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TAXADVISER

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HELEN WHITEMAN
JANE ASHTON

Welcome
A very hot topic

By the time you read this welcome, there will be just a few more days until we will know who is going to form the government for up to the next five years.

As non-political educational charities, we did not comment on the political manifestos or policies but it is fair to say that taxation has been an important election topic for the political parties and the general public. Although we do not have a political view, the CIOT has provided 2024 General Election: Explainers (see www.tax.org.uk/2024-general-election-explainers). These are non-partisan explanations on the tax issues in the spotlight during the campaign and have been produced by our technical officers and members of the external relations team.

We are sure that regardless of the colour of the winning party, taxation will remain a very hot topic for the next government. Both the ATT and CIOT look forward to working with that new government in making taxation easier to operate and understand.

Those taking up membership of the ATT were joined by prize winners and guests at the ATT admissions ceremony held on 27 June. This year, the venue was 113 Chancery Lane in London and a great time was had by over 200 attendees. July sees the publication of the results from the May examinations and we wish all our students good luck with their results – we are sure that many of them will be attending our next admission ceremonies and taking up full membership.

Whilst the ATT has now finished its successful round of conferences, this year involving a topical tax update by Barry Jefferd and sessions by the ATT technical team, there are still lots of ways both old and new members can increase their CPD by attending our local branch events (see www.tax.org.uk/local-branches). There is also an online programme of Technical CPD brought to you by the Branch Network (see www.tax.org.uk/branch-webinars). The CIOT Cambridge conference on 13-15 September is now available to book! We were pleased to see many of you at the annual CTA Address on 5 June (full coverage is on page 53) and our next AI Ethics webinar for members is on 17 September, online.

> **The CIOT has provided 2024 General Election Explainers on the tax issues in the spotlight during the campaign.**

Whilst there is a full obituary on page 58, we wanted to mark the passing of Roy Jennings. Roy was a giant in the tax community and gave so much to the profession of which he was a part for so long. The ATT and CIOT in particular benefited from his giving nature. He served on the Council of the Institute of Taxation, as it was then, from 1975 to 1995, was President from 1987 to 1988 and represented the Institute on the General Assembly of the Confederation Fiscal Europe. He was the driving force behind the establishment of the ATT, which was established on 30 August 1989. It is a measure of the wisdom of this decision that the ATT now has nearly 10,000 members. Roy was President of ATT from 1989 to 1992 and served on the Council through to 2000. To those who were fortunate enough to know him and all of us who benefited from his unwavering kindness and endeavours, he will be remembered with great admiration and fondness.

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CHARLOTTE BARBOUR
PRESIDENT

Public education

> We can, and should, inform any public tax debate by explaining how taxes operate and providing factual information.

Welcome to the July 'President's Page'. In the last few months, when considering the priorities to focus on as I became President, I had not expected that we would immediately find ourselves in the run up to an election and that most discussions with HMRC would be suspended during the period of purdah.

During the election campaign, there has been much talk about tax. That's as it should be, as a key element of any government's remit is raising money to fulfil its ability to govern and implement its policies. Perhaps more questionable is the quality of some of the debate about taxation. This brings to the fore the role of the CIOT because our charitable objects, as set out in our Royal Charter, include 'to advance public education in and the promotion of the study of the administration and practice of taxation and the principles of economic and political science in relation to taxation'.

As a professional body constituted as a charity, we have to be mindful that charity law requires that we are not established for political purposes, and in representing members' views as tax practitioners, the same need for independence and political neutrality applies. The Council has been revisiting, and fine tuning, how we meet the object of 'public education' because this is not cast in concrete. A new overarching public awareness strategy has been agreed with three audience sub-groups in order to help us prioritise and direct our efforts effectively: those with an interest in tax; unrepresented taxpayers who seek further specific tax information; and the wider public who need an awareness of tax.

Discussions were also held within the Council in early June about how we engage in an election, given that the Institute is apolitical. It's a delicate balance because tax is intrinsically political but we can, and should, inform any public tax debate by explaining how taxes operate and providing factual information – often to help counterbalance some of the claims that appear. (I'm always surprised at how much some commentators think they may generate from countering tax avoidance!)

The Council agreed that our established 'Rules of Engagement' are appropriate and helpful. So as well as our technical experts being available to the media, we have produced a series of 'explainers' providing background and non-partisan explanations on the tax issues in the spotlight during the campaign. I commend our technical and external relations teams for these helpful explainers, which are now available on the website – and include topics such as tax and the state pension, national insurance and non-doms.

I found the recent joint CIOT/IFS debate on VAT on private school fees informative and thought-provoking, especially given that the topic tends to be emotive and views on it very 'black and white' – and plenty have told me in no uncertain terms what should be done on this! The debates are helpful in bringing together both the practical operational experience of CIOT members and the IFS's macro-economic picture to inform a more rounded view.

Watch out for the next joint CIOT/IFS debates. On the morning of 16 July, there will be an online debate on tax priorities for the incoming government, and in the evening of 4 September another will take place in central London on the taxation of residential property.

At the start of the election campaign, I wrote to the finance spokespeople of each of the main parties to set out what we think should be priorities for the next government. These include the following seven aspects of tax administration:

1. Resourcing HMRC to provide the level of service taxpayers need.
2. Review tax digitalisation to focus it on the needs of taxpayers.
3. Commit to meaningful simplification of the tax system.
4. Get research and development tax credits working properly.
5. Effective but proportionate action to tackle rogue tax agents.
6. Greater transparency and accountability over policy costings.
7. Adherence to sound tax policy making principles.

We've published the responses we've received so far on our website – tax.org.uk/election-2024 – and will be following up with ministers, shadow ministers and other spokespeople, as well as relevant parliamentary committees, when the new Parliament is formed. The need for good tax administration has never been greater – but, in the meanwhile, I trust you will enjoy the summer holiday period.

Charlotte Barbour
President
president@ciot.org.uk

Chartered Institute of Taxation.

SENGA PRIOR
DEPUTY PRESIDENT

It takes a village…

> It takes many people to support someone through their professional exam – employers, family, friends, tutors and colleagues.

May and July are busy months in the social calendar of both ATT and CIOT. This will be my last welcome page as Deputy President as I will replace Simon Groom as President of ATT on 11 July. Invitations to the AGM have been issued to all members and we hope you can join us at this virtual event. Graham Batty will take over from me as Deputy President and Barry Jefferd will become Vice President.

Graham will be known to some of you as a past President of ATT, who has now retired from practice and continues to volunteer with ATT, chairing the ATT Examination Steering Group. He is also a former Chair of both the Leeds and Birmingham and West Midlands Branches. His knowledge of the charity sector is a fantastic resource for us.

Barry is a partner with George Hay Chartered Accountants and past Chairman of the Mid Anglia Branch. He serves on the ATT Examination Steering Group and he lectures regularly. He recently led the Topical Tax section at our Spring Conferences.

It is difficult to believe that almost a year has passed since my first welcome page. Back then, we were bemoaning the closure of the HMRC helplines and HMRC service levels. I was going to say that not much has changed but the Treasury has listened to us and we were grateful that an additional £51 million of funding has been made available for phoneline support. It will obviously take a few months to train up the additional staff but we hope to see improvements before we hit the busy season.

My presidential diary is already filling up with invitations. If any branches would like a visit, please let the ATT office know. I am particularly interested in any special events such as a branch anniversary, but I am open to any invitations. (Sheffield, remember to let me know if there's an escape room planned. I also love quiz nights!) Please remember I have to make travel plans which will likely include flights or lengthy train journeys unless you are north of the Midlands, so please give as much notice as you can once your programme has been approved. I would particularly like to visit all the Scottish Branches, so please do get in touch.

My final event as Deputy President before the Council Meeting and AGM on 11 July was the 2024 Admission Ceremony at the end of June. This is always one of the highlights of the year. It is an honour to welcome our new members and celebrate their achievements and the successes of all our prizewinners, along with their family and friends. Just as it takes a village to raise a child, it takes many people to support someone through their professional exams – employers, family, friends, tutors and colleagues.

I am always humbled to hear of how many have battled through difficult circumstances or have studied while raising a family. Every one of our new members and prizewinners deserves our warmest congratulations.

By the time we have our Council meeting and AGM, we will know the results of the general election, which will probably be followed by a Budget within a few months. Whatever the result of the election, I imagine there will be several new tax policies to put in place, which is always an interesting time for our technical officers. We are still awaiting further details of measures that did not make the pre-election Finance Bill, such as the proposed changes to the taxation of non-doms. Hopefully, we will receive clarification soon after the election and there will be several consultations that we can get our teeth into!

Our AGM this year will again be online, and I would encourage you to attend if possible. If you are unable to attend, you will still be able to vote online on various matters if you haven't already done so.

In closing, as I write this article, sitting in Edinburgh Airport, waiting for my flight to London to chair the Technical Steering Group, I am very jealous of all the holiday makers and it reminds me I must get something organised for myself. We all work more efficiently after having a break from the work routine and I hope you manage to get some quality time away from your desks over the summer break. I will sign off wishing you a lovely summer regardless of what your plans are and look forward to serving as President over the coming year.

Senga Prior
ATT Deputy President
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Big decisions ahead
Unsolved tax problems

Whatever the results of the upcoming election, the incoming government will find itself facing many challenges.

by Bill Dodwell

Just a few days after this article appears, a new government will be formed to lead the country for the next five years. No doubt Liam Byrne's famous 'I'm afraid there is no money' note won't be replicated but what might a candid tax minister write about unsolved tax problems?

Self-employment or employment?

There are huge financial differences between self-employment and employment. Those issues come to a head with freelancers – a group which provides their labour, typically with no or limited other services. The main differences are national insurance. There are no 13.8% employer contributions, and the main self-employed rate is 2% lower than the employed rate, at 6%.

The fundamental challenge is that there is no clear definition of employment. Instead, there are lots of tax cases, with slightly changing emphasis over the years. The solution adopted so far has been to put the responsibility onto the engager to work out whether the individual is a quasi-employee, such that PAYE applies.

The parties have quite different approaches. The Conservative manifesto proposes abolishing self-employed national insurance, which would increase the gap to almost 20%. The Liberal Democrats and Reform propose abolishing the off-payroll rules, which would widen the tax gap, as contractor compliance is thought by HMRC to be poor. The Labour Party proposes abolishing 'worker' status, which is likely to mean that many more freelancers are given full employment rights, no doubt accompanied by a PAYE obligation.

The key challenge here will be to find a new definition of employment for tax purposes; the numerous cases demonstrate that there is no widely agreed definition. As the Upper Tribunal put it in the recent Adrian Chiles case (*Basic Broadcasting Ltd* [2024] UKUT 165): 'The uncertainty and financial exposures generated by the difficulty in establishing a clear and stable legal position continue to produce a very real human cost.'

Pensions

Chancellor Jeremy Hunt abolished the pensions lifetime allowance, which removed one challenge for high earners, although many other issues remain. Those in defined benefit schemes have no real means of knowing whether they have an annual charge and, if so, how much it could be. They also have no understanding of the effect on their ultimate pension should they ask the pension fund to bear the charge.

Many people have started to save, following automatic enrolment, but have inadequate savings to support retirement. There's a lot of complexity around the size of the tax free amount for those with one of the transitional protections. There seems no obviously good reason why where the pension holder dies before 75, the pension should be inherited tax-free (although I don't think that both income tax and inheritance tax charges should be levied – one is enough!).

The 2006 reforms did give us a single system, but today's pensions bear no resemblance to what was originally introduced. It is surely time to commission a proper review, so as to set a sustainable system for the next 20 years.

International corporate tax

One of the big decisions for the new Chancellor and tax minister will be where to take the UK's response to the expiry on 30 June 2024 of the digital services tax (DST) agreement with the United States; the adoption of Pillar 1 (the allocation of part of the profits from digital activities to market jurisdictions); and the potential implementation of the final part of the Pillar 2 package (which would allow a country to levy a top-up tax on an overseas company even where that country had no ownership interest).

All three issues depend on the United States. The DST agreement effectively accepted that five countries with a DST could continue to levy it without trade retaliation from the US, until Pillar 1 came into effect. The five agreed that DST paid could be credited against corporation tax once Pillar 1 came in – and there is a general expectation that the DST will exceed to the Pillar 1 corporation tax.

It seems highly unlikely that the US will adopt Pillar 1 in the near future – so the UK will need to consider whether renewing the DST moratorium is possible, which could require a trade-off with the Pillar 2 charge on US subsidiaries not owned by the UK.

Open areas from the March Budget

The new government will need to decide whether/how to take forward open areas from the March Budget. These include the abolition of the furnished holiday lettings rules; major changes to the non-dom rules; and the introduction of a criminal offence for promoters who ignore a 'stop' notice and continue promoting an egregious product. Any Budget would be some three months away, as 10 weeks' notice must be given to the Office for Budget Responsibility, so finding a way to give guidance on those open policies would be helpful.

There is also a broader issue about tax administration and HMRC service standards, where a longer term strategy and short term support may both be needed.

Lots to do!

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Important concessions

Are your clients missing out?

There are ten important concessions that are relevant to VAT and which your clients will definitely want to know about.

by Neil Warren

Key Points

What is the issue?
An awareness of the many concessions and allowances in the legislation and HMRC guidance can save clients a lot of tax or improve their cash flow. For example, the six-month debtors concession for a business leaving the cash accounting scheme helps to ease the transition from accounting for VAT on a payment received to invoice date basis.

What does it mean for me?
HMRC Notice 48 includes many extra statutory concessions about VAT, although many have been abolished. The article highlights two useful concessions that are available, relating to output tax apportionment on membership subscriptions for non-profit making entities and the opportunity to claim input tax on invoices issued by a business that is not registered for VAT.

What can I take away?
The partial exemption de minimis limits are worth up to £7,500 in a tax year, meaning that input tax can be claimed on some costs that relate to exempt sales made by a business.

The proposed abolition of the special rules for furnished holiday lettings was a reminder that there are still many allowances and concessions in the tax legislation that can benefit our clients.

How much extra revenue would the government raise each year if some of the many VAT concessions and allowances were abolished? The answer is billions! It would require a bold approach to strike a pen across out-of-date and unnecessary legislation, even if the motive for an allowance being introduced ended long ago. I'll consider some on them in this article.

1. Partial exemption de minimis limits

My favourite tale about the partial exemption de minimis limits relates to a florist I advised about ten years ago. She owned the freehold of her premises, which consisted of a ground floor shop from which she traded and a first floor flat that she rented out on a buy-to-let basis. The rental income was exempt from VAT.

The cost of major flat improvement works she needed to carry out was £50,000 plus VAT and she asked if she could claim input tax. 'Only if you spread the work over two partial exemption tax years,' was my reply:

- A business with exempt and taxable income can claim all input tax on its costs if the exempt input tax qualifies as de minimis.
- There are three de minimis tests but the main test is that exempt input tax must be less than £7,500 in a partial exemption tax year and also less than 50% of the total input tax incurred by the business.

- Exempt input tax includes the proportion of input tax not claimed on mixed costs and general overheads; e.g. telephone and computer costs.

A partial exemption tax year ends on 31 March, 30 April or 31 May – depending on the VAT periods of the business – or 31 March if it submits monthly returns. You can hopefully see the significance of my client spreading the building work over two tax years at £25,000 plus £5,000 VAT per annum; i.e. to take advantage of the £7,500 tax de minimis threshold. Job done!

2. Car hire and leasing charges: input tax concession

What happens if a client hires or leases a car and pays VAT on the charges but the business use is only 10% of total use?

The business can still claim 50% input tax on the leasing charges, irrespective of the actual percentage of business use. The other 50% is blocked for deemed private use. This concession would obviously not be a good deal if business use in a leased car was, say, 90% rather than 10%!

There are two main exceptions to the 50% arrangement:

- If a car is hired specifically for business purposes – for example, a consultant in London hires a car to visit a client in Scotland – then input tax can be fully claimed as long as the hire period is ten days or less. This 'relief' for short term vehicle hire is a concession from HMRC, rather than stated in VAT law (see VAT Notice 700/64 para 4.4).
- If input tax on a leased vehicle would have been fully claimed if it was purchased outright. In other words, it is used as a tool of trade by a car hire business, taxi firm or driving school or it qualifies as a genuine pool car available for general use by employees (see VAT Notice 700/64 para 3.7).

3. Input tax on vehicle repairs

A specific concession granted by HMRC – which makes VAT different to direct tax – is that input tax does not need to be apportioned on repair and maintenance work on a vehicle used for business and private purposes. The opportunity to fully claim input tax extends to repairs to cars owned by employees that are used for business travel, as long as the business pays for the work and is invoiced by the supplier.

There must be some business use of a vehicle. To quote from VAT Notice 700/64 para 5.1:

> 'If you're a sole proprietor or partner and use a vehicle solely for your own private motoring you cannot reclaim the VAT on repairs as input tax.'

4. Retrospectively joining the flat rate scheme

The legislation about the flat rate scheme – which can be used by a business if its annual taxable sales will be less than £150,000 excluding VAT in the next 12 months – states that potential users can join from the beginning of the next VAT period. However, HMRC grants a concession that new recruits can join from the current period, as long as the return has not already been submitted.

There are two other worthwhile concessions:

- A newly registered business will get a 1% discount on its relevant flat rate scheme percentage in the first year of VAT registration. So, for example, a hairdresser would apply a rate of 12% rather than 13%, a welcome saving of tax (see VAT Notice 733 para 4.7).
- Scheme users can claim input tax on capital expenditure goods costing more than £2,000 including VAT. However, note the reference to capital goods and not services, such as the construction of an office extension.

5. Leaving the cash accounting scheme: six-month debtors concession

The annual sales threshold for joining the cash accounting scheme has remained at £1.35 million excluding VAT for decades, with an exit figure of £1.6 million.

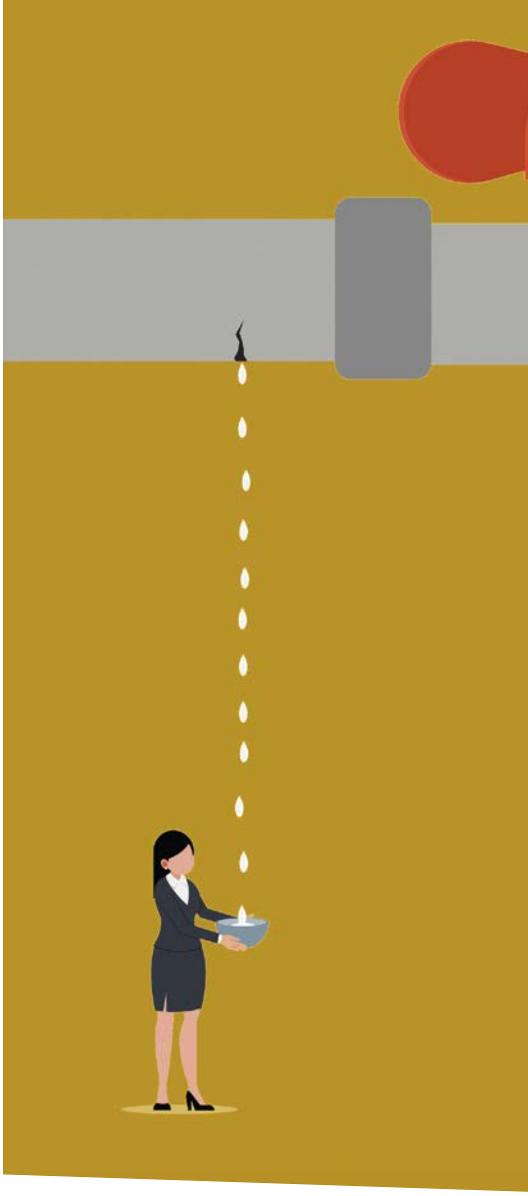
This is a shame because it means that inflationary rather than volume increases in sales have forced many businesses to leave and therefore lose the worthwhile opportunity to account for output tax according to payment rather than invoice dates. However, an important concession is that output tax on closing debtors can be declared by leavers on the two subsequent returns after the departure period as payments are received from customers.

It is not a complete 'win win' concession because input tax cannot be claimed on closing creditor invoices until suppliers are paid.

6. Output tax on assets when deregistering: £1,000 de minimis limit

If a business deregisters, it must account for output tax on all stock and assets owned on the final date of registration which are standard rated by statute and if input tax was claimed when they were purchased.

The calculation is made according to the open market value of the item on the deregistration date, which takes account of obsolescence and wear and tear, etc. However, there is a de minimis limit whereby no output tax is due if the total value of the stock and assets subject to output tax is less than £5,000.



When I was on the speaking circuit, I used to share a planning tip about a builder deregistering whose only asset subject to output tax was a van worth £6,000. My advice? 'Leave it overnight at the rough estate near where I live before you deregister, and it will be worth less than £5,000 the following day when you collect it. So you have saved the VAT.'

7. New charity building: 5% business use concession

The freehold sale of a new building to a charity – or leasehold sale exceeding 21 years in the UK apart from Scotland, which is 20 years – will be zero-rated if it will be wholly used by the buyer or leaseholder for a relevant charitable purpose; i.e. its charitable rather than business activities. The same outcome applies if the charity constructs the building and uses external builders; i.e. the builder services and materials they supply as part of their work will be zero-rated. In both cases, the charity must issue a VAT certificate to the seller or builders to confirm their intended use (see VAT Notice 708 s 18).

However, many new charity buildings include a small coffee shop or gift shop on the premises to help pay for some overhead costs. HMRC therefore accepts that zero-rating can still apply if business/

non-charitable use will be less than 5% of total use. And, as a further concession, the charity can make the 5% calculation by using any method that is fair and reasonable. It doesn't have to be carried out on a strict square footage split.

8. VAT on imports: postponed accounting

I won't elaborate on this topic because it has been well covered in previous articles in *Tax Adviser* and is a complete 'win win' as far as VAT is concerned. Basically, an importer of goods that is both registered for VAT and EORI (Economic Operators Registration and Identification) can defer the payment of VAT when goods arrive in Great Britain – or outside of the EU for a business based in Northern Ireland – and account for VAT on its next return by doing a postponed accounting entry.

It will account for output tax and claim input tax based on the VAT rate that applies to the goods in question, usually 20%. The end result will be a nil payment to HMRC, unless there is an input tax block for exempt, private or non-business use.

9. Extra statutory concessions: VAT Notice 48

Extra statutory concessions are granted by HMRC when a strict application of the law would create a disadvantage to a business that was not intended when the legislation was passed. The concessions can be adopted without asking for HMRC's permission but it is important to regularly check that they have not been withdrawn. That has happened a lot in recent years!

Many of the concessions are industry specific following agreements with different trade associations but here are two specific extra statutory concessions that are worth highlighting:

Paying VAT to a supplier who is not registered for VAT

HMRC has the power to pursue an unregistered supplier for VAT it has charged but when the buyer has no legal basis to claim input tax. This is because the supply of goods or services has not been made by a taxable person. However, by concession – on the grounds of equity – HMRC will allow a buyer to claim input tax as long as they paid the VAT in good faith and were not party to any deliberate fraud or tax avoidance (see HMRC Notice 48 para 3.9).

Apportionment of membership subscriptions paid to non-profit making bodies

If a non-profit making club or charity charges a standard rated membership fee (or possibly exempt) and the members also receive a newsletter or magazine as part of their subscription, the zero-rated magazine would be subject to VAT (or exempt) as an ancillary supply to the membership fee.

However, HMRC allows the fee to be apportioned on a fair and reasonable basis to reflect the value of all supplies received by members. In other words, a mixed supply outcome is allowed, meaning an improved input tax recovery rate because part of the subscription is zero-rated rather than an exempt or an output tax saving if the subscription is standard rated (see VAT Notice 48 para 3.35).

10. Zero-rated, reduced rated and exempt supplies

I could not write about the many VAT saving opportunities and allowances without mentioning the extensive list of supplies that qualify for 0% or 5% VAT, or are exempt from VAT. Relevant legislation is at Value Added Tax Act 1994 Sch 7A, 8 and 9.

If any government wished to increase the VAT yield, it could withdraw many of these reduced rates. The Labour Party has already stated its intention to withdraw the exemption for education fees in private schools.

To quote from a 2023 document issued by the highly respected Institute for Fiscal Studies titled 'Tax and public finances: the fundamentals' (see tinyurl.com/jrycjhy4): 'Fact 5: VAT zero rates and exemptions cost £100 billion in forgone revenue.'

Enough said.

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Practical pointers
Negotiating R&D tax relief

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We consider the key challenges involved in R&D enquiries and set out some practical pointers about how to tackle them.

by Dawn Register and Piyush Patel

HMRC will commence an enquiry into research and development (R&D) claims under Finance Act 1998 Sch 18 para 24. It has adopted a 'volume compliance approach' with a clear focus on opening enquiries in bulk: HMRC's latest published figures state that it is now checking over 20% of claims (i.e. one in five claims are now selected for enquiry). This article focuses on the key challenges that advisers face when dealing with an HMRC R&D enquiry and what to bear in mind.

Background to R&D

R&D tax relief measures are designed to incentivise and support companies to invest in innovative projects involving science and technology to support growth and innovation in the UK economy. Tax relief based on a company's qualifying R&D expenditure is given by either reducing a company's corporation tax liability or by making a cash payment to the company (i.e. an R&D tax credit).

Up until 1 April 2024, HMRC operated three schemes:

- the small and medium-sized enterprises (SME) scheme;
- the R&D intensive scheme (for loss making SMEs with a high R&D spend); and
- the R&D expenditure credit (RDEC) scheme.

The merged scheme starts for accounting periods beginning on or after 1 April 2024, replacing the SME and RDEC schemes (the R&D intensive scheme continues). Practically, we do see some companies claiming under the wrong scheme, which is a key point for advisers and claimants to get right.

Definition of R&D

To manage enquiries efficiently and seek resolution with HMRC, it is crucial to understand the meaning of R&D for UK taxation purposes (other countries may use alternative definitions and terminology). The Department for Science, Innovation and Technology defines R&D as follows:

> 'R&D for tax purposes takes place when a project seeks to **achieve an advance in science or technology** ... through the resolution of **scientific or technological uncertainty**'.

Key Points

What is the issue?
Many companies are facing tax enquiries on their historic R&D tax credit claims with HMRC demanding repayment of tax credits already paid out.

What does it mean for me?
Advisers may be asked to support their clients through such enquiries, even though they were not involved in compiling the original R&D claim, so must understand why HMRC is challenging claims and the process needed to resolve them.

What can I take away?
Contemporaneous evidence about the technical background to the R&D project and knowledge on the technical problem that was 'readily available' at the time of the project is often crucial. Knowledge of HMRC powers during an enquiry, including information requests, appeals and assessments, is also needed. Therefore, working with specialist advisers in R&D and tax disputes is often necessary for effective resolution with HMRC.

It goes on to state that 'an advance in science or technology means an advance in **overall knowledge or capability** in a field of science or technology (not a company's own state of knowledge or capability alone).' Furthermore: 'Scientific or technological uncertainty exists when knowledge of whether something is scientifically possible or technologically feasible, or how to achieve it in practice, **is not readily available or deducible by a competent professional** working in the field.'

R&D non-compliance

R&D tax reliefs are valuable to business, with the most recent figures published by HMRC showing that the total claims in 2022/23 were worth £10.2 billion. However, HMRC, the Treasury and the National Audit Office have all highlighted non-compliance as a significant problem within the R&D tax relief process in recent years.

Understanding what constitutes R&D and understanding the rules for making a valid claim on a company's corporation tax return can be complex. Errors occur through genuine mistakes, such as in the computation of a claim, by a misunderstanding of the rules or by including certain costs for R&D projects that do not qualify. HMRC also considers that there is a significant element of fraudulent abuse within the regimes. Using its mandatory random enquiry programme, HMRC estimated that the level of error and fraud in R&D tax relief claims during 2022/23 was £1.1 billion (or 13.3% of related R&D expenditure).

Our experience shows that HMRC is using several measures to tackle non-compliance. This includes:

- checking claims before and after making a payment to the claimant companies;
- reviewing amended corporation tax returns to understand why the initial claim for relief was incorrect;
- opening enquiries into claims, to challenge the amount of relief claimed or whether the activities qualified for R&D at all;
- writing to companies suggesting that the submitted claims may be incorrect via its Fraud Investigation Service; and
- undertaking criminal investigations with a view to a prosecution.

Practical challenges and pointers

1. Stuck in 'correspondence tennis'

HMRC's volume compliance approach involves writing to claimant companies to enquire into the R&D claim. This includes requesting information and documents from the business to support the R&D activity undertaken and to ensure that the correct amount of qualifying costs were claimed.

Gathering the relevant information and articulating the nature of the R&D activity can be time consuming. Inevitably, HMRC may seek further clarification during the enquiry process. Before long, the challenge evolves into what is best described as 'correspondence tennis' – the to-ing and fro-ing of correspondence with HMRC.

In almost all cases, early engagement between HMRC and the relevant competent professional via a face-to-face meeting should be encouraged, as set out in HMRC's Corporate Intangibles Research and Development Manual (at CIRD80525) and the Enquiry Manual (at EM1822).

Where this has not happened and where there appears to be a breakdown in communication, alternative dispute resolution may prove the key to unlock 'stuck' cases, particularly where the facts are misunderstood, where evidence is incomplete or where there is a breakdown in communication.

2. Issues with the 'competent professional'

What happens if the competent professional has left or is concerned about meeting HMRC?

The role of the competent professional and their technical assessment of the underlying R&D activity is an essential aspect of the R&D regime. The R&D activity is usually highly technical and articulating the technological advances and the related uncertainties overcome – both in writing and in a method which is easy to understand – is a challenge.

This reinforces the benefits of discussions between HMRC and the competent professional. Although now mandatory for R&D claims submitted since 8 August 2023 (the Additional Information Form requires it), a detailed report drafted by the competent professional to clarify the R&D activity undertaken and the qualifying expenditure incurred is equally essential.

Early drafting of such forms and reports can help in instances where the relevant competent professional leaves their role or to minimise costs where the company uses an external expert. Providing HMRC with such evidence from the relevant competent professional (i.e. the necessary technical assessment) during the course of an enquiry is crucial as it can then be relied upon if the case ever goes to tribunal (see *HMRC v Grazer Learning Ltd* [2021] UKFTT 348 (TC)).

3. HMRC thinks the solution was readily available

It is important that sufficient information in support of the qualifying R&D activity is clarified to HMRC. This should include helping HMRC to understand the business, the R&D activity and the scientific or technical advancement.

It is worth noting that HMRC's officers are not science or technology experts, nor can they be expected to be experts in every niche field. HRMC's enquiry letter requests that technical explanations are set out 'at a high level, in a form understandable to the non-expert'.

It should also be noted that technological advances happen all the time and what is 'readily available' now may not have been readily available before. Therefore, understanding and documenting what is readily available (and importantly what is not readily available) during an R&D project is equally important, as is providing documentary evidence of what is readily available during the relevant year of the R&D claim.

4. Insufficient documentary evidence

It is possible that due to changes in IT systems, the sale of a business or as a result of personnel leaving the business, there may be gaps in evidence in support of a genuine R&D claim. Every effort should be made to maintain and retain sufficient documentary evidence.

Having sufficient evidence to support that an activity qualified for R&D purposes and met the appropriate criteria per the guidelines is of great importance (see *HMRC v AHK Recruitment Ltd* [2020] UKFTT 7718 (TC)).

5. Out of time to open an enquiry

HMRC has powers to issue discovery assessment for years that are too late to open enquiries, but can it really go back 20 years?

Where HMRC concludes that a claim for R&D tax relief was incorrect, it may consider that previous or subsequent R&D tax relief claims may also be incorrect. HMRC discovery powers allow it to raise assessments for accounting periods which are out of time to open an enquiry. HMRC must issue such assessments within statutory time limits following the end of the accounting period.

Consideration must be given to the nature of the behaviour that gave rise to the mistake made within the R&D claim by the company or someone acting on behalf of the company. Where it can be demonstrated that the company (or someone acting on its behalf) took reasonable care, the appropriate time limit is four years. Where the behaviour was careless, the relevant time limit is six years. However, where the behaviour is found to be deliberate, HMRC can go back 20 years.

6. Impact of rejected claims on group relief and losses

Where a company is part of a group that qualifies for group relief (Corporation Tax Act 2010 Part 5), it may surrender losses to other group members. Where a loss-making group member makes a claim for R&D tax relief, any losses can be used to reduce the taxable profits of companies in the same group. If an R&D claim is subsequently rejected by HMRC, this impacts the quantum of the loss of the loss-making company, which in turn affects the tax position of the other group members.

7. Penalties for errors

Is professional advice alone enough to demonstrate that reasonable care was taken?

Where it is identified that a company's corporation tax return contained an error due to careless or deliberate behaviour, HMRC will consider imposing tax-geared penalties. The level of penalty will depend on the exact category of behaviour and whether the company came forward voluntarily (i.e. unprompted) or whether the error was identified as part of an enquiry (i.e. prompted).

The relevant penalties per Finance Act 2007 Sch 24 para 1A are as follows:

Behaviour	Unprompted	Prompted
Careless	0% to 30%	15% to 30%
Deliberate	20% to 70%	35% to 70%
Deliberate and concealed	30% to 100%	50% to 100%

The exact level of penalties depends on the 'quality' of the disclosure. Receiving expert advice during the enquiry or disclosure process can help to mitigate the level of penalties imposed.

HMRC's Compliance Handbook (at CH81130) confirms that no penalty is due when a taxpayer was 'acting on advice from a competent adviser which proves to be wrong despite the fact that the adviser was given a full set of accurate facts'. This implies that obtaining and relying on professional advice can help to demonstrate that a taxpayer has taken reasonable care which, in turn, removes the risk of HMRC imposing penalties.

However, the reality is that obtaining professional advice alone is not enough. Taxpayers, including companies making R&D tax relief claims, can be considered to have taken reasonable care if they:

- obtain appropriate professional advice from someone with relevant expertise in R&D;
- provide their adviser with a full set of accurate and relevant information;
- review the R&D advice received as best as they can;
- check the tax return prior to authorising submission;
- keep records of the above steps to evidence they took reasonable care; and
- if in doubt regarding any of the advice obtained, the company should consider a second opinion.

8. Finance Act 2008 Sch 36 information notice

HMRC usually requests information informally to check claims. Where it does not receive the details needed, it may issue a formal information notice (Finance Act 2008 Sch 36 para 1). The information requested must be 'reasonably required' for the purposes of checking the tax return and claims within it.

HMRC may impose penalties for the failure to comply with a formal information notice. Further penalties may be imposed for concealing, destroying or otherwise disposing of a document that is the subject of an information notice.

9. Confusion: is an appeal required?

Where HMRC rejects an R&D claim, there is often some confusion as to whether it has made a formal decision which can be appealed. Care should be taken to check whether HMRC 'intends to issue a closure notice' (which implies that the letter received does not contain an appealable decision) or whether the letter itself is the closure notice. In practice, we find these are not labelled as such, so it is often unclear.

Where HMRC has not issued a 'formal decision' or closure notice, any appeal will be rejected by HMRC's appeals team. Conversely, failure to recognise a formal decision may mean that the statutory 30 day deadline to appeal is missed. Bringing the confusion to HMRC's attention within the 30 days is often the best solution; as well as considering the merits of submitting an appeal to protect the company's position.

10. Understanding subsidised and subcontracted costs for R&D tax relief purposes

These areas frequently lead to challenges by HMRC and there are currently several cases before the Tax Tribunal on them. While we expect more case law to clarify whether HMRC's strict interpretations of the law are correct, it is worth noting that for claims made under the new merged scheme, some of these issues should fall away.

In conclusion

There is evidence of misuse and abuse of R&D tax relief which has led HMRC to take necessary action to protect Treasury monies. However, the practical challenges faced when dealing with a company tax enquiry can often be to the detriment of genuine R&D tax relief claimants.

This, in turn, can have an impact on a company's willingness to invest further in innovation – undermining the government's economic strategy. We also see companies needing to spend time, energy and resources to defend their claims in an enquiry which can be long running. HMRC accounts show the average time for company tax enquiries is 18 months in duration.

Regardless of the numerous challenges, the volume of R&D enquiries is likely to remain high for the foreseeable future. HMRC using targeted resources is now 'business as usual' in other areas of tax, such as wealthy individuals and transfer pricing for corporates.

On the plus side, taxpayers who obtain appropriate expert advice and adopt suitable enquiry defence strategies will be able to limit the disruption to their business and continue to benefit from tax reliefs.

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The United Nations
A new framework

Discussions are underway to develop a new framework for international tax cooperation at the United Nations.

by Philip Baker KC

Key Points

What is the issue?
At the end of April and the beginning of May, discussions took place at the UN Headquarters in New York on the terms of reference for a new United Nations Framework Convention on International Tax Cooperation.

What does it mean for me?
There is general agreement that UN discussions should proceed by seeking a consensus. However, this may prove elusive on many issues. In those circumstances, the question arises as to how differences of opinion will ultimately be resolved by voting.

What can I take away?
It is interesting to speculate what the UK under a new government may decide to do, as it may not wish to disengage from a UN process. The next six months may prove crucial in the future development of the international tax regime.

This may not have hit international headlines alongside the UK election and the trials of Donald Trump, but for those interested in the world of international taxation there are some interesting and new developments in connection with the institutional structure of international tax cooperation. At the end of April and the beginning of May, discussions took place at the UN Headquarters in New York on the terms of reference for a new United Nations Framework Convention on International Tax Cooperation. The topic of this UN meeting was the subject of a workshop held in Oxford shortly before the New York meeting, which was sponsored, in part, by the CIOT.

The background

The short-term background to the meeting in New York starts in November 2022. The UN General Assembly voted to pass a resolution on a possible new form for international tax cooperation at the UN. That resolution asked the UN Secretary-General António Guterres to prepare a report setting out options for the UN in this field.

The report outlined three options:

- a legally binding international convention;
- a framework convention; and
- a loose arrangement for international dialogue.

In November 2023, the General Assembly, by a majority, voted for the second option and for the establishment of an Ad Hoc Committee made up of representatives from 20 governments to draft the terms of reference for such a framework convention. This was the subject for the initial discussion in New York in April and May and will involve the finalisation of the text of the terms of reference at a further meeting to be held in July and August this year.

The historical background can be traced much further back. Most of the current structure of rules of international taxation were developed by government representatives at the League of Nations between the two World Wars. After the Second World War, the League was replaced by the United Nations which, for a short period, continued that work through its Fiscal Commission. However, in a decision which has proved fateful for the subsequent history of international taxation, the UN decided to wind up that Fiscal Commission in 1954.

In the gap that was created, the body that became the OECD (the Organisation for Economic Cooperation

and Development) began to undertake work in this field and became, eventually, the leading intergovernmental organisation. The OECD is not the only intergovernmental organisation concerned with international tax: the International Monetary Fund and the World Bank also have activities in this area, as well as the United Nations itself, which set up the UN Committee of Experts on International Cooperation in Tax Matters in the 1960s. However, it is the OECD which dominated much of the work on the development of international tax treaties, transfer pricing and more recently the base erosion and profit shifting (BEPS) projects, including the Pillar 1 and Pillar 2 solutions.

A call for fully inclusive participation

The difficulty with leadership by the OECD has always been that it is a membership organisation, consisting of the richest and most developed economies in the world. It is also essentially a consensus organisation, which means that it can only move

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forward if there is effective agreement at least involving all its major members.

For some time, there has been a growing concern that the rules of international taxation were being developed by a small group of economically developed countries, and the interests of the rest of the world, particularly developing nations, were not fully represented. In part to address this, in 2015 the OECD itself established the Inclusive Framework on the BEPS project. However, participation in that project has not attracted all countries, and those that have agreed to participate in the Inclusive Framework have often felt – it is reported – that their voices are still not adequately heard in a body that is still dominated by the traditional OECD member countries.

This has led to a growing call for the establishment of a fully inclusive structure for dialogue and international cooperation at the United Nations level. The General Assembly resolutions in 2022 and 2023 reflected the fact that calls for such a new institutional structure were now supported by a substantial majority of countries.

The framework convention

The legal format that has been selected, it would appear, to be used as a basis for establishing the new cooperation at the UN is that of a framework convention. The nearest equivalent appears to be that of the UN Framework Convention on Climate Change.

The decision to use a framework convention – supported by some non-governmental organisations, in particular – has both advantages and disadvantages.

The advantages

The structure of the framework convention offers a very simple pattern which can be adjusted to operate in the tax field. Thus, the framework convention would contain:

- a preamble;
- a statement of objectives;
- some principles;
- some high level commitments;
- provisions for the organisational structure of the UN work (including any subsidiary bodies);
- the establishment of a secretariat and a Conference of Parties (CoP) as the main institution; and
- other standard provisions expected in a multilateral convention.

Detailed rules relating to particular areas of international taxation would then be negotiated and agreed through this structure and appended to the framework convention in the form of protocols.

The disadvantages

The problematical aspects of using the format of a framework convention are, however, that exactly these issues – objective, principles, commitments, etc. – will have to be negotiated between the UN member countries. Those countries will then have to decide whether or not they wish to sign up to this multilateral convention.

At that point in time, the whole project might collapse if, for example, a substantial number of countries decide that they do not wish to join the multilateral convention. The United States, for example, has a history of not participating in multilateral conventions, and any ratification by the United States requires support of two thirds of the Senate, which has proved a major problem for other multilateral conventions in the international tax field.

Some observers think that it was a major mistake to assume that the pattern that had been used for climate change could also be used for international tax cooperation, and that an alternative approach might have been easier and more effective. For example, the UN previously had a Fiscal Commission between 1946 and 1954. Reestablishing such a Commission would simply involve the support of a majority of members of the UN Economic and Social Council, and its work on developing new rules of international taxation could have begun already. By contrast, it seems likely to be 2025 or later before a framework convention is capable of being signed and ratified, and enters into force.

Negotiating the terms of reference

The discussions at the UN in April and May (and even the preceding workshop at Oxford University) gave some indication of the difficulties that lie ahead in agreeing even just the terms of reference for the framework convention.

On virtually every issue that was discussed at the meetings in New York, the world was split into two camps. Broadly, the Global South expect a major role for the new UN institutions in rewriting international tax rules, particularly with a view to giving greater taxing rights to the developing world. On the other hand, a block of countries that includes the main OECD and EU countries (and the UK as an OECD member country) are more cautious and wish to ensure that any new developments take into account the existing framework of international tax rules and the work that is currently going on at the OECD (including the work of the Inclusive Framework).

On virtually every issue that was discussed at the New York meeting, country delegates that spoke fell into one of these two camps. It will clearly be a very difficult process – if it can be achieved at all – to get agreement on even the terms of reference given these different viewpoints. A couple of examples are set out below.

Capacity building and domestic resource mobilisation

One might have thought that on the issues of capacity building and domestic resource mobilisation there would be universal agreement. However, even on topics such as these, some spokesmen for the Global South emphasised that an inequitable international tax system which gave them insufficient taxing rights could not form the basis for adequate domestic resource mobilisation. They claimed that missions from developed countries to assist in capacity building have sometimes become a demand for the adoption of international tax rules that do not respect the sovereignty or the needs of developing countries.

The sequence of negotiations

Even on the question of the sequence between the negotiation of the main framework convention and the negotiation of the substantive protocols there are strong differences.

Some of the delegates with experience at the OECD took the view that the logical sequence was to agree the framework convention first (perhaps partly so the countries could see what they were signing up to) and then for research to be carried out and solutions developed which could be encapsulated in protocols. On the other hand, spokesmen from the Global South emphasised that they could not wait any longer for the development of rules in the protocols. They also felt that a number of initial protocols – intended to deal with particularly urgent problems (such as tax-related illicit financial flows and the taxation of cross-border services in the globalised and digitalised economy) – could not wait and should be developed at the same time as the main framework convention.

Voting

One of the critical issues on which strongly differing views were expressed concerns voting in the UN process. As clarified by one delegate, voting relates to three separate issues:

- First, there will be voting, if necessary, on the terms of reference.
- Second, there will be voting, again if necessary, on the terms of the framework convention.
- Finally, when it comes to the adoption of particular substantive rules in protocols, there will be voting, if necessary, in the Conference of Parties or other institutional structures that are created for the development of substantive rules.

The words ‘if necessary’ are included because there is general agreement that, ideally, the UN discussions should proceed by seeking a consensus – that is a solution on which all countries are agreed. However, a consensus may prove elusive on many issues. In those circumstances, the question arises as to how differences of opinion will ultimately be resolved by voting.

The fallback position, emphasised by delegates from the Global South, is the normal rule of the UN by which a simple majority is required. Given the current positions being adopted by countries, voting by simple majority would ensure that the Global South triumphed in virtually every matter on which there was disagreement. Not surprisingly, therefore, the OECD/EU countries prefer a departure from simple majority, possibly by proceeding only through consensus (as is the position ultimately in the OECD) or by some form of special majority required for certain decisions.

This is, of course, a critical issue. By having adopted the format of a framework convention, which countries will have to decide whether or not to sign and ratify, this choice of format creates a possibility that a large group of countries will not join the framework convention if they consider it is not in their interests to do so.

The prospect that they will continuously be outvoted by the Global South countries may well lead to a position where the rest of the world decides that they cannot sign up to a convention where they will be continuously outvoted. If the vast majority of countries is to buy in to this framework convention, then some form of compromise will be necessary, particularly on this issue of decision taking.

Looking forwards

A further round of discussions is to take place at the UN Headquarters in New York in July and August. That meeting is tasked with drafting the terms of reference for the framework convention. Whether or not agreement can be reached on the terms of reference will be a good indicator as to whether this project has realistic chances of success or whether some alternative, Plan B, is required.

If consensus cannot be found on the terms of reference, and voting becomes necessary on key points of difference, and the Global South outvotes the Global North, this will no doubt be followed by a battle and further votes at the General Assembly over the terms of reference. If the Global North is again outvoted, the issue will arise as to whether those countries continue to participate in the drafting of the framework convention itself on the basis of terms of reference against which they have voted.

It would be a major step to refuse to participate further in discussions on international cooperation at the UN. However, is there any point in remaining engaged in discussions that will require substantial resources of personnel when there is strong disagreement with the whole direction this project is taking? Some countries – including some northern European countries – may wish to remain engaged in any event; other countries, such as the US, may become disengaged.

It is interesting to speculate what the UK under a new government may decide to do in these circumstances (if they arise). The UK has traditionally been a strong supporter of the OECD process, but a new government may not wish to be seen to disengage from a UN process.

The next six months may prove crucial in the future development of the international tax regime. There are potentially monumental changes underway in the structure of international tax cooperation, but it is far from certain exactly how successful the UN process will prove to be and exactly what that structure will look like in a few years’ time.

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The Tragic Roundabout

The IR35 rules

We review HMRC's appeal against a First-tier Tribunal's decision in an IR35 case involving an IT contractor.

by Keith Gordon

Key Points

What is the issue?
Richard Alcock was an IT contractor who provided his services through a company, RALC Consulting Ltd. The company faced an IR35 challenge in relation to three contracts. The actual arrangements were entered into through an employment agency, adding a further layer of complexity to the factual analysis.

What does it mean for me?
New guidance issued by the Upper Tribunal reaffirms the position that the hypothetical contracts do not simply replicate the net effect of the actual contracts but can also take into account, for example, an individual party's subjective views as to what the contractual relationships involved.

What can I take away?
This case emphasises the need to take a careful approach to IR35 cases and, in particular, the importance of identifying the actual contractual terms between the various parties in the contractual chain and then carefully identifying the terms of the hypothetical contract or contracts between the worker and the client.

The so-called 'IR35 rules' (more strictly, the 'intermediaries' legislation') were announced just over 25 years ago with their stated aim being to prevent employment relationships (and the adverse tax consequences compared with those arising in the case of self-employment) being avoided by the mere interposition of another person (the intermediary) between the worker and the putative employer.

Under the rules, when they apply, the relationship should be taxed as an employment, notwithstanding that in law (and, in particular, under employment law) there is no actual employment relationship.

Few people will object to the aim of the legislation in those extreme cases where, as suggested back in 1999, train drivers and doctors' receptionists were engaged through their own service companies simply to avoid employer's and employee's National Insurance contributions.

However, not every situation is as clear cut as this. Indeed, it was long accepted by employment case law that there are relationships which (despite the theoretical dichotomy between employment and self-employment) could be categorised either way. In fact, it has long been accepted that in truly borderline cases, a worker's status can be definitively determined simply by the contract stating the parties' intentions so far as employment status is concerned.

One sector of workers where this 'no-man's land' problem is particularly acute is that of IT contractors. Typically, these contractors would work on projects for several months for large companies or government departments and, when the projects come to an end, look for a new project either with the same client or elsewhere.

Such work relationships could be fairly categorised as a series of short-term employments or, just as fairly, as a succession of assignments being carried out in the course of the contractor's profession. In most cases, the workers were content to be categorised as self-employed, accepting slightly higher net pay as compensation for the commensurate lack of employment rights.

Their clients, however, remained concerned that, at some later date, the workers might assert employment rights and they therefore took precautions to prevent any such claims. They did so by insisting that the workers provide their services through the medium of a limited company. That measure also provided protection for the clients from any HMRC challenge. Had the parties contracted without the use of an intermediary, HMRC would typically have turned to the putative employer for any tax and National Insurance that it considered should have been deducted at source.

When IR35 was first announced, the compliance obligation was meant to fall on the clients (in much the same way as it would absent the presence of any intermediary). However, until the reforms in 2017 and 2021, the legislation by the time it was enacted in the Finance Act 2000 ensured that it was the intermediaries (and, effectively, the workers) who bore the compliance risk.

In the first ten years following the enactment of the IR35 rules, there were a number of HMRC/Inland Revenue challenges which can be found in the case reports. All of them concerned contractors in the IT and similar sectors. Given the borderline nature of their employment status, it is perhaps unsurprising that the outcome of those cases was split almost equally between a victory for the taxpayer and a victory for HMRC (and, in the earlier cases, the former Inland Revenue). Indeed, at least from a superficial analysis of the cases, it would seem that there is a strong correlation between those taxpayers who were represented by specialists in the field (rather than by generalist practitioners) and those who prevailed before the tribunal (or, pre-2009, the Special or General Commissioners). In other words, for most such contractors, it was not unreasonable to treat their working relationships as outside the scope of IR35.

By the time we reach the 2010s, HMRC's focus seems to have broadened or at least shifted to broadcasters, with the much publicised rush of cases involving TV and radio presenters, many of which are still being litigated. However, this does not mean that IT contractors are no longer within HMRC's sights. This article looks at one such case involving an IT contractor, *HMRC v RALC Consulting Ltd* [2024] UKUT 99 (TCC).

The facts of the case

The facts can be stated quite simply. Mr Richard Alcock was the IT contractor who provided his services through a (presumably eponymous) company, RALC Consulting Ltd. The company faced an IR35 challenge in relation to three contracts: two with Accenture and one with the Department for Work and Pensions. The contracts spanned five different tax years: the first contract lasted 20 months followed by a three-month break before a further six-month stint; the second contract lasted nine months; and the third contract lasted just over a year (including two Christmas periods).

As is typical with many contractors, the actual arrangements were not entered into between the intermediary and the client but through an employment agency. That does not prevent the IR35 rules from applying but adds a further layer of complexity to the factual analysis.

HMRC considered that Mr Alcock would have been an employee of the DWP and Accenture during the relevant periods and issued determinations accordingly. The company appealed against them and the matter proceeded to the First-tier Tribunal which heard the appeal in September 2019. The First-tier Tribunal, allowing the company's appeal, concluded that the arrangements were outside the IR35 rules. HMRC appealed against that decision to the Upper Tribunal, arguing that the First-tier Tribunal had made seven errors of law in reaching its conclusion.

> **One sector of workers where this 'no-man's land' problem is particularly acute is that of IT contractors.**

The Upper Tribunal's decision

The case came before Mr Justice Jonathan Richards and Upper Tribunal Judge Ashley Greenbank.

HMRC's first ground of appeal concerned the First-tier Tribunal's approach to the key IR35 provision, found at Income Tax (Earnings and Pensions) Act 2003 s 49(1)(c). That provides a condition for IR35 to apply if:

> 'the circumstances are such that ... if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client or the holder of an office under the client...'

In other words, one has to imagine, counter-factually, a contract existing directly between the worker and the client, and then determine whether that contract would amount to one of employment.

For the purposes of that exercise, s 49(4) provides that: 'The circumstances referred to in sub-section (1)(c) include the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided.'

The First-tier Tribunal had said that the approach to be followed was as follows:

> 'The legislation requires the tribunal to do the following:
> a) make findings of fact about the actual terms on which the parties contracted and any other relevant "circumstances" for the purposes of ss 49(1)(c)(i) and 49(4);

b) determine the terms of the hypothetical contracts; and
c) apply the common law tests to determine whether the hypothetical contracts would have been contracts of employment.'

It was common ground that the First-tier Tribunal's summary of the approach was correct and, indeed, it was largely replicated in subsequent case law. It was also common ground that the question as to whether any contract amounted to an employment contract should be addressed by reference to a three-stage test as laid down in the High Court case of *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497 (albeit as supplemented by later case law).

This case emphasises the importance of identifying the actual contractual terms between the various parties in the contractual chain.

HMRC's complaint was that, despite the First-tier Tribunal's own direction as to the approach it should take, the tribunal did not actually follow its own ruling. The Upper Tribunal agreed.

In particular, the First-tier Tribunal did not expressly set out the terms of the hypothetical contract (or contracts) whose status it was analysing. Although it did seem to identify some of the key terms of the contract, this was after it had already carried out some of the analysis. Allied to this, the question as to whether a contract was an employment contract (the *Ready Mixed Concrete* tests) was applied not to the hypothetical contract as a whole but to particular terms of the actual contracts in place between the various parties in the contractual chain.

On top of this, addressing HMRC's second ground of appeal, the First-tier Tribunal appears to have mis-applied the test of 'mutuality of obligations' (which is an aspect of the *Ready Mixed Concrete* analysis) by concluding that some of the facts of the case were inconsistent with the existence of an employment relationship, in breach of other binding case law.

With those two errors of law, the Upper Tribunal concluded that the First-tier Tribunal's decision could not be supported and remitted the case back to the First-tier Tribunal to be redecided by a differently constituted panel. The remaining five grounds of appeal did not need to be considered.

Commentary

Given the Upper Tribunal's concerns about the approach taken by the First-tier Tribunal, it was inevitable that HMRC's appeal would be allowed. The Upper Tribunal considered whether it should remake the decision itself, rather than remit the case back to the First-tier Tribunal. However, a particular problem that the Upper Tribunal faced was the fact that for the first two tax years under review, HMRC needed to establish that the company's failure to apply IR35 amounted to careless conduct, something on which the First-tier Tribunal made no findings.

Interestingly, I do not recall carelessness being alleged in any other IR35 case. This is because employment status is usually determined on an evaluative basis and therefore it would be rare to find cases where a taxpayer's approach is not only 'wrong' but carelessly so. There are some cases in my experience where allegations of carelessness are made simply to justify a late assessment – this might be one such case. That will, no doubt, be considered in any subsequent decision of the First-tier Tribunal.

However, the point does raise a more general concern about the impact of the IR35 rules in practice. Many work situations (and, in particular, those of contractors) are in a no man's land so far as employment status is concerned. (This point was acknowledged by the Court of Appeal back in 2001 when the proposals were challenged unsuccessfully in judicial review proceedings – *R (Professional Contractors Group & Others) v IRC* [2001] EWCA Civ 1945).)

It is therefore perhaps unfortunate that taxpayers can legitimately categorise their relationship as one of (say) self-employment – but if they find that HMRC has equally legitimately taken the contrary position, the taxpayer is then required to prove that its original categorisation was correct before a tribunal that could legitimately decide the case either way. This unfortunate scenario is exacerbated by the fact that even experienced tribunals (as evidenced by this case and many others involving IR35 challenges and employment status more generally) reach conclusions that prove to be subject to an error of law.

It is more than possible that the First-tier Tribunal's original conclusion was correct – indeed, given the history of cases involving contractors, it is not an unlikely outcome. However, what appears to be clear is that the First-tier Tribunal simply reached its conclusion by an impermissible method. Indeed, the Upper Tribunal made it clear in its decision that it was not suggesting that the First-tier Tribunal's ultimate conclusion was wrong.

As a result, the taxpayer company is back where it started, but having already had to incur the expense of a First-tier Tribunal hearing, a hearing in the Upper Tribunal and HMRC's costs in the Upper Tribunal.

If there is one consolation from this particular spin on the roundabout of IR35 litigation, the Upper Tribunal has given clearer guidance on how the hypothetical contracts should be constructed under s 49(4). This new guidance reaffirms the position that the hypothetical contracts do not simply replicate the net effect of the actual contracts but can also take into account, for example, an individual party's subjective views as to what the contractual relationships involved.

What to do next

This case emphasises the need to take a careful approach to IR35 cases and, in particular, the importance of identifying the actual contractual terms between the various parties in the contractual chain and then carefully identifying the terms of the hypothetical contract or contracts between the worker and the client. It is only at that stage that it will be appropriate to apply the employment status tests.

Such an exercise ought to be carried out by taxpayers and HMRC long before a case reaches the tribunal. Indeed, it would help the First-tier Tribunal if the terms of the hypothetical contract have already been agreed by the parties. Of course, any remaining dispute as to its terms can be determined by the First-tier Tribunal.

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Capital or revenue? Tax treatment of distributions

The case of *Beard v HMRC* considers the tax treatment of distributions received from non-UK companies following *First Nationwide*.

by Peter Johnson

Key Points

What is the issue?
Mr Beard, a UK tax resident, received substantial cash and *in specie* distributions from the share premium of a Jersey incorporated and non-UK resident company, Glencore PLC. When HMRC assessed Mr Beard to income tax on the distributions, he appealed.

What does it mean for me?
The Upper Tribunal held that the reasoning in the case of *First Nationwide* should be applied to the tax treatment of distributions received from non-UK companies in the (different) context of the Income Tax (Trading and Other Income) Act 2005.

What can I take away?
UK tax practitioners considering whether a dividend should be regarded as capital or revenue may benefit from having regard not only to the local law distribution machinery, but also to the wider commercial substance of any transaction giving rise to the dividend.

The Upper Tribunal decision in *Alexander Beard v HMRC* [2024] UKUT 73 (TCC) may interest tax practitioners who find themselves grappling with the UK tax treatment of distributions received from non-UK companies, particularly for income tax purposes.

The decision could also merit wider attention in relation to comments made by the Upper Tribunal about the role that can and should be played by case law predating the Tax Law Rewrite Project when interpreting 'basic' concepts (such as the concept of 'capital') found in Tax Law Rewrite Project legislation.

Those who can remember the *First Nationwide* litigation rumbling on (particularly the decisions of the Upper Tribunal [2011] UKUT 174 (TCC) and Court of Appeal [2012] EWCA 278) may remember the sense of uncertainty that resulted from arguments made in that case regarding the tax treatment of non-UK company distributions. Anyone alarmed at the news that some of those arguments have recently been revisited by the Upper Tribunal in *Beard* might, however, be comforted to hear the tribunal's conclusions.

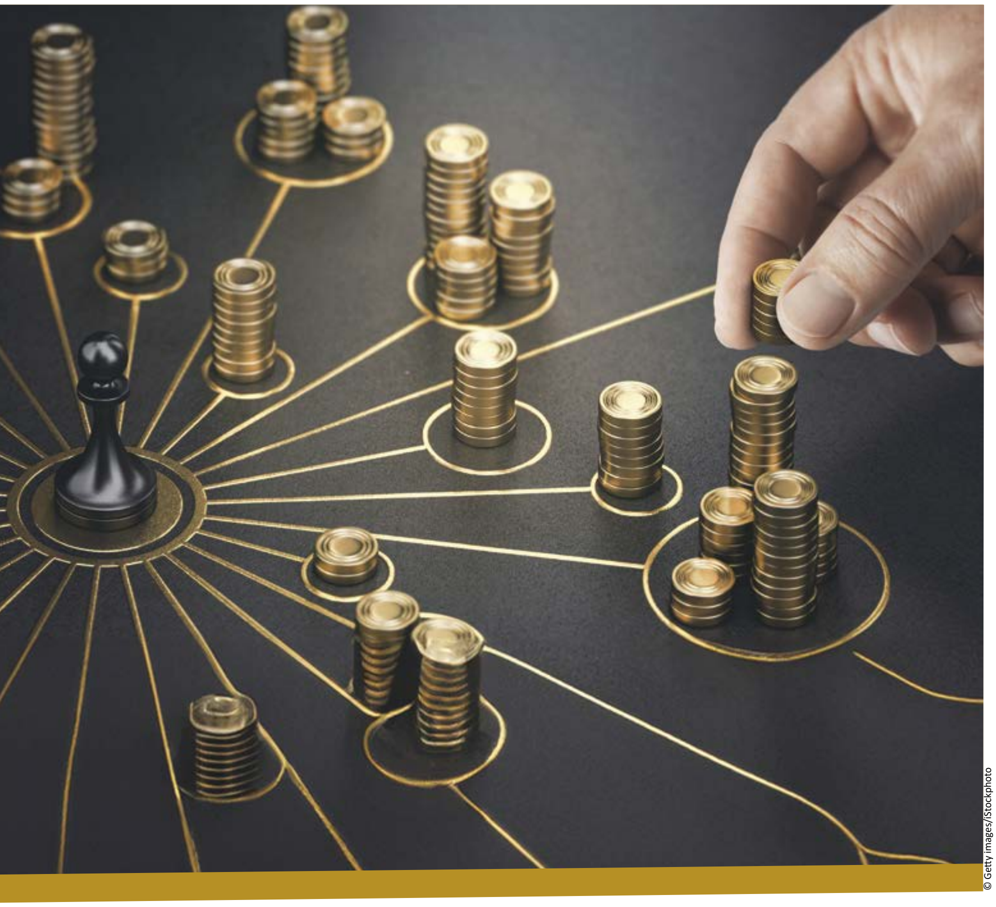
Agreeing with the First-tier Tribunal (and HMRC), the Upper Tribunal held that the reasoning of the Upper Tribunal and Court of Appeal in *First Nationwide* should be applied to the tax treatment of distributions received from non-UK companies in the (different) context of Income Tax (Trading and Other Income) Act (ITTOIA) 2005. The Upper Tribunal decision provides clarity on how this should take place. It also underscores the importance of understanding the local law mechanics of non-UK company distributions made from share premium when analysing such distributions for UK tax purposes.

The Upper Tribunal's reasoning would also suggest that regard should be had to the substance of the overall transaction of which any dividend forms part, since in rare cases that may impact whether the dividend should be regarded as having a 'capital nature'.

Background

Mr Beard, a UK tax resident, received substantial cash and *in specie* distributions (the 'distributions') from the share premium of a Jersey incorporated and non-UK resident company, Glencore PLC. HMRC assessed Mr Beard to income tax on the distributions. Mr Beard appealed to the First-tier Tribunal.

Mr Beard maintained that he should not be charged to income tax further to ITTOIA 2005 s 402. This provides, amongst other things, that income tax is charged on 'dividends' (not defined in ITTOIA 2005) received from a non-UK resident except for 'dividends of a capital nature' (also not defined). It was argued for the taxpayer (represented by Malcom Gammie KC, who acted for HMRC in *First Nationwide*) that in effect the distributions were not dividends and in any event were of a capital nature, such that the distributions should instead be charged to capital gains tax.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The First-tier Tribunal rejected Mr Beard's appeal. Mr Beard appealed to the Upper Tribunal.

Decision of the Upper Tribunal

The Upper Tribunal decision covers three questions of interest.

1. When are distributions 'dividends'?

To decide whether a distribution from a non-UK company is a 'dividend', the parties agreed that one should:

- consider the ordinary meaning of the term 'dividend' in English law; and
- look at the non-UK law governing the distribution.

The first issue for the Upper Tribunal to consider was how to approach this analysis for the distributions.

By way of context, in *First Nationwide*, distributions had been declared out of the share premium account of a Cayman Islands company. The question arose as to whether such distributions were 'dividends' for the purposes of a different tax provision pre-dating the Tax Law Rewrite Project.

Cayman Islands company law allowed distributions from share premium in a similar manner to distributions from retained earnings, provided that the company making the distribution remained able to pay its debts. Looking at the position under Cayman Islands law, the Upper Tribunal decided that the distributions were 'dividends'.

However, the position of share premium in Jersey company law is arguably less clear in certain respects than in Cayman Islands company law. Share premium in Jersey occupies, as the First-tier Tribunal had put it, a 'hybrid territory' between Cayman Islands and English company law. Jersey law contains, on the one hand, provisions that would seem to protect the share premium account as share capital of the company and, on the other hand, provisions that freely permit distributions out of share premium in a similar manner to distributions out of retained earnings. How then should the distributions made in this case from Jersey share premium be analysed?

The Upper Tribunal agreed with the First-tier Tribunal (and HMRC) that the distributions should be regarded as dividends, for reasons that we would summarise as follows.

First, the hybrid nature of the share premium account in Jersey law did not dissuade the Upper Tribunal from characterising the distributions as dividends. The local law mechanism by which the distributions were made proved key. Since the distributions were made from share premium using the same mechanism as that used for making dividends out of trading profits, the distributions could properly be regarded as dividends.

Second, the Upper Tribunal struggled to see any conceptual bar to regarding distributions out of share premium as 'dividends' under the ordinary meaning of that term.

Counsel for Mr Beard had referred to the Court of Appeal decision in *Memec plc v IRC* (1998) 71 TC 77 (following *Esso Petroleum Co Ltd v MoD* [1990] Ch 163) in which a dividend is described as 'a payment out of part of the profits for a period in respect of a share in a company'. It was argued that the distributions did not meet this description since, when one considers the position of the share premium account in Jersey company law, the share premium from which the distributions were made should be regarded as capital rather than profit.

The Upper Tribunal was unconvinced. It noted that dividends out of share premium had once been possible in English company law. The Upper Tribunal concluded (in para 42) that the *Memec* description of a 'dividend' relied on by counsel for Mr Beard was (in its view) rightly characterised by the Upper Tribunal in *First Nationwide* (in para 37 of that decision) as a description that should not be treated as 'legislation' when applied out of context.

The Upper Tribunal also notes judicial commentary to the effect that share premium can in any event be said to represent profit for a period (*Re Duff's Settlement Trusts* [1951] Ch 721 and the Upper Tribunal in *First Nationwide*).

As such, the Upper Tribunal describes as 'impeccable' the First-tier Tribunal's conclusion amongst other points that:

> '[T]he distributions fulfil almost exactly the example description provided in *First Nationwide*... [T]here is nothing either in the Jersey legislation or in the manner in which these payments were made by Glencore to indicate that the distributions cannot be treated as fulling [sic] the English law definition of a dividend.'

Many may find this conclusion reassuring.

A final observation: it appears that UK tax practitioners do not have a hard and fast definition of 'dividend' to work with when considering non-UK company distributions. Although this seems unlikely to present a problem for most cases, careful thought may be necessary when considering more unusual distributions from non-UK companies.

2. When are dividends 'of a capital nature'?

The next question for the Upper Tribunal was whether the distributions were in any event dividends of a 'capital nature' (per s 402(4)). How should this be analysed given the unusual status of the share premium account in Jersey law, as well as the different tax law context compared to that considered in *First Nationwide*?

The Upper Tribunal held that the distributions were not dividends of a capital nature, for the following two reasons.

The 'method of distribution' test

Distributions have a capital nature if they involve a diminution of the 'corpus of the assets' of the company (per the House of Lords in *Rae v Lazard Investment Co Ltd* (1963) 41 TC 1). The Upper Tribunal considered that, further to *Rae v Lazard* and the analysis of the Court of Appeal in *First Nationwide*, the mechanism of distribution determines whether the corpus of the assets is reduced by the distribution.

The Upper Tribunal considered that approach appropriate for s 402(4), given that the statutory expression 'dividends of a capital nature' would seem to focus on the character of the dividend itself not, as counsel for Mr Beard had argued, the character of the source of funds.

In reaching this conclusion, the Upper Tribunal did not accept the argument made for Mr Beard that s 402 had the effect of creating a third category of receipt between income and capital; namely, 'a receipt which is paid as a dividend from what is treated under the law of the company as the capital of the company'. The Upper Tribunal relied on comments in the Explanatory Note for ITTOIA 2005, which sought to place s 402 into the context of the established case law where only two categories of payment in respect of shares are recognised: capital and revenue.

The Upper Tribunal also commented on the proper role that should be played by case law predating the Tax Law Rewrite Project (see below).

Applying this 'method of distribution' test, the Upper Tribunal concluded that the distributions should not be seen as having a capital nature since the mechanism by which the distributions were made by Glencore PLC was the same mechanism as that used for making dividends out of trading profits. The distributions had not been made by the alternative mechanism provided for in Jersey law for reducing capital.

(In any event, although the Upper Tribunal did not appear to see the character of the source of funds as determinative, it endorsed the First-tier Tribunal's rejection of the idea that share premium has an essential character as capital, agreeing with it that share premium instead has a 'chameleon character, taking its colour from the law which is applied to it'.)

However, does such a focus on distribution mechanics tend to put form over substance? The Upper Tribunal thought not, appearing to regard the decision of the company to use one distribution mechanism rather than another as a reasonable dividing line, drawing support for that approach from comments by the House of Lords in the trust case *Bouch v Sproule* (1887) 12 App Cas 385.

The 'dividend which could not on any sensible view be regarded as income' test

It was argued for Mr Beard that the above approach has the effect of rendering redundant the s 402(4) concept of 'dividends of a capital nature'. The Upper Tribunal decision does not relay the details of this argument. However, perhaps we might put the question this way: if both issues of 'dividend' and 'capital nature' are determined by reference to the distribution machinery, in what circumstances would one ever conclude that a distribution can be both a 'dividend' and 'of a capital nature'?

The Upper Tribunal's answer to this is that s 402(4) is directed at dividends which 'cannot on any sensible view be regarded as income' (para 75).

The Upper Tribunal gives *Sinclair v Lee* [1993] Ch 497 as an example of a case in which the wider facts and circumstances meant that a dividend *in specie* from an English company arising on a demerger could not sensibly be regarded as 'income' for trust law purposes. The court in *Sinclair v Lee* had considered that to conclude otherwise would 'exalt company form over commercial substance to an unacceptable extent'.

The Upper Tribunal also notes (para 75) that it is 'impossible to envisage all the circumstances in which a company may pay a dividend, in particular when s 402 is concerned with companies incorporated under a multitude of foreign laws which may include procedures and arrangements unknown in the UK.'

The Upper Tribunal found no such problem with the distributions, concluding that s 402(4) should not apply.

Evidently, the Upper Tribunal sees as the target of s 402(4) those unknown unknowns where the substance of the overall transaction of which the dividend forms part forces one to conclude that the dividend in question 'cannot on any sensible view be regarded as income'. Therefore, although s 402(4) might reasonably be expected to apply only rarely, in view of the Upper Tribunal's decision in *Beard*, UK tax practitioners considering whether a dividend should be regarded as capital or revenue may benefit from having regard not only to the local law distribution machinery, but also to the wider commercial substance of any transaction giving rise to the dividend.

3. Applying previous case law to Tax Law Rewrite Project legislation

The Upper Tribunal also made comments about the proper role played by tax case law pre-dating the Tax Law Rewrite Project when analysing Tax Law Rewrite Project legislation.

First Nationwide concerned tax law pre-dating the Tax Law Rewrite Project, whereas s 402 was a product of the Tax Law Rewrite Project. Counsel for Mr Beard argued that the earlier authorities, in particular *First Nationwide*, were inappropriately relied upon by the First-tier Tribunal in *Beard*.

The Upper Tribunal disagreed. It acknowledged the, as yet unanswered, question noted by the Supreme Court in *NCL Investments Ltd v HMRC* [2022] UKSC 9 of 'whether and when it is appropriate to refer to earlier case law either in relation to a consolidation statute properly so called or to a Tax Law Rewrite Project statute'. The Upper Tribunal also accepted that 'in order to interpret a new statutory provision it may well be inappropriate to rely on a previous case which determined the meaning of another, and now replaced, statutory provision'.

However, the Upper Tribunal concluded that there was nothing in the relevant authorities which meant that the tribunal should 'eschew the assistance' provided by cases dealing with such 'basic' and widely used concepts as income and capital (para 52). Although arguably unsurprising, this comment by the Upper Tribunal may merit attention when analysing other similarly fundamental and pervasive tax law concepts.

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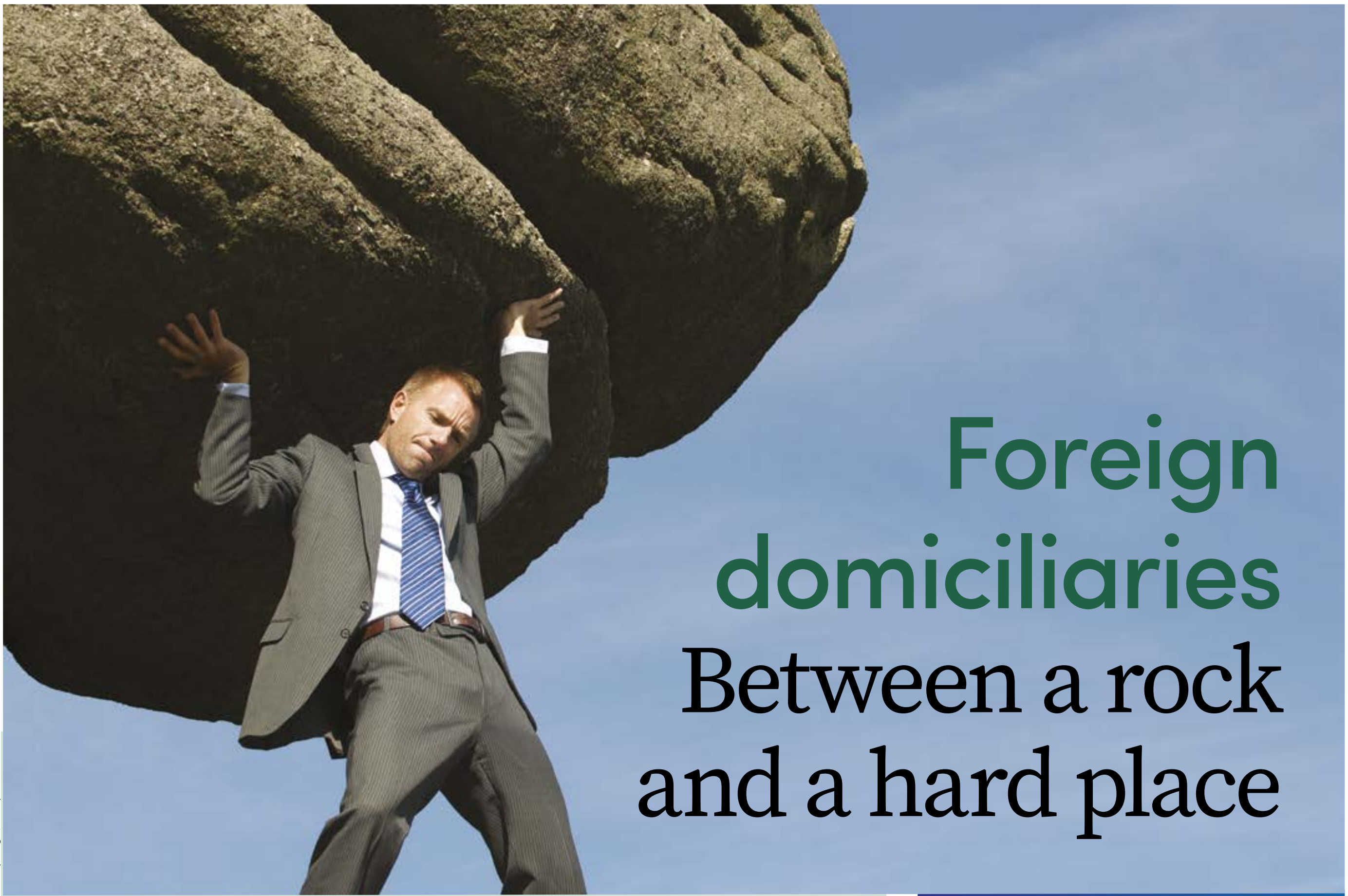

Foreign domiciliaries
Between a rock and a hard place

We consider the inheritance tax implications for non-doms with existing trusts as well as new arrivers of the current proposals on the table and the possible changes after the general election.

by Emma Chamberlain

In the June 2024 edition of *Tax Adviser,* I considered the options for those who will lose the income tax and capital gains tax trust protections from April 2025. This article considers the inheritance tax options for non-doms with existing trusts and new arrivers (i.e. those who have not been UK resident in the previous ten tax years and have been UK resident for less than four tax years by April 2025).

The two major parties remain vague on the specifics of inheritance tax changes announced for non-doms. Although Labour and the Conservatives appear to agree on 90% of the March 2024 announcements, a key difference seems to be inheritance tax. Until an incoming government produces some legislation, it is not possible to give specific advice and practitioners should emphasise the need for caution before taking irrevocable decisions.

Assuming that the non-dom changes are not delayed and **are** effective from April 2025, there may be relatively little time for clients to weigh up their options between the publication of draft legislation and the end of the tax year. The legislation may well not even be final by the time the changes take effect – as occurred in 2008 and 2017!

This article highlights some issues that clients may want to consider in advance. An option appropriate for one client will not work for another. As explained below, non-residence may not always be a complete tax answer from the inheritance tax perspective. However, any advice must remain uncertain until sight of legislation.

Key Points

What is the issue?
This article considers the inheritance tax options for non-doms with existing trusts and new arrivers (i.e. those who have not been UK resident in the previous ten tax years and have been UK resident for less than four tax years by April 2025).

What does it mean for me?
An option appropriate for one client will not work for another. Non-residence may not always be a complete tax answer from the inheritance tax perspective. However, any advice must remain uncertain until sight of legislation.

What can I take away?
Foreign doms can be forgiven for feeling that they are between a rock and a hard place at the moment. Hopefully, greater clarity on the scope of the new inheritance tax provisions can be outlined soon.

The differences between Labour and the Conservatives

In the 2024 Budget, the government promised that all trusts established by foreign doms before April 2025 would effectively be grandfathered for inheritance tax purposes only and remain taxable under the current regime. This means that even where the settlor has become domiciled or deemed domiciled in the UK and however long they have been UK resident, any non-UK settled property held in a trust set up when they were foreign domiciled before April 2025 remains excluded property.

There are certain exceptions to this in relation to:

- settlors who acquired a foreign domicile of choice but were born in the UK with a UK domicile of origin and are now UK resident ('returners'); and
- resettlements made after the settlor becomes deemed or actually domiciled.

However, the position was relatively clear and a long stayer settlor with a foreign domicile of origin who has now become domiciled in the UK could at least be certain that their trust remained protected from inheritance tax, provided that it held only non-UK assets and that the property was settled when they were foreign domiciled. It was proposed that if a non-dom died before April 2025, any trusts set up in the will would also be chargeable under the current regime.

The example of Arj below sets out the key differences between the current regime and the Conservative and Labour proposals.

Example: Arj's discretionary trust

Arj was foreign domiciled and established and funded a discretionary trust in 1990 before he had acquired deemed domicile. In 2024, he is still resident in the UK and is now deemed domiciled. He may even have decided to settle permanently in the UK and has therefore acquired a domicile of choice here.

From April 2025, whatever his domicile status as a matter of common law Arj cannot benefit from the capital gains tax and income tax trust protections. However, provided the settled property comprises only foreign situated assets, under the Budget proposals there is no tax charge on his death, even if he can benefit from the settled property. There are no ten year charges. (Note that the trust does not have to avoid all UK situated assets. It can hold assets such as UK quoted shares in a foreign incorporated company.)

The settled property (being held by the trustees) will be non-UK situated and therefore excluded property for inheritance tax purposes. (There is , of course, one exception for enveloped UK residential property not discussed here.) On Arj's death, the trust can continue to be excluded property, thus providing indefinite and valuable inheritance tax protection for future beneficiaries whatever their residence or domicile status.

Differing approaches

Under the Conservative proposals, as Arj's trust was funded when he was foreign domiciled and prior to April 2025, no change arises to its inheritance tax status after April 2025. This was no doubt a pragmatic attempt to avoid problems of uncertainty (comparable to those seen in 2006 on the trust changes) if a foreign dom died before April 2025 when the legislation was due to come into effect.

It is perhaps not surprising that Labour objected to this permanent exemption. Labour's statement in early April noted:

> 'While Labour supports most aspects of the proposed replacement to the non-dom rules, including the four-year arrival window, the principle of a ten-year window for inheritance tax, we are concerned that major loopholes remain. That is why Labour will include all foreign assets held in a trust within UK inheritance tax, whenever they were settled, so that nobody living here permanently can avoid paying UK inheritance tax on their worldwide estates.'

It is not entirely clear what the reference to 'living here permanently' means. Assuming that Labour does not want to return to a domicile test, it **may** mean that someone who has been living in the UK for more than ten years will be subject to inheritance tax after April 2025 not only on their worldwide estate but also in respect of any property in trusts they have already set up.

And presumably (although this is speculative) they and their trusts will remain within the inheritance tax net for at least ten years after they leave ('the inheritance tax tail').

A fluctuating test

If this is right, the inheritance tax protection for existing trusts is no longer a permanent one but a fluctuating test (similar to that used for returners) which is retested at each chargeable event from April 2025:

- If the settlor is UK resident for more than ten years, the non-UK situated property is subject to inheritance tax.
- If the settlor has been non-UK resident for more than ten years, the foreign property will not be subject to inheritance tax.

Of course, there could be many other options used as a connecting factor for inheritance tax; for example, the residence of beneficiaries could be taken as the relevant connecting factor. However, most other tests pose even greater problems. The residence status of the settlor from time to time is surely the most likely test to be used, especially as it would appear it is intended to apply for trusts set up after April 2025 even under the Conservative proposals.

So in the case of Arj, not only would his worldwide personal estate be subject to inheritance tax from April 2025 (as is already the case if he is deemed domiciled here) but also the settled property would be subject to inheritance tax going forward from April 2025. Logically, this could mean that not only is the trust subject to ten year charges at up to 6% (with the first charge in 2030 in the example above) but if the settlor can benefit there would be a 40% charge on his death under the reservation of benefit provisions.

Assuming that the changes work in a similar way as for residential property in 2017, the rate would be 3% in 2030 (as the settled property would only have been relevant property for five years). Even if Arj leaves the UK in 2024/25 or later, the trust would still be within the inheritance tax regime if the relevant tie used is UK residence in the last ten years, as he will still have a ten year tail.

Objections to this approach

There have been vociferous objections to this proposal, usually on the following lines:

Unfair penalisation: Non-doms were tempted by the statutory reliefs around trust protections to set up trusts in 2017 and will now be penalised for doing so, suffering additional ten year charges. The trust could mitigate the ten year charges by investing in property qualifying for business property relief at least two years before the ten year anniversary. However, this may not always be commercially feasible and business property relief will not generally protect these trusts against a reservation of benefit charge arising on death. They are now in a worse position than UK doms who did nothing.

Winding up trusts: It is hard to wind up these trusts for deemed doms who are UK resident without incurring immediate income tax and capital gains tax charges. Should there be something equivalent to the temporary repatriation facility for such trusts which are wound up in favour of the settlor so that the rate of tax is reduced?

Spousal exemption: The inheritance tax regime as a whole is harsher than if they owned the assets personally. Not only are there ongoing exit and ten year charges but if the settlor can benefit from the trust, there is a reservation of benefit. In these circumstances, spousal exemption is very difficult to secure. Generally, business property relief is not possible to protect the person from a reservation of benefit charge on death (as it will only be available if the property qualified for business property relief when settled).

Unexpected benefits: Those who were UK domiciled when they settled property into trust and have been non-UK resident for more than ten years will unexpectedly benefit, as those trusts logically should now fall outside inheritance tax from April 2025!

Excluded trusts: It is assumed the new measures will not apply to trusts of settlors who have already **died** by April 2025. There are many very old trusts with excluded property status. It would be difficult to ascertain the residence status of the settlor (particularly under common law case law) in the years prior to their death if this occurred many years ago or to judge whether they were 'living in the UK permanently' at that point. But this is yet another point requiring clarification.

Options

In these circumstances what should Arj and non-doms in a similar position do to protect their inheritance tax position?

Option 1: Do nothing

Inheritance tax would be payable every ten years at 6% with the first charge arising in 2030 of around 3% (reduced slightly as it will only have been relevant property since 2025). That could be mitigated by a trust investing in business property for two years prior to the ten year anniversary (but the trust could not borrow to invest in business property and actually has to put the cash in two years before the ten year anniversary).

Inheritance tax would arise on Arj's death under the reservation of benefit provisions at 40% with no credit for the ten year charges and no possibility of business property relief. The trustees may be able to mitigate this by conferring on Arj a general testamentary power of appointment. He can exercise this by will to appoint his spouse or civil partner a revocable interest in possession, which could take effect as an immediate post-death interest (though he may not have a spouse or want to leave assets on trust for them). The assets are then in the spouse's estate going forward.

Arj may later choose to go non-resident to try and lose the ten year inheritance tax tail.

Option 2: Go non-resident

Arj must be non-resident for the whole of the tax year in which the trust is wound up and remain non-UK resident for six tax years. Split year non-residence will not normally protect the non-resident beneficiary from capital gains tax or income tax arising out of trust distributions in that year. In practice, it is unlikely now that Arj will be able to become non-UK resident for the whole of 2024/25, so the trust will not be wound up before 2025/26. At that point, there will be a small exit charge on the winding up of the trust as it is now chargeable property, though this will be very small. Arj can receive the trust assets tax free.

The real difficulty is that Arj will need to wait ten years before losing the inheritance ten-year tail. Under the current regime, deemed doms fall out of the inheritance tax net after three years, provided that they do not return within six years. Now Arj has to wait for ten years and his estate is vulnerable to inheritance tax if he dies in that period. There have been objections to such a long ten year tail, although Germany has a similar tail. Both CIOT and STEP have suggested the tail should only be for the excess period over the ten years, so someone resident for 15 years here would only have a five year tail after they left the UK. It is hard to see an incoming government agreeing to this unless it can be shown that it will avoid a cliff edge (everyone leaving in the ninth year to avoid a ten year tail).

Arj can make gifts in this ten year period but:

- will need to survive seven years as he will be within the potentially exempt transfers (PET) regime; and
- cannot make gifts to UK residents out of trust distributions to him without the latter being caught by the onward gifts rule.

Therefore, he would generally have to wait three years before making a gift out of any trust distributions he has received received to avoid the onward gifts rule and seven to avoid inheritance tax altogether. He cannot set up another trust while still in the ten year tail without incurring an entry charge. Once Arj owns the trust property personally, he will have more options to secure business property relief or spousal exemption on his death and there are no continuing 6% charges. However, the ten year tail feels uncomfortable for an elderly person.

Some practitioners are hoping to rely on treaty relief. This will probably work in relation to a country like the United States, although most treaties refer to domicile as the deciding factor. However, it seems likely that treaty relief will be disapplied unless the other country has an effective rate of inheritance tax of more than 0%. In other words, the same approach may be followed as was adopted under Schedule A1. (Italy may therefore be a better option than India.) However, the earlier Arj leaves, the earlier he loses the ten year tail. This option will therefore be better for younger settlors.

Option 3: Arj as settlor stays UK resident but is irrevocably excluded from his trusts

Generally, only the settlor needs to be excluded to avoid a reservation of benefit and therefore avoid inheritance tax at 40% on their death for inheritance tax purposes. However, this would not avoid income tax on Arj if his spouse can still benefit. Exclusion will not avoid the 6% inheritance tax charges, which will continue while the settlor is within the scope of inheritance tax, but it will avoid the 40% charge on death.

Ideally, exclusion is done this tax year while the settled property is still excluded property to avoid a seven year run off. Exclusion under the current regime in respect of foreign settled property should not generally give rise to a deemed PET under Finance Act 1986 s 102(4).

Arj's surviving spouse could benefit from trust property as a discretionary beneficiary after his death as his widow for both income tax and inheritance tax purposes without any ongoing income tax or inheritance tax charges for Arj.

This option is likely to be more suitable for the elderly settlor unlikely to leave. At that point, the trust really becomes a long term roll-up fund for the issue of the settlor. The trustees will want to invest in non-reporting funds to avoid any charge under the Taxation of Chargeable Gains Act 1992 s 86 on the settlor while he is alive and the UK resident children will have to accept income tax and capital gains tax charges on any distributions.

In conclusion

Foreign doms can be forgiven for feeling that they are between a rock and a hard place at the moment. Hopefully, greater clarity on the scope of the new inheritance tax provisions can be outlined soon.

The views expressed in this article are Emma's own and should not be attributed to the CIOT.

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The Border Target Operating Model
Animal and plant products

We examine the regulatory checks and Common User Charge on imports of animals, products of animal origin, plants and plant products.

by Mike Frost

Key Points

What is the issue?
UK traders need to be familiar with the Border Target Operating Model. New risk categories apply to a range of products of animal origin, plants and plant products (including food).

What does it mean for me?
Traders need to be able to identify relevant goods, including the commodity code classification and country of origin. New certification and inspection requirements are mandatory to allow certain goods to be imported.

What can I take away?
Additional charges (such as the Common User Charge) have made importing controlled goods more costly.

For Great Britain's businesses, the UK's withdrawal from the EU single market and customs union at 11pm on 31 December 2020 resulted in fundamental changes to the way goods are traded. Intra-EU dispatches and acquisitions were replaced with import and export formalities and a divergence in regulatory requirements.

Brexit divergence

In addition to all the standard requirements of trading goods internationally (including complying with classification, country of origin and customs valuation rules, etc.), major changes have been made to duty rates in the UK tariff, the format of the customs declaration with the launch of the HMRC Customs Declaration Service, and the way import VAT is accounted for with the introduction of postponed VAT accounting.

One area in which the UK has been slow to adapt is managing biological security. This is a key pillar of border management, so it is no surprise that the EU chose to immediately apply third country regulatory checks on GB animals, products of animal origin, plants and plant products. Collectively, these items are known as sanitary or phytosanitary (SPS) goods, as they can be subject to sanitary or phytosanitary controls and are some of the most complicated and admin intensive items to import.

In contrast with the EU, the UK government has repeatedly delayed the introduction of similar UK checks on EU SPS goods, instead only performing checks on the highest risk live animals and high-risk plants. A variety of reasons have been cited for the delays, including the impact of the global pandemic, industry concerns, lack of inspection facilities and the risk of additional administrative costs further pushing up prices in a time of relatively high inflation.

Over three years since the end of the Brexit transitional period, changes to the UK's border policy are finally being implemented with the introduction of the UK Border Target Operating Model, the last phase of which is scheduled for 31 October 2024. The changes impact all GB importers; however, businesses in the food and drink, agricultural and manufacturing sectors need to particularly monitor the changes and ensure they abide by the new requirements.

A food wholesaler importing chilled meat, a furniture manufacturer importing timber or a garden centre importing seeds are all examples of traders importing goods subject to UK SPS controls. SMEs that are reliant on low value imports of SPS goods from Europe are particularly exposed and have already found the feasibility of their supply chains called into question.

The Border Target Operating Model: what are the changes?

The Border Target Operating Model is the key policy guiding the UK's border management. First released in draft form and subject to public consultation, the final version was published in August 2023. The model sets out the UK policy on:

- imports of animals, products of animal origin, plants and plant products (i.e. SPS goods subject to sanitary or phytosanitary controls); and
- safety and security declarations (applying to all imports of goods – of any kind).

These new requirements come with a cost. The government originally estimated a cost to UK businesses of £330 million. However, a recent third-party report suggested £2 billion as a more realistic figure. The changes have been introduced in three phases, each of which require careful consideration.

Phase 1: Risk status (31 January 2024)

On 31 January 2024, new 'risk categories' were introduced to govern the import requirements for SPS goods. To find the risk category, the importer needs to know the commodity code of the goods and their country of non-preferential origin. These details can then be checked against lists that have been published by DEFRA online.

Changes were also made to documentation and reporting requirements based on these new risk categories:

- **Animals and products of animal origin:** All goods appearing in the medium or high-risk category require an export health certificate. An Import of Products, Animals, Food and Feed System notification is required at the border to allow clearance.
- **Plants and plant products:** All medium and high-risk plants and plant products require a phytosanitary certificate and a notification to the Import of Products, Animals, Food and Feed System.

The export health certificate and phytosanitary certificate are official documents that confirm a consignment meets the UK's health and biosecurity standards. The export health certificate is completed by a certifying officer in the country of export (e.g. an official veterinarian). The phytosanitary certificate is issued by the competent plant health authority in the country of export.

Goods are physically inspected and certificates will only be issued if all checks are passed. It is the exporter's responsibility to obtain these certificates.

UK exporters of SPS goods to the EU or rest of the world will already be acutely aware of these documentation requirements. Many EU exporters of SPS goods to the UK have been required to provide certification for the first time as a result of the changes but typically the cost is passed directly on to customers.

The Import of Products, Animals, Food and Feed System is the UK system used to pre-notify a movement of SPS goods. It is run by the Animal and Plant Health Agency and the Department for Environment, Food and Rural Affairs (DEFRA).

A successful notification on the Import of Products, Animals, Food and Feed System generates a document known as a Common Health Entry Document, which contains information about the import for control purposes and is a requirement for the goods to clear the border.

Phase 2: Changes to the entry process and the Common User Charge (30 April 2024)

Checks on SPS goods can take several forms:

Documentary checks: This involves the Port Health authority reviewing the Common Health Entry Document, certification and full suite of commercial documents. This includes the invoice, packing list and bill of lading (the documentation showing shipment details for customs control procedure).

Identity checks: This involves verification that the goods declared on the paperwork can be identified, such as a visual inspection of identification marks, stamps, etc.

Physical checks: Customs law requires that a certain proportion of imports are subject to a physical check for pathogens, disease and contamination. Countries where there is a known issue (e.g. a diseases outbreak) may be targeted. Inspection can involve sampling and taking temperatures.

Changes to the entry process

On 30 April 2024, further changes were made at the border regarding the entry process for SPS goods.

All SPS goods: Goods must enter the UK via a border control post or control point (for plants or plant products).

EU SPS goods: Documentary and 'risk-based' identity and physical checks are now required for medium risk animal products, plants, plant products and high-risk food and feed of non-animal origin. (This does not apply in West Coast GB ports, such as Holyhead, due to additional complexities associated with moving SPS goods from Ireland.)

Common entry health documents must be generated for all live animal, high-risk food and feed of non-animal origin and animal product imports from the EU.

COMMON USER CHARGE

Commodity type	Imports	Transits
Live animals	TBC	TBC
Products of animal origin: low risk	£10	£10
Products of animal origin: medium risk	£29	£10
Products of animal origin: high risk	£29	£10
Plants and plant products: low risk	No common user charge	No common user charge
Plants and plant products: medium risk	£29	No common user charge
Plants and plant products: high risk	£29	No common user charge

Non-EU SPS goods: Checks and certification requirements for 'low risk' SPS goods from non-EU countries have been reduced or removed, with limited exceptions based on intelligence.

Medium risk SPS goods from non-EU countries are less likely to be selected for physical checks.

The Common User Charge

In an attempt to recover some of the operating costs associated with running its border control facilities, the government introduced the Common User Charge on 30 April 2024.

The charge applies to a consignment when all of the following apply:

- The import or movement is commercial.
- The goods, such as products of animal origin and plants and plant products, are potentially subject to SPS checks at a government-run border control post in England.
- The goods are being moved via the port of Dover or the Eurotunnel.
- The goods are being imported into Great Britain or are entering or leaving Great Britain under transit suspension.

Dover and Eurotunnel have been targeted as they are the main arrival locations for road freight from the EU. The charge applies for every import or transit movement, regardless of whether the goods are selected for further inspection.

The maximum charge is limited to five commodity lines on the Common Health Entry Document. Any additional lines do not result in additional cost.

If the Common Health Entry Document has commodity lines with different risk categories, the rate of the highest risk category will apply to all commodity lines. When low risk and medium risk commodity lines are combined in the same Common Health Entry Document, the medium risk common user charge rate applies to all lines. For example, an import of five low risk and two medium risk animal products attracts a charge of:
5 x £29 = £145.

The charge does not apply at other commercial ports; however the port operator will need to provide their own border control post facilities and can increase their port fees to cover these costs. The charge does not cover inspection fees, which are administered by Animal and Plant Health Agency, Port Health Authorities and local authorities.

When the conditions are met, liability to pay the charge rests on the importer. In certain circumstances, a UK-based customs agent acting under delegated authority may pay on behalf of the importer. In these circumstances, it is expected that the charge would be disbursed as an additional cost.

DEFRA will issue their own invoices and no VAT will be added to the charge. The first invoice is expected no earlier than 12 weeks after implementation (the week commencing 23 July 2024), with later invoices to be issued monthly in arrears.

Phase 3: Safety and security (31 October 2024)

The last phase of changes will see the introduction of a safety and security declaration requirement for imports from the following countries and territories which currently benefit from a waiver: EU 27, Andorra, Ceuta and Melilla, Heligoland, Liechtenstein, Monaco, Norway, San Marino, Switzerland, the municipalities of Livigno Campione d'Italia, the Italian national waters of Kale Lugano, and the Vatican City State.

Safety and security declarations were introduced as part of the World Customs Organisation SAFE framework, to which the UK is a signatory, and are given force of law in the UK's customs regulations.

In the UK, information for safety and security at import is submitted on a document known as an Entry Summary Declaration. (The export equivalent is known as the Export Summary Declaration.) The legal obligation to submit this declaration lies on the operator of the active means of transport (i.e. the carrier) but can be passed on to other businesses involved in the movement.

Safety and security declarations collect basic information about a consignment, pre-arrival or pre-departure. Border control authorities can then risk assess whether to accept the entry of a good into the country or prioritise goods for inspection where they have appropriate intelligence. For containerised maritime cargo, vessels can be prevented from loading in the port of export if Border Force have reason to reject the movement.

The requirement to provide the safety and security declaration will coincide with the introduction of a reduced data set for the Entry Summary Declaration. Mandatory fields will be reduced to 20, along with eight conditional fields only used in specific circumstances and nine optional fields.

West coast ports

British west coast ports are also expected to begin physical checks on imports into the UK that do not already qualify as being in Northern Irish free circulation. However, a final deadline is yet to be set.

Single Trader Window

The October changes are expected to coincide with further functionality for the UK Single Trader Window. The Single Trader Window is a major HMRC IT project using cloud-based technology. It aims to provide a single login and service to allow traders to interact with the range of authorisations, documents and applications required to import or export their goods.

Rather than traders needing to sign up for a range of different applications or sites, the Single Trader Window will interact directly with HMRC, DEFRA, the Home Office and other interested government agencies.

It is the government's intention that safety and security declarations will be submitted directly through the Single Trader Window. In addition, there are plans for:

- customs import and export declaration submissions;
- access to import and export data and records;
- excise declarations;
- customs special procedure authorisations; and
- access to SPS Documentation.

Priorities for UK businesses

In order to comply with the Border Target Operating Model changes, it is vital that businesses have identified the risk status and control requirements of goods before they are imported.

When importing relevant SPS goods, appropriate documentation and any notifications to Import of Products, Animals, Food and Feed System should be made well ahead of time. This can be facilitated by planning entry location and working with carriers and agents to ensure information is available to all interested parties.

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Fee disputes
How to avoid them

Most practices will at some point find it difficult to secure payment from a client. We consider the steps you can take to avoid this, and the impact of credit control.

by Karen Eckstein

All professionals want happy clients who pay their fees on time, refer more work to them, and go on to refer them to other potential clients. Fee disputes cause significant problems, however. They disrupt the client relationship, putting the likelihood of future work at risk, as well as impacting the firm's cashflow and profits. Fee disputes can also lead to professional negligence claims via the 'back door', leading to significant cost to the firm. They are to be avoided if at all possible.

What are common causes of a fee dispute? The most common issues include:

- fee overruns, due either to poor time management or to additional work that was not included in the original fee quote or estimate;
- service issues, including errors and other problems;
- a difficult client; and
- clients who fail to pay or have cash flow issues of their own.

Fee overruns

To avoid challenges relating to fee overruns, we recommend that firms set fee alerts to warn them when work in progress is at 75% of the estimated or quoted fee. Firms should record the time spent on a case (whether it is on a fixed fee or not). In that way, they can identify whether the case is progressing as it should – or if there has been or is likely to be an overrun.

This tracking allows them to investigate the cause while there is time to resolve it. If there has been scope creep, the fee for any additional work can be agreed with the client. If the person working on the file is taking too long and making errors, this can be resolved before it is too late. Other issues with the client can hopefully also be resolved at this stage.

Service issues

Common causes of service errors made by tax advisers are:

- failure to respond;
- missing deadlines;
- failure to meet expectations; and
- making mistakes, such as getting the complexities of the tax law wrong.

You should have a clear policy within the firm that emails and phone calls will be responded to within a

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specific time period. Set up alerts on files to identify when they have been inactive for a specific period (perhaps a month). File reviews should also be undertaken to ensure that the policy is adhered to and regular team meetings held to discuss all files – not just those that are being actively progressed.

Having a clear process for recording deadlines on a firm-wide basis and advance noting significant deadlines will assist in ensuring that they are less likely to be overlooked. It is important to engineer a culture whereby deadlines are not the responsibility of any one individual but are the collective responsibility of the whole team.

Failure to meet expectations usually arises because of ambiguity within the engagement letter. Many of us are guilty of viewing the engagement letter as a 'tick box' exercise and do not pay sufficient attention to the scope of the retainer between the professional and client. Ask the important questions. What are you doing and why? Who are you doing it for? When does it have to be done by? See the box below for suggestions about how to draft your engagement letters more clearly.

Ambiguity can give rise to client expectations that are not met. Clients may be frustrated if the work takes longer than they expected. The scope of the work should be made clear at the outset. You must manage your client's expectation of costs – even if the cost was always going to be the fee charged. Mismanagement of any of these issues can lead to a fee dispute. A friendly and informal relationship between the client and the advisor can be seen as a positive – but it can also lead to informal advice and unrealistic expectations. These ambiguities can also lead to fee disputes.

Finally, fee disputes can arise because the adviser has made an error in the advice given to the client, whether in relation to the tax law, the process or the client's expectation as to the outcome of any transaction. The likelihood of such issues can be reduced by having good training programmes and proper processes in place. Advice should be peer reviewed when appropriate, and risk mitigated by obtaining second or expert opinions (counsel, for example) where required. Again, we recommend regular reviews to ensure that the processes are being followed.

Difficult clients

It is important in the first place to think about why a client is coming to your firm when you decide whether or not to take them on. Don't fall prey to the 'flattery' trap. Is this a client that you want to act for? Are they going to be more trouble than the fee is worth? Are they going to be a cost-effective client? Is being difficult their 'modus operandi'?

Think about the client's previous involvement with tax advisers. Have they had a difficult relationship with their previous advisers, and may they continue in that manner with you? But perhaps their problems may be because they have been badly let down by advisers in the past and are just wary? This might be a judgment call, but it is an important one to make.

Clients who won't or can't pay

When you are onboarding a new client, consider why they have changed firms to come to you. If their previous firm has refused to carry on acting because they weren't being paid, are you likely to end up in the same situation? If so, do you want to proceed?

> **Failure to meet expectations usually arises because of ambiguity within the engagement letter.**

If you know that the client has financial issues, then consider whether to obtain payment in advance. It isn't uncommon to ask for this for new clients – you are not there to be their funder.

Think also about the timing of billing. Many clients will not object to monthly billing, so why wait until the job is complete (and you have no leverage) to bill for the first time?

If appropriate, you may also decide to advise the client that you cannot incur further work in progress until the bill is paid.

The impact of credit control

Sadly, too many firms don't consider these issues. They may end up handing the pursuance of the outstanding fees over to a credit control team, whether that be internal or external, without considering the root cause of the fee dispute. This disconnect can have significant impacts:

- The client might pay up (in full or in part) but your relationship will probably be damaged and become hostile.
- If there isn't a resolution to the dispute, your client may decide to litigate. As well as the breakdown of the client relationship, this will cost you time and money in getting a judgment. If you succeed in the litigation, you will still need to recover your fees. Even if the client has the money to pay the judgment, a second battle may be needed.
- If your client defends with a professional negligence counterclaim, you will become involved in a time consuming, costly process, with implications for your professional indemnity insurance.

The impact on your business

The obvious impact of fee disputes result in a breakdown in client relationship, and a reduction in the time that your firm could spend earning fees or on other productive issues. However, there are a wide range of other negative impacts that you should consider.

ENGAGEMENT LETTERS

A crucial factor in avoiding fee disputes is to ensure that you have appropriate wording in your terms of business and engagement letters. We recommend including the following elements in the terms of business:

- a term that allows a client a limited period to dispute invoices (usually 14 or 21 days), otherwise they are deemed to be accepted;
- a term providing the adviser the right to charge interest on unpaid invoices from the date of issue if not paid; and
- a term providing that invoices are due on presentation (and include this term on the invoice too).

Engagement letters need to be properly drafted in terms of fees to be charged – all too often, they are silent about this, so it is hardly surprising that fee disputes arise. Other suggestions include discounts for early compliance with deadlines and penalty pricing for complying late.

The best cure for fee disputes is to have a clear engagement letter with clear terms as to the fee to be charged, a clear process for any additional work undertaken, and a clear process for checking what issues have arisen and why the fee hasn't been paid before launching straight into the credit control process. The adage 'a stitch in time saves nine' is very true in this case and leads to happier, healthier and more profitable client relationships.

Reputational issues: An unhappy client is unlikely to recommend you to other potential new clients, meaning that you have lost out on potential new income streams.

Cashflow/income issues: Any forecasts based on assumed payment of fees will clearly be impacted, as will any budgets based on chargeable hours for those whose time is impacted by dealing with fee disputes and any prompted professional negligence claims as a result.

Prompted professional negligence issues: We often see clients defending fee disputes by alleging that the fee isn't due because the tax adviser was negligent. This results in a professional negligence claim that might otherwise have been dealt with outside the litigation process, being resolved more amicably and in a less time consuming manner.

Potential insurance issues: Tax advisers who have unpaid fees should consider the reason. Does an unhappy client have a valid reason not to pay? If so, does that claim or circumstance need to be notified to insurers? This is something that should be considered, as failure to notify can cause insurance issues in the future.

Further, if a decision is made to settle a fee dispute with a client on commercial grounds, and there is an underlying claim, then the agreement of insurers should be obtained before doing so. It is important to ensure that the client is advised of their right to take independent advice and the tax adviser should make it clear that the agreement is on commercial grounds only, and that they are not admitting any errors. (This step should mean that tax advisers will avoid inadvertently becoming liable for unforeseen later errors.)

Points to consider

In our experience, tax advisers (and other professional firms) who consider the root cause of the failure to pay the fee before starting the credit control process have fewer issues with their clients. It is important to examine whether the client has a reasonable claim. Perhaps you truly haven't given good enough service, or have overcharged the client without keeping them advised. Look at the time records and narratives to see if there are any entries that give rise to concern.

If the client has reasonable concerns, can these be put right? If an apology is warranted, consider whether you should obtain your insurer's consent before making it.

We strongly advise that tax advisers looking to settle any fee dispute with their clients, where there is any doubt at all about the service provided to their clients, should take legal advice on how to draft the settlement. They should also agree the wording with their insurers if there is a circumstance that could give rise to a claim, even if the settlement is within the adviser's excess.

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Landlord contributions to tenants
Make yourself at home

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We examine the tax implications and practical considerations of landlord contributions to tenants, emphasising how commercial aspects of a typical lease deal can have a significant impact on how landlord contributions to tenants are taxed.

by David Westgate

This article supersedes a previous article published in July 2017, 'Landlord contributions – avoiding the bear traps'. Due to the changes in working practices, new legislation and a number of amendments to existing legislation, I feel it is appropriate to provide a comprehensive update.

Landlord contributions to tenants for landlord works (Category A and Category A+) and for tenant works (Category B) are very common. Identifying the different types of contributions at the outset is critical in determining their correct treatment for contractual and tax purposes. Incorrect treatment of contributions can result in disputes with tenants, significant tax liabilities and penalties.

Tenant incentives

So why do landlords give incentives and what form do these incentives take? In order to answer these questions, we need to understand the commercial aspects of a typical lease deal. There are four classifications of fit out used by the property industry (see ***Four categories of fit out used by the property industry*** on the right for further information).

Difficulties arise when tenants require enhancements that could fall within more than one of these categories. These may range from backup generators, roof terrace enhancements or a higher specification Category A+ fit-out. Although these are tenant's requirements, they could easily be seen as benefiting the landlord's reversion.

The critical issue is that the parties agree how the expenditure will be categorised and budgeted at the outset, which may be driven by their own tax and accounting treatment. In order to incentivise tenants to take space, landlords will typically offer inducements, which tend to take the following forms:

- a rent-free period;
- cash; and
- contributions towards tenants' fit-out costs (Category B).

In property jargon, monetary inducements are called reverse premiums. Cash and Category B contributions fall within this category but a rent-free period is not a reverse premium as no money changes hands.

An inducement must be freely given and there must be no expectation or obligation on the tenant to do something, other than enter into the lease. If a payment is made for works that increase the value of the landlord's reversion (such

Key Points

What is the issue?
Landlord contributions to tenants for landlord works (Category A and Category A+) and for tenant works (Category B) are very common. Identifying the different types of contributions at the outset is critical in determining their correct treatment for contractual and tax purposes.

What does it mean for me?
The landlord may make two types of payment: an inducement to the tenant to enter into a lease; and a payment for landlord's works. The tax consequences are different for each and it is therefore critical to identify what type of payment is being made.

What can I take away?
There is no formal definition of what constitutes Category A and Category B works and although most works should be clearly identified as being within either category, it is not always that clear.

FOUR CLASSIFICATIONS OF FIT OUT USED BY THE PROPERTY INDUSTRY

- **Shell and Core**
  The final category is Shell and Core, which includes only the most basic elements of the building. It generally refers to the structural framework and exterior envelope of the building.
- **Category A**
  A landlord will typically provide a building to a tenant 'ready for fit out'. It includes the essential infrastructure and finishes necessary for occupancy, such as raised floors, suspended ceilings, M&E (mechanical and electrical) services and internal wall finishes.
- **Category A+**
  This is an enhanced level of Category A. To reflect the changing nature of the workplace dynamic, landlords are also providing fully furnished space, including enhanced features such as meeting rooms, break out spaces, kitchenettes, desking and advanced IT infrastructure, allowing tenants to move into a ready to use space.
- **Category B**
  The tenant can, of course, fit out the space to their own specification and customisation. Category B expenditure includes such things as final finishes and branding, installation of offices, specialist facilities and reception fit out, etc.

as works required to make a building ready to let or on fitting out costs which will be taken into account in fixing market rent on a rent review), then this is not a true inducement because a service is being provided.

Practicalities

The issue of incentivising tenants will regularly arise when granting a new lease or as a result of a lease re-gear (the renegotiation of a lease during its term). A tenant may wish to take space in a building which has yet to be completed. In this situation, both parties will enter into an Agreement for Lease, whereby the tenancy is conditional upon the building works being completed by the landlord.

As a practical matter, there may be an overlapping period when the tenant may wish to start its Category B works whilst the landlord is finishing off its own Category A works. This is particularly the case where the tenant's works are of a nature that impact the landlord's works. In this case, for efficiency and speed, the landlord may employ the tenant as the landlord's sub-contractor to finish works in conjunction with the tenant's works. The tenant will then execute the works as a single contract, but obviously the landlord will have to pay the tenant in respect of its own works.

Tax implications

We can see from above that the landlord may make two types of payment: an inducement to the tenant to enter into a lease; and a payment for landlord's works. The tax consequences are different for each and it is therefore critical to identify what type of payment is being made.

Note that reference to Category A includes reference to Category A+ unless specifically stated.

VAT

The option to tax

The default statutory position under UK VAT law is that supplies of most commercial property are exempt from VAT (Value Added Tax Act (VATA) 1994 Group 1 Sch 9). The impact is that no VAT is charged on rents and the landlord is unable to recover VAT on refurbishment and construction costs.

A commercial property owner can opt to tax their land and this generally converts an exempt supply to a taxable supply (VATA 1994 Sch 10), subject to any disapplication (see below). The impact of this is that the landlord will charge VAT on rents and recover VAT on refurbishment and construction costs.

The option to tax is personal to the taxpayer and does not bind the tenant.

If the tenant wishes to sub-let part or all of its premises, it should seriously consider whether to opt to tax its own title. By contrast, supplies of construction services (e.g. the tenant carrying out Category A works for the landlord) will generally be standard-rated regardless of any option to tax, unless they qualify for one of the specified categories of zero-rating.

Contributions and disapplication of the option to tax

There are anti-avoidance rules and where they apply their effect is to disapply the option to tax. The rules are complex, and whilst they are intended to catch schemes by VAT exempt businesses to recover VAT on construction costs, they can be triggered on entirely innocent commercial transactions.

Under these rules, disapplication can occur if:

- a lease is granted to a person who will occupy the premises other than for substantially wholly eligible purposes; i.e. for 80% or more VATable activities (e.g. a financial services tenant or a charity using the building for exempt fundraising purposes); and
- that person has provided financing or entered into an arrangement to provide finance for the grantor's (landlord's) development of the land.

The implication for contribution payments is that an option to tax could be disapplied if a tenant pays, wholly or in part, for works which form part of the landlord's capital item; for example, where:

- a tenant requires higher Category A specification works and the landlord does not meet the cost; or
- a landlord contribution towards Category A works does not cover the whole of the Category A works being undertaken by the tenant.

There is no de minimis so even if a tenant financed just £1 of the landlord's capital item, this could in theory invoke disapplication.

Disapplication of the option to tax can result in a clawback of VAT and this could obviously be significant if the landlord has just completed a major redevelopment.

An option to tax will **not** be disapplied merely because a tenant pays for works that form part of its own capital item (Category B works).

Contributions and invoicing

Taking a lease does not in itself constitute a supply; therefore, a standard inducement does not trigger VAT. (See the European Court of Justice judgment in *Mirror Group* (Case C-409/98) and also the VAT Supply and Consideration Manual VATSC46400.)

However, the tenant will have to account for VAT on the inducement if it does something in return, such as carrying out works that would otherwise be the landlord's responsibility or where the tenant acts an 'anchor tenant'; i.e. with agreement to use the tenant's name to market the site. In either of these situations, there will be a VATable supply by tenant to landlord.

When a non-monetary inducement is provided by way of a rent-free period and the tenant does something in return for taking the lease, this is, subject to the comment below, a VATable barter transaction. The undiscounted value of the rent free that relates to the supply will constitute the value of the consideration for the supply.

When a non-monetary inducement is provided by way of a rent free in return for extending the lease, the removal of a break clause or granting a reversionary lease, this does not constitute a supply for VAT purposes and is not therefore a barter transaction (Revenue and Customs Brief 11 (2020).

The Construction Industry Scheme

Where a landlord makes contributions to a tenant relating to construction operations, the landlord may be a deemed (or mainstream) contractor (Finance Act 2004 s 59) and the tenant a sub-contractor (Finance Act 2004 s 58) under these rules.

Payments fall within the Construction Industry Scheme if they are made under a contract relating to construction operations (Finance Act 2004 s 74). Construction operations are widely defined and include construction, building alterations, repairs, demolition, site preparation, etc. Construction operations do not include professional fees; e.g. architects and surveyors (unless they are involved in the management of the project), carpet fitting, and the making and delivery of materials used in construction (see Construction Industry Scheme Guide CIS340).

If the landlord is a deemed or mainstream contractor, it has responsibility under UK tax law to withhold tax on certain payments to the tenant (Finance Act 2004 s 61) and account to HMRC for amounts withheld unless the tenant has registered gross under the scheme (Finance Act 2004 s 63(2)). The landlord will verify the tenant's Construction Industry Scheme registration status with HMRC in accordance with Finance Act 2004 s 69.

If a contract includes a mixture of construction and non-construction operations, all payments made under the contract by the contractor to the sub-contractor will be treated as falling within the Construction Industry Scheme regime.

Construction Industry Scheme and contributions

Contributions to tenant's works which are inducements are excluded from the Construction Industry Scheme as reverse premiums under SI 2005/2045 Reg 20(2). Inducements given as rent free are outside the scope of the Construction Industry Scheme as there is no cash payment.

Contributions made to tenants in respect of landlord's works meeting the conditions set out in SI 2024/308 Reg 20A are outside the scope of the Construction Industry Scheme (see below).

Contributions made to tenants in respect of landlord's works excluded from the provisions of Regs 20 and 20A are consideration for construction services and the Construction Industry Scheme is applicable. In this respect, the landlord is obliged to deduct up to 30% from the payments unless the tenant is registered for gross payment.

Contributions falling under Reg 20A

SI 2024/308 Reg 20A exempts Category A payments made by or on behalf of a landlord to a tenant under a construction contract from the definition of 'contract payment' in Finance Act 2004 s 60.
If all five conditions of the SI are met the payments will be out of scope for the Construction Industry Scheme.

One of the conditions of Reg 20A states that the landlord's payment to a tenant has to be for works that are intended primarily for the benefit and use of the tenant that occupies or will occupy the property under the lease. This extends to works that provide incidental benefits to the landlord and tenants and/or minor structural works specific to the tenants' needs. The guidance at Construction Industry Scheme Reform Manual CISR14048 provides further clarification and some examples of how to apply this in practice.

If the landlord's payment (or any part of the payment) is not for works intended primarily for the benefit and use of the tenant, Reg 20A will not apply and the whole payment will be within scope of the Construction Industry Scheme.

The condition that the payments have to be primarily for the benefit and use of the tenant that occupies or will occupy the property under the lease is to ensure that the Construction Industry

Scheme provisions cannot be circumvented by routing works that are unrelated to the tenant's demise via the tenant or, in extreme cases, grant a lease so as to make a sub-contractor a tenant for the purposes of the regulation.

Interaction with the domestic reverse charge

If the Construction Industry Scheme is applicable to Cat A payments made by a landlord to a tenant (i.e. Reg 20A does not apply), such payments are excluded from domestic reverse charge under Article 8(1)(b)(ii)(bb) on the basis that the landlord and tenant have a relevant interest in the same land. The landlord will need to issue a *written notification of its end user status* to the tenant for VAT to apply in the normal way – otherwise the domestic reverse charge will apply.

If the Construction Industry Scheme is not applicable to payments made by a landlord to a tenant due to the payments meeting the conditions in Reg 20A, such payments are outside the scope of the domestic reverse charge. For VAT purposes, the payment is to be accounted for as normal by default and there is no need for a written notification of end user status.

Stamp duty land tax and inducements

Monetary inducements that are reverse premiums are not subject to stamp duty land tax.

Stamp duty land tax and early access by tenants under an agreement for lease

Entering into an agreement for lease does not constitute a 'chargeable event' on the tenant for stamp duty land tax purposes unless the agreement for lease is substantially performed (Finance Act 2003 Sch 17A para 12A(2)).

Sometimes tenants require early access to the building to commence their works in conjunction with the landlord's works. Early access given to the tenant (usually under a licence to occupy) will constitute substantial performance as the tenant has taken possession (Finance Act 2003 s 44(5)(a)) and this may trigger a principal liability to stamp duty land tax. In this event, the tenant may have to pay any stamp duty land tax due and submit a land transaction return to HMRC before the lease has actually been granted.

Capital allowances

In most cases, the recipient (tenant) cannot claim capital allowances where the expenditure has been met by the landlord (Capital Allowances Act 2001 s 532). The landlord's capital contribution towards a tenant's fit-out costs is treated as capital expenditure on the provision of plant and machinery for use in the landlord's business and it is the landlord that can claim the capital allowances. Capital Allowances Act 2001 s 538 gives the landlord 'deemed' ownership of the plant and machinery for the purpose of claiming the allowances. Contributions allowances are pooled separately by the landlord, and they are not impacted by the mandatory pooling rules under Capital Allowances Act 2001 s 187A(1)(c).

Capital allowances and corporate tax treatment: tenant

Contributions made by a landlord towards the tenant's fit-out costs are, in principal, reverse premiums under Corporation Tax Act 2009 s 96 and treated as a receipt of a revenue nature. The tenant is subject to tax on the reverse premium as an income receipt under Corporation Tax Act 2009 s 98, spread over the term of the lease.

A payment is not a reverse premium if it is brought into account under Capital Allowances Act 2001 s 532 to reduce the recipient's expenditure qualifying for capital allowances (Corporation Tax Act 2009 s 97). Therefore, to the extent that the tenant is unable to claim capital allowances on the contribution because the expenditure is met by the landlord, it will be treated as a 'tax free' capital receipt (albeit that the tenant's claim for capital allowances is clearly reduced).

Capital allowances and corporate tax treatment: landlord

In the landlord's hands, contributions will represent capital expenditure. If the expenditure is reflected in the state or nature of the landlord's interest at the time it is sold (Taxation of Chargeable Gains Act 1992 s 38(1)(b)), it will be included in the base cost of the building when calculating the capital gain.

Capital allowances and Category A+ considerations: landlord

When the government introduces new enhanced allowances provisions such as the super deduction and more recently, full expensing, these allowances do not generally extend to plant and machinery lessors, except in regard to 'background plant' in leased buildings (although this restriction is currently under review for full expensing). Background plant refers to the type of installations generally installed in most buildings. SI 2007/303 tells us what is included and excluded from the definition of background plant and machinery.

If a landlord gives a Category A+ contribution to a tenant, the works may include the provision of fixed and loose 'furniture fittings and equipment' (equipment). Loose equipment qualifies as plant and machinery but does not qualify as background plant and machinery (unlike fixed equipment) and will not therefore be eligible for enhanced allowances unless the government extends new enhanced allowance provisions to plant and machinery lessors. Notwithstanding this, the landlord can make a claim for loose equipment under the annual investment allowance.

If loose equipment is included in a capital allowance claim for a Category A+ fit-out, it should be separately identified to ensure it is excluded in the event of bringing in a disposal value for a s198 election. This is because it is not a fixture for capital allowance purposes under Capital Allowances Act 2001 s 173.

If a property includes loose equipment, these are normally identified as chattels. These items should be separately documented in the sales pack with a separate value. This value can then be taken out of the capital allowance pool on disposal.

Finally, consideration should be given to the long funding lease rules which may be relevant depending upon the amount of loose equipment included in a Category A+ fit-out. A discussion on the long funding lease rules is outside the scope of this article.

Tenant requested modifications

The scope of this article is limited to the tax implications of payments made by landlords to tenants. The tax issues pertaining to payments that tenants make to landlords in respect of tenant requested modifications are outside the scope of this article (save as regards the comments made in relation to the possible disapplication of the option to tax above).

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Moving abroad
Tax-free pensions?

UK pensions can be paid gross under double tax treaties when taxpayers relocate abroad for work or retirement, though there are exceptions that must be considered.

by Jon Golding

Key Points

What is the issue?
Most UK pension payments are subject to taxation due to the fact that pension inputs were tax relieved when originally made. Expatriates' UK pensions can be free of tax under a double tax treaty.

What does it mean for me?
If dealing with expatriates or those going abroad, it is possible that UK pension payments can be paid without deduction of UK tax. Most foreign countries have pension double tax treaties within the OECD model.

What can I take away?
It is important to ensure that a non-resident individual who can benefit from a taxable UK pension receives and completes the necessary tax office forms. There are some important exclusions.

Long-term expatriate individuals resident abroad can apply to receive gross payment of UK pensions. At a time when non-domiciles are considering leaving the UK because of the new tax rules, it is likely that others will soon be joining them in this exodus from the UK.

Double tax treaties

Many individuals in the UK already have their pensions subjected to UK tax. The UK state pension and other additional pensions will be taxed at the taxpayer's marginal rate after the personal allowance is set off.

If, however, taxpayers relocate abroad for work or retirement and are classed as non-resident under the statutory residence test, their UK pensions can be free of tax under a double tax treaty. The opportunity arises for their UK pensions to be paid gross with a nil tax coding (NT code) applied by their pension administrator.

Many UK pensions – but not all – can be paid gross under double taxation treaty relief using the general Form DT-Individual (see tinyurl.com/mwdreh9w). However, a number of countries use country-specific forms and require particular attention, including the US, Canada, Australia, New Zealand, South Africa, and a number of EU countries including France, Germany, Spain, the Netherlands and Ireland. Most of the specific country forms are detailed in 'Living and Working abroad and offshore forms' on the HMRC website (see tinyurl.com/bdeh88sh).

Government and non-government pensions

However, government pensions do not normally benefit from gross payment relief when Form DT-Individual is completed and will continue to be taxed by that government. (There are exceptions under individual double taxation agreements, however, so do check the instructions for the country in question.)

It is therefore important to check whether the taxpayer's pension is paid by the government or local authority or by non-government. HMRC's International Tax Manual (INTM343030 and INTM343040) contains further information and a list to clarify whether pensions are government or non-government.

EXAMPLE 1: RAY AND HELEN

Ray and Helen were teachers in the UK and have both retired. Ray receives a university teaching pension and Helen a general teaching pension from their previous jobs in the UK. Both apply for teaching jobs abroad and expect to be UK non-resident for many years.

As former teachers, they check with the INTM343040 list. This includes:

- teachers pensions – general;
- teachers pensions – paid for service to a private or independent school; and
- the Universities Superannuation Scheme.

Ray's income is within the University Superannuation Scheme and is non-government. Therefore, an NT tax code will be sent to his scheme administrators. However, Helen's pension falls within the general category, which is a government pension. Her pension does not benefit from gross payment by the scheme administrator.

For instance, the taxpayer may have been a teacher in the UK and now provide teaching services abroad. In a case such as this, you would have to distinguish which pension scheme is applicable, as there are a number of government and non-government teachers pensions (see ***Example 1: Ray and Helen***).

Many other professions are similarly divided, including the police and fire security services (see ***Example 2: John***).

Processing Form DT-Individual

Clearly, the double tax treaty articles should be checked to ensure that the taxation of pensions is specified by limiting it to the 'paying state'; i.e. the UK.

Under the OECD double tax treaty convention applied by most countries, this is normally detailed under the heading 'Pensions'. In the UK-Malaysian Treaty, for example, Articles 19 and 20 on 'Pensions' importantly distinguish between government and non-government pensions. However, under a recent amendment (PU(A) ss 234 and 235), Malaysia has imposed tax on foreign source income, including pensions and annuities, within Income Tax Act 1967 s 4.

Having confirmed whether the pension being paid is government or non-government (i.e. UK taxable or not), the foreign country's tax office can be approached to stamp the completed Form DT-Individual or provide a foreign residence ruling to accompany the form when it is sent to HMRC.

Normally there will not be any push back by the foreign tax office in undertaking this task. Commonly, the view is that it will result in more foreign income entering the country, which in the long run will be to their benefit. The Form DT-Individual does ask numerous detailed questions, including whether the expatriate will be remitting the income to the foreign state.

Tax-free benefits

Upon the individual arriving abroad on retirement or for a new job, certain foreign countries may not impose taxation on foreign source income, including UK pensions, received in that country. Many of these are in the Middle East. They may, of course, require the submission of a local tax return where there is local employment.

This special category of countries has differing requirements regarding the UK pension payments. In order to obtain tax-free benefits, the individual must not only be considered as non-resident in UK but must also meet the necessary criteria to be classed as resident in the foreign state.

EXAMPLE 2: JOHN

John retires abroad from the UK police force after years of service. He receives a full police pension which is taxed at UK basic and higher rates. He also receives a full UK state pension, which amounts to £11,502 a year. This is offset against his personal allowance of £12,570, before the small balance is offset against his police pension.

John remits all his pension sources to his long-term foreign country of residence and asks the tax office there to confirm his permanent tax residence.

After submitting the Form DT-Individual to HMRC, John is advised that the police pension is UK state funded and under the rules is taxable in the UK. (See INTM343040, which includes the Metropolitan Police Fund and Transport Police in police pensions.)

Before his retirement, however, John was offered a position in the police force in Jamaica but declined. Had he accepted the job and received a Jamaican pension from that state, Article 13 of the UK-Jamaica Tax Treaty (1973) states:

> 'Remuneration, including pensions, paid by one of the contracting governments to any individual in respect of services rendered to that government in the discharge of governmental functions shall be exempt from tax in the territory of the other contracting government, if the individual is not ordinarily resident in that other territory or (where the remuneration is not a pension) is ordinarily resident in that other territory solely for the purpose of rendering those services.'

John's government pension would therefore have been taxable only in Jamaica unless he was ordinarily resident in the UK.

(See Double Taxation Relief Manual DT10552)

EXAMPLE 3: UNITED ARAB EMIRATES

The United Arab Emirates, particularly Dubai, has seen a large increase in British expats relocating there for work and retirement.

A recent UAE Cabinet decision (85) in 2022 has provided new criteria of residence along these lines. This requires an expatriate to have a physical presence in UAE for 183 days in a year and to have their primary residence in the UAE, and consequently to be UK non-resident under the statutory residence test. If so, the expatriate can apply for a tax residence certificate in the UAE to forward with Form-DT Individual to HMRC. This then enables UK pension payments to be paid gross.

As the UAE does not tax foreign sourced income, the UK pension will be tax free in both countries.

Appendix 1 of Form DT-Individual applies to Bahrain, British Virgin Islands, Cayman Islands, Hong Kong, Kuwait, Qatar, Saudi Arabia and UAE. Box H: United Arab Emirates, for example, states:

- Under the law of UAE, are you recognised as resident in UAE by reference to your domicile, habitual abode or centre of vital interests there?
- Enclose a copy of your UAE certificate of residence.

See ***Example 3: United Arab Emirates***.

In conclusion

In determining whether a UK source pension is excluded from taxation in the foreign state, the double tax treaty should first be reviewed with focus on the pensions articles and the government pension references. Even then, there may be different nuances to each different treaty. This is partially demonstrated in Example 3. Interestingly, Article 18(2)(b) of the UK/Spain treaty agreement is similar to the wording in the UAE treaty.

Even if only UK tax is exigible according to the treaty and the pension is not taxable in the foreign state, it may be taken into account in calculating the local marginal rate of tax on income applied in the foreign state. Pre-planning care should be taken when applying the foreign country's tax treatment of receiving a UK pension.

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The thriving tax professional

What's right for you?

It's time to take a fresh perspective on your career in tax.

by Ruth Punter

Over the last few months, I've had the pleasure of presenting a series of online sessions to students and members of the ATT and CIOT entitled 'The thriving tax professional'. Here, I provide a taster of the key themes and tools from across the series to enable a wider audience of tax professionals to reflect on what 'good' looks like for them. We should all be able to make decisions in our career and life that are better aligned to who we are and what is important to us.

Career plans are unrealistic

With my own background of 25 years spent in professional services, I know well how easy it can be to be motivated and measure ourselves by a narrow vision of career success – for instance, where making partner is the holy grail.

However, in my own experience – and that of many people who I work with and encounter as a coach – it can become easy to forget what is important to us, and who we are, in the process of trying to take the next obvious step forward in our careers. This can become a problem if progressing becomes harder, if your career stalls or doesn't feel quite right – or if we realise that we're no longer motivated by it.

It is rare for someone to have a clear plan for their career when starting out, and even rarer when such a plan is fully played out in reality. Expecting to have a clear endpoint and milestones to follow – like the step by step directions you might use to get from point A to point B on a map – isn't realistic.

A career is more like exploring uncharted territory, where you create your own map of the landscape as you go. If you reach some difficult terrain, you might have to learn a new skill or enlist some help to go across it – or make a path around it. When you reach the top of a hill, you might notice an oasis across the valley that you'd like to visit but will need to track back to find. What you will see and who you will meet along the way is unknown and you choose the route you take as the landscape unfolds ahead of you.

With that as the reality of our career journey, what do you need to navigate it successfully? This is where your career compass comes in – calibrated based on the North Star of your values, passions and motivations – to guide your choices based on what is important to you. On your journey, you will need to have the right personal attributes and resources for success, as well as the right support alongside you. These are the components of thriving.

What is thriving?

Many definitions of thriving have been offered but words and phrases commonly used include flourishing, growth, vitality, a sense of learning and positive functioning – mentally, physically and socially.

The things we need to thrive lie in our own attitudes, thinking and behaviours – for instance, having a positive perspective, proactivity, motivation, knowledge and learning, resilience and social competence – as well as what we need around us, including having an environment that challenges us and the support of family, colleagues and the organisation we work for.

Looking a little further at motivation, in his book *Drive: the surprising truth about what motivates us*, Daniel Pink tells us that we are motivated by autonomy, mastery and purpose. We want control over how we work and who we work with, visibility of

our impact, to get better at something that matters, and to be in service of a higher objective. This part is critical for calibrating our career compass.

So we should see what I call our 'thrivometer' as giving us a read-out on our preparedness to set out and continue on our uncharted career journey (as well as giving us a measure of how far we've already come). Ask yourself where your career thrivometer is on the following measures right now:

- your resilience;
- the level of healthy challenge in your role;
- the extent to which you are learning and growing;
- the extent to which you are able to use your strengths;
- the level of autonomy you have over what you do and how you do it;
- whether your outputs are visible and recognised;
- whether there is alignment between your role and your purpose; and
- whether you have the support that you need.

We can control or exert influence over all of these elements. Getting the support you need at work can come through building trusted, reciprocal relationships – finding mentors and role models, and securing recognition of what you offer and what you need. Some of us find it easier than others to meet new people and make new connections but we can all grow in our ability to do this – and for it to feel authentic. Yes, it's important to be clear about your strengths and to use them but remember that you have the capacity to grow and learn, too. Everything we consider ourselves to be is made up from examining, arranging and testing our experience. As we continue to have experiences, so our view of who we are and what we are capable of is reinvented.

> **It is about getting the right sort of experience as you go through your career. Know your limits, and when you need to get help, support and advice.**

Our resilience both impacts and is impacted by all of the other measures. We need to look after both our physical and mental wellbeing so we're in a good place to deal with what our journey throws at us. And with the right support, mindset, motivation, learning and challenge, your resilience is also boosted and maintained.

Thriving leaders

What about what's important for leaders in tax? All components of the thrivometer are key enablers for thriving tax leaders too, but I would particularly highlight the importance of support, alignment to purpose, learning and healthy challenge.

Leadership development literature, supported by the comments from those I interviewed in my own 2016 MBA research on developing tax leaders, highlights that experience-based learning is important. It must also be supported by personal development activities to develop wider cognitive, organisational and emotional intelligence, where self-awareness is a key component.

Self-awareness is an important element of leading authentically, including understanding how our life experiences have shaped us and given meaning to our lives, including our personal purpose, and then translating our values into action through our leadership principles. Other key components include the aligning of self across all parts of lives, balancing extrinsic and intrinsic motivations, and building your support team.

All successful people will have had a lot of help along the way and you can deliberately construct your own team of personal advisers, covering the different support you might need based on your current goals and challenges. Many people are not only willing to help you on your career journey but are happy to do so.

Pause for breath and take in the view

Now we have a broader definition of thriving that can be more meaningful and specific to us, we can use it to sustain and guide us on our career journey. Of course, that doesn't mean any of this is easy. Wherever you are on your journey right now, I encourage you to pause for a breath and take in the view. As well as thinking about what you're excited to explore next, make sure you also take a look around at how far you have already come.

It's time to check your thrivometer and dust off and recalibrate your career compass.

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WELCOME

Richard Wild

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July Technical newsdesk

As a former VAT specialist, I remain interested in current indirect tax issues and our ongoing work in this area. So my attention was piqued when on 1 June I received my daily GOV.UK update, highlighting changes to some of HMRC's VAT Notices. VAT Notice 700/2 (Group and divisional registration) and VAT Notice 700/11 (Cancelling your VAT registration) were both affected, with the email alert innocuously stating that: 'The timescale for a reply has been updated.'

Reviewing the updated VAT notices on GOV.UK reveals that on 31 May 2024, these notices extended HMRC's expected response time. Or to be more precise, the length of time that applicants should wait before contacting HMRC. Both now state:

> 'If you have not heard from us after 40 working days, contact our VAT Registration Service to make sure that they have received your application. Do not contact us before then or you might delay us processing your application.'

The previous timescales stated in these notices were 15 and 30 working days respectively.

VAT Notice 700/1 (Who should register for VAT) now also states a 40 working day period, having previously increased from 15 to 30 working days in 2022.

Whether a turnaround of 40 working days – that is eight weeks – is acceptable is highly debatable, even for complex applications which might require human intervention. Not being able to properly raise invoices, conclude property purchases or manage cash flow are some of the significant problems that can arise from waiting for a VAT registration number or the cancellation of a VAT registration.

But that aside, if HMRC are now able to take up to eight weeks to complete their obligations (and often longer for cases that pass this deadline), presumably the same is now the case for taxpayers? And if previous timescales for HMRC have been increased by up to 166%, surely they have been similarly increased for taxpayers?

Clearly, the answer to both these questions is 'no'. There have been no equivalent changes to taxpayers' obligations. There remains, for example, a legal requirement for taxpayers to notify their liability to register for VAT, or to cancel their VAT registration, within 30 (calendar) days – around half the time HMRC allow themselves. This does not seem right, does it? If it is important enough to require taxpayers to act within short timescales, the same urgency should apply to HMRC.

Readers of our consultation responses and other work will know that two of the CIOT's objectives for the tax system are 'A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented)' and 'Responsive and competent tax administration, with a minimum of bureaucracy'.

Discrepancies between the obligations placed upon taxpayers and HMRC conflict with these objectives, and we raise them and their consequences with HMRC and ministers. For example, the CIOT, ATT and LITRG addressed issues of this sort in their responses to the Tax Administration Framework Review, which we reported on in last month's Technical Newsdesk. They also underpin much of the feedback which formed part of the Charter Stakeholder Group's report to HMRC which, subject to any election restrictions or delays, will be published in the middle of July.

Rest assured that these issues will continue to be central to our engagement with HMRC.

NEWSDESK ARTICLES

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GENERAL FEATURE

Public Accounts Committee inquiry into HMRC customer service

The CIOT, ATT and LITRG responded to the Public Accounts Committee's inquiry into HMRC customer service.

On 22 March, the Public Accounts Committee (PAC) opened an inquiry into HMRC's customer service. Following the dissolution of Parliament on 30 May 2024, all committees (except some statutory committees) have ceased to exist. It will be for the successor committee (once appointed following the general election) to determine its future programme, including whether or not it wishes to resume any of its predecessor's inquiries.

CIOT's written evidence

The CIOT's response built on previous evidence submitted to the PAC in October 2023 (www.tax.org.uk/ref1212).

We said we continue to be extremely concerned by HMRC's poor customer service across many key areas, and the approach they are taking to moving taxpayers to online services. We do not believe there is adequate evidence that measures such as closing telephone helplines will have their desired effect, nor are we convinced that they will not negatively impact compliance.

We support the use of digital tools to enable taxpayers (and their agents) to comply with their tax affairs. However, there remains a significant gap between the availability and awareness of such tools, and what appear to be HMRC's perceptions of what taxpayers (and their agents) can do. We said that the extent of that gap needs to be determined, and a plan devised to bridge it.

We welcome the additional funding (£51 million) recently announced for HMRC's customer service directorate. However, it amounts to less than half of the 'savings' being demanded of the directorate this year. HMRC have a growing 'customer' base, and their resources should not be further cut until improved digital systems have delivered the intended efficiencies and resource savings. We shared with the PAC our suggested minimum standards for the introduction of new HMRC digital systems, minimum requirements for HMRC digital forms, and our principles of tax digitalisation.

LITRG's written evidence

LITRG's response also builds on a previous submission to the committee in October 2023 (www.litrg.org.uk/10869).

We highlighted that, although digital services can be greatly beneficial to both taxpayers and the tax system, there are issues with HMRC's current suite of digital services, and we are not supportive of HMRC's attempts to force people to use digital channels before they are of a sufficient standard to meet their needs.

Our response examines HMRC's decision to permanently close and restrict the self assessment helpline and the reversal of that decision 24 hours later. We conclude that HMRC's plans were too aggressive, were not built on a solid understanding of taxpayer needs and did not have a robust evidence base. Our response also draws out points made in the recent National Audit Office report on customer service. That report echoed many LITRG concerns, including those we have made about the data used by HMRC to make decisions.

The remainder of our response examines what steps HMRC need to take next in developing their digital strategy to ensure that they are building good quality digital services, encouraging people to use them and supporting them to do so. It highlights the need for a clear provision for those unable to use digital services and recommends that any strategy should be published so external stakeholders can hold HMRC to account.

ATT's comments

The announcement of the general election and the resulting prorogation of Parliament on 24 May brought forward the deadline for submitting evidence to the PAC for this inquiry, and it was not possible to submit our evidence within the reduced time. Our intended submission highlights that members continue to experience significant problems with HMRC's performance. We regularly receive reports of agents waiting at least 40 minutes for phones to be answered, poor quality or meaningless advice on webchat and long delays in getting answers to post. While we welcome the recent additional funding provided for HMRC, there will inevitably be a substantial lead time before improvements can be made.

Our members would be keen to do more online with HMRC, but there are significant gaps in HMRC's digital services and, even where services do exist, agents do not always have access to the full range of digital services available to taxpayers.

We also have concerns about how HMRC are going to manage both their old legacy and new systems as Making Tax Digital for Income Tax and Self-Assessment are rolled out over the coming years. As it will be a number of years (timescale yet unknown) before all taxpayers are migrated to HMRC's Enterprise Tax Management Platform, we think it is important that HMRC are adequately funded to maintain their existing systems to the same level. Too often we are told that 'Making Tax Digital will fix that' but a full migration of individual taxpayers to Making Tax Digital systems is some years off.

The CIOT's written evidence can be found at: www.tax.org.uk/ref1317.
LITRG's written evidence can be found at: www.litrg.org.uk/10923.
ATT's comments can be found at: www.att.org.uk/ref457.

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GENERAL FEATURE

Raising standards in the tax advice market

On 6 March 2024 HMRC issued a consultation on 'Raising standards in the tax advice market: strengthening the regulatory framework and improving registration'. The proposals could have a significant impact on tax advisers and professional bodies. This article sets out the main themes of the responses submitted by the CIOT, ATT and LITRG.

The latest in a series of consultations on raising standards in the tax advice market was published in March 2024 (tinyurl.com/hmrcraisingstandards). After gathering feedback (including a survey completed by more than 600 members) the CIOT, ATT and LITRG all submitted a response.

The consultation set out three possible approaches to strengthening the framework within which tax advisers operate in order to improve standards:

- Approach 1: mandatory membership of a recognised professional body;
- Approach 2: joint HMRC-industry enforcement; and
- Approach 3: regulation by a separate statutory government body.

It also proposed mandatory registration of tax advisers interacting directly with HMRC subject to some exclusions.

The full responses submitted by the CIOT, ATT and LITRG are available on the respective websites: CIOT (www.tax.org.uk/ref1308), ATT (www.att.org.uk/ref455) and LITRG www.litrg.org.uk/10922), but we summarise the main points from each below.

CIOT response

The CIOT is supportive of mandatory registration of tax advisers as a useful and

GENERAL FEATURE

Standards for agents: an update

The HMRC standard for agents outlines HMRC's expectations of all tax agents and tax advisers in their dealings with HMRC, whether or not they are members of professional bodies which have their own codes of behaviour.

The HMRC standard for agents (the standard) can be found on GOV.UK at: tinyurl.com/38juevtw.

The Professional Conduct in Relation to Taxation (PCRT) is also a code, co-authored by seven professional bodies (including CIOT and ATT), that sets out the principles and standards of behaviour that all members, affiliates and students of those bodies are expected to follow.

The standard was updated in early 2023 with the intention of addressing a number of issues that HMRC had encountered in relation to their dealings with tax agents and advisers. However, the revisions included in the update also resulted in some inconsistencies with the standards set out in PCRT and the supporting ethical codes of the relevant bodies.

Following the update to the standard in early 2023, a small working party of the PCRT group was convened to discuss the revisions with HMRC. The working party have been collaborating with HMRC since this time and the joint work culminated in the publication of a further update to the standard on 17 May 2024.

The updated standard continues to endorse PCRT, and the revised wording ensures that there is consistent messaging between it and PCRT. Importantly, it also states that if agents are meeting the code of ethics of their professional body, the standard should not place further requirements on them. The updates to the standard also remove potential duplication and unnecessary compliance burdens where there is perceived misalignment between the codes of conduct when an agent is subject to more than one.

PCRT sets the highest standards for members and the bodies support the updated wording of the standard. The bodies welcome the collaborative approach taken by HMRC throughout the process in working to resolve the various points raised by both the bodies and their members. They also recognise the importance of raising standards consistently across the profession in light of the current focus on the potential future regulation of the tax services market.

The PCRT bodies issued a joint press release covering the update which can be found on both the CIOT (tinyurl.com/37pufju6) and ATT (tinyurl.com/ms7va74c) websites.

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sensible step towards ensuring basic standards. We consider that firm level registration would be the simplest to administer, although details need working through as to how the registered member would ensure that regulatory standards were met throughout the firm. Individual professional body members would also need to continue to meet the requirements of their own body. There are a number of outstanding practical points to be worked through in relation to registration.

Following our survey results, we indicated that, if a decision is taken to regulate the tax advice market, there is a strong feeling that this should apply universally to those giving tax advice in a professional capacity, limiting exclusions to friends and family assisting on a pro bono basis.

CIOT was broadly supportive of Approach 1, which would enable us to build on the good work already done by professional bodies towards setting and embedding high standards, and is likely to be the quickest and cheapest model to implement. This was the model which members favoured in their response to our survey. However, we have also been clear to HMRC that the issue cannot be looked at in isolation of the HM Treasury consultation on future anti-money laundering regulation – which looks at whether the professional bodies should continue to be supervisors for anti-money laundering purposes.

The CIOT will not dilute our exam or entry requirements to give unaffiliated tax practitioners an easier route into membership, as we do not see this as supporting high professional standards.

Failures in the tax advice market identified in the consultation are wide ranging and no one regulatory approach is likely to solve all of them. To evaluate the options fully, clearer articulation is needed of what the regulatory models seek to achieve and how they would or would not achieve this. Further detail is also needed to understand HMRC's expectations in relation to regulatory activity and the oversight of the regulators. Regardless, HMRC will continue to have a role to play. They are unique in holding data which can identify areas of poor standards, which they will need to share with professional bodies for them to target intervention most effectively.

A three to five year target implementation date will pass quickly, given the amount of further work needed before introducing regulation. However, quicker action is needed from HMRC to tackle some of the current issues in the market in the meantime, rather than waiting for the introduction of the model.

ATT response

The ATT agrees that a good first step towards a strengthened regulatory framework would be for all those tax practitioners operating in a professional capacity to undertake mandatory registration to interact with HMRC. Registration would allow HMRC to ensure that an individual practitioner or firm meets the standards required and to stop tax practitioners who do not meet these standards from gaining access to HMRC systems and taxpayer information.

We also welcome the proposed introduction of 'a single agent registration service' to facilitate this process and recommend that HMRC prioritise its creation and design. Once designed, HMRC should provide clarity on the requirements necessary for registration, support tax practitioners and agents to meet those standards and provide well communicated and signposted guidance. Access to the service should be quick, easy and efficient.

In principle, the ATT supports the mandatory membership of a recognised professional body, but considers that many elements of that approach would need further consideration and consultation before it could be fully adopted and implemented. For example, what is the criteria for recognised professional body status? How would the unaffiliated be transitioned? And what oversight would there be of recognised professional bodies, including penalties and sanctions?

We have also been clear to HMRC that the issue cannot be looked at in isolation of the HM Treasury consultation on future anti-money laundering regulation.

We consider that regulation at firm level is the most appropriate and workable model, whilst recognising that there will always be a place for professional standards requirements to be placed on all individual recognised professional body members working within firms.

LITRG response

LITRG's response focused on the proposals in the context of the problems with tax refund agents (high volume repayment agents) – most of whom are currently unaffiliated. HMRC have recently made important progress on tackling issues relating to these. They now have a firmer grip of the multiple problems in this space and are getting better controls around agent processes. The recent R40 initiative shows that HMRC are aware of the need to get clear evidence of customer authority every time.

Given that this serious, but now somewhat contained, issue seems to have been a key driver for this consultation, we start our response by urging the government to make sure that they have fully identified the nature and scale of the other issues they are trying to address.

On registration, we say we support a requirement for agents to register. Given the issues of phoenixing and the fact that the same names repeatedly come up as problematic refund agents, we have encouraged the incorporation of certain checks as part of registration, including 'fit and proper' checks. LITRG are also in support of a public register to help enforce standards for agents that do not interact with HMRC. We have highlighted the risk of unscrupulous agents attempting to use HMRC registration as evidence of official endorsement of their services.

On the question of regulation, we support CIOT's view that Approach 1 (mandatory professional body membership) is the most desirable of the three options. However, we highlight that there may be consequences in terms of 'good' unaffiliated agents exiting the market and costs that may be passed onto consumers. Although these concerns should not prevent any changes from being made, they do need to be understood and considered as plans develop so any mitigations can be designed.

Taking everything we know and understand about certain tax refund agents into account, it seems unlikely to us that mandatory recognised professional body membership alone (or indeed any of the proposed approaches) will close down all bad practices. Some agents will continue to push boundaries and make life hard for the professional bodies who are tasked with supervising and managing them. Others will probably ignore the rules or try to side-step them by evolving their practices to fall outside of regulation. Who will police the agents attempting to operate outside the boundaries? We think that HMRC are best placed to identify and sanction those outside of a professional body who have not dealt with regulatory requirements and require criminal sanctions.

Finally, we highlight the need for HMRC to supplement any approach with a structured initiative to expand and enhance the provision of not-for-profit tax advice and consider how HMRC can monitor and improve other sources of advice and support relied on by unrepresented taxpayers. We also note that any change is likely to take some time. In the interim, HMRC must continue to look for ways to raise standards and act quickly to protect consumers within the current framework – for example, by legislating to close down abuses around electronic signatures.

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PERSONAL TAX PROPERTY TAX
LARGE CORPORATE OMB

Finance (No.2) Bill 2024: CIOT briefings on property and transfers of assets abroad

The CIOT's briefings on Finance (No.2) Bill 2024 for parliamentarians consider the clauses relating to property taxes and the transfer of assets abroad rules in Finance (No.2) Bill 2024.

Finance (No.2) Act 2024 received Royal Assent on 24 May 2024. It was one of a number of bills fast-tracked through Parliament in the last few days before it was prorogued, following the announcement of the general election. Finance (No. 2) Bill had already completed its Committee stages in the House of Commons, and this article summarises the briefings the CIOT provided for those proceedings.

Clauses 7 to 10: Stamp duty land tax

Clause 7 abolished multiple dwellings relief (MDR) following consultation and evaluation of its efficacy. We noted that evaluation of tax reliefs in this way is welcome; however, it is possible that there will be unintended consequences on funding for certain sectors such as student accommodation. Furthermore, the differential between residential and non-residential stamp duty land tax (SDLT) rates is now greater than when MDR was introduced. The withdrawal of MDR exposes this differential, creating potential anomalies. We highlighted three in our briefing:

- Investors in residential property buying five or fewer properties are likely to be paying SDLT at a higher rate than an investor buying six or more dwellings – creating a potential barrier to investment for smaller scale investment.
- As long as MDR was in place, UK resident buyers of residential property had a competitive bidding advantage over non-UK resident buyers because of the SDLT surcharge for non-UK resident purchasers of residential property. We therefore questioned whether there is now an inconsistency in the policy approach.
- Transitional provisions that 'de-link' pre-abolition transactions that enjoyed MDR from post-abolition transactions that would otherwise be linked with them may produce unfavourable and uneven outcomes. (The CIOT also provided comments on HMRC's draft guidance on the MDR transitional provisions now published at SDLTM29901 onwards.)

We are supportive of the change to SDLT first-time buyers' relief in clause 8 that corrects a defect and follows CIOT representations in 2023 with the Stamp Taxes Practitioners Group. Similarly, the SDLT changes in clauses 9 and 10 are welcome in removing some uncertainties and updating the legislation for changes in social housing legislation. However, there remain some uncertainties for pre-March 2024 transactions.

The full CIOT briefing is available here: www.tax.org.uk/ref1335

Clause 20: Collective investment schemes: co-ownership schemes

Clause 20 relates to the new Reserved Investor Fund (Contractual Scheme), including a power to make provisions via regulations. The CIOT has not responded formally to the subsequent consultation on the draft tax regulations. However, our response to the original consultation made the overarching point that the tax treatment of the new fund should be largely equivalent, as far as possible, to comparable common offshore funds investing in UK commercial real estate.

With that context in mind, we have raised a concern with HMRC that the deemed company treatment for SDLT purposes is linked to meeting the ownership/asset requirements and therefore there is a risk of 'dry' SDLT tax charges on leaving the new fund regime. This would mean that a Reserved Investor Fund is not the equivalent of the offshore vehicles that do not have the same uncertainty.

Clause 22: Transfer of assets abroad

Clause 22 is a reaction to the Supreme Court's decision in *HMRC v Fisher* [2023] UKSC 44. In that case, the court rejected

HMRC's arguments and held that the transfer of assets abroad rules only apply to transfers made by individuals, not limited companies; the changes within clause 22 extend the provisions of ITA 2007 ss 720 and 727 so that they do. The income tax charge will apply to close company shareholders ('relevant participators') who did not object to, and were aware or should have been aware of, the transfer made by the company.

Whilst generally supportive of measures which fill loopholes in anti-avoidance legislation, the CIOT is concerned as to how widely these new provisions are drafted, the impracticality and unfairness of their application and their retroactive effect. Concerns raised included:

- minority shareholders with no influence in the day-to-day running of the business being caught and apportioned an element of the tax charge (despite no mechanism being in place to do this);
- applying the motive defence to multiple shareholders; and
- applying charges under income tax to income ordinarily subject to corporation tax.

The full CIOT briefing is available here: www.tax.org.uk/ref1338.

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PERSONAL TAX
INHERITANCE TAX AND TRUSTS

Non-domicile changes

The CIOT submitted papers to HMRC and HM Treasury commenting on the 'non-domicile' changes announced in the March 2024 budget and the proposed new temporary repatriation facility.

The Budget in March 2024 contained proposals for changes to the taxation rules for foreign income and gains and inheritance tax (IHT) deemed domicile rules. Whilst widely heralded as the abolition of the 'non-domicile' rules, the changes actually concern the remittance basis for foreign income and gains, moving from a domicile basis of assessment to one of residence.

From 6 April 2025, a four-year window will be available for individuals who become UK resident after a period of 10 years non-residence. Within that four-year window, qualifying individuals will not pay tax on any foreign income and gains arising. Those who cannot benefit from this window and whose foreign income and gains are subject to the arising basis in April 2025 will have 50% of their foreign income (not capital gains) subject to UK tax for 2025/26 only. Thereafter, the arising basis will apply to all their income and gains; an election to rebase assets at their April 2019 value for capital gains tax purposes may be available for those who had been claiming the remittance basis. Those who have settled a non-resident trust will also be taxed on that trust's income and gains on an arising basis from 2025.

For pre-2025 foreign income and gains, encouragement to remit those monies to the UK will take the form of a 'temporary repatriation facility' where a tax rate of 12% will apply on remittances for 2025/26 and 2026/27.

For IHT, from 6 April 2025, once an individual has been resident in the UK for 10 years, they will be subject to IHT on their worldwide assets; they will continue to remain liable for a further 10 years after leaving the UK. Existing 'excluded property' offshore trusts containing offshore assets will remain outside the scope of IHT after 2025, but trusts settled by a non-domiciled settlor thereafter will be subject to the new residence-based regime. These changes are subject to consultation.

Whilst the CIOT supports a move away from a domicile-based assessment of foreign income and gains to one of residence, we are concerned that a four-year tax-free window is too short. Other countries have longer periods (for example, Italy and Greece with 15 years) and four years will not be attractive or practical for those considering settling and bringing wealth into the UK. We recommend that a 10-year window would be more effective.

With respect to the temporary repatriation facility, we consider this a 'welcome and pragmatic measure' as part of the transition to the new rules. However, greater detail as to its operation and application is needed. A simple 'designation' method to pay a fixed amount of tax on foreign income and gains over multiple years may be preferable.

Whilst Labour have stated that they support many aspects of these changes, they have also stated that they would not give a 50% discount for foreign income in 2025/26, the temporary repatriation facility may be amended or extended, and protections for existing excluded property trusts would end.

The papers can be read on our website at: www.tax.org.uk/ref1337.

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OMB PERSONAL TAX LARGE CORPORATE
PROPERTY TAX

Welsh land transaction tax consultation

The CIOT responded to the Welsh government's consultation on land transaction tax following the Spring Budget announcement of the abolition of stamp duty land tax multiple dwellings relief.

The Welsh government recently consulted on proposals to abolish land transaction tax (LTT) multiple dwellings relief (MDR) following the UK government's decision to abolish the equivalent relief for stamp duty land tax (SDLT). Abolition of SDLT MDR without further action by the Welsh government is estimated to reduce the Welsh block grant by £8 million a year.

In our joint response with the Stamp Taxes Practitioners Group, we noted that the design of LTT was guided by the desire to align with the SDLT framework as far as possible, subject to specific Welsh circumstances and priorities. Retention of LTT MDR in Wales could add complexity for transactions involving properties in both jurisdictions, particularly as familiarity with SDLT MDR reduces.

In terms of acquisitions by private individuals, anecdotally our members point to experience of approaches by individual buyers who suggest an MDR claim or reclaim in circumstances where a claim is sometimes without merit. Similarly, we are aware that reclaim firms advocate refunds based on contested interpretations of the law with little or no warning as to the risks involved in relation to SDLT and LTT. This activity adds costs and complexity to the LTT regime for all stakeholders contrary to the principles of clarity, stability and simplicity.

For transactions involving commercial portfolios of residential property, where the higher rates apply, abolition of LTT MDR should have minimal impact, assuming the six or more dwellings rule remains in place. However, for those portfolio transactions where the higher rates do not apply, most commonly purpose built student accommodation, abolition of LTT MDR will increase the LTT liability potentially quite significantly. We therefore suggested that the nature and value of LTT MDR claims are evaluated to ensure that abolition does not lead to unintended consequences for wider Welsh government policies.

We said that the effect of withdrawing the six or more dwellings rule is potentially far more significant in terms of increased LTT liability than the effect of the abolition of LTT MDR. The additional LTT cost will be a further factor (alongside different planning conditions) for UK wide developers to consider when deciding whether to invest in Wales or in England.

Other proposals

The consultation proposal to extend the current LTT relief for acquisitions by registered social landlords to acquisitions by local authorities in Wales provides an opportunity to clarify areas of uncertainty in the application of the current relief.

We raised three further areas where the application of the LTT code could be clarified or evaluated. These are charities relief, Islamic finance and the anti-avoidance rule in a case of a grant of a lease to/from a bare trustee.

The full CIOT response is available here: www.tax.org.uk/ref1323

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INDIRECT TAX

Vaping products duty consultation

At the Spring Budget, the government announced that vaping products duty would be applied to vaping products from 1 October 2026. Following roundtable discussions between government and stakeholders, CIOT responded to this consultation.

Following the Budget announcement about vaping products duty (VPD), aimed at addressing public health concerns about vaping raised by the Department of Health and Social Care, HM Treasury and HMRC published their joint consultation, 'Vaping Products Duty consultation' (tinyurl.com/52wtpt94) on 6 March.

The main aim of the duty is to discourage young people and non-smokers from taking up vaping by applying the highest duty rates to products with stronger nicotine strengths, whilst also balancing a financial incentive for existing smokers to switch to vaping. Accordingly, there will be an increase in tobacco duties at the same time that VPD is launched. This consultation set out proposals for how the duty will be designed and implemented.

Interested stakeholders were invited to attend a series of virtual roundtable meetings during the consultation period, which closed on 29 May 2024. CIOT representatives attended the meetings with other industry representatives and submitted its written response to the consultation.

CIOT's feedback

In our written submission, we said that, broadly, the aims for VPD would be met by the proposals. However, we noted that stakeholders had consistently raised the issue that the addition of duty could increase the attractiveness for consumers to seek out contraband vaping products and smuggled cigarettes. In the roundtable meetings, HMRC said that it would collaborate with border and domestic agencies, as well as the industry itself, to increase safeguards to tackle non-compliance, avoidance and evasion.

We were concerned about the measure to bring into scope individuals who make their own vaping products for home use, especially as one of the aims is to 'ensure that the duty is proportionate to administer for both businesses and HMRC.' We would prefer that VPD applies to businesses only and that VPD should be due on the supplies to such individuals.

We mentioned that we would like to see a light touch approach to penalties for non-deliberate behaviour for a period after the introduction of VPD. The sector will be new to the excise regime and we would like an educational approach taken by HMRC in the early period post-launch.

VPD becomes due early in the supply chain (similar to alcohol and tobacco excise duty), either at the completion of manufacture or when imported into free circulation in the UK, rather than being declarable at retailers. We noted that it appeared possible that retailers could buy in large volumes of stock prior to the duty becoming applicable on 1 October 2026 (industry feedback said this could even be a year's stock), so HMRC may wish to consider whether any anti-forestalling measures should apply.

Further comments can be read in the full response, which is on our website here: www.tax.org.uk/ref1307.

Next steps

There will be further consultation on VPD in due course and the government policy teams are keen to have smaller businesses involved in the conversations. If you have clients in this sector (including retailers), they can contact HMRC at vapingproductsduty@hmrc.gov.uk to request that they are invited to future roundtable meetings.

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GENERAL FEATURE PERSONAL TAX

Crypto Asset Reporting Framework

The CIOT has responded to an HMRC consultation on the implementation of the international Crypto Asset Reporting Framework and amendments to the Common Reporting Standard.

HMRC issued a consultation regarding the implementation of certain discretionary and optional elements of the Crypto Asset Reporting Framework (CARF) and amendments to the Common Reporting Standard (CRS), which have been agreed at an international level to ensure consistency and will come into force in 2026.

CARF addresses the exchange of information concerning cryptoasset users and the relevant tax authorities. The aim is to maximise transparency with standardised information and tackle non-compliance. Cryptoassets can be transferred and held without the interaction of traditional financial intermediaries or any central oversight; also, cryptoassets generally do not fall within the scope of existing information exchange framework. The G20 gave the Organisation for Economic Co-operation and Development (OECD) a mandate to develop CARF as a global framework, to provide for the automatic exchange of information for cryptoasset transactions in a standard manner and within one regime.

Published by the OECD in 2014, and to which the UK was one of the first signatories, the CRS provides for the automatic exchange of information on financial accounts. The introduction of CARF sits alongside amendments to the CRS to ensure the tax transparency framework keeps up with the development of cryptoassets.

Another element of the consultation concerns domestic reporting, as neither CARF nor the existing CRS require crypto service providers to inform individual reportable users of what information has been reported to HMRC. Instead, HMRC relies on existing data-gathering powers to obtain the information they need from third parties. By making the UK a 'reportable jurisdiction' within CARF, HMRC would have access to increased amounts of information from financial institutions. A new penalty regime would enforce these new reporting obligations.

The CIOT supports any measure which assists with the exchange of relevant information needed to enforce tax compliance. However, the requirements should not be overly burdensome and there needs to be further clarification as to some of the definitions within CARF. More importantly, we are concerned that a lack of public awareness surrounding cryptoasset compliance and record-keeping at a fundamental level may undermine the effectiveness of CARF and an amended CRS.

Our full response can be found on our website here: www.tax.org.uk/ref1309.

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PERSONAL TAX

Public Accounts Committee inquiry: universal credit

Earlier this year, the Public Accounts Committee launched an inquiry on the government's progress in implementing universal credit. The Low Incomes Tax Reform Group responded to the committee's call for evidence.

LITRG's response (www.litrg.org.uk/10903) to the Public Accounts Committee's call for evidence (tinyurl.com/57emuwce) focused on the transition of tax credit claimants to universal credit.

The government gave a broad commitment that anyone moving to universal credit, without a change of circumstances, should not lose out in cash terms on that transition. However, LITRG's submission highlighted that, under the current transitional protection rules, some people may get less universal credit than they were getting on legacy benefits (such as tax credits), but they will not get transitional protection. As a result, the government's commitment does not, in reality, apply to all migrating claimants.

Since 2018, LITRG have urged the Department for Work and Pensions (DWP) to do a full assessment of transitional protection to get a better understanding of:

- how many people will not get transitional protection, even though their universal credit award will be lower than their legacy benefits; and
- how many people will get a transitional element in their universal credit award, even though it is higher than their legacy benefit award.

DWP should do this urgently before they further increase the number of migration notices. In addition, DWP should clarify their guidance to:

- make it clear that some people may not fully benefit from the commitment that there will be no cash losers at the point of transition and it is possible that their actual universal credit award will be less than their legacy benefits;
- provide examples of the most common situations where this is likely to occur; and
- explain that the calculation of the transitional element is based on an indicative universal credit amount and not the actual universal credit award.

The information provided by DWP about transitional protection is currently misleading by suggesting that the comparison is between the amount the claimant was receiving on legacy benefits and the amount they will get under universal credit. This is incorrect – when assessing whether someone is entitled to transitional protection, the comparison is between their legacy benefit amount and an 'indicative' universal credit amount. This indicative universal credit amount may differ from their first actual universal credit award for a number of reasons. LITRG have therefore urged that this guidance should be updated as a priority.

Furthermore, there is a lack of transparency around transitional protection both for claimants and advisers. For claimants, DWP do not provide information about how transitional protection is calculated as a matter of course. Claimants must know to ask for this and then challenge it by way of a mandatory reconsideration. LITRG have urged DWP to improve transparency and include transitional protection calculations on award notices as a matter of course.

Up to March 2023, nearly 27% of tax credit claimants who were sent a migration notice did not claim universal credit and missed out on an average of £300 a month. DWP do not appear to have done any detailed research with that specific group to understand why they did not claim and look at whether any mitigations can be put in place to encourage people to claim the support they are entitled to. More work should be done to understand why so many tax credit claimants do not go on to claim universal credit.

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CIOT		Date sent
Proposed changes to land transaction tax reliefs	www.tax.org.uk/ref1323	16/05/2024
Priorities for tax administration in the next Parliament	www.tax.org.uk/ref1336	24/05/2024
Public Accounts Committee inquiry into HMRC customer service	www.tax.org.uk/ref1317	23/05/2024
Cryptoasset Reporting Framework and Common Reporting Standard	www.tax.org.uk/ref1309	29/05/2024
Raising standards in the tax advice market: strengthening the regulatory framework and improving registration	www.tax.org.uk/ref1308	29/05/2024
Transfer of Assets Abroad: Finance (No.2) Act 2024	www.tax.org.uk/ref1338	29/05/2024
Vaping Products Duty	www.tax.org.uk/ref1307	29/05/2024
Finance (No.2) Bill 2024 briefing: Property taxes	www.tax.org.uk/ref1335	5/06/2024
Penalties for failure to pay tax (assessments) regulations 2024	www.tax.org.uk/ref1329	6/06/2024
ATT		
Public Accounts Committee inquiry into HMRC customer service	www.att.org.uk/ref457	29/05/2024
Raising standards in the tax advice market: strengthening the regulatory framework and improving registration	www.att.org.uk/ref455	29/05/2024
LITRG		
Finance (No.2) Bill 2023-24 Briefing on high income child benefit charge changes	www.litrg.org.uk/10921	23/05/2024
Public Accounts Committee inquiry into HMRC customer service	www.litrg.org.uk/10923	30/05/2024
Raising standards in the tax advice market: strengthening the regulatory framework and improving registration	www.litrg.org.uk/10922	30/05/2024


Young International Corporate Tax
26 September 2024
Deloitte Auditorium | London
YIN
YOUNG IFA NETWORK
ADIT
Chartered Institute of Taxation.
The CIOT European Branch and ADIT in conjunction with the Young IFA Network (UK Branch) will be holding their Young International Corporate Taxation Conference to highlight the current major international tax issues.
The major topics covered will be:
• Global elections – impact on tax policy and practitioners
• UN developments & the evolution of the international tax framework
• Key law updates
• Tax & accounting – back to basics
• Tax & technology.
For more details and to register visit:
www.tax.org.uk/yictpc2024


The ATT in video
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We are delighted to share 13 fantastic short videos for prospective students, current students, members, the wider tax profession and general public to help understand tax, our qualifications, and technical insights from the ATT. Just some of our videos include:
• The wonderful world of VAT
• Volunteering for tax professionals
• Benefits of being an ATT member
• ATT Technical Steering group
• HMRC Agent Forum – top tips for members
• Claiming tax relief for common employment expenses
• Tax relief for homeworkers
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Let us know what you think, and if you have any suggestions for future videos please email: atttechnical@att.org.uk

Election

CIOT issues election challenge to parties

Any party serious about improving economic growth and productivity should be making the administration of the tax system a key part of its general election platform, says CIOT.


Nigel Huddleston James Murray Sarah Olney

Institute President Charlotte Barbour has written to the tax spokespeople for the main political parties identifying seven 'pressing issues' which the Institute believes should be a priority for the next government.

The seven issues are:

1. Resourcing HMRC to provide the level of service taxpayers need
2. Review tax digitalisation to focus it on the needs of taxpayers
3. Commit to meaningful simplification of the tax system
4. Get research and development tax credits working properly
5. Effective but proportionate action to tackle rogue tax agents
6. Greater transparency and accountability over policy costings
7. Adherence to sound tax policy making principles

The letter, sent at the start of the general election campaign, states: 'We believe that unless these are addressed the tax system will continue to become less efficient, harder to comply with and less effective at both raising revenue and supporting taxpayers.'

Charlotte explained: 'Tax is always central to political debate and party manifestos during an election campaign. But too often this is limited to arguments about which groups should pay a bit more or a bit less. Just as important is having a tax system that works effectively. Onerous requirements, excessive complexity, an inability to access clear guidance and prompt payments – all these hinder the ability of business to do business and to contribute to the economic growth and increased productivity that the UK needs to prosper.

'A properly funded and efficient HMRC is vital to the success of the UK economy. But current HMRC service levels are far from where they should be. Callers to HMRC telephone helplines spent nearly 800 years waiting on hold in 2022-23 – more than twice as long as in 2019-20.

'Done well, digitalising tax administration can bring benefits to all involved. But too often it seems to be an exercise merely in outsourcing work from HMRC to taxpayers and their agents. A straightforward, easy to navigate tax system would free up business owners and managers to focus on growing their business, rather than spending their days overcoming bureaucratic hurdles put in their path by the state.

'Better tax policy making can provide taxpayers with greater certainty and stability, increasing public support for, and compliance with, the tax system. In all these areas, improvements to how the tax system operates can make a significant contribution to UK economic growth. We hope politicians of all parties will put such measures at the heart of their elections plans and programmes for government.'

The letter was sent to spokespeople for the Conservatives (Nigel Huddleston), Labour (James Murray), Liberal Democrats (Sarah Olney), SNP (Drew Hendry), DUP (Sammy Wilson), Plaid Cymru (Ben Lake), Green Party (Molly Scott Cato) and Reform UK (Lee Anderson).

Read the letter and responses at: tax.org.uk/election-2024-challenge

Political update

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

Finance Bill (No.2) 2024 completed its public bill committee stage in a single session the day before the election was called, with CIOT and LITRG comments cited on a number of issues.

Discussing the high income child benefit charge, Shadow Financial Secretary James Murray highlighted LITRG's concern about the rate of clawback and marginal tax rates. On the SDLT clauses, Murray raised a number of CIOT points, including asking the minister whether he was 'aware of the potential for anomalies and for new behaviour to emerge around the acquisition and definition of property'. He asked for reassurance that the minister would work with CIOT and other stakeholders to avoid unintended consequences from these clauses.

On the economic crime levy, the Shadow Economic Secretary Tulip Siddiq raised a point we had made about how it would be helpful to get more granular feedback on suspicious activity reports. On VAT, she raised our points around agent access and reinstating HMRC's discretion not to charge interest where there is no loss to the Exchequer.

On transfer of assets abroad, Siddiq raised a number of CIOT points, including the position of minority shareholders, uncertainty for business and the complexity of tackling corporate tax avoidance through a personal tax measure. In response, Financial Secretary Nigel Huddleston made a point of saying the government appreciates stakeholder input, mentioning CIOT in particular. However, he added, the government 'respectfully disagrees with the CIOT' on some matters. He tried to reassure MPs that the measure would not have the impacts feared.

At the end of proceedings, the Financial Secretary thanked CIOT and LITRG 'for their contributions to this Committee'. Murray also thanked CIOT, saying its expertise 'is always greatly valued'.

Professional Standards
Backing for mandatory membership – many unanswered questions

Both ATT and CIOT have backed mandatory membership of a professional body as the preferred option from those in the 'raising standards' consultation, but both bodies have sounded warnings and sought greater clarity from the government about its objectives.

Senga Prior, chair of ATT's technical steering group, explained: 'Requiring all tax practitioners to register with HMRC is a good first step towards a strengthened regulatory framework… However, the changes this consultation envisages could profoundly impact the ability for some tax practitioners to legitimately remain within the tax advice market… The government and HMRC must be clear what the problems in the tax market are that the proposals are seeking to address and understand who is perpetrating them.'

For CIOT, Ellen Milner, Director of Public Policy, said: 'We're broadly supportive of approach one [mandatory membership] as the system which could be set up in the least amount of time and at the lowest overall cost. However, this is not a silver bullet and our support is subject to a need for further detail as the policy develops.' She added that HMRC's expectations on what regulation means in practice are, as yet, unclear.

A survey of ATT and CIOT members in April found that 84% thought regulation of the tax profession would improve professional standards, with 54% believing professional bodies should regulate the profession, compared to just 2% for HMRC.

See Technical Newsdesk (page 44) for more on the ATT and CIOT responses to this consultation.

CTA Address
Impact of AI on Tax

The rise of artificial intelligence (AI) will 'inevitably' have an impact on the world of tax, but human users will still be needed to oversee the technology, said speakers at this year's CTA Address.

The event on 5 June was chaired by CIOT President Charlotte Barbour, with the main speaker Conrad Young CTA, former Chief Digital Officer at Deloitte and Chair of the Advisory Board at the Oxford Internet Institute. The other panellists, also CTAs, were Bivek Sharma, Chief Technology Officer for PwC UK, and Shan Sun, Tax Technology lead at Deliveroo.

Conrad said revenue authorities are looking to acquire more data from taxpayers and intermediaries, use AI to analyse and scrutinise that data and use digital channels to transform interactions with taxpayers. French authorities used AI to uncover 140,000 undeclared swimming pools in the country in 2023, amounting to €40 million in tax. On the other hand, the Dutch government resigned after 20,000 families were wrongly accused of child benefit fraud, in part due to flawed investigations aided by AI.

Within the tax services market, an influx of AI providers could affect the status quo, with taxpayers moving away


Bivek Sharma, Shan Sun, Conrad Young and Charlotte Barbour

from established bodies to new services. Conrad warned that AI could 'be the end' of billing 'by the hour' and some other commercial models.

Bivek said that AI is moving so quickly that businesses need to take a look at where it will end up in the future, rather than how it is now. He said he knows one tax professional who initially thought AI 'couldn't possibly do what I do' but who is now an ardent user. We are becoming 'augmented advisers', he concluded.

Shan said machine learning will always have errors and we must allow for that. AI will need to be monitored, but it is 'inevitable' that it will be largely monitored by other AI itself, due to the large data sets. On tax advice, there was agreement among panellists that 'some form of human in the loop' is needed to ensure accuracy, as AI can generate sensible sounding but wrong answers.

Watch the full address at: tinyurl.com/CTA24-AI

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

ATT technical officer Helen Thornley appeared on the BBC News Channel to discuss VAT and other tax pledges made ahead of the General Election. She explained that the main parties have vowed to keep the main rate of VAT at 20%, but Labour plan to expand the scope of VAT to private school fees.

'Joanne Walker, technical officer at the Low Incomes Tax Reform Group (LITRG), said child trust funds mature on the 18th birthday of the person they belong to. "At that point they can decide whether to take the money or transfer it into a tax-free adult ISA."'

Daily Express, 15 May

'With the [NAO] report suggesting HMRC customer services have been told to find at least £116 million of new savings during the 2024-25 tax year, this week's £51 million funding injection, while welcome, amounts to no more than slowing the pace of the cuts and tempering their short-term impact. Helping willing taxpayers to be compliant is a vital part of HMRC's job.'

Richard Wild, CIOT head of tax technical, in the Financial Times on HMRC funding, 17 May

'According to the Chartered Institute of Taxation, anyone earning more than £27,850 will pay more income tax in Scotland than someone earning the same amount in other parts of the country.'

The Herald on Scottish tax divergence, 18 May

'The tax gap has shifted by £3 billion over 18 years. To think that you can reduce it by £5 billion or £6 billion per annum over the next five years, I think would be quite a tall order.'

Steven Pinhey, technical officer at the Association of Taxation Technicians, in the Financial Times on tax avoidance, 31 May

AGM

Gary Ashford: A year of achievement and celebration

Outgoing CIOT President Gary Ashford reflected on his 12 months in the role in his validictory speech at the Institute's AGM on 30 May.

Gary Ashford and Charlotte Barbour

In my year as President, CIOT has brought together economists, tax advisers, academics, politicians, civil servants and many others to debate some of the most contentious issues in tax: non-doms, VAT on school fees, the future of income tax and, with Pascal Saint-Amans, international tax reform.

At party conferences in Manchester and Liverpool, we joined the IFS and politicians to explore the tax challenges for the next Parliament. I joined the Tax Institute of Hong Kong at their annual conference to talk global tax collaboration, and the City of London to talk tax and sustainable finance at a joint roundtable.

We've celebrated the contribution of our volunteers with a reception at the fabulous Design Museum. And we've notched up notable technical successes on issues from low income trusts to off-payroll working.

It's been a year of achievement and celebration:

- The 25th anniversary of CIOT's LITRG, which continues to go from strength to strength. (Congratulations to them for winning 'Outstanding Contribution to Taxation in 2023-24 by a Not-for-profit Organisation' at the Tolley's Taxation Awards.)
- The fabulous first full year of our Diploma in Tax Technology.
- Reaching – and passing – the milestone of 20,000 members.

Our members

A particularly rewarding experience was when I had the pleasure of welcoming Rachael Brown as the 20,000th member of our CTA family earlier this year. I was delighted and honoured to meet so many of our other newly qualified CTAs at our Admissions Ceremonies at that same event in March. I hope our new members see their membership as a springboard for their future success.

I have really enjoyed meeting so many members and friends of the Institute at branch and national events around the country during the past year, including a return to my amazing home nation for our Edinburgh lunch earlier this month.

On these travels, I always try to talk to members about what's bothering them professionally, and what they want the Institute to be doing more of.

HMRC service levels

One issue that has come up more than any other over the last 12 months is HMRC service levels.

At the AGM a year ago, I spoke about how poor service levels aren't just a pain for taxpayers and their advisers. They harm tax compliance, hinder business activity and erode trust in the tax system. Over the past year, I've made that argument in the press, to politicians and to HMRC themselves.

The announcement in March of big, permanent cuts to phone helplines brought matters to a head. Our response was clear and immediate. I said the cuts were misguided, that I was deeply dismayed and that, if last year's temporary closure was – as I said at the time – a 'flashing indicator' that HMRC could not cope, the new announcement was a blinding light.

Our reaction – and that of other bodies – seems to have had an impact. HMRC's chief executive Jim Harra told the Treasury Committee that ministers had expressed their concern about the 'strength of the reaction and about the fact that the reaction was not just political reaction'. It was – and these are his actual words – 'a genuine concern about how this was all going to work'.

As a result, they 'quickly agreed that the right thing to do was not to proceed with it and to listen to the concerns ... to take them on board and replan'. I welcome this approach, and we have already begun to discuss with HMRC how we might help and offer ideas as they seek to move forward.

Technology: digitalisation and AI

What do attractive digital services look like? I encourage you to take a look at the seven 'principles of digitalisation' that we and ATT published in April.

We have continued to engage with HMRC on MTD through the year. But we continue to have concerns about how the programme is being implemented and whether it will achieve its objectives.

We've also been doing some thinking around AI. The Institute has set up a group to look at the implications and impact on us and our members. And we held a useful roundtable discussion in Edinburgh recently. I've also continued to take a keen interest in crypto, as chair of the CIOT's crypto assets working group and lead on this for CFE Tax Advisers Europe.

What is clear is that we need to continue to be adaptive, and this will be an ongoing process for the rest of our working lives. Again, I want to sing the praises of our Diploma in Tax Technology – only 18 months old but already going strong with more than 130 graduates.

Gary also reported back on CIOT's work on simplification, pointing to efforts to hold ministers to their promises, and on regulation. He thanked members for taking part in the survey which informed the Institute's response to the raising standards consultation (see 'Backing for mandatory membership – but many unanswered questions' on page 53).

Gary closed the speech with thanks to CIOT members for the honour of being Institute President, to his colleagues and family, and to CIOT Council and staff for their support. He wished incoming President Charlotte Barbour well.

This speech has been abridged. The full speech can be read at: tinyurl.com/CIOT-Gary

Engagement Group
Spotlight on the Representative Bodies Steering Group

In the first of a new series of spotlights which focus on our engagement with HMRC and policymakers, we take a look at the work of the Representative Bodies Steering Group (RBSG).

The RBSG is an important forum that engages with professional bodies, intermediaries, software developers and senior HMRC managers. It helps to advise on strategic decisions about HMRC's performance, including customer service, its digital strategy, and the impact of these on agents. We have engaged with senior HMRC staff in similar forums for many years. Prior to RBSG being established a few years ago, we had similar engagement with HMRC under the auspices of what was known as the Joint Initiatives Steering Group.

CIOT, ATT and LITRG are all represented at RBSG through a combination of staff and volunteers. Other members of RBSG include the main accounting and tax bodies, and representatives from the software industry.

The Steering Group is chaired by the Director General for Customer Strategy and Tax Design, Jonathan Athow. We meet every two months to discuss HMRC's customer service and other strategic matters which affect its digital services, agents and the health and operation of the tax system.

Three working groups report to RBSG: the Agents Digital Design Advisory Group; the Additional Needs Working Group; and the Issues Overview Group. We will look at the activities of those groups in later spotlights.

A standing item on the RBSG agenda is HMRC's performance. Members will know that this has been a key focus for CIOT, ATT and LITRG for several years, and we continue to constructively challenge HMRC regarding their performance and channel shift decisions (such as the closure of telephone lines), while seeking to work with them on ways to improve customer service.

On 28 May, we had a 'bespoke' RBSG meeting, focusing solely on HMRC's channel shift, with a view to better understanding the reasons for telephone and webchat contact, so we can work with HMRC to develop alternatives to ensure taxpayers and agents can better self-serve.

At RBSG, we also discuss other significant topics such as Making Tax Digital, agent standards and the tax administration strategy, to name just a few. These typically have their own dedicated engagement forums, but periodic discussion at RBSG ensures that key points can be highlighted directly to senior HMRC staff.

Further information about the RBSG can be found on GOV.UK at tinyurl.com/5n64mr6a, including 'meeting summaries' prepared by HMRC. Please be aware that because these are for public consumption, they are necessarily sanitised and do not fully reflect everything discussed during the meetings, or the extent of the debate and challenge put forward by the representative bodies.

General Election Explainers

Tax is central to the political debate – and especially so during election campaigns – but often debates between politicians generate more heat than light. That's why we've produced a series of 'explainers' providing background and non-partisan explanation on the tax issues in the spotlight during the campaign.

You can read them at: tax.org.uk/2024-general-election-explainers

ADIT
Promoting ADIT at IFA Cape Town 2024

The CIOT is delighted to be exhibiting its flagship international tax qualification, ADIT, at the International Fiscal Association (IFA) Annual Congress, which takes place this year in Cape Town, South Africa from 27 to 31 October.

We have been a regular fixture at IFA events around the world since 2010, and the Annual Congress is regarded as one of the most important gatherings of leading international tax practitioners, decision-makers and thought leaders from across the globe, with representatives from governments, the legal and accounting sectors, industry and academia.

IFA Cape Town 2024 will be the 76th IFA Annual Congress and, given South Africa's location as a key business and political hub in sub-Saharan Africa, the event is expected to attract attendees from across the region and around the world. We will therefore have the perfect opportunity to promote ADIT to African tax professionals and their employers, and showcase the activities of our new ADIT Southern Africa Network, led by our regional ADIT Champion Clayton Bonnette and Deputy ADIT Champion Werner Olivier.

Members of the ADIT Committee and Academic Board will also be in attendance, and the ADIT exhibition will feature 'meet and greet' sessions with some of these leading lights in the international tax community.

We will be exhibiting alongside the International Tax and Investment Center (ITIC), a US-based research and education organisation that promotes initiatives to encourage investment in transition and developing economies. ITIC shares our goal of promoting tax understanding around the world, and you can find more information about their work at www.iticnet.org.

IFA
2024 The 76th Congress of the International Fiscal Association
27-31 OCTOBER | CAPE TOWN | SOUTH AFRICA

If you are an ADIT student, graduate or Affiliate, or an ATT or CIOT student or member, and you plan to attend the Congress, or if your organisation is sending delegates, please do visit our exhibition stand to talk to us and discover the benefits of the ADIT certification.

For more information about ADIT, visit www.tax.org.uk/adit. Details about IFA Cape Town can be found at www.ifa2024capetown.com. See you in South Africa!

Conference

The Joint International Tax Conference

A conference report by Edward Balaba and Camille McFarlane.


Camille McFarlane Edward Balaba

In the 13th year of this global annual event, organised by King's College London (KCL), CIOT, ADIT and the International Fiscal Association (IFA) UK Branch on 23 and 24 May, we brought together leading international tax practitioners to provide valuable insights into current challenges in international tax, drawing on their real-world experiences.

Chaired by Jonathan Schwarz, Temple Tax Chambers and Director of KCL's International Tax Law LLM, the conference catered to international tax specialists and future leaders in the field, including LLM students and the ADIT community. Professor Guglielmo Maisto, IFA President, opened with a keynote address on dispute resolution and the global minimum tax.

At the ESG and International Taxation session, chaired by Natalie Dunne (Baker & McKenzie), Lucy Healy (FTI Consulting), Sebastian Akbik (UN Principles for Responsible Investment) and James Egert (BDO) addressed key legal ESG issues, including the impact of base erosion and profit shifting practices, which cause revenue losses for governments that hinder funding sustainability goals. Soft laws, such as the Global Reporting Initiative standards, can provide a transparent approach for companies to meet stakeholder demands by aligning tax practices with sustainability.

The second session, chaired by Clive Gawthorpe (UHY Hacker Young), addressed Substance in International Tax. The panel – Dennis Kellmann (Mazars), Charles Duro (Duro & Partners) and Mark Bevington (ADE Tax) – discussed the meaning of substance in BEPS Actions 3 and 5 the EU Unshell Directive; substance, abuse and tax avoidance; and the Pillar 2 substance-based exclusion. They concluded that authorities should not close one loophole and open another.

The final day session on Recent International Tax Cases, chaired by Jonathan Schwarz, featured Sarah Gabbai (McDermott Will & Emery), Reinout de Boer (Stibbe) and Philip Baker KC (Field Court Tax Chambers). Beneficial ownership under securities lending agreements in tax treaties was analysed by the Tax Court of Canada in *Husky Energy v R* and in a Dutch Supreme Court decision on 19 January 2024. Application of GAARs and the PPT to tax treaties in the *Husky Case* and the Privy Council appeal from Trinidad and Tobago in *Methanex v IRB* was followed by *Pepsico Inc v COT* on royalties in the Australia-US Treaty.

Ivan Gutierrez (EY) chaired the Current Issues in Transfer Pricing session with Amelia O'Beirne (A&L Goodbody), Jemma Dick (Clifford Chance) and Juan Osman Moreno (DLA Piper). The first Irish Tax Appeals Commission decision *59TACD2024* on the treatment of employee share options was followed by discussion on the English Court of Appeal decision in *Blackrock LLC5 v HMRC* on whether third party covenants can be imported into a related party financing transaction and the Australian Full Federal Court decision in *Singtel v CoT*-on implicit support.

Cory Hillier, International Monetary Fund Senior Counsel, concluded with a keynote speech on varied experiences of, and advice to, governments on Pillar 2 implementation.

The authors are International Tax Law LLM students at King's College London. Edward Balaba is a Chevening Scholar and Camille McFarlane is an Investment and Trade Promotions Consultant at JAMPRO.

Award

A winner's story: Tax Mentor of the Year

Jane MacKay was winner of the ATT sponsored Tax Mentor of the Year award at the 2024 Tolley's Taxation Awards.

Simon Groom, Jane MacKay and Victoria Coren Mitchell

Like many tax professionals, my career in tax wasn't planned. When I left university, one of my friends was training to be an auditor with a big four firm and gave me their firm's recruitment brochure. The section on tax was more appealing to me, so I decided to apply to be a tax trainee working in a corporate tax team.

At that stage, I didn't expect to stay in tax beyond qualification. But my career has included a secondment to an in-house tax team, work overseas and time working on a range of tax areas. The reason I've stayed in tax so long is the many opportunities to learn new skills in different environments along the way.

I've had a range of formal and informal mentors in my career. Looking back, I've been very lucky with many of the people I worked with. There are a couple of mentors from early in my career that particularly stand out. They were willing to invest their time with me. They explained the context and the tax technical issues in detail and why they mattered. They were demanding about the quality and presentation of my technical research and client work. They would also provide support and feedback. They insisted that I form a judgement and give advice, and if they didn't agree with my advice, they'd share their knowledge and experience by explaining why they'd come to a different conclusion.

I've adopted a similar approach of challenge and support to the people who now work with me. I enjoy seeing people I've mentored go on to become senior people in the tax field and it's been hugely rewarding to get the feedback from winning the award that this approach has had an impact on the careers of others working in tax.

As a mentor, I am acutely aware that career pathways for young tax professionals may be very different to those followed by today's tax leaders. The speed of change of technology in tax and how it will affect the tax profession is a hot topic now, and there's an expectation that Gen AI will very soon be able to produce a tax advisory report or tax computation more quickly and accurately than a human can.

However, most of the core skills that are required from a tax professional are the same now as when I started my career – having the ability to critically analyse complex data and information, and then to form a judgement and explain it well. Our clients are humans after all, and they'll still want human interaction with an adviser who is prepared to give advice on a tax technical matter in a way they can understand.

AI Webinar Series
What's all the fuss about AI?

There's been a lot of noise and distraction about artificial intelligence (AI) lately, particularly when ChatGPT burst onto the scene 18 months ago. But AI and machine learning have been around for decades. So why are we now paying more serious attention as it creeps into the professional services sphere – and moves beyond robotics, Alexa and Terminator movies?

These questions formed the basis of our first member AI webinar in May. I was delighted to welcome two expert panellists – Shan Sun, Tax Technology Lead at Deliveroo, and Frankie Jell, Tax Technology Consulting Partner at Deloitte – in a discussion to help set the scene with a brief potted history of AI and machine learning.

Frankie and Shan helped to explain some of the most commonly used terms and concepts, such as explainability, bias and large language models, with reference to some practical business examples for each. It was great to hear Frankie talk about what's happening in UK tax firms. Are firms using AI? If so, how and where? And what are the limitations? We noted that members in this webinar – from small, medium and large firms – are embracing AI, but 78% are at the discovery stage.

We covered the status of UK safeguards and potential for regulation, what the opportunities and limitations of AI in tax may be and the relevance and starting places for smaller practices. We highlighted the impact that Generative AI (GenAI) is having, and will continue to have, on the tax profession. Our discussion focused on:

- **The most valuable 'use cases':** Is AI best used for individual productivity (such as writing meeting notes) or for domain specific activities (such as transfer pricing, R&D and permanent establishments, where we see the highest risk).
- **Specific 'use cases':** What is the best technology to meet these? For example, should we use domain specific or generic AI tools, or other techniques, such as RAG? We also considered the issue of obsolescence in the future versus return on investment.
- **Culture and governance:** How you educate tax professionals, have trustworthy AI in these organisations and approach data security.
- **Readiness:** The preparedness of data and infrastructure that are necessary to adopt AI.

We had over 900 registrations for this first webinar in our series, with attendees from the Big Six, in-house tax advisers and sole practitioners. We also provided a short 'takeaway' document highlighting some of the terms and concepts we covered.

Frankie Jell, Helen Whiteman and Shan Sun

The discussion on AI in tax doesn't stop here. We continued at the CTA Address on 5 June, where Conrad Young CTA spoke about the impact of AI in tax. You can read more about that on page 53.

Our second AI webinar will be on 17 September, focusing specifically on ethics, followed by a third webinar on 20 November about workforce readiness. Register to attend these webinars at: www.tax.org.uk/ciot-ai-webinar-series. Recordings will be made available to registered members after the webinar.

You will have read about the CIOT Diploma in Tax Technology. This has just relaunched with more AI related content and updates, so I urge you to take a look and consider how this can equip you with new and complementary digital skills in an ever-increasing digital world. For further information, see www.tax.org.uk/ditt. I will keep you up to date with our activities in this area from time to time, and please do follow and engage with me on LinkedIn where I also post on a regular basis.

Helen Whiteman, Chief Executive, CIOT

Anti-Money Laundering
Review of CIOT and ATT 2024/25 AML supervision renewal

It is a legal requirement for firms and sole practitioners providing tax or accountancy services to be supervised for anti-money laundering (AML) and to meet the requirements of the Money Laundering Regulations (MLR). Approximately 830 CIOT firms and 600 ATT firms are currently registered with CIOT or ATT for supervision.

The AML renewal takes place in May each year and registered members are required to renew by the deadline of 31 May. Members receive an email request in early May and further email reminders prior to the deadline. It is advertised in *Tax Adviser*, social media and our websites. This year, we also sent a letter to members who were late in 2023/24, advising them of the importance of being on time in 2024/25.

Most members complied with the requirement to renew by 31 May but in 2024 a small number did not complete all requirements on time. Members should diarise the deadline, as non-receipt of the renewal email and related reminders is **not a valid excuse** for missing the deadline. Members should ensure that the correct email and postal addresses are listed on their portal account. They should also add aml@tax.org.uk to their contact lists to improve email deliverability. Other points for members to note include:

- Notification is required within 14 days of any changes to a business. Not responding to the renewal emails is **not** a notification of cessation.
- For new business owners, officers and managers that join a firm during the year, we require a criminality check certificate which must be forwarded to us within 14 days of their appointment. **Firms often forget to do this.**
- Care must be taken when completing the form to ensure it is accurate.

The Professional Standards team follow up with responses that may indicate non-compliance with the MLR. Please respond promptly to any correspondence received.

Members late in completing their 2024/25 renewal will have received a fixed fine of £350 to £500 (dependent on their 2023/24 compliance history) or will be referred to the Taxation Disciplinary Board (TDB). At the time of writing, 10 ATT and 18 CIOT members have been fined.

These disciplinary actions, along with other actions taken throughout the year, are part of the 'effective, proportionate and dissuasive disciplinary measures' that CIOT and ATT are required to undertake to enforce the AML requirements.

Members should review their submissions and contact us at aml@tax.org.uk for guidance and support if you are unclear about the requirements.

Obituary

Roy Leonard Jennings (1932–2024)

Many members of ATT, CIOT and the Worshipful Company of Tax Advisers will have been saddened by the news of Roy's death on 27 May after a short illness. He will be missed by his many friends and colleagues in the tax world.

Roy was a giant in the tax community as demonstrated by his stellar career and great achievements.

Roy served on the Council of the Institute of Taxation, as it was then, from 1975 to 1995, was President from 1987 to 1988 and represented the Institute on the General Assembly of the Confederation Fiscal Europe (CFE). He was involved a great deal with the CFE, serving on various committees, as well as chairing the European Tax Committee.

Whilst President of the Institute, Roy became aware that many candidates for membership, although successfully passing the Intermediate Examination, did not achieve membership. He was the driving force which set up the ATT, which was established on 30 August 1989. The Association gives tax technicians who do not aspire to become a member of CIOT a professional qualification. It is a measure of the wisdom of this decision that the ATT now has nearly 10,000 members. Roy was President of ATT from 1989 to 1992 and served on the Council through to 2000.

During his time on the ATT Council, Roy worked tirelessly for the Association and to ensure that its professionalism was open for all to see. One particular area with which he was very much involved was the setting up of the Taxation Disciplinary Board. He was the prime mover behind this which, when set up jointly with CIOT, left the position open for other professional bodies to join if they wished.

Roy's contribution to Council was such that even when he started to suggest it was time for him to stand aside, Council persuaded him to stay on 'for a while longer'. Roy was very astute and had a great gift of silently listening to the debates whilst the rest of Council came to what we thought was a sensible decision. He would then simply, and politely, say words to the effect of 'I understand what you have decided, and of course, you are perfectly entitled to reach that decision, but have you considered the effect of this on…' This highlighted the one small flaw in Council's reasoning which led to a reversal of the earlier decision. He was finally 'allowed' to retire in 2000.

The huge commitment Roy gave to both the Institute and Association was combined for many years with his very demanding position as a Partner with Arthur Andersen & Co, where he was responsible for the firm's tax practice throughout much of the world. One particular story which Roy used to love to tell about his time with Andersen's concerned a trip to East Africa to resolve some problems there. He arrived at a fairly modest airport, but was surprised to be greeted by many local dignitaries and be feted by them. It was several days before he realised that they had thought he was Roy Jenkins, the Home Secretary at the time.

This confusion prevailed, unfortunately, as the members of Council at the time of Roy's retirement decided to present Roy with a suitable gift. It was agreed that a silver salver, suitably engraved, would be appropriate. This was arranged through a contact the then President had with the PA to the Crown Jeweller. Andy Pickering collected the salver and brought it to the dinner where this was to be presented to Roy. Regrettably, it had been engraved 'Roy Jenkins' so had to be returned for amendment!

Having successfully set ATT on its way, Roy turned his attention to other things which he could do. Along with others, he was instrumental in forming the Guild of Tax Advisers. This has now become the Worshipful Company of Tax Advisers, a City Livery Company with a considerable reputation within the City for the good work it does in briefing the Lord Mayor in relation to the tax systems operating in the countries he is visiting. The Company has provided one Lord Mayor during its existence. The Guild was formed in December 1995, finally becoming a City Livery Company in January 2005 and obtained its Royal Charter granted by the Privy Council in July 2009.

The many people who served with Roy on the Council were immensely privileged to have been both Roy's colleagues and friends.

Roy is survived by his two daughters and two grandchildren.

Disciplinary reports

NOTIFICATION

Mr Adam Hart

At its hearing on 16 April 2024, the Disciplinary Tribunal of the Taxation Disciplinary Board determined that Mr Adam Hart of Guernsey, a member of the Chartered Institute of Taxation, was in breach of the Professional Rules and Practice Guidelines 2018 (as amended in 2021) (PRPG) as a consequence of his conviction on 22 August 2023 at Khon Kaen Provincial Court in Thailand following a guilty plea for the offence of negligence causing the death of another person.

As a result of the conviction, Mr Hart was sentenced on 27 September 2023 to one year and six months' imprisonment suspended for two years.

The tribunal found that Mr Hart was in breach of the following rules of the PRPG:

a) Rule 2.2.2 in that Mr Hart engaged in or was party to illegal activity; and
b) Rule 2.6.3 in that Mr Hart conducted himself in an unbefitting, unlawful and/or illegal manner which tends to bring discredit upon himself and/or may harm the standing of the profession and/or the CIOT.

As a result of these findings, the tribunal imposed a sanction of censure on Mr. Hart to be effective for a period of three years.

The tribunal also ordered that Mr Hart pay the TDB's costs in the sum of £2,493.

NOTIFICATION

Mr Alan Rodgers

At its hearing on 2 May 2024, the Disciplinary Tribunal of the Taxation Disciplinary Board determined that Mr Alan Rodgers of Weymouth, Dorset, a member of the Chartered Institute of Taxation, was in breach of the Professional Rules and Practice Guidelines 2018 (as amended in 2021) (PRPG) in:

- failing to provide information to his client's trustee in bankruptcy knowing that he was obligated to do so under section 312 and 366 of the Insolvency Act 1986; and
- failing to produce his organisation's complaints procedure following a request from his client's Trustee in Bankruptcy.

The tribunal found that Mr Rodgers was in breach of:

a) Rule 2.2.1, in that he knowingly failed to provide relevant information;

b) Rule 2.6.3, in that he had:
   1. performed his professional work or conducted his business relationships improperly, inefficiently, negligently or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to himself, or to the CIOT or to the tax profession; and/or
   2. conducted himself in an unbefitting, unlawful or illegal manner which tends to bring discredit upon a member and/or may harm the standing of the profession and/or the CIOT.

c) Rule 11.3.1, in that having received a request for information or documents from a third party, Mr Rodgers should have either obtained his client's permission or ensured that the request was legally enforceable and legitimately overrode client confidentiality.

The tribunal imposed a sanction of censure on Mr Rodgers to be effective for a period of five years. It also ordered that Mr Rodgers pay the TDB's costs in the sum of £2,733.

NOTIFICATION

Mr Dilip Patel

At its hearing on 27 March 2024, The Disciplinary Tribunal of The Taxation Disciplinary Board determined that Mr Dilip Patel of Reading, a member of the Chartered Institute of Taxation, was in breach of the Professional Rules and Practice Guidelines 2018 (as amended in 2021) (PRPG) in that:

a) he had been subject to an order of the Investigation Committee of ICAEW on 4 January 2023 that he be severely reprimanded, fined £10,000 and pay costs of £6,190: and

b) he had failed to notify the Head of Professional Standards at CIOT within two months of 4 January 2023 of the regulatory action referred to above having been upheld against him by another professional body to which he belonged.

The tribunal found that Mr Patel had conducted himself in an unbefitting manner which tends to bring discredit upon himself and may harm the standing of the profession and CIOT contrary to Rule 2.6.3 of the PRPG and had failed to notify the Head of Professional Standards at CIOT within two months contrary to Rule 2.14.2.

The Tribunal determined that the appropriate sanction was that Mr Patel be censured. It was ordered that Mr Patel pay the TDB's costs in the sum of £2,506.

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

A MEMBER'S VIEW

Pamela Chatterjee

Tax Manager, Glazers Chartered Accountants

This month's ATT member spotlight is on Pamela Chatterjee CTA, ATT, Tax Manager at Glazers Chartered Accountants.

How did you find out about a career in tax?

I started off working in audit and accounts at an accountancy firm (after graduating in civil engineering) and did not really enjoy it. However, whilst undertaking my chartered accountancy exams, I discovered that I really enjoyed studying for the tax exam. So after becoming a part-qualified ACA I took a sideways step into the tax world and haven't looked back.

Why is the ATT qualification important?

Studying for the qualification gives you a good foundational knowledge of the main taxes, and having these letters after your name provides reassurance to colleagues and clients that you can help them with their tax compliance queries. It doesn't hurt that it is a globally recognised qualification.

Why did you pursue a career in tax?

I thoroughly enjoyed learning the subject matter whilst training to be an accountant – so much so that I changed careers as I knew I would be much happier dealing with tax queries!

How would you describe yourself in three words?

Extrovert, enthusiastic and ebullient.

Who has influenced you in your career so far?

I have had the pleasure of working for three bosses who each had an almighty impact on my career trajectory. Firstly, Jill Springbett (currently tax partner at MGR Weston Kay), who was my first tax boss. She taught me the basics and was always very generous with her time. We keep in contact.

Secondly, the late Peter Legg who taught me inheritance tax planning skills and how to deal with all manner of challenging clients. He had so much joy for inheritance tax planning, it was contagious. I have many happy memories of working for him – he was an extremely sharp man with a wicked sense of humour.

Finally, Tim Keeley (tax consultant), who has taught me many tax planning skills and is always on hand to provide sound advice – for which I am eternally grateful. I keep in touch with him regularly too.

I also had a wonderful mentor when doing my CTA exams – Steven Pinhey (who now works for the ATT). He was always available to listen to my concerns and guide me, usually over a fabulous lunch. He did such a wonderful job as I am a first-time passer.

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

Do it! It is a very well-respected, universally renowned qualification and you will learn a lot. Plus you earn the privilege of having these three letters after your name.

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

We will always be required, especially whilst the tax legislation remains so convoluted and complex. Not everyone can make sense of the tax rules – hence the need for tax advisers who can interpret the tax legislation correctly to assist with all manner of financial transactions. I cannot see this need diminishing even with the advent of an AI world.

What advice would you give to your future self?

Don't bother with accountancy. Go straight into the tax world!

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

I used to be an aerial acrobatics student at Circus Space.

Contact

If you would like to take part in A member's view, please contact Melanie Dragu at: mdragu@ciot.org.uk

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Taxation Recruitment

GEORGIANA HEAD

Director

Tel: 0113 418 0767
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georgiana@ghrtax.com

Tax Consultant – full or part-time
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£40,000 to £55,000 + bonus

A CTA qualified tax professional is sought by a small independent firm which specialises in tax advisory work for other firms of accountants. In this role, you will deal with a wide variety of tax planning for owner-managers, their businesses and for HNW individuals. You will work with the Directors and will advise on a wide range of transactions, company reorganisations, share plans and property tax issues, etc. Would consider a recently qualified or someone about to complete CTA through to a more experienced manager. Your current role may be more compliance-based and you will be looking to switch to an entirely planning and advisory role. This role is largely office-based. **Call Georgiana Ref: 3467**

Tax Manager
Carlisle
£45,000 to £65,000

Our client is a friendly, successful local firm which offers tax advice, compliance and accounting services to an extensive client base of sole traders, partnerships and SME limited companies. This family run firm seeks an experienced tax professional to help manage their tax work. You may be a qualified (ATT, CTA or ex HMRC) or perhaps be qualified by experience. The role is varied and will involve all aspects of tax compliance for individuals and SME's. Office presence would be desirable although flexible working is available for this full time position. **Call Georgiana Ref: 3448**

Group Tax Manager – Part time
Salford
£70,000 to £80,000 FTE

Property Group seeks and experienced Tax Manager. Ideally, you will have a relevant qualification (CTA, ACA, ICAS ACCA). This role could be part-time 3 days or upwards. Day to day, this will include liaising with HMRC and managing all UK tax compliance obligations including corporation tax, VAT, stamp duty, employment tax and CIS reporting. Similarly, you will be actively involved in tax reporting and project work. Based in Salford Quays, you would ideally be in the office at least 1 day a week. Great salary and benefits package and interesting work with lots of variety. **Call Georgiana Ref: 3468**

Stamp Taxes, AD or Director
Countrywide
£excellent

Our client is the Real Estate Tax team of a Top 10 accountancy practice. This successful team grew topline by 30% in 2023 and is looking for a senior stamp taxes hire. Their client base is high profile and includes real estate funds, global institutional investors, REITs, private investors, the public sector including universities and charities. You will need corporate focused (rather than residential) stamp taxes experience. Full-time, part-time, flexible working, hybrid (minimum 1 day a week in the office) and job share options all available. You will be part of a high performing team with a great deal of tenure within the firm and the sector. There is a clear path to partnership for someone with strong corporate stamp taxes experience. Would consider a tax lawyer. **Call Georgiana Ref: 3469**

Tax Specialist
Berkhamsted
£40,000 to £50,000

Our client is an established tax consultancy which is the sister company to an investment management business. They seek a key hire, a tax specialist who is ideally ATT qualified and looking to progress. In this role, you will Join a small team to manage the day-to-day compliance for 200 HNW individuals – many of whom have residence and domicile issues. You will also deal with trust work including accounts, administration and trust tax work and get involved in a wide range of advisory work including residence and domicile advice, IHT and CGT advice. **Call Georgiana Ref: 4000**

Tax Senior
Manchester
£30,000 to £36,000

This is a really interesting opportunity for an ATT qualified tax professional which comes with genuine promotion prospects. As part of the succession plan for this department, our client seeks a Tax Senior with a 'can do' attitude who can work to a partner on a mix of compliance management and advisory work. The audit and accounts teams prepare the CT tax comps, but you will review them and also review personal tax returns prepared by an assistant. You will prepare some more complex returns yourself. The plan is for this to grow into a manager role and beyond. In this role, you will field queries from HMRC and will deal with a mixed tax allocation. You will have plenty of client contact. **Call Georgiana Ref:3458**

www.georgianaheadrecruitment.com

Hazlewoods

Various Tax Roles
Cheltenham and Staverton, Gloucestershire

At Hazlewoods, with over 100 years of excellence, we've built a legacy of trust and expertise. Our central Cheltenham office boasts a distinguished reputation, serving a diverse and extensive client base. As one of the UK's Top 35 independent Accountants and Business Advisers, we're committed to innovation, collaboration, and growth. Situated in the heart of Cheltenham, our central office boasts a renowned reputation, earned through serving a wide-ranging and diverse clientele.

As part of this growth we seek several key hires including;

Corporate Tax Manager or Senior Manager

You will manage the successful delivery of tax advice, ensuring technical excellence and a commercial approach. You will manage a client portfolio providing both corporate tax compliance, tax accounting and planning advice. A key element of the role is managing the tax team workload and development of more junior staff. You will also support tax partners on many and varied advisory projects including mergers and acquisitions and restructuring.

Legal Tax Team

The firm seeks several hires for a specialist team which deals with tax work for law firms. This includes a Partnership Tax Specialist, a Transaction Tax Specialist (Senior Manager level upwards) and corporate tax professionals from Tax Senior level and upwards. There are opportunities to manage client relationships in areas such as Personal Tax, Partnership Tax, Corporate Tax Advisory, Transaction work and Compliance Management. Hazlewoods are also interested in applications from more junior staff. We work on a hybrid basis, can offer full-time or part-time hours and have a generous salary and benefits package including profit share bonus.

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

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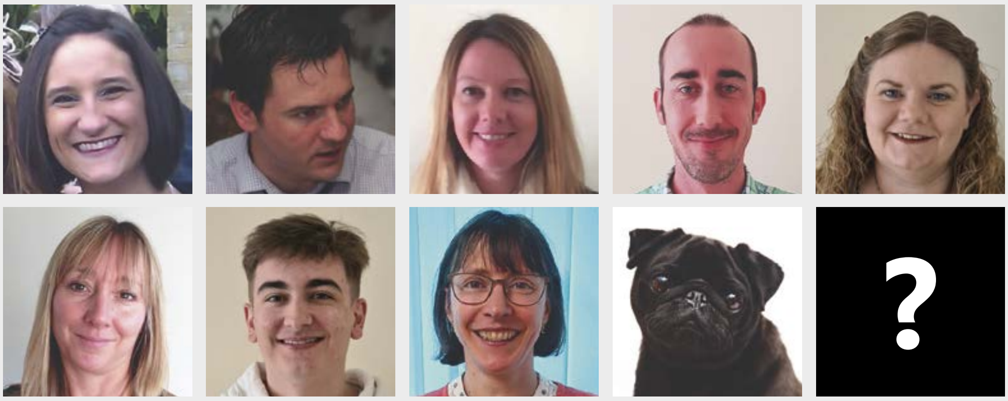

We are a small but dynamic practice based in Petersfield, providing very high-level tax advice to individuals and businesses in the UK and abroad, as well as being a go-to tax department for small accountancy practices, financial advisers and solicitors.

We are specifically looking for a **CTA qualified individual** with **report writing experience in advising on private client work, including IHT, estate planning and trusts**. A good legal knowledge would be desirable but not essential.

We are **also interested in hearing from CTA qualified or experienced individuals in international tax planning or corporate tax planning**. We have more than one position available. The work is interesting, different every day and you will have a team to back up the advice with compliance services.

Competitive salary for the local area, option of private medical insurance, **a friendly office** with a laid-back approach.

One other requirement: you must like dogs as there are two in the office!

To apply, contact **nickygander@gandertaxservices.co.uk**.

www.gandertaxservices.co.uk

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