of the scheme do not need to be the child's parents in order to qualify – eligibility depends on being responsible for the child. Those eligible will pay money into a childcare account run by NS&I on behalf of HMRC and will receive a top-up payment from the government. The payment will be £20 for every £80 paid in, subject to an annual limit of £2,000 a child (equal to tax relief at 20% on costs of £10,000) or £4,000 for a disabled child.

Complexity

The basic design of TFC is straightforward but there is much complexity in the interaction between TFC and other means of childcare support. People receiving TFC will not be able to continue receiving tax credits or universal credit. TFC will also replace the existing tax and NIC reliefs for employer-supported childcare (ESC).

Throughout the development of TFC, LITRG has highlighted concerns about these interactions and the need for detailed guidance and information so that people can make the right choice based on their circumstances and again as their circumstances change. HMRC published draft guidance for consultation in October 2014. In response, LITRG again raised concerns about the interaction between TFC and the childcare support provided through ESC, tax credits and universal credit.

Many people will need to decide whether to join the TFC scheme or stay with their existing childcare support. This can be a complex decision, not only in determining the best financial choice but also in understanding the different eligibility rules. Here are some of the factors to be considered:

- Different age limits apply to ESC, tax credits, universal credit and TFC.
- Unlike ESC, TFC will be available to self-employed parents (depending on their estimated income).
- TFC is awarded based on payments into a childcare account over a three-month period (and not on the childcare costs paid out in that same period). Tax credits are an annual award with childcare costs averaged over varying periods and UC is a monthly benefit with different childcare calculating rules.
- Tax credits are being phased out, and many claimants will be transferred to universal credit which also includes support for childcare costs but has different rules. Some potential TFC claimants will need to compare tax credits and TFC; others will need to compare universal credit and TFC. There is still uncertainty about the rollout of UC.
- The cuts and other changes to tax credits announced in the July Budget will affect any 'better-off' calculation.
- TFC is not available if the claimant (or their partner) does not work, except in some circumstances.

Current and likely future changes of circumstances, such as a new baby, a child exceeding an age limit, or a claimant becoming a member of a couple or separating, will need to be considered.

These issues will present a challenge for tax agents. How will unrepresented taxpayers and claimants fare? Detailed guidance will be essential. That guidance will have to be long and complex if it is to deal with the wide range of personal and financial circumstances.

Free childcare

The increased free childcare provision introduced by the Childcare Bill and set to start in September 2017 is a key factor in any 'better-off' calculation because some parents who might have expected to take up TFC will no longer need to do so. Others may still need TFC but to a lesser extent than anticipated.

In summary, the Childcare Bill would provide for an increase from 15 to 30 hours a week for 38 weeks of the year in the entitlement to free childcare available to 'eligible working parents' of three- and four-year-old children in England. Separate rules apply to free early years' provision in Scotland, Northern Ireland and Wales.

The government has made a commitment to make good a reported underfunding of free provision, which has resulted in fee-paying parents subsidising themselves or other parents.

The Bill was amended at committee stage in the House of Lords to withdraw a regulation-making power that would have allowed the establishment of a body corporate to carry out functions set out in regulations. The report stage is expected in October. The Bill itself is short and peers have complained that nearly all the key provisions have been left to regulations.

However, the second reading on 16 June and the committee stage debates on 1 and 6 July provided some useful indications of the government's thinking. Further guidance was provided in a Department for Education policy statement made available to peers on 25 June and in a House of Lords library note published on 10 June.

The conditions for the additional 15 hours will be set out in regulations. The stated intention is that both parents or the single parent, as the case may be, must be working the equivalent of eight hours a week at national minimum wage.

Consultation with parents, providers and employers about how they access or deliver childcare will inform the development of draft regulations and draft guidance, which will be the subject of a public consultation in 2016.

Employer-supported childcare

The delay in implementing TFC will prompt renewed interest in ESC. The government confirmed on 1 July that ESC will 'remain open to new entrants until TFC launches'. Parents who wish to remain in ESC once TFC has begun will be able to do so while their current employer continues to offer the voucher scheme. Workplace nurseries will be unaffected by the introduction of TFC.

In a TFC impact assessment updated in November 2014, HMRC suggested that ESC was 'neither effective nor fair' as many working families were unable to access it. HMRC expected about 1.25 million families to have childcare costs that would qualify for TFC. About one million families would be better off as a result – most of those 'would not qualify for any support were [TFC] not introduced'.

Guidance

LITRG has urged the government to take the opportunity presented by the delay to consider the impact of TFC as drafted and to examine the interactions. We will continue to take part in HMRC's implementation advisory forum on the delivery of TFC.

There is an opportunity to re-examine the legislation to try to smooth some of the interactions and to make sure that detailed guidance and supporting tools are in place so that individuals can make informed decisions.

Victoria Todd
vtodd@litrg.org.uk

Working Together – the digital future

MANAGEMENT OF TAXES, GENERAL FEATURE

After an extended delay we now have the feedback from the workshops in February and March 2015 to discuss the future of Working Together in a digital age.

Due to the closure of all HMRC enquiry centres and most of the regional offices, action needed to be taken to prevent Working Together withering on the vine.

In the past few years there have been model Working Together groups that have conducted their business in accordance with the Working Together agreement and were particularly proactive in raising issues and highlighting these to HMRC.

It is imperative that we nurture these individual volunteers from all the professional bodies in the new digital age because it would be sad if we were to lose these valuable assets.

Conversely, engagement across all Working Together groups has been variable and, in recent years, attendance has been significantly down to extent that some meetings have been cancelled.

Time will tell whether the work carried out by HMRC to develop agent digital products and platforms to refresh and support Working Together will be accepted by a majority of agents. However, I believe it is the role of this Institute, and the other professional bodies, to contribute fully in this process to establish a platform for members to continue to raise issues that affect our working lives. Further, we should be able to bring these to the attention of HMRC in a simple and transparent way so that they are resolved in a timely and sensible manner.

New proposals in brief

- It is planned that future Working Together meetings will be in the form of live webinars, with podcasts available, centred on 10 UK regions.
- All regions are to have a named, dedicated contact with HMRC.
- There will be a rolling programme of meetings to be jointly held with HMRC and agents.
- Agendas will have a standard format to update Working Together issues, plus other items.
- The intention is that the regions can discuss specific issues or particular topics, or subjects with experts, which agents and HMRC agree should be included.

Face-to-face meetings will be held where, for example, there is a need for:

- workshop issues relevant to business issues and also the agent strategy; and
- HMRC will also look for opportunities to support agent-sponsored events.

It is hoped that agents not previously involved in Working Together will become involved and that they will be encouraged to attend the live webinar meetings. Agents will have the opportunity to attend all Working Together meetings during the year, or just those hosted by their own region, or those they particularly chose to attend.

Other areas being considered are:

- an online formal forum to raise possible widespread issues;
- using social media, such as LinkedIn, as a way to engage with HMRC and other agents to discuss issues; and
- an informal forum to enable agents to ask questions and to have these answered by HMRC, or other agents.

Conclusion

The new format is a work in progress and there a planning meeting was held in mid-July to agree the format of the first regional meeting in September, which I will attend on behalf of the Institute, and is centred on the good practices established by the former Oxford Working Together group, led by the ICAEW representative, Rob McCulloch.

HMRC have requested feedback and questions so I urge everyone to read their document, *Digital Agent Engagement Working Together in a Digital Age*, issued on 1 July. This has been posted on our website and is also referred to in the CIOT weekly newsletter, published on 3 July.

In July and August HMRC will hold two digital meetings to give agents an opportunity to comment and input to the finer details of Working Together in a digital age. We appreciate that this is peak holiday season, but would encourage members to attend one of them. Details will be relayed to our members through the usual channels when they are released by HMRC.

Finally, remember to email any issues to wt@tax.org.uk and we will ensure that these are raised with HMRC.

Nigel Clarke
nigel@ashleyclarkeassociates.co.uk

Recent CIOT submissions	**Further information**	**Date sent**
FA 2015 Entrepreneurs' Relief Changes	www.tax.org.uk/Ref948	2 June 2015
Measure for inclusion in the next Finance Bill	www.tax.org.uk/Ref950	8 June 2015
OECD BEPS Action 7: Preventing the artificial avoidance of PE status	www.tax.org.uk/Ref951	12 June 2015
OECD BEPS Action 8: Hard-to-value intangibles	www.tax.org.uk/Ref952	18 June 2015
Future of local taxation in Scotland	www.tax.org.uk/Ref957	22 June 2015
Scottish Fiscal Commission	www.tax.org.uk/Ref959	26 June 2015
Recent LITRG submissions	**Further information**	**Date sent**
Creating a secondary annuities market	www.litrg.org.uk/ref154	18 June 2015
What's the Future of Local Taxation in Scotland?	www.litrg.org.uk/ref155	22 June 2015

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