October 2024

TAXADVISER

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Making Tax Digital for ITSA

How to make sure your clients and your practice are ready for the significant changes ahead

Private school fees

Many schools will soon have to register for VAT for the first time

The *PGMOL* judgment

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Income tax exemptions for qualifying schemes provided by employers

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HELEN WHITEMAN JANE ASHTON

Welcome
So many ways to get involved

Autumn has got off to a great start with a fantastic CIOT Cambridge conference, and already over 1,500 students registering for the CTA exams, over 1,200 for the ATT CTA Pathway and over 850 for the ATT exams – in total sitting well over 4,000 papers.

The new government has shown welcome intent for engaging with professional bodies. We have already joined the minister James Murray MP for meetings on various issues from our tax system priorities to the promised business tax roadmap. This was very topical, having featured the previous week as the subject of our latest IFS/CIOT debate, where we were joined by David Gauke, the former Treasury minister in charge of the last two business tax roadmaps in 2010 and 2016. We are looking forward to hearing about the government's plans for regulation – as well as the details of their first Budget!

With the Budget on 30 October, the ATT and CIOT technical officers have made a series of representations commenting on government policy and suggesting new policy for inclusion in the upcoming Budget. We are always keen to hear from members about practical instances where the legislation is not working as originally anticipated, or where changes to the tax system could make it easier to navigate. Please share your ideas with us at technical@ciot.org.uk and atttechnical@att.org.uk.

The CIOT has joined forces with the ICAEW's Tax Faculty to produce an evidence-based report with recommendations on HMRC's services – the main concern we continue to hear about from members. The six week data gathering exercise started on 9 September with over 30 firms volunteering to record their contact with HMRC via webchat and phone lines. We look forward to analysing the results and updating you on our progress later in the year, as well as hearing more about the government's plans for increased investment in HMRC.

There are lots of other ways in which we encourage members to get involved. On 3 October, ATT members can join a free online webinar on MTD to hear about the latest developments and what you need to do in practical terms to prepare for MTD.

On 9 October, ATT Fellows can join a free webinar where they can meet other ATT Fellows and join a range of discussion groups. The main session, 'The end of furnished holiday lets – what do you and your clients need to know?', will be presented by David Wright. It will be followed by discussion groups covering such diverse subjects as 'Employment status – the case for (and against) a statutory test', 'Practical tax problems – what issues are you seeing in 2024?' and 'The Budget – what are you and your clients worried about?' If you are an ATT member or Fellow, look out for your invitation and details of how to register.

In November, the ATT will again be working collaboratively with the AAT to present its Sharpen Your Tax skills series. Barry Jefferd and the ATT technical team will update us on recent topical tax changes, including plenty of practical and interactive examples. Keep an eye on the weekly newsletters for how to register.

The ATT has listened to employers who have asked that we do more to encourage and promote tax as a career option for students and career switchers. We have revised and relaunched our schools and careers resources packs under the 'Step into Tax' strapline, and now have new brochures, FAQs and videos where our members give their insights into their experiences of studying for the ATT and what the qualification has meant to them. Find out more at www.att.org.uk/stepintotax.

Finally, the ATT has hit a significant milestone by welcoming its 10,000th member. We are pleased that people choose the ATT and recognise it as the leading professional body for those providing UK tax compliance services.

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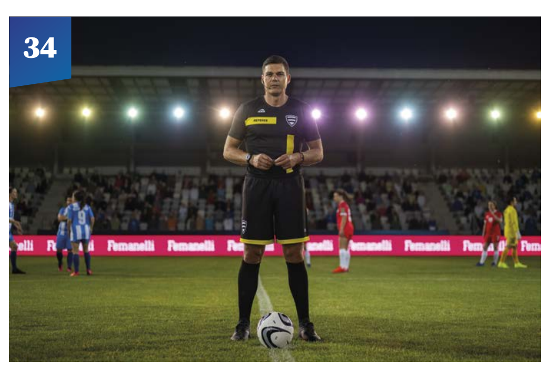
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PAUL APLIN
VICE PRESIDENT

A community

> My overriding impression as I left the conference was of that very real sense of community and common purpose.

When I was asked to write my first piece for *Tax Adviser* as Vice President, my inclination was either to reflect on the main tax changes I have seen since I qualified back in 1989 or to talk about some tax topics close to my heart. When I chaired the CIOT Autumn Residential Conference, last month, at Queens College Cambridge, however, I realised that it provided a far better subject.

The first thing that struck me when we assembled on the Friday afternoon was the buzz in the room. That is something you just don't get with a webinar.

As a regular speaker, I know how important the connection between speaker and audience is and how a face-to-face event can give you the opportunity to change your presentation on the spur of the moment. It also gives the audience a far more engaged way to ask questions and for ideas to be pursued, whether during the lecture, in the group working sessions, over coffee or over dinner.

Webinars have a vital place in the post-Covid world of flexible and remote working; they also offer the chance to watch on demand if you can't join live. But they cannot replicate the spontaneity of a face-to-face conference.

The second thing that struck me was what a diverse community we are in 2024, a real cross section of society with a common bond, the CTA. We have become a far more inclusive profession than we were in 1989 and that is something we should all take pride in.

Some things do not change. Within minutes of arriving, I met two old friends, Robert Jamieson and Peter Rayney. I first heard Robert speak in the early 1980s while I was still studying; his topic then was capital transfer tax and when I mentioned this to him, he not only recalled the lecture but the exact location (Exeter Golf and Country Club).

I first heard Peter lecture a few years later and the fact that these two gentle giants of our profession are still so actively involved with our institute and that they are so generous with their time and knowledge when talking to conference delegates says a great deal about our CTA community.

Rebecca Benneyworth reinforced that point by delivering a brilliant, practical and completely impromptu session on MTD after her scheduled lecture on Saturday.

The conference covered a wide range of topics, some in great technical depth (but peppered with practical insights), while others challenged our perceptions of the future of the profession.

On Saturday afternoon, I chaired a panel session on AI in tax. Matthew Vick, Head of Futures and Innovation at HMRC, shared a tax authority perspective on how AI is being used in chatbots to deal with taxpayer queries and in the identification of tax risk to better target enquiries. Esther Mallowah, Head of Tech Policy at ICAEW, looked at the importance of risk management, good governance and ethics and Kunal Nathwani talked about the issues surrounding automated decision making in tax in the context of his recent paper for the IFS Tax Law Review Committee.

There is no doubt that AI is going to change the way we do tax – it already has – and we have to ensure that we are not only aware of the issues it creates, but in a position to actively steer things in the right direction for the future. Our core skills as professionals will be as important as ever, using our technical knowledge to assess the accuracy of AI generated output, exercising judgement, professional scepticism and, of course, human empathy with clients.

My overriding impression as I left the conference was of that very real sense of community and common purpose. The feedback from delegates was overwhelmingly enthusiastic. One comment particularly struck me: 'As someone from a smaller firm, I didn't think it would be for me, but I really enjoyed it. I didn't know anyone when I arrived, but left having made new friends and I'll certainly be back next year.'

If you missed the conference this year, why not join us next year? Aside from the technical discussions, it was also – especially with Eddie the Eagle as our after-dinner speaker – great fun!

Paul Aplin
Vice President
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GRAHAM BATTY
DEPUTY PRESIDENT

Ten thousand strong

> Look out for our marketing campaign promoting tax as a career to school leavers, students, employers, finance people and people looking for a career change or return to work.

Back in 1969, the Woodstock Festival took place in New York State. If you do not know what this was, ask your granny – although, as everyone knows, 'If you can remember the sixties, you weren't there man!' Google it. Shortly afterwards, Crosby, Stills, Nash and Young recorded a hit song which included the line 'By the time we got to Woodstock we were half a million strong'.

ATT may not be quite half a million strong yet, but we are getting there – so a big welcome to Molly Eldridge, our ten thousandth member. Molly works for Kendall Wadley in the West Midlands, and you can read an interview with her elsewhere in this issue of *Tax Adviser*.

Molly can look forward to an interesting, varied and challenging career in tax. I have certainly found it so. Interesting, in the variety of problems that clients come to me with and the wonderful array of people I have met. Varied, in the number of different areas that have led me to gain a deep insight, including the need to treat OMBs and their owners as the same, and the issues around profit-related pay. My career has included technical writing, lecturing and presenting – and, of course, charities.

Tax has been a challenging area to work in as it changes all the time, not just because of the annual Budget (30 October is coming, could Halloween be a day early this year?) but also due to case law. I find it fascinating talking to tax lawyers, whether solicitors or counsel, as they approach things in a different way to someone like me whose initial training was as an accountant. If Molly ever gets the chance to help draft instructions to tax counsel or go to a conference with them, she should grab it with both hands.

With the way that tax constantly changes, our chosen career means that we have all committed to a life of constant learning and study. Almost none of us can maintain the up-to-date breadth of knowledge that Molly and our other new members who have just passed their exams currently have. That is why it is so important to keep up to date with your CPD. The branch network provides a large number of affordable CPD courses both in person and online, live and recorded, many of which are free. Another effective way is the annual AAT/ATT Sharpen your tax skills events. The 2024 running will take place on 20 November and 6 December. Barry Jefferd, ATT Vice President and Chair of the Examinations Steering Group, will be the main speaker, while our brilliant ATT Technical Officers will provide support. Booking is now open.

Molly has made a good decision to get her ATT qualification and follow a career in tax. Unfortunately, talking to employers highlights that not enough people are following her lead, meaning there are a lot of opportunities out there. The ATT are trying to encourage more people into tax. Look out for our marketing campaign promoting tax as a career to school leavers, students, employers, finance people and people looking for a career change or return to work. This is currently running on LinkedIn, X, Instagram, You Tube and TikTok. Please like it and forward a link to your friends and contacts.

I mentioned last month that we are at the start of a consultation process on the future regulation of the tax profession. We are yet to have a full response to our initial consultation response (which you can find on the website) or whether the new government has the appetite to proceed, given all their other priorities. However, we need to be prepared. The most favourable option seems to be requiring all agents who interact with HMRC to be members of and regulated by an approved professional body.

This is not, of course, a problem for ATT members but many very experienced agents running their own longstanding business are not members of ATT or another similar body. This is where you can help.

Our charitable objectives include enforcing standards of professional conduct amongst those providing tax services, and there is clearly a case for ATT to provide a home for these practitioners who are qualified by experience. They can, of course, take the ATT exams and qualify for membership in the traditional way. However, while we would not just simply let them in, there is a case, for a very limited period, for allowing some of them to become ATT members and subject to our supervision, provided they can prove their good character and technical competence in the area in which they work.

Please look out for and complete the 2024 members survey which includes some questions on this. You can also let us have your comments via the welcome page email address. Remember, the ATT is your association.

Until next month.

Graham Batty
ATT Deputy President
page@att.org.uk

10,000 Members and Growing Join Us Today!

Thank you to all our members who have helped us achieve our 10,000-member milestone. Congratulations for being part of an elite group of committed tax professionals. This is a proud moment in the history of ATT, and the wider tax profession.

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International tax update

Global complexities

We review the latest international tax developments, focusing on Pillar 1 and 2 and the EU.

by Bill Dodwell

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Work continues on taking forward Pillar 2 – the 15% minimum corporate tax agreed by over 135 jurisdictions as part of the OECD/G20 Inclusive Framework. Over 60 jurisdictions have implemented it, or are in the process of doing so.

On 19 September 2024, the OECD hosted the signing ceremony for the multilateral convention on the subject to tax rule (see tinyurl.com/59nvnxvf) – part of implementing the Pillar 2 minimum tax rate. The convention acts as a treaty protocol, unlike the BEPS multilateral convention. It allows countries to tax payments of interest and royalties and for services where the recipient country taxes them at less than 9%. It thus effectively overrides low or zero withholding rates included in many double tax treaties, to ensure that such payments bear tax at 9% in total. Nine countries have signed the convention, with a further ten indicating they will do so. 57 countries joined the ceremony, including the UK and the US.

The undertaxed profits rule

The focus is moving towards implementing the undertaxed profits rule, which is perhaps the most controversial element of Pillar 2. The first elements require countries to assess profits in their own jurisdiction and profits earned overseas by subsidiaries as an expanded controlled foreign companies' rule. However, the undertaxed profits rule requires that countries with a physical presence of a multinational may tax profits earned overseas by its affiliates, where the first two rules have not been applied.

It's a bit of cleverness to ensure that the 15% rule applies very broadly, even if the ultimate parent country and the activity country have not adopted it. The UK has announced that it will enact the rule in the next Finance Act, applying in 2025.

Republican members of the Ways and Means Committee in the US House of Representatives wrote to the OECD on 17 September to complain about the undertaxed profits rule agreed to by President Biden's administration (see tinyurl.com/5db4wphf). Their letter illustrates the complexity of US democracy, where only Congress has the power to enact tax legislation but the President and the administration manage foreign relations. The undertaxed profits rule, of course, doesn't require that the US enact anything – but it could apply where the US controlled foreign company rule (the GILTI) does not.

Digital taxes

The general feeling is that Pillar 1 is unlikely to go forward, since it relies upon a multilateral convention, which the US and China are highly unlikely to adopt. The result is that we are likely to see more digital services taxes levied on digital sales (and not digital profits). Canada has swung into action with its digital tax, applying it from 2022. Others will no doubt follow.

There is no common standard for digital taxes, with rates and coverage varying widely. The UK has a relatively narrow base and a low 2% rate but we have naturally seen some affected digital companies increase their prices to pass on the tax to their customers. It will always be naïve to assume that digital companies will simply accept the extra levy.

European Commission

The new European Commission for 2024-29 has finally been agreed, under President Ursula von der Leyen (see tinyurl.com/399xfxz4). The Commissioner responsible for taxation is Wopke Hoekstra, who includes it as part of a portfolio of Climate, Net Zero and Clean Growth. He is a former Dutch finance and foreign affairs minister. President von der Leyen has published a letter of instruction to Mr Hoekstra (tinyurl.com/2vdsvt7f).

The work on taxation covers energy taxation; a coherent framework for the EU's financial sector; the reform of corporate taxation and the current corporate tax package; and implementing Pillar 2 – as well as naturally fighting avoidance and fraud. There is also an interesting (and no doubt unachievable) target to reduce the administrative burden on companies by 25% – and by 35% for SMEs.

Former OECD head of tax Pascal Saint-Amans, a non-resident fellow at Bruegel, a European economic think tank, has advice for the new tax commissioner (see tinyurl.com/48mjatkc). He points out that EU-US conflict on tax policy is likely as the EU joins the UK in collecting tax on third country profits through the under taxed profits rule. Conflict is also likely on digital services taxes, in view of the likely failure of Pillar 1.

It's much easier for a former French Finance ministry official to point out that initiatives on EU direct taxation are unlikely to succeed, due to the reluctance of the member states to hand powers to the European Commission and the European Court of Justice. Instead, he recommends a discussion on a Code of Conduct on Individual Taxation, which could lead to reduced competition for high net worth individuals and digital nomads. Seeking to harmonise capital gains tax across the EU would be more productive than a global wealth tax. He also points out the diplomatic benefits of resetting the tax relationship with African countries, by reducing the scope of countries assessed for compliance with EU standards.

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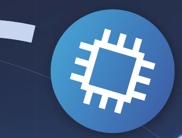

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Private school fees
A lesson for us all

We consider the new legislation about VAT being charged on private school fees from 1 January 2025 and how this will have wider implications than many advisers realise.

by Neil Warren

What changes are taking place on 1 January 2025?

Fees charged by private schools to their pupils are currently exempt from VAT under Value Added Tax Act (VATA) 1994 Sch 9 Group 6. The exemption also extends to 'closely related goods and services' supplied with education. From 1 January 2025, school fees and boarding charges will be standard rated. This is a massive change and means that most private schools will register for VAT for the first time because their taxable sales will exceed the annual registration sales threshold of £90,000.

The legislation will apply to the schooling of children who come within the UK's compulsory school ages, so nursery classes provided at private schools will not be affected. However, private sixth form colleges are also captured if they provide full-time education to pupils under 19. If a pupil is receiving funding due to special needs which state schools cannot handle, their funder 'will be compensated for the VAT they incur', which is good news for charitable organisations that aid children with special needs.

Note: The compulsory school age is five to 16 in England, Scotland and Wales and four to 16 in Northern Ireland.

Can schools register for VAT before 1 January 2025?

Yes. Schools with some taxable sales can register for VAT straight away on a voluntary basis. Those with no taxable sales can register from 30 October 2024 as an intending trader; i.e. an intention to make taxable sales from 1 January 2025. The October date will avoid the mass rush of schools seeking a date of 1 January 2025 – past history shows that HMRC does not cope well with a sudden influx of registrations caused by a change in the law.

The disadvantage of registering before 1 January 2025 is that output tax will be payable on sundry income received by the school during the extra months, although there will be some opportunity to claim more input tax.

Can schools issue invoices or receive payments before 1 January so that fees will still be exempt?

No. As expected, there is anti-forestalling legislation applying to payments after 28 July 2024 included in the law change, which prevents a school from creating a tax point before 1 January 2025 to avoid VAT in relation to school fees and boarding charges for terms starting on or after this date. This seems reasonable, otherwise there would be a big advantage for parents who can afford to pay a lump sum in advance for their child's education.

To cut to the chase, if an advance payment or invoice for school fees and boarding charges relates to actual supplies of education made by a school from 1 January 2025 and later, they will be subject to VAT. End of story.

What about other fees charged by schools? Will they be subject to VAT?

Supplies of 'closely related goods and services' linked to education will continue to be exempt; e.g. school meals, stationery, books and transport. The supplies must be for the direct use of pupils and necessary for delivering their education.

Key Points

What is the issue?
Private school fees and boarding charges will be subject to 20% VAT from 1 January 2025. This means that most schools will register for VAT for the first time and submit quarterly returns.

What does it mean for me?
Many other supplies made by schools will continue to be exempt from VAT. Each source of income needs to be considered separately to establish the correct liability. Organisations that hire facilities at schools will be charged VAT in many cases, so will also need to prepare for increased costs.

What can I take away?
Private schools will be partially exempt as far as input tax is concerned so must allocate their expenses between the usual three categories that apply for any partially exempt business. The article considers these categories and gives examples of how they will work in practice.

As well as charging VAT on the main school fees and boarding charges, private schools must also charge VAT on additional education provided to pupils, as well as fees for out of hours activities and school holiday clubs. Vocational training supplied by private schools will also be subject to VAT, defined as 'all training, retraining or work experience or volunteer work in some cases'.

The good news is that any fees that relate to before and after school childcare will be exempt because these supplies relate to a 'welfare service' (see VATA 1994 Sch 9 Group 7).

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PRIVATE SCHOOL: INCOME FROM HIRING OUT SWIMMING POOL

Harowton School hires out its swimming pool on a weekly basis to two entities:

- a local swimming club, organised by volunteers; and
- a commercial business that gives swimming lessons to adults.

The hiring out of sporting facilities, including swimming pools, is subject to VAT but there is scope for the fees paid by the swimming club to be exempt from VAT under the 'series of lets' rules; i.e. they must hire the pool for a minimum of ten lets at intervals of between one and 14 days (see VAT Notice 742 s 5). However, all hirings to a commercial business will be standard rated.

PRIVATE SCHOOL: STATIONERY PURCHASES AND ACCOUNTANCY FEES

Harowton School purchased stationery in January 2025, which will only be used by pupils for the spring term. As the school fees will be taxable for this term, the school can claim input tax on these goods on its first return. The expenditure wholly relates to taxable supplies, so there is no partial exemption restriction.

Arvil Accountants produced a business plan in February 2025 about a proposed extension to the school's gymnasium. However, the gym is used for both taxable and exempt supplies, so the input tax claimed will be apportioned according to the school's relevant partial exemption method.

What are the implications for businesses and organisations that hire facilities at schools?

I had a question recently about a local swimming club that hires the pool at a private school on a weekly basis throughout the year. The treasurer asked if they will be charged VAT on their hire fees after 1 January 2025. The initial answer to this question is 'yes'. The hire of sporting facilities is standard rated by virtue of VATA 1994 Sch 9 Group 1 item (m) but if a club or association lets the facilities regularly, they can still be exempt from VAT. See ***Private school: income from hiring out swimming pool***.

The challenge for schools will be to review each source of income they receive and establish the VAT liability in each case. For example, the hiring out of rooms for meetings will usually be exempt from VAT as a land supply but providing catering services for a party will be standard rated.

What about input tax claims?

The commercial reality is that most, if not all, schools will have both taxable and exempt sales after 1 January 2025 so will need to get to grips with the complexities of partial exemption. They will need to allocate all expenses into one of three categories:

- directly relate to taxable sales: all input tax can be claimed, subject to usual rules;
- directly relate to exempt sales: no input tax can be claimed; and
- mixed costs and general overheads: some input tax can be claimed, based on the standard method of partial exemption based on income splits between taxable and exempt sales.

See ***Private school: stationery purchases and accountancy fees.***

A decision for schools and their advisers will be to consider if a partial exemption special method might be worthwhile, which is any method other than the standard method. A special method will be appropriate if the standard method 'breaks down'; i.e. it gives a distortive result in terms of input tax recovery.

The adoption of a special method requires HMRC's agreement and certification by the applicant that it gives a fair and reasonable result.

What about pre-registration expenses and also the capital goods scheme?

Let's assume that a school will register for VAT on 1 January 2025. There will be scope to claim some input tax on its first VAT return on pre-registration expenses:

- **Goods:** Stock or assets must still be owned on the date of registration and have been purchased by the school within the last four years.
- **Services:** Only services purchased in the six month period before registration will be eligible for a potential claim.

However, according to HMRC's VAT Input Tax manual VIT32000, input tax can only be claimed on these expenses to the extent that, at the time the tax was *incurred*, the relevant goods and services were used, or intended to be used, to make taxable supplies. In reality, most of the expenditure will have been purchased at a time when schools made *exempt* rather than taxable sales, and the expenditure is therefore linked to these supplies.

To quote from the manual: 'The amount of tax that can be recovered is the amount that would have been deductible had the business been registered at the time the tax was incurred.' However, HMRC has confirmed that it will include

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details about pre-registration input tax in guidance that will soon be issued for schools, so it might use the discretionary powers under Reg 111 of Value Added Tax Regulations 1995 SI 1995/2518 to allow a partial claim on these expenses.

The capital goods scheme should be considered by all schools. There may be scope to claim some input tax with the annual adjustments that are made over ten years for land and building projects costing at least £250,000 excluding VAT; and over five years for computer expenditure exceeding £50,000 excluding VAT. The main opportunity for an input tax windfall is likely to relate to building projects, so the starting point is for a school to identify projects in the last ten years where a potential claim could be made.

Will schools increase their prices by 20% or absorb some of the VAT?

Some schools have hinted that they will be able to absorb all of the extra tax charge and not increase fees charged to parents but this seems very unlikely. The Treasury has commented that schools can 'take steps to minimise fee increases' – presumably because of the opportunity to claim input tax – but this is unlikely to be more than 5%.

Many schools have identified opportunities to increase their revenue – for example, by increasing the hiring of facilities to external users – and some intend to transform themselves into wedding venues. The priority is for schools to use the time between now and 1 January to get ready for their dramatic entry into the shark-infested waters of the nation's favourite tax. As the pundits say... if you fail to plan, you plan to fail.

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Employer provided nursery care

Material financial responsibility

We examine when employer supported workplace nurseries qualify for tax exemption.

by Susan Ball

In recent years, there has been a growing interest in schemes that offer employer provided nursery places through arrangements between employers, nurseries, a scheme provider and employees (who are also parents). These arrangements claim to provide nursery childcare free from tax and NICs by utilising a tax exemption. However, the exemption for employer provided childcare, within Income Tax (Earnings and Pensions) Act (ITEPA) 2003 s 318, includes several qualifying conditions that must be met for the exemption to apply.

This growing interest perhaps arises because the costs of childcare have increased and the Tax-Free Childcare scheme introduced from 6 April 2017 does not provide sufficient help for working parents. Meanwhile, other established and well used childcare schemes (the employer-contracted scheme and the childcare vouchers scheme) were closed to new entrants from 4 October 2018 by the then Chief Secretary to the Treasury Elizabeth Truss.

In 2022, HMRC provided updated guidance on commercially marketed

Key Points

What is the issue?
In August 2024, HMRC provided updated guidance on commercially marketed workplace nursery schemes and the income tax exemption available for qualifying schemes. However, HMRC remains concerned that many schemes do not qualify for the exemption and has issued further detailed guidance.

What does it mean for me?
HMRC's updated guidance states that to meet the partnership requirements employers must assume 'material financial responsibility'. This goes beyond merely paying for places at a commercial nursery and making a notional contribution to fixed costs.

What can I take away?
Employers with an existing scheme in place should consider whether they urgently need to review them, if they haven't already, against the exemption criteria and most up to date HMRC guidance to see if their scheme meets the requirements for claiming the tax exemption.

workplace nursery schemes and the income tax exemption available for qualifying schemes in its manuals (updated in August 2024 – see tinyurl.com/ed3rtf3h). However, HMRC remains concerned that many schemes do not qualify for the exemption and has issued further detailed guidance in its July 2024 Agent Update issue 121 (see tinyurl.com/9x65r8u4).

What are the exemption criteria for workplace nurseries?

Section 318 of ITEPA 2003 provides an exemption from tax for certain employer-provided childcare, for a qualifying child under the age of 16, where all the qualifying conditions below are met:

- **Condition A:** The child is a child or stepchild that the employee either lives with or for whom the employee has parental responsibility.
- **Condition B:** The premises on which the care is provided must meet registration requirements (as defined in the legislation) and must not be used wholly or mainly as a private dwelling.
- **Condition C:** The premises on which the care is provided are made available by the scheme employer alone, or the partnership requirements are met.
- **Condition D:** The arrangement under which care is provided must be open to all employees generally or, if the scheme employer has premises at more than one location, the scheme must be open to employees generally at the particular location at which the scheme operates. Nurseries may also be available to other workers on the site, such as contractors or employees of other employers based at the premises.

Further information on the above conditions can be found in HMRC's Employment Income Manual at EIM22002 (Condition A), EIM22003 (Condition B), EIM22004 (Condition C) and EIM22005 (Condition D).

Where a workplace nursery scheme is provided under a salary sacrifice arrangement and qualifies for the exemption at ITEPA 2003 s 318, it is also specifically excluded from the optional remuneration arrangement rules (the 'OpRA' rules) in ITEPA 2003 ss 69A and 69B. In addition, under the Social Security Contributions and Benefits Act (SSCBA) 1992 s 10(1)(a), there will be no Class 1A NICs liability where the tax exemption applies. This is because a Class 1A NICs liability can only arise where the benefit provided to the employee is general earnings on which the earner is chargeable to income tax under ITEPA 2003.

However, if the benefit is taxable as earnings within ITEPA 2003 s 62, the question of exemption under ITEPA 2003 s 318 does not arise.

In general, s 62 will apply to a benefit in kind if it is 'money's worth'. This includes anything of direct monetary value to the employee. Examples of this include arrangements where:

- the contract for a nursery place is between the employee and the nursery, so that when the employer pays the nursery they are satisfying the employee's pecuniary liability (see EIM00580); and
- the employee can at any time give up a nursery place and revert to their original salary, a principle established in the case of *Heaton v Bell* [1969] 46 TC 211 (see EIM00570).

The major scheme promoters generally manage to avoid these situations, but the points are worth bearing in mind if you are dealing with a one-off arrangement.

Commercially marketed schemes

Many of the commercially marketed schemes which HMRC believes fail to comply with the statutory provisions follow a similar model. They may have some or all of the following features or variants of them:

- The employee enters into a salary sacrifice, giving up an amount of pay equal to the cost of the nursery place which is to be provided.
- The employer pays for a nursery place for the employee's child, which may be at a nursery run by the scheme promoter or at an independent nursery, depending on the scheme.
- In addition to paying the nursery fee, the employer pays the nursery an additional sum, typically £100 per month per place.
- The employer appoints the scheme promoter to act as their 'agent' at meetings of the nursery management committee, though in practice the employer has no real say at all in the way the nursery is run.

It is generally Condition C that is problematic for such arrangements.

What are the requirements of Condition C?

HMRC's concern is primarily around employers entering into partnership arrangements with commercial nursery providers where the parties do not engage in such a way that the employer is wholly or partly responsible for financing and managing the provision of care.

Condition C allows employers who do not make a workplace nursery available on their own premises to jointly run a childcare facility with other employers. The partnership requirements must then be met for the exemption to apply, the conditions being that:

- the employer must be included in the arrangements for providing the care;
- the premises where the care is provided must be on one of the employer's sites or on the premises of a commercial childcare provider involved in the partnership; and
- the employer must, at least in part, contribute to both the financial and management elements of the care provision.

There is little case law in this area. In *Lotus Group Ltd v HMRC* (TC/2010/5155), the First-tier Tribunal considered the following significant facts and ruled in favour of the taxpayer:

- The employer had committed to maintaining, improving and redecorating the nursery in question, as well as paying an annual fee of £500 per child (in addition to the ongoing fees for the provision of a childcare place), thereby demonstrating a clear financial commitment, rather than a mere 'token gesture' as described in HMRC's guidance.
- A third-party agent, rather than the employee, met with the nursery on behalf of the employer.

However, these facts limit the ruling's applicability to many of the current schemes. Specifically, the employer was directly funding the nursery places, rather than merely passing on funds collected from employees through salary sacrifice. Additionally, the management circumstances differ, highlighting an employer-focused involvement and financial commitment to the nursery, as opposed to the employee-focused approach seen in many current marketed schemes.

Material financial responsibility

HMRC's updated guidance states that, to meet the partnership requirements, employers must assume 'material financial responsibility'. This goes beyond merely paying for places at a commercial nursery and making a notional contribution to fixed costs. It involves accepting the financial risks associated with operating a nursery, including sharing responsibility for any potential losses.

There must be a financial responsibility by the employer to fund the childcare facility, such as a significant contribution of capital or a specific undertaking to make good losses (where

fees fall short of costs and contractor's profits).

HMRC also asserts that for employers to effectively manage the provision of childcare, they must have significant input and influence over management decisions and the way childcare is delivered. This could involve overseeing the performance of childcare staff and determining the conditions under which care is provided. Simply being consulted occasionally by the nursery provider on broad policies or having infrequent calls for general updates does not suffice.

If an employee is appointed to the nursery's management board, HMRC expects clear evidence that the employee is fully empowered to act on behalf of their employer, actively does so, and is involved in managing the delivery of childcare as described above.

HMRC is aware that some workplace nursery scheme operators have advertised their services as having been approved by HMRC. It says that it 'will never give approval for a business to advertise that a scheme is tax compliant'. It is the responsibility of the employer to make sure they only claim the tax exemption for any qualifying scheme they join, and employers are required to file forms P11D or payroll the benefit to employees if the exemption does not apply.

However, it should be remembered that HMRC guidance does not have the same standing as the underlying legislation; it is only its view of the law and has yet to be really tested through the courts. With that in mind, the question for employers is: are they comfortable that they know the correct tax treatment of their arrangements? Furthermore, do they understand the implications of getting it wrong and do they want to take that risk?

What should employers with such arrangements do now?

Employers with an existing scheme in place should consider whether they urgently need to review them, if they haven't already, against the exemption criteria and most up to date HMRC guidance to see if their scheme meets the requirements for claiming the tax exemption.

Some arrangements will qualify for the exemption. If there is any ambiguity regarding eligibility in the first instance, the employer might want to discuss this with the workplace nursery provider to obtain their thoughts, though ultimately if it does not qualify it's the employer that will suffer the consequences of a challenge by HMRC.

If the conditions of the workplace nursery exemption aren't met, generally the benefit should be reported to HMRC on an employee's Form P11D or through the payroll (if payrolling benefits has been agreed) and subject to Class 1A NIC.

If the exemption has been incorrectly claimed for earlier tax years, employers should consider making a voluntary disclosure to HMRC and settling the outstanding liabilities arising.

Where an arrangement has been treated as exempt in the past, but it is concluded that the exemption does not apply, HMRC can go back six tax years to collect any underpaid Class 1A NICs and charge interest on late payment and penalties. HMRC may also invite the employer to settle any underpaid tax due from employees on a grossed-up basis, normally for the previous four tax years.

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The *Wardle* case
When does trade commence?

We consider the importance for tax purposes of identifying the commencement of a business or trade, as highlighted by the *Wardle* case.

by Chris Lallemand

Identifying the commencement of a business or trade depends on the particular facts and circumstances and has a number of tax consequences. It is reasonable to expect that a business or trade commences when the entity begins operational activities. While this might not require sales to be made at that point, it would generally require some preparation for dealing with customers (though an activity which merely reviews customer possibilities or tries to justify going into trade is insufficient).

There have been a few recent cases in which the date of commencement of a trade or business has been considered. This article discusses the importance for tax purposes of identifying commencement, using the recent First-tier Tribunal decision in *Wardle v HMRC* [2024] UKFTT 543 (TC). This case held that the commencement of a trade of power generation from waste occurred before it was possible to make a sale.

Date of commencement and the tax implications

The first issue is to establish why the commencement of business or trade is an important issue for tax.

The commencement of business or trade is the start of an accounting period and triggers the obligation to register for tax (Corporation Tax Act (CTA) 2009 s 9 and Finance Act 1998 Sch 18 para 2). A business must be undertaking a qualifying activity (such as a trade or property business) before it can claim capital allowances and other reliefs, for example, land remediation relief (Capital Allowances Act 2001 s 11 and CTA 2009 s 1147).

For corporation tax, loan relationship debits that are incurred before a trade commences are treated as non-trade debits. However, an election can be made to treat them as trading debits on the first day of trading (CTA 2009 s 330) or undertaking a UK property business (CTA 2009 s 330ZA)). In a group context, these debits will only be available for group relief if the relevant companies are 'in business', as group relief is available by reference to an accounting period.

For corporation tax, the commencement of an investment business may mean that there are deductible management expenses available for group relief (CTA 2010 ss 99 and 188BB).

It is possible to claim pre-trading expenses as incurred on the first day of trade if they were incurred within seven years of that day (CTA 2009 s 61 and Income Tax (Trading and Other Income) Act 2005 s 57).

If a foreign business's activity in the UK amounts to a trade, it may have a UK permanent establishment and UK tax filing and payment obligations, notwithstanding that it owns no UK property as capital (CTA 2009 s 5), though the definition of a UK permanent establishment may be modified by the application of a double tax treaty. This is to be distinguished from preparing to trade.

Whether an activity is a business may determine where and how its income is taxed (as highlighted in the recent *GE Financial Investments* case [2024] EWCA Civ 797 at the Court of Appeal).

Whether an activity amounts to a trade can be important for determining whether certain reliefs are due; for example, a substantial shareholdings exemption (Taxation of Chargeable Gains Act (TCGA) 1992 Sch 7AC) or business asset disposal relief (TCGA 1992 ss 169H-169SA and Sch 7ZA).

Key Points

What is the issue?
Identifying the commencement of a business or trade depends on the particular facts and circumstances and has a number of tax consequences. The *Wardle* case illustrates that trade can commence before the business is entitled to generate income.

What does it mean for me?
Identifying the correct date of commencement of a business or trade will assist in advising on tax compliance obligations, as well as available reliefs and claims and even jurisdiction of taxation.

What can I take away?
The *Wardle* case is a useful illustration of the principles involved in identifying when a trade has commenced. It may be helpful to consider how the principles could be applied in identifying the commencement of a trade or a property business, bearing in mind that in general trade principles are applied in determining taxable property business profits.

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There may be an impact on associate company status if a company does not carry on a business activity (CTA 2010 s 18E(3) and *Jowett (Inspector of Taxes) v O'Neill and Brennan Construction Ltd* [1998] STC 482 Ch).

The *Wardle* case

The First-tier Tribunal decision in *Wardle* held that the waste to energy businesses met the trading requirement for what was, at the time, entrepreneurs' relief for the required two-year period. This was despite the fact that, at the start of the two year period before the sale, the plant to be used for the business had not passed its commissioning tests and was not at that time in a position to generate income from sales of electricity.

Assessing whether an activity amounts to a trade or business at a particular point in time is a fact-sensitive exercise. The *Wardle* case is a useful reminder of the factors to consider in relation to a trade, particularly on larger infrastructure projects where it may be some time before a sale is made.

It is helpful to summarise the facts and timeline in this case:

- In June 2015, a limited liability partnership was formed as a special purpose vehicle for the project. The external funders' investment committee approved funding in August 2015 and the limited liability partnership entered into unsecured loan arrangements with the funder.
- In August 2015, the limited liability partnership entered into a number of contracts for construction works.
- A power purchase agreement was signed in August 2015 and was subject to a number of conditions being met. A power purchase agreement usually refers to a long-term electricity supply agreement between two parties: a power producer and a customer. It can include conditions such as the amount of electricity to be supplied, the negotiated prices and penalties for non-compliance.
- In or around May 2016, the limited liability partnership issued the Commencement Notice under the operation and maintenance contract, at which point the contractor could commence work and invoicing for that work. At this time, the plant was due to be constructed in 2017 but this was delayed.
- By December 2017, the plant could import electricity under the power purchase agreement. However, on 28 February 2018, condition precedent 2.1(a) of the power purchase agreement was not satisfied and the plant was neither generating electricity nor receiving feedstock commercially.
- On 31 March 2018, the commissioning tests and trial runs were passed, with commissioning certified as complete by the installation contractor.
- In June 2019, electricity was generated commercially for the first time. Specifically, 808.409 MWh were exported to the Grid Company, representing revenue of £36,290.18.
- The limited liability partnership's Annual Report and Financial Statements for the period to 31 December 2019 ('2019 Accounts') record turnover of £173,528, a total loss of £11,177,548, and that the limited liability partnership had drawn down £89,240,773 under a loan arrangement.

An interest in the limited liability partnership was sold on 28 February 2020 and the question to be determined was whether the business had been trading for at least two years prior to that.

Assessing whether trade had commenced

The main basis used for assessing whether the trade had commenced were the tests commencement identified in the Special Commissioners' case of *Mansell v HMRC* [2006] UKSPC 551 (also mentioned in HMRC's Business Manual at BIM80505).

The *Mansell* case considered whether an individual had commenced a trade before he signed heads of terms for options over interests in land suitable for a motorway service station. This case was cited in the High Court case of *Tower MCashback* [2008] EWHC 2387 (Ch) as a useful demonstration of identifying when operational activities had begun. To reach that determination three factors had to be considered.

As applied in the case of *Wardle* for assessment by February 2018, these were:

1. Was there a specific concept of the type of activity to be carried on?
All parties were agreed that this was present – the construction and operation of a power plant burning wood waste where a third of the revenue would be derived from production and sale of electricity, and two-thirds from the sale of Renewable Obligation Certificates.

2. Has a trade been set up?
The acts of 'setting up' are not commencing or carrying on the trade. Setting up trade will include: setting up a business structure to undertake the essential preliminaries; getting ready to face your customers; purchasing plant; and organising the decision-making structures, management and financing. Depending on the trade, more or less than this may be required before it is set up.

This is a fact-sensitive analysis and what is required to set up one business to the requisite level will vary (potentially greatly) from what is required to set up another.

In the case of *Wardle*, the First-tier Tribunal considered the trade to be sufficiently set up, despite not being 100% complete. This was based on a case where a gambling business was held to be set up, even though it did not have a gambling licence (*Hunt* [2019] UKFTT 515 (TC), and two cases concerning whether film businesses had been set up despite not yet having received approval from the department of culture, media and sport (*Halcyon Films LLP* [2008] UKSPC 696 and *Micro Fusion* [2008] UKSPC 695).

3. Was there operational activity?
HMRC had conceded that if the second step was satisfied then the power purchase agreement would satisfy the third step, as the power purchase agreement was operational activity, being dealings with a third party that were immediately and directly related to the supplies to be made, which it is hoped will

give rise to expected profit and which involved the limited liability partnership putting money at risk. For the avoidance of doubt, the First-tier Tribunal agreed that the power purchase agreement constituted operational activity.

In conclusion

While the First-tier Tribunal did not comment on a specific date for commencement, it is clear that the findings in this case were that trade commenced more than a year before a sale was actually made.

While the *Wardle* case looks specifically at the date of commencement of trade, the date of commencement of a property business and an investment business are also of interest. You may have seen that the CIOT has made a proactive submission attempting to get HMRC to give greater clarity about its views in this area (see tinyurl.com/4m73jwrr). While discussions on this are ongoing, it may be helpful to make reference to comments on business activity in two other recent cases.

In *Centrica Overseas Holdings Ltd* [2024] UKSC 25, the House of Lords commented that: 'It is true that Parliament chose to calculate the profits of a property business in the same way as the profits of a trade and therefore incorporated a series of trading provisions by reference in [CTA 2009] s 210(2)' (para 60).

The HMRC guidance at Property Income Manual PIM2505 gives HMRC's view that a property rental business usually starts when letting first commences. New large rental premises often require significant planning, operational and finance activity before the first rent can be received. CTA 2009 s 207 identifies a UK property business as one which is carried on for generating income from land. It does not specify that the rental income has to be received before there is a business. Indeed, the *Wardle* case may indicate that such a business may have started some time before the first rental is received or before the first letting commences.

One might think that a company or limited liability partnership has to have a business purpose from its constitution. However, in the case of *GE Financial Investments*, it is worth bearing in mind the Court of Appeal comments on the earlier First-tier Tribunal finding that there was no business. It considered that the limited partnership in which the GE UK company had an interest:

> '...acted merely as a passive holding vehicle for some loan receivables. Their size makes no difference: the test is a qualitative one. The board of GEFI Inc, as the limited partnership's general partner, did not make strategic decisions and in fact had "very little involvement".'

Such an entity undertaking activity with significant assets can still be held to be 'not in business'.

The date of commencement of business or trade can impact on many tax areas and may require detailed review to properly determine how tax applies in any situation.

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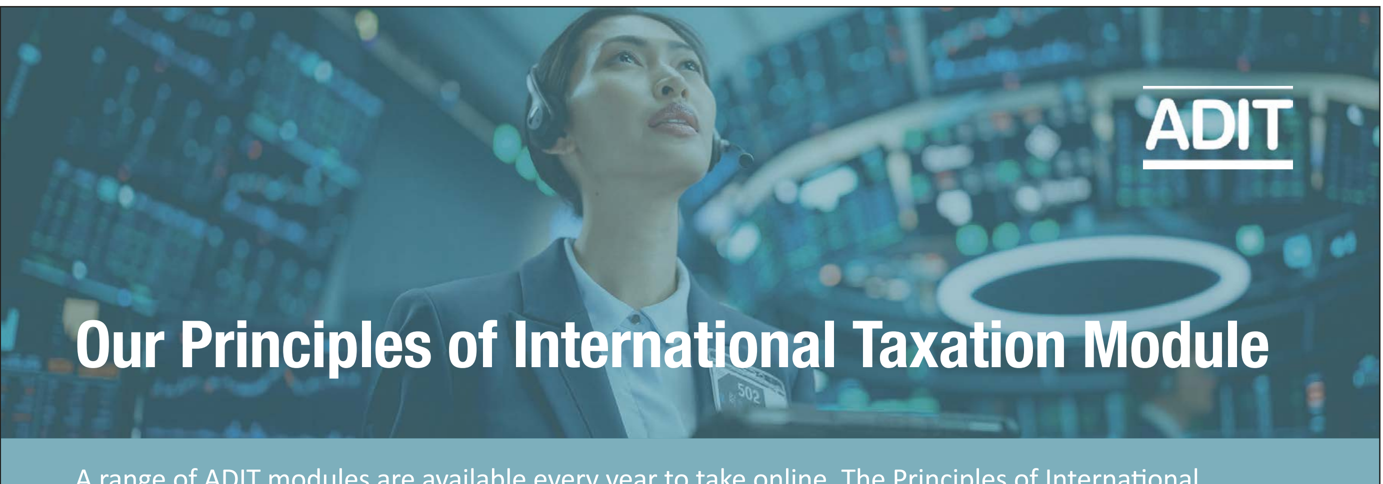

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The *Centrica* case
Timing isn't everything

Management expenses incurred before a firm decision is taken to proceed with a particular transaction may be capital in nature, and therefore not tax-deductible.

by Tim Douglas

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Key Points

What is the issue?
The important Supreme Court decision in *Centrica Overseas Holdings Limited v HMRC* addresses the deductibility of expenses incurred by a company with investment business in connection with the proposed disposal of an investment.

What does it mean for me?
The decision puts beyond doubt that such expenses may be non-deductible by virtue of being capital in nature, even where they fall to be regarded under pre-existing case law as expenses of management. Whilst the case considered costs of disposal, the same principles apply in the context of an acquisition.

What can I take away?
Until recently, it was generally thought that transaction-related expenses should, if incurred before a firm decision is taken to proceed with a specific transaction on specific terms, usually be deductible expenses of management. The Supreme Court has now confirmed that a more nuanced approach is required, to establish whether the expenditure is capital or revenue in nature, using the same principles that apply to trading businesses.

A 2022 decision of the Court of Appeal put companies with investment business, including ultimate and intermediate holding companies in trading groups, on notice that a legislative amendment in 2004 may have had consequences that were not previously widely recognised.

Unanimously confirming that decision in *Centrica Overseas Holdings Limited v HMRC* [2024] UKSC 25, the Supreme Court has made clear that expenses incurred by such companies should be analysed to determine whether they are capital or revenue in nature, applying the same principles that would

be applied to expenses incurred by a trading company. Any costs that belong in the capital bucket are not deductible as expenses of management – and in cases where the substantial shareholding exemption applies or is expected to apply to the disposal of the underlying asset, this will generally mean that no tax relief is available at all.

Factual background

Centrica Overseas Holdings Limited, an intermediate holding company in the Centrica plc group, held an investment in an overseas sub-group, Oxxio. A strategic decision to sell the Oxxio business was taken in the summer of 2009, but a transaction with a specific buyer (Eneco) was not approved by the company's board until 22 February 2011. That transaction completed in March 2011.

Various expenditure was incurred in connection with the disposal, including:

- corporate finance fees payable to Deutsche Bank for services in relation to the disposal of Oxxio, including identifying and evaluating potential purchasers, managing the disposal process and providing advice in relation to potential transaction structures (e.g. share or asset sale);
- vendor due diligence fees payable to PwC; and
- legal fees payable to De Brauw, a Dutch law firm, for legal advice on the sale, covering the employment, competition, tax and contract law implications, as well as drafting a sale and purchase agreement and preparing a virtual data room.

Centrica Overseas Holdings Limited sought a deduction for the above expenditure, referred to in the litigation as the 'Disputed Expenditure', on a time apportioned basis. In its tax return, it recognised deductible expenses of management for a proportion of the Disputed Expenditure calculated as:

- the number of days between the parties being engaged and the 22 February 2011 decision to sell to Eneco; divided by
- the total number of days between the parties being engaged and the transaction completing.

No deduction was sought for the element deemed to accrue between the date the board decided to proceed with the Eneco transaction and the date the transaction completed. This treatment was consistent with Centrica's understanding of the relevant provisions of the Corporation Tax Act (CTA) 2009, based on the precedent case law at the time.

Legal background

Prior to the *Centrica* case, the key authorities considering the deductibility of expenses incurred by a company with investment business were *Sun Life Assurance Society v Davidson (Inspector of Taxes)* [1958] AC 184 (*Sun Life*) and *Atkinson (Inspector of Taxes) v Camas plc* [2004] EWCA Civ 541 (*Camas*).

Sun Life concerned brokerage fees and stamp duty incurred on the purchase of certain investments, and established that the cost of acquiring an investment (including any costs that cannot be severed from such an acquisition) is not an expense of management.

Camas concerned the application of this principle in the context of an aborted transaction – the taxpayer incurred financial, legal and other advisory costs in drawing up a bid, which it sought to deduct as expenses of management. The Court of Appeal found that this treatment was consistent with the decision in *Sun Life*, as the expenditure was incurred for the purpose of assessing whether or not to make an acquisition, and thus an expense of management rather than a cost of acquisition. It was also satisfied that there was, at the time, nothing in the legislation governing the tax treatment of expenses of management that prevented deductions being obtained for expenditure of a capital in nature.

In its commentary on changing investments in the management expenses section of its Company Taxation Manual (CTM08190), HMRC provides the following commentary on the application of *Sun Life* and *Camas*:

> 'Expenditure preparatory to making a decision to purchase will generally be an expense of management. Once the decision to acquire has been made then the expenditure is likely to fall into the category of "costs of implementation of a purchase already decided upon" and will therefore not be an expense of management.
>
> 'The decision to acquire/purchase would normally be evidenced at the latest by, for example, an offer being made to the target company, when the expenditure ceases to be on decision making and becomes part of the implementation of a purchase already decided upon. Up to that point the expenses are generally all on decision-making and are not sufficiently direct costs of the acquisition...
>
> 'The principles established apply equally to acquisitions and disposals and to abortive as well as to successful expenditure.'

Understandably, Centrica considered that it was following the principles established in the earlier cases and reflected in this guidance when it adopted the time apportionment approach described above. However, a new provision was introduced into the relevant legislation in response to the *Camas* litigation, which of course could not be considered in that case. That now forms limb (a) of CTA 2009 s 1219(3), which provides that, subject to a few specific exceptions outlined in s 1221(1) of the same act, no deduction is allowed as an expense of management for 'items of a capital nature'. The interpretation of this provision would ultimately determine the outcome of the *Centrica* case.

The issue before the Supreme Court

Centrica's appeal was initially dismissed by the First-tier Tribunal, essentially on the basis that it was not persuaded that Centrica Overseas Holdings Limited actually carried out any investment management activities in relation to which it could have incurred the Disputed Expenditure.

However, in case (as ultimately transpired) it was wrong in that conclusion, the First-tier Tribunal also stated that it considered that the Disputed Expenditure consisted of expenses of management in line with the principles established in *Sun Life* and *Camas*, and those expenses were not capital in nature.

The Upper Tribunal overruled the decision that Centrica Overseas Holdings Limited did not carry out the relevant investment management activities, but broadly agreed with the First-tier Tribunal that the Disputed Expenditure represented expenses of management and was not capital. The conclusion on the capital expenditure issue was, in essence, reached because the expenses could not be said to be 'one-off' costs (as Centrica Overseas Holdings Limited had many other capital investments), and because at the time that the expenses were incurred it could not be guaranteed that Oxxio would be sold.

Arguing that the tribunals were wrong on both the expenses of management and capital expenditure issues, HMRC appealed to the Court of Appeal, which dismissed the arguments on the former ground but, in a dramatic turnaround, agreed that the Disputed Expenditure was capital in nature.

Noting that the earlier cases were decided before the prohibition on capital expenditure now provided by CTA 2009 s 1219(3)(a) was introduced, the Court of Appeal considered that the First-tier Tribunal and Upper Tribunal had confused the tests for determining whether expenditure is an expense of management with the test for determining whether it is made on capital or revenue account.

It accepted HMRC's argument that money which is expended in order to achieve the acquisition or disposal of a capital asset is also capital in nature and considered that the Disputed Expenditure answered to this description.

The sole issue before the Supreme Court was, therefore, whether the Court of Appeal was correct to decide that the Disputed Expenditure was capital in nature. Counsel for Centrica advanced two arguments as to why this was wrong: firstly contending that the principles that apply when determining whether expenses of management are capital in nature are different to those that apply when making this assessment in respect of expenditure of a trading company; and secondly that the Disputed Expenditure was revenue in nature even if the first ground failed.

The meaning of 'capital'

Dismissing Centrica's first ground of appeal, the Supreme Court determined that the reference to 'items of a capital nature' in CTA 2009 s 1219(3)(a) had the same meaning as the phrase 'expenses of a capital nature' in CTA 2009 s 53(1), which is the relevant provision in the rules governing the calculation of trading profits. Both of these provisions 'plainly intended to carve out those expenses which are capital in nature by reference to the well established principles developed by the courts on that distinct legal question.'

Counsel for Centrica had sought to persuade the Supreme Court that the meaning of 'capital' must be different for companies with investment business, because all investments are capital, so all expenditure incurred by such a company must be concerned with capital assets. Thus, it was argued, the rules allowing deductions for expenses of management would be largely redundant if HMRC and the Court of Appeal's position were adopted.

The sole issue before the Supreme Court was whether the Court of Appeal was correct to decide that the Disputed Expenditure was capital in nature.

This submission was flatly rejected, on the basis that day-to-day costs of managing investments that a company with investment business may typically incur (such as staff costs, rent and administration costs, and repairs) would be considered revenue expenditure, rather than capital, under the established principles.

There is therefore ample scope for deductions to be obtained under the expenses of management code without having to depart from those principles.

Was the Disputed Expenditure capital in nature?

The question as to whether expenditure is capital or revenue in nature is a question of law, and hence the Supreme Court was satisfied that it and the Court of Appeal were entitled to come to their own conclusions based on the findings of fact made by the First-tier Tribunal.

Summarising the precedent case law, the Supreme Court stated that the objective purpose for which a payment is made is an important indicator of its nature, and that money spent on the acquisition or disposal of an identifiable capital asset should, as a starting point, be assumed to be capital in nature. That assumption may be rebutted in some circumstances – the example given being the case of *Lawson (Inspector of Taxes) v Johnson Matthey plc* [1992] 2 AC 324.

Consequently, the character of the Disputed Expenditure fell to be determined by reference to the transaction for which it was incurred. The Supreme Court considered it clear that, 'once a commercial decision was taken to dispose of the Oxxio business, the services of Deutsche Bank, PwC and De Brauw were obtained precisely to enable management to achieve that disposal'. As the Disputed Expenditure was incurred to bring about the disposal of an identifiable capital asset, it was indeed capital in nature.

Where are we now?

Following *Camas*, the prevailing practice for companies with investment business placed significant emphasis on the time at which expenditure was incurred to determine whether expenditure was deductible as an expense of management. It was widely thought that would also determine whether the expenditure was capital in nature. Indeed, even HMRC's guidance at CTM08260 places significant emphasis on the importance of the timing of a firm decision to buy or sell when determining whether expenditure is capital.

The Supreme Court, however, took a different approach. It emphasised the importance of identifying the purpose of the expenditure based on the transaction for which it was incurred.

> 'Money expended to achieve a disposal of a capital asset is properly regarded as being of a capital nature. The nature of Centrica Overseas Holdings Limited's business does not affect that conclusion. If a trading company disposes of a capital asset, the costs of bringing about that disposal (such as the fees of professionals involved in the sales process) will also be capital in nature. The same should be true of an investment company.' [para 87]

It does not matter that there may be uncertainty as to whether a proposed transaction will proceed to a successful conclusion – as the Supreme Court noted, 'expenditure on an abortive capital disposal transaction is capital expenditure nonetheless'. Centrica would have succeeded in its appeal if the legislation had not changed following *Camas*. It seems, therefore, that CTA 2009 s 1219(3)(a) has more significance than was perhaps appreciated at the time it was introduced. This judgment, which becomes the most important authority on transaction-related expenses incurred by investment holding companies, demonstrates that the bar for obtaining deductions has been raised considerably.

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Making Tax Digital for Income Tax

How to get your practice ready

We look at some of the steps agents can start taking now to get their practice and their clients ready for Making Tax Digital for Income Tax Self-Assessment.

by Emma Rawson

Making Tax Digital for Income Tax Self-Assessment (MTD ITSA) is now less than 550 days away, becoming compulsory for the first wave of self-employed individuals and landlords on 6 April 2026. When it arrives, it will bring a fundamental shake-up of how taxpayers and their agents interact with each other and HMRC.

What is MTD ITSA?

MTD ITSA will apply to landlords and self-employed individuals, and has three main components:

- digital record keeping;
- quarterly updates; and
- year-end reporting.

Digital record keeping will require the amount, category and date of business income and expenditure to be recorded in software. These digital records will then form the basis for quarterly updates – summary totals of income and expenses which have to be submitted to HMRC at the end of each tax year quarter.

Quarterly updates will not need to include tax or accounting adjustments. However, the move from filing just one tax return a year to submitting information to HMRC quarterly is likely to be a significant practical challenge for taxpayers and agents.

Taxpayers will then need to complete a year-end filing to adjust quarterly update information as required and bring in other sources of income, claim reliefs, etc. The deadline for this will be the same as for the self-assessment return; i.e. 31 January following the end of the tax year in question.

Underpinning all these elements is the concept of 'digital links'. Once data has been entered into the digital records, any transfer to HMRC or other software has to be done digitally, with no manual keying or copy and paste allowed.

Key Points

What is the issue?
Making Tax Digital for Income Tax Self-Assessment (MTD ITSA) will become compulsory for the first wave of self-employed individuals and landlords on 6 April 2026.

What does it mean for me?
The most important first step is to ensure that you fully understand the MTD ITSA requirements, and what they might mean for your practice and clients.

What can I take away?
One way to get your practice ready for April 2026 is to consider joining HMRC's MTD ITSA testing programme. Even if you and your clients are not quite ready to join testing, there are several 'digital housekeeping' steps which can be taken in the meantime to ease the transition to MTD ITSA.

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When is it happening?

The introduction of MTD for ITSA will be phased, with the start date depending on a taxpayer's income:

- Income over £50,000: 6 April 2026.
- Income between £30,000 and £50,000: 6 April 2027.

Those with income under £30,000 are, for the time being, exempt from MTD ITSA. However, this decision will be kept under review.

It is important to note that the above thresholds look at gross trading/property income (before expenses or deductions). Where a taxpayer has more than one trade, or trading and rental income, it is the total figure which needs to be considered.

When applying the income threshold for any specific tax year, HMRC will look at the tax return for which the filing deadline fell just before the start of that tax year. So, for 2026/27, HMRC will look at the figures for the return for 2024/25 (filing deadline 31 January 2026). For 2027/28, it will look at the return for 2025/26 (filing deadline 31 January 2027) and so on.

Getting MTD ready

All agents with sole trader and/or landlord clients will need to make some form of preparations ahead of April 2026.

Even those practices that are already fully digital will need to, as a minimum, consider how they and their clients will handle the move to quarterly reporting. For some practices, especially those with clients who keep paper records or only get in touch once a year, the changes required may be more extensive.

Regardless of where your practice sits on this spectrum, now is the time to start thinking about what needs to be done and when.

MTD ITSA has been delayed several times in the past and, given how busy many agents currently are, it is tempting to put off preparations on the assumption that we will have another delay. However, there currently appears to be no sign from HMRC or the government that further delays are on the cards, and waiting until closer to April 2026 risks making what could already be a difficult transition even more challenging.

Some of the steps outlined below (especially the 'digital housekeeping') could also deliver benefits to you and your clients beyond MTD.

First steps

The most important first step is to ensure that you fully understand the MTD ITSA requirements, and what they might mean for your practice and clients.

Both the ATT (see tinyurl.com/5n8574jm) and CIOT (see tinyurl.com/3ps3xca3) have dedicated MTD ITSA landing pages directing you to further content. You should also consider attending webinars – a recording of a free ATT/CIOT webinar from earlier this year can be accessed at tinyurl.com/cbjj57ar (enter password TVD368PGB) and the ATT held a further free webinar for their members on 3 October (you can access the recording at tinyurl.com/5n8574jm). HMRC also frequently features MTD in its Agent Update and other newsletters.

The next step is client segmentation. Out of your client base, who will be in scope of MTD ITSA and when? As set out above, mandation from April 2026 will be based on income reported in the self-assessment return for 2024/25, which it may be possible to estimate fairly reliably. Getting a feel for how many clients will need to be supported through the transition to MTD ITSA will help you determine the amount of further work you need to do.

As part of this segmentation exercise, you should also consider whether any of your clients could qualify as 'digitally excluded' or fall into another exempt category. HMRC provides more information about exemptions at tinyurl.com/mr3vny8b.

Next steps

Once you have identified which clients are going to be in MTD ITSA, the next step is to consider how much support they will need.

Clients who are relatively tech savvy may be comfortable keeping their own digital records and filing quarterly updates, in which case it may still be possible to only engage with them once a year when finalising their tax position.

At the other end of the spectrum, some clients may prefer their agent to handle everything – keeping their records, filing their quarterly updates and doing their year-end filing. Others may wish to engage a bookkeeper to keep their records and file quarterly updates, but have year-end filings handled by their tax agent (something which should be possible by April 2026, when HMRC has promised to deliver functionality to allow multiple agents to be appointed per tax).

You will need to talk to your clients to see what arrangements they are happy with, bearing in mind the additional fees and administrative burdens of the various options.

Only by identifying what level of support clients might need can you then consider the important question of resourcing. Will your practice realistically be able to supply all the additional services needed by clients? Does this affect decisions about staffing levels, or even the ability to take on new clients or retain existing ones?

Software choices

A further key consideration is whether you have the right software in place to service your clients under MTD ITSA. Compatible commercial software will need to be used to keep digital records and submit quarterly updates. HMRC will not be providing any software, though it is anticipated that it will provide an online service for final year-end reporting where it is not possible to do this through commercial software.

HMRC publishes a list of MTD ITSA compatible software (see tinyurl.com/2tmmu76a). Those looking at this list now may be surprised at how short it is. However, a number of suppliers (including some of the bigger 'household names') are expected to come online soon.

If your chosen provider does not appear on either the 'available now' or 'in

development' list, you should speak to them sooner rather than later to find out their plans. If your software provider is listed, you still need to consider whether they will be able to support all your client needs in a cost-effective manner.

For some clients, including those with simple affairs or using bespoke software systems, you may want to consider using alternatives to a full tax and accounting software package. This could include using a spreadsheet to keep digital records, and then a cheaper piece of 'bridging software' to submit quarterly update information to HMRC in the required format.

HMRC testing

One way to get your practice ready for April 2026 is to consider joining HMRC's testing programme. I recently recorded a *Tax Adviser* podcast with Rebecca Benneyworth about her experiences of testing so far – this is worth a listen if you are considering signing up (see www.taxadvisermagazine.com/podcasts).

In 2024/25, HMRC's testing will be at a fairly low scale, focusing on agents and aiming to test a range of different types of taxpayer circumstances rather than bringing in a large number of participants. It is then expected to expand as we move into 2025/26.

Unfortunately, not everyone can currently join testing. Agents will need to be using one of the relatively small number of software packages shown as 'available now' on HMRC's list of MTD ITSA compatible software (see tinyurl.com/2tmmu76a). Taxpayers will also need to have a 5 April year-end, or a 31 March year-end (if software can support this). Other taxpayers, such as those subject to the high income child benefit charge or with joint held property or partnership income are also unable to join at this stage. Some of these exclusions are expected to fall away when testing is widened further in 2025/26.

There are, of course, pros and cons of joining testing. Joining will give you a chance to familiarise yourself with MTD ITSA and stress test your systems and processes with dedicated HMRC support. However, it will inevitably involve additional work for both you and your clients.

At this stage, it is advisable to only enter one or two clients at the most into testing, ideally ones who are particularly adventurous or tech savvy. The sign-up process includes an initial eligibility checker, which can be used to narrow down a list of potential clients and identify possible candidates. However, you will need to speak to your client and get their approval before signing them up.

As an alternative, if your firm meets the criteria, you could sign yourself up for testing. This gives you a chance to have a trial run, without worrying about client approval, engagement letter changes, etc. Before signing up any client (or yourself) for testing, you should speak to your software provider to ensure they can support you through testing.

Further details of the pilot testing including how to sign up can be found on GOV.UK (see tinyurl.com/bd2f9z9p).

Digital housekeeping

Even if you and/or your clients are not quite ready to join MTD ITSA testing, there are several 'digital housekeeping' steps which can be taken in the meantime to ease the transition to MTD ITSA.

You should consider encouraging those clients who don't already have one to sign up for a business bank account. Bank feeds can then be linked to your software or that of your client. Some business bank accounts also come with free record keeping software.

Another area to look at is encouraging better record keeping behaviour amongst clients. Clients should be encouraged to engage with their records more frequently. If you have paper-based clients, you should also encourage them to transition gradually to digital record keeping. This doesn't mean moving to a full software package straight away – an intermediate step could be getting them used to a simple spreadsheet. You should also consider encouraging clients to sign up for the HMRC App – a good way to access a range of tax and benefits information, including employment and income history for the past five years.

All the above steps could make life easier for both you and your clients and improve business management and financial insight, even without considering MTD ITSA.

Another step is to ensure your firm has an Agent Services Account (ASA) in place. The ASA will replace existing Government Gateway accounts under MTD ITSA. You can only have one ASA per firm, and your firm may already have one if they are involved in VAT or Trust Registration Service work (which already use the ASA). If you are unsure, the first step is to check with colleagues working in those areas.

Once the ASA is set up, existing Government Gateway accounts can then be linked to it. This doesn't prevent the old accounts from being accessed or used, but instead creates a dynamic link between the two. There is no need for your clients to reauthorise you, as existing authorisations will be carried across. You can therefore carry out this step at any point.

Taking small steps such as these now could make your life easier as April 2026 approaches.

The final furlong

As we move into 2025/26, there will be several final tasks for agents.

If you haven't entered clients into testing this will be your last chance to have a trial run.

Beyond this, all clients mandated from April 2026 will need to be signed up to MTD ITSA – this is not something that HMRC will do automatically. There will be no bulk sign-up facility, meaning that clients will have to be signed up one by one. HMRC has, however, indicated that it will open the sign-up window as early as April 2025 to allow agents extra time.

As set out above, if you have clients who you believe are digitally excluded, you will need to apply to HMRC for exemption. It is not yet known exactly how this will work in practice, but HMRC has indicated that exemption applications will be accepted well in advance of April 2026, and possibly as early as April 2025.

Other practicalities to consider include final checks on resourcing. Does your firm need extra help to get clients across the line? Will fees need to increase and by how much? Any increases should be communicated to clients as far in advance as possible. Finally, you should ensure that whatever is agreed with clients regarding changes in scope of services and fees is reflected in your engagement letters. The ATT and CIOT are currently working on updates to their engagement letter templates – keep an eye out for more on this.

The final message

The above is a very high-level summary of what agents need to think about in the next 500 or so days to ensure that they, their clients and their practices are MTD ITSA ready. Given the limits of a single article, there are undoubtedly extra steps which I have not been able to cover.

Although the above may seem daunting, putting off preparations will not be productive in the long run. There is much to do, but starting as soon as possible will, hopefully, make April 2026 go much more smoothly.

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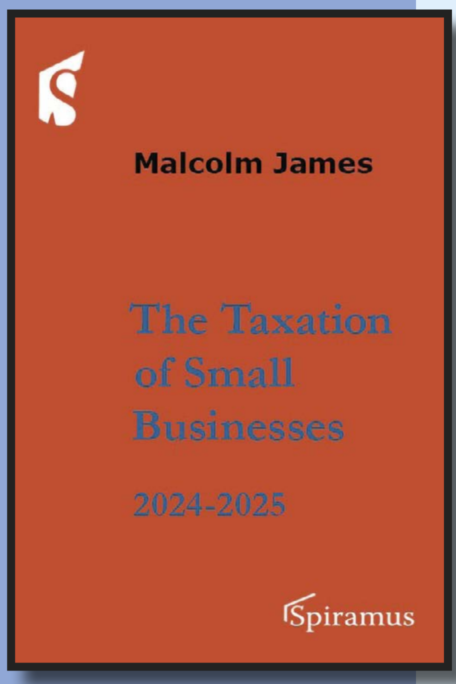

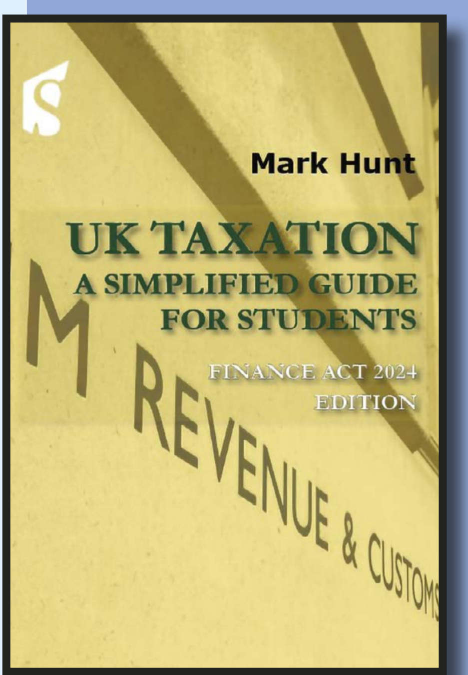

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Digital services tax

Navigating a new landscape

The approaching five-year anniversary of the UK's digital services tax presents an opportunity to reflect on the key learnings to date.

Key Points

What is the issue?
Digital services taxes have been controversial because, whilst seeking to address undertaxed profits, they deviate from the traditional framework of global corporate income taxation on profits and use a tax on revenue.

What does it mean for me?
The Inclusive Frameworks's already extended deadline of 30 June 2024 to reach agreement on Pillar One's Amount A has now passed. Even if agreement can be reached, this would need to be executed by way of a Multilateral Convention.

What can I take away?
Although many remain optimistic about the broader Pillar One reforms, for now it is clear that digital services taxes are here to stay.

by Liam Smith

Since 2016, we have seen digital services taxes introduced around the world as a new instrument to tax digital activities. These digital activities, which include online marketplaces, social media platforms and search engines, have often been perceived by governments as highly profitable and insufficiently taxed under existing international tax rules.

Digital services taxes have been controversial because, whilst they are seeking to address undertaxed profits, they deviate from the traditional framework of global corporate income taxation (based on nexus and arm's length profit allocations) and use a tax on revenue. They are also hard to keep track of and comply with, given the unilateral nature of the measures in place or announced, following action by individual countries in the absence of global or even regional (e.g. EU) agreement on a common design.

The initiative from the OECD/G20 Inclusive Framework, managed by OECD officials, to tackle this proliferation of digital services tax is Amount A of BEPS Pillar One (see tinyurl.com/34pea49r). It is intended to remove unilateral measures and replace them with a globally consistent, profit-based system that applies to the world's largest and most profitable companies. However, those plans have so far neither been agreed nor implemented. As a result, some governments remain frustrated at the perception that data-dependent businesses can generate significant revenues from local users whilst not subject to material corporate income tax.

The already extended deadline of 30 June 2024 to reach agreement on Pillar One's Amount A has now passed. Even if agreement can be reached, this would need to be executed by way of an international treaty referred to as a Multilateral Convention.

For this to be effective, the Multilateral Convention needs to be ratified by at least 30 jurisdictions, including the US. The outcome of the US election may have a significant impact on the likelihood of material multinational progress any time soon – and the US has a long history of not signing up to Multilateral Conventions.

The next wave

The intended progression to a global solution saw countries initially hold off on the further introduction of unilateral measures. In October 2021, 138 members of the OECD/G20 Inclusive Framework agreed not to introduce new digital services taxes before the end of December 2023, provided the signature of the Multilateral Convention had made sufficient progress by this date.

Alongside this backdrop of continuing difficult negotiations and delayed progress, there is the potential for significant geopolitical change in 2024. By the end of the year, more than 64 countries, as well as the EU, will have held national elections. In addition, government finances continue to be stretched and the belief that digital activities represent a significant area of activity that is undertaxed locally persists. Therefore, it is perhaps no surprise that we are seeing a new wave of digital services taxes being introduced.

In 2024, new rules have been introduced in Canada and proposed in New Zealand, while other countries are also actively considering the introduction of a digital services tax. The Canadian rule has retroactive effect from 1 January 2022, which surprised many but effectively highlights the government's sentiment that this is a deferred introduction of the rules.

As more countries implement these new taxes and build the revenues generated into their national budgets (for example, the Canadian authorities expect to raise $7.9 billion over the next five years), it may reduce the chances of agreement on Pillar One Amount A unless its local revenue impact is comparable with existing digital services taxes being removed. This may be unlikely in practice, given that Pillar One is based around a reallocation of profits, whereas digital services taxes are an incremental tax on revenues.

Navigating the global rules

With the lack of progress around the BEPS Pillar One proposals and with the increasing number of countries seeking to introduce unilateral measures, it is critical that impacted businesses have a clear process to monitor the frequent legislative developments. For many businesses, these processes will already be in place as part of their routine monitoring of developments in the VAT on digital services space. However, there is also a subset of businesses that have historically adopted a 'wait and see' approach to global digital services tax monitoring, particularly after the October 2021 statement. In anticipation of increased tax authority activity in this area, businesses that have previously adopted this approach will need to rethink their digital services tax strategy.

At this stage, it is clear that businesses will not be able to adopt a common approach to assessing the impact of digital services taxes on their revenue streams across the current measures that exist, and will need to be agile as they respond to global digital tax service developments. The unilateral nature of the global digital services tax landscape means there are significant differences in how the rules have been implemented by legislators.

Countries have different views on the rates of tax, as well as on the nature of activity that should be within scope. Examples of variations in implemented rules include:

- **The scope of the impacted activities:** At one end of the spectrum, countries such as Turkey and Kenya apply a broad interpretation of the types of services that are in scope, whilst other countries such as Austria have narrowly focused their digital services tax on advertising activities only. The expected trend is that legislators will look to broaden the scope of the tax as more countries turn to them as a means to tax the digital economy and reduce fiscal deficits.
- **Applicable thresholds:** Countries such as the UK are applying far higher local thresholds than other European countries, such as Italy and Spain. For example, £25 million of local revenues are needed under UK rules, compared to €5.5 million and €3 million in Italy and Spain respectively.
- **The rate of tax:** The UK has one of the lowest rates at 2% compared to countries such as Turkey, where the digital services tax rate is 7.5%.
- **The impacted financial years:** Canada has recently issued an announcement making it the first country to apply the digital services tax regime on a retroactive basis, capturing revenues earned as far back as 2022.

The combination of these factors means it is critical that impacted businesses have a clear strategy in place to respond to developments, particularly against the backdrop of the increased awareness of shareholders, investors and auditors.

In the UK

The approaching five-year anniversary of the UK's introduction of its own digital services tax presents an opportunity to reflect on the key learnings and observations to date.

This also coincides with the anticipated HMRC review into UK digital services tax in 2025 – although no specific 'sunset clause' was included within the UK digital services tax legislation at the time of its introduction. However, the recent change in government presents a new interesting dynamic, and it remains to be seen whether this commitment will be upheld. One option would be for a consultation to be announced as part of the Autumn Budget.

The Labour Party manifesto was silent on the UK digital services tax. However, it was included in the Liberal Democrat manifesto, with a proposal to increase the rate of tax to 6%. In order to fund increased public spending, the new government will need to raise tax revenues to fund increased public spending and has committed to freezing VAT and corporate tax rates, opening the door to a possible increase in the UK digital services tax rate.

The government has also pledged to increase investment in HMRC to reduce the tax gap and it is reasonable to conclude that businesses that operate within the digital economy are likely to face increased scrutiny around compliance with UK digital services tax legislation.

Lessons learned so far...

- The scope of the 'marketplace' activity is broad and applies to a range of businesses. In addition to the clearly impacted businesses such as online platforms for used goods and travel, the digital services tax has also impacted price comparison sites and businesses that operate under a franchise model.
- The rules apply to non-resident businesses, as well as to UK-only businesses that derive all their revenue from UK users. This creates a 'cliff-edge', where businesses with revenues close to the £500 million global threshold are faced with the prospect of all their revenues being subject to UK digital services tax once the global threshold is exceeded, with the exception of the £25 million allowance.

- The trend of user-generated content and user-user interactions is continually increasing. We have seen businesses adopt different approaches as to who ultimately bears the cost of the digital services tax, with some choosing to pass the 2% cost onto their customers. This raises wider commercial implications regarding pricing structures, time to implement and communication with customers.
- HMRC has been open and collaborative with taxpayers and demonstrated a commitment to learning, as shown from the outset through the extensive consultation process, and has continued with HMRC publishing detailed guidance that is frequently updated.
- Digital services tax calculations are complicated. Whilst HMRC expects that businesses will use the data they already have, rather than build new processes, it can take time to work through and to correctly identify revenues and discounts, etc.
- Overall, the introduction of the UK digital services tax has been considered a success by HMRC. Many businesses that have registered have commented on the simplicity of the registration process and ongoing compliance. A 2022 National Audit Office review also highlighted the significant revenue raised by the digital services tax, which exceeded forecasts by 30% (£358 million in 2021, increasing to £567 million in 2023).

In summary

Should the 2025 review go ahead as originally planned, it is likely that taxpayers will want a range of considerations included, such as:

- a commitment to maintaining the existing alternative charge election for loss-making businesses and to not align the UK digital services tax with other countries where no similar provisions exist;
- continued clarity on what HMRC considers as 'similar digital services taxes' for the purposes of cross-border relief, including an explanation of why certain measures such as India's equalisation levy are not considered similar;
- clarity around how the UK digital services tax applies to businesses involved in goods supply chains where flash title is exchanged; and
- a commitment to maintaining the existing 2% rate and existing scope.

Against the backdrop of increased controversy within the digital economy, such as the Italian VAT authorities challenge on social media businesses providing 'free' services to users, the introduction of new taxes such as digital services taxes only increases the pressures and demands on tax functions.

When digital services taxes were first introduced, they were considered by many as 'temporary' measures, pending a greater overhaul to the international tax system under BEPS Pillar One. What has become clear in recent years, however, is that the existing digital services taxes in force are viewed positively by legislators and tax authorities as solving the problem of how to tax those that operate in the digital economy.

Although many remain optimistic about the broader Pillar One reforms, for now it is clear that digital services taxes are here to stay. The longer they are in force, the harder it becomes politically to repeal these.

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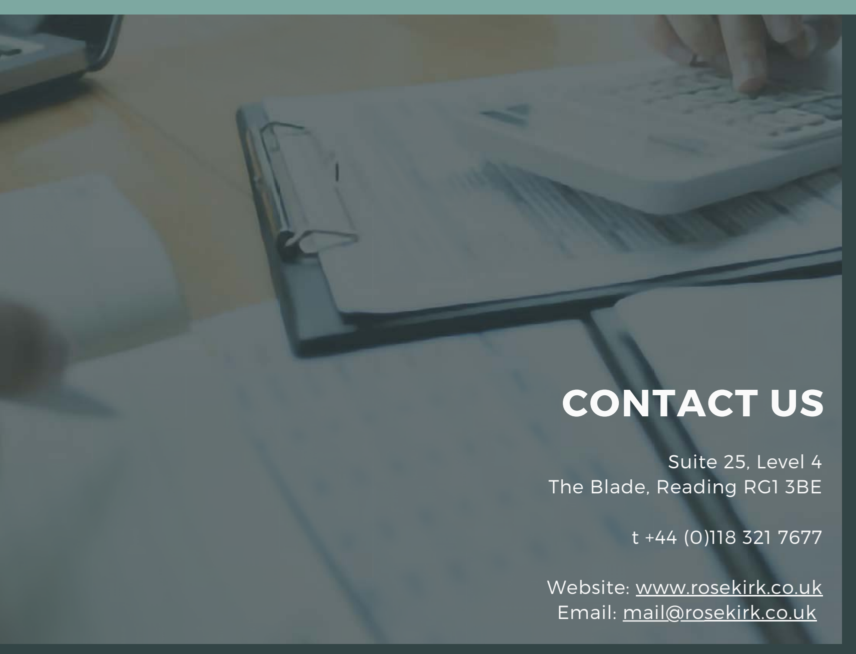

Fixed establishments
Is the definition 'fixed' yet?

In a series of legal cases, the CJEU has laid out authoritative guidelines on what does *not* constitute a fixed establishment.

by Michael Taylor

The repetitious nature of certain referrals to the Court of Justice of the European Union is perhaps a fact of life. It is not difficult to sense the exasperation in the Advocate General's Opinion in *SC Adient* (Case C-533/22) on the matter of fixed establishments: 'This is now the fifth request for a preliminary ruling since 2018 concerning the criteria for determining whether a fixed establishments. It is already the third since the judgment in *Dong Yang* in 2020.'

So, has there been genuine confusion across the member states as to what constitutes a fixed establishment? Or, as the AG suggested – in the context of cross-border supplies of services – have 'tax authorities subsequently started searching within corporate structures for ... subsidiaries or even just other group companies' that could be construed as fixed establishments, which would attract a charge to VAT within their jurisdictions?

Defining fixed establishments

The old cornerstone of the case law on fixed establishments was *DFDS* (Case C-260/95), where the ECJ (as it then was) considered the activities of a UK branch of a Danish travel agency. The case of *DFDS* was concerned with the Sixth Directive, which provided that the place of supply of a business-to-business service would be 'the fixed establishment from which the service is supplied'.

Observing that the Sixth Directive sought to secure 'the rational delimitation of the respective areas covered by national VAT rules' and thereby to prevent the double taxation of cross-border services, in *DFDS* the court – building upon its judgment in *Berkholz* (Case C-168/84) – enshrined several key phrases in the vocabulary of VAT practitioners:

- First, the ECJ found that an entity should be regarded as the fixed establishment of a particular taxpayer only if that 'establishment is of a certain minimum size and both the human and technical resources necessary for the provision of the [relevant] services are permanently present'.
- Second and consequently, it suggested that an entity, regardless of whether it had an independent legal personality, should be regarded as a fixed establishment of its parent if it were 'merely act[ing] as an auxiliary organ of its parent'. In other words, if the facilities and employees of the entity were entirely at the disposal of the parent, the former should be regarded as a fixed establishment of the latter.

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In 2008 and 2011, however, the Place of Supply of Services Directive and the associated Implementing Regulation reversed the position and established 'the general rule [that] the place of supply of services should be based on the place where the recipient is established' (Place of Supply of Services Directive, Recital 4).

The Principal VAT Directive Article 44 henceforth provided that, where business-to-business services were provided to a place other than the customer's business establishment, it would be the relevant fixed establishment which determined the place of supply.

More specifically, Articles 10 and 11 of the Implementing Regulation provided detailed guidance on how suppliers should discern the business and fixed establishments of their customers:

- **Article 10:** A taxpayer's business establishment would be where 'the functions of the business's central administration are carried out'. Article 10(3) discounts 'the mere presence of a postal address'. Instead, for the purposes of determining that location, suppliers must now consider 'the place where essential decisions concerning the general management of the business are taken, the place where the registered office of the business is located, and the place where management meets'.
- **Article 11:** This has codified the historic guidance of the ECJ/CJEU by defining a fixed establishment as an entity which – more than simply having a VAT number associated with it – has 'a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs'.

But what exactly are *sufficient* resources? And what are the other commercial, real-world indices of the existence of a fixed establishment?

Significant court judgments

Dong Yang Electronics

Perhaps the first significant judgment on the matter came with *Dong Yang Electronics* (Case C-547/18).

A Polish company had contracted with a Korean parent company for the provision of services to its Polish subsidiary. The question before the court was whether the subsidiary was a fixed establishment of the parent. If so, the place of supply would have switched from Korea to Poland and thereby created a charge to Polish VAT.

The CJEU, however, was adamant that 'the existence, in the territory of a member state, of a fixed establishment of a company established in a non-member state may not be inferred by a supplier of services *from the mere fact that that company has a subsidiary there'* [33].

Moreover, the court found that there was nothing in the Implementing Regulation which obliged a supplier to investigate the contractual arrangements between its customer and that customer's parent company for the purposes of determining the place of supply.

Berlin Chemie

A similar issue came before the court two years later in *Berlin Chemie* (Case C-333/20), where a German company had outsourced a major part of its functions to a Romanian business, which thereby made supplies of those services – which concerned marketing, advertising and regulatory obligations – from Romania to Germany. The question, therefore, was whether the Romanian company had become a fixed establishment of its customer.

In the view of the Romanian authorities, it was decisive that the German company had sustained and almost automatic access to the human and technical resources of the Romanian entity, and that the German company was the Romanian entity's only customer.

For the CJEU, however, there were several problems with that analysis:

- First, it was necessary to assume that, even if a business has only one customer, its human and technical resources – including more than 200 employees in this case – nonetheless belonged to it, not to the customer, and so were used for its own needs (i.e. making supplies of services to that customer).
- Second, and more importantly, it was logically impossible for the Romanian company to *make* supplies of outsourced services to its German customer, yet simultaneously to *receive* those same supplies as a fixed establishment of that German customer. In other words, if the Romanian entity's human and technical resources had been economically used to *make* supplies, how could those same resources then be used to *consume* those supplies?

Cabot Plastics

Within a year, an extremely similar set of facts came before the CJEU in *Cabot Plastics* (Case C-232/22), where a Belgium company was making supplies of toll processing to a Swiss business within the same corporate group and which had the same ultimate parent.

As in *Berlin Chemie*, the supplier appeared to have only one customer, so the question was asked: should the Belgian company be regarded as a fixed establishment of the Swiss company, with the effect that charges to VAT would arise in Belgium and not in Switzerland?

This time, in reaching the same decision that the Belgian company was *not* a fixed establishment of the Swiss customer, the court emphasised that in circumstances where a supplier 'remains responsible for its own resources and provides those services at its own risk', even an exclusive contract could not transmute the human and technical resources of the supplier into those of the customer.

More to the point, the court understood that such an analysis would risk the elision of the supplies of services by the taxpayer (i.e. toll processing) with the supplies of goods by the customer (i.e. the goods being processed), whereas those transactions were economically, contractually and literally separate.

SC Adient

Most recently, and subsequent to the Advocate General cited at the beginning of this article, the court confirmed in its judgment in *SC Adient* that considerations of company law and the mere fact that a supplier and its customer might have shared infrastructure and facilities – such as IT networks – were not determinant of the existence of a fixed establishment.

In conclusion

Following this flurry of cases, it appears that the CJEU has laid down – even if wearily at times – a series of authoritative guidelines on what does *not* constitute a fixed establishment.

Now, where tax authorities are seeking to establish a place of supply for cross-border services that would create a VAT liability within their jurisdiction, they may not engineer a fixed establishment from the existence of a parent-subsidiary relationship (*Dong Yang*), or the outsourcing of services (*Berlin Chemie*), or an exclusive customer base (*Cabot Plastics*), or shared infrastructure or considerations of company law (*SC Adient*).

But given the myriad ways in which businesses can structure themselves and their operations, and given the myriad VAT analyses that follow, what odds that another question on fixed establishments may soon trouble the CJEU?

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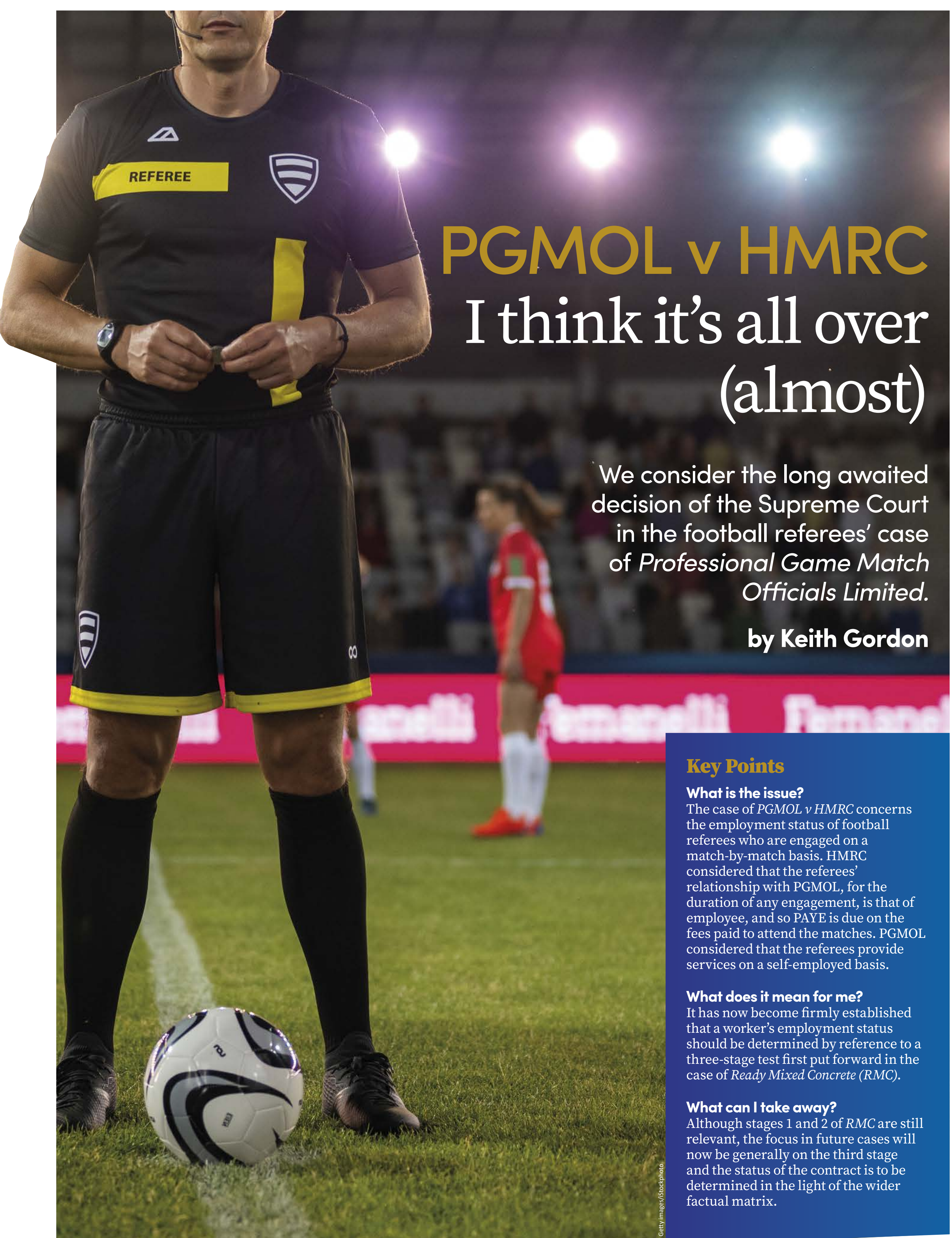

PGMOL v HMRC

I think it's all over (almost)

We consider the long awaited decision of the Supreme Court in the football referees' case of *Professional Game Match Officials Limited.*

by Keith Gordon

Key Points

What is the issue?
The case of *PGMOL v HMRC* concerns the employment status of football referees who are engaged on a match-by-match basis. HMRC considered that the referees' relationship with PGMOL, for the duration of any engagement, is that of employee, and so PAYE is due on the fees paid to attend the matches. PGMOL considered that the referees provide services on a self-employed basis.

What does it mean for me?
It has now become firmly established that a worker's employment status should be determined by reference to a three-stage test first put forward in the case of *Ready Mixed Concrete (RMC).*

What can I take away?
Although stages 1 and 2 of *RMC* are still relevant, the focus in future cases will now be generally on the third stage and the status of the contract is to be determined in the light of the wider factual matrix.

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Exactly three years ago, in the November 2021 issue of *Tax Adviser*, I wrote about the Court of Appeal's decision in the case of *HMRC v Professional Game Match Officials Limited* (*PGMOL*) [2021] EWCA Civ 1370, a case concerning the employment status of football referees who are engaged on a match-by-match basis, principally in the Championship (the second tier of the professional game in England). That article, 'Our Mutual Friend', followed my previous article 'Men in Black', exactly three years before that in November 2018, which concerned the Upper Tribunal's decision in the case.

It has now become firmly established that a worker's employment status (i.e. whether an individual is an employee of the person engaging that individual's services or whether that individual is providing services on a self-employed basis) should now be determined by reference to a three-stage test as first put forward by Mr Justice MacKenna in the case of *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497 (often abbreviated as '*RMC*').

The *RMC* approach was recently confirmed by the Court of Appeal in the case of *HMRC v Atholl House Productions Ltd* [2022] EWCA Civ 501, not only so far as 'pure' employment status cases are concerned but also in IR35 cases, where the *RMC* approach must be applied to a hypothetical contract.

Those three stages, as set out in *RMC* and as explained in *Atholl House*, can be summarised as follows:

- To be an employment contract, there must be both personal service and a mutuality of obligations.
- To be an employment contract, the engager must have sufficient control over the worker.
- Unless one or more of the previous two tests has definitively led to the conclusion that there is not an employment contract, the status of the contract is to be determined by considering the contract in the light of the wider factual matrix.

In my 2021 article, I noted how the Court of Appeal's decision in *PGMOL* (although in favour of HMRC) nevertheless rejected a number of arguments being advanced by HMRC in relation to the third of those tests.

In *Atholl House*, the Court of Appeal (differently constituted) confirmed that HMRC's arguments in relation to the third stage were to be rejected.

In the present case before the Supreme Court, both PGMOL and HMRC made it clear that they were not suggesting that the Court of Appeal was wrong to reject the submissions previously advanced by HMRC in those earlier hearings. However, *Atholl House* did not need to (and did not) give any guidance about the first two tests (mutuality and control). And it was those two tests that lay at the heart of the *PGMOL* case, hence the keenness of many for the Supreme Court's decision, reported at [2024] UKSC 29 (particularly as the hearing took place back in July 2023).

The facts of the case

PGMOL is a company which is owned by the main football authorities in England. Matches in the top tier of English football are refereed by employees of PGMOL. However, the next tier of matches are refereed by a pool of keen 'amateurs' who provide their services on a part-time basis, usually alongside a full-time employment that they hold elsewhere.

The *PGMOL* judgment stresses that the intellectual effort should in future be directed at looking at the wider picture.

Typically, the referees will sign up on a Monday to a match taking place the following weekend. However, until the match actually kicks off, the referee can withdraw from the commitment and, equally, PGMOL can remove the match from the referee's roster. If the referee does not referee a particular match, the referee will not get paid. Similarly, there is no obligation on any referee to sign up for matches on any particular weekend, but there is an expectation that they would do without any good reason not to.

HMRC considered that each of these referees' relationship with PGMOL, for the duration of any engagement, is that of employee, and so PAYE is due on the fees paid to attend the matches, whereas PGMOL considered that each of these referees provides services on a self-employed basis.

The Supreme Court's decision

The case came before Lord Richards, Lord Hodge, Lord Leggatt, Lord Stephens and Lady Rose. The only judgment was written by Lord Richards, with whom the other judges agreed. It is worth noting that Lord Richards (then Sir David Richards) wrote the lead judgment of the Court of Appeal in *Atholl House*.

The judgment made reference to the evolution of the test of employment status – from the Victorian age when control was the sole determinant of employment status to the more nuanced approach in *RMC*. *RMC* necessarily retained control as a condition of there being an employment relationship but the third stage of Mr Justice MacKenna's test made it clear that, provided that there was sufficient control to bring the contract to one that could be one of employment, it was then necessary to consider the other terms of the contract. In the decades that have followed, the courts and tribunals have applied the third stage by looking at the wider picture, including factors outside the contract itself. The correctness of that approach was confirmed in *Atholl House* (contrary to the arguments of HMRC).

Another aspect of the approach that HMRC advanced unsuccessfully in *Atholl House* was whether the nature of the mutuality of obligations and/or control, i.e. the issues that lay at the heart of the first two stages of the *RMC* analysis, could then be taken into account at the third stage when looking at the wider picture. HMRC argued that they were precluded from being taken into account at the third stage but the Court of Appeal had held that the extent and nature of these matters were indeed relevant factors to be taken into account when painting the overall picture.

The *PGMOL* judgment continues on this theme and emphasises that the importance of the first two stages should be downplayed. Although they both remain necessary conditions to be satisfied if there is to be an employment relationship, the *PGMOL* judgment stresses that the intellectual effort should in future be directed at looking at the wider picture. So far as mutuality of obligations and control are concerned, they can, as held in *Atholl House*, be considered at the third stage in their full factual context.

Furthermore, the judgment has attempted to sharpen the focus on the mutuality of obligations test to the question as to whether 'the employee provides his or her personal service for payment by the employer'. As a result, the judgment has made clear that the absence of any mutual obligations between assignments is not a relevant issue for the first *RMC* test.

Of course, as the Court of Appeal noted in *Quashie v Stringfellow Restaurants Ltd* [2012] EWCA Civ 1735, the precariousness of a worker's situation if engaged on an engagement-by-engagement basis is a relevant factor when looking at the third stage. That approach was reiterated in the Supreme Court in the case of *Uber BV v Aslam* [2021] UKSC 5 and expressly endorsed in the present judgment, albeit in relation to the category of individuals who are treated as 'workers' (individuals who are not employees but who still have some protections under employment law).

On the facts of the case, the judgment noted that there was in fact sufficient mutuality of obligations as soon as the

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matches were allocated to the referees at the start of the week. These mutual obligations continued even though either party was then at liberty to terminate the contract before the relevant match started. In the Supreme Court's judgment, the right to terminate the contract before the match was merely a factor that should be considered at the third stage of the *RMC* analysis.

In the *RMC* judgment itself, the first test was not expressed in terms of mutuality of obligations in the wider sense and the Supreme Court has effectively returned to that approach (limiting that stage to a question of personal service), albeit with the clear indication that the third stage can take account of more factors than would be permitted on a literal reading of the *RMC* judgment (as previously emphasised by the Court of Appeal in *Atholl House*). As a result, although the judgment did not spell it out in express terms, it is clear that the allocation of a match to a referee a few minutes before kick-off would have been sufficient to allow the first stage of *RMC* to be passed.

In relation to control, the judgment stressed that 'a sufficient element of control by the employer over the employee is essential to the existence of a contract of employment' and it continued to acknowledge that the control test 'is a test that can prove difficult to apply … in a minority of cases'. It was also noted that the world has changed considerably since 1968, although much of Mr Justice MacKenna's guidance and examples remain applicable in the present age. However, the Supreme Court's judgment recognised that the test is vague, referring to a later case which referred to a 'sufficient framework of control', and adding that it was doubtful that a more precise test could be formulated.

The judgment has sought to steer courts and tribunals from focusing on questions such as whether, in theory, a putative employer could intervene in the course of performance of a contract. As Lord Richards' judgment said, 'when applied to the performance of highly skilled tasks, this, in my view, involves detaching contractual rights from any practical reality'. Furthermore, the Supreme Court made clear that the control test need not be a 'right to intervene in every aspect of the performance by the [putative] employee of his or her duties', although it emphasised that the alleged control must still derive from the contract itself.

The judgment has made clear that 'sufficient control consistent with an employment relationship may take many forms and is not confined to the right to give direct instructions to the individuals concerned'. In the *PGMOL* case, the First-tier Tribunal had considered that the inability of PGMOL to intervene in the middle of a match and the related fact that its only power over referees was to refuse to engage them in future were not incidences of control for the purpose of this test. However, the Upper Tribunal disagreed and this was upheld by the Court of Appeal (albeit with some slight variation). This meant that the Supreme Court had to consider whether the Upper Tribunal's correction of the First-tier Tribunal's decision on control was justified.

The Supreme Court said that it was. Furthermore, the Court considered that 'the existence of effective sanctions which it was open to PGMOL to impose after the end of an engagement are of some significance because, on the facts of this case, the right to impose those sanctions played a significant part in enabling PGMOL to exercise control over the referees in the performance of their duties, on and off the pitch'. As a result, the Supreme Court concluded that the second stage of *RMC* was also satisfied.

In the light of their decisions on those two stages, the First-tier Tribunal and Upper Tribunal did not address the third stage of *RMC*. In the same way as the Court of Appeal would have done, the Supreme Court has now sent the case off to the First-tier Tribunal to complete the task.

Commentary

At the beginning of the judgment was the helpful statement that, although the context of the case was as a tax case, the case was being determined by reference to the common law tests of employment. Furthermore, the judgment made it clear that the court was expecting the case to be relevant to those other areas of law which turn on the employment status of a worker.

The judgment appears to have completed the transition of the test of employment status which was started in *RMC* and continued with *Atholl House*. With *Atholl House*, the Court of Appeal ensured that the third stage of the *RMC* analysis can look at the overall picture and not merely individual terms of the contract in question.

What *PGMOL* has done is relegated the first two stages as low-level thresholds which will be crossed in all but the most obvious of cases. As a result, as the Supreme Court has made clear, little time and energy ought now to be expended on those first two issues. I do wonder, however, whether there will be some ongoing doubts as to how the 'personal service' test should be applied. Subject to that, it is hoped that the Supreme Court has blown the final whistle on stages one and two of *RMC*, although it is inevitable that there will be yet another case effectively seeking a replay (or VAR).

What to do next

Although stages one and two of *RMC* are still relevant, the focus in future cases will now be generally on the third stage of *RMC* and the question of the wider picture as explained in *Atholl House*.

Indeed, contrary to the title of this article, for PGMOL it might not be all over because they now have the chance to argue in the First-tier Tribunal that the overall picture is one of self-employment rather than employment. A win at that third stage of *RMC* overrides any defeat at stages 1 and 2. It's a funny old game, isn't it?

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Tax evasion in retail
A National Audit Office report

Electronic sales suppression and phoenixism are estimated to cost the Exchequer £950 million a year in lost taxes.

by Richard Philson and Craig Aspinall

The National Audit Office (NAO) published its comprehensive report titled 'Tackling tax evasion in high street and online retail' on 9 September 2024 (see tinyurl.com/2e9mhnbv). The report discusses whether HMRC, alongside other relevant parts of government, are suitably placed to tackle tax evasion in the retail sector.

Its conclusion is somewhat critical of HMRC and in particular finds, amongst other things, that 'significant weaknesses remain in government systems which tax evaders can easily exploit' and that HMRC has so far lacked an effective strategic response in tackling tax evasion in small businesses.

When discussing whether HMRC is offering value for money, the NAO concludes that 'tax evasion has been growing among small businesses, and HMRC has so far lacked an effective strategic response'. The report highlights widely used methods of evasion, such as sales suppression and phoenixism, which it identifies as 'large and potentially growing'.

The NAO notes that tackling tax evasion is not straightforward, but that HMRC needs to work with other stakeholders to find the most cost-effective way to reduce evasion. The report concludes that tighter controls and more compliance work would be likely to raise significant sums, and that they would be both cost effective and improve value for money.

With this in mind, it is useful to understand the scale of tax evasion. HMRC estimates that tax evasion cost £5.5 billion in lost revenue in 2022/23 (14% of the total tax gap); and £4.4 billion of this sum occurs in small business (81% of all evasion).

The NAO report and tax evasion

The NAO sought to assess HMRC's overall approach to tax evasion in retail and looked at specific areas:

- contrived business insolvency and phoenixism;
- VAT evasion by overseas retailers selling through online marketplaces; and
- electronic sales suppression.

We focus on two of these areas: electronic sales suppression and phoenixism.

Electronic sales suppression

Electronic sales suppression involves the use of software installed on till systems which is designed to reduce the recorded turnover of the business, whilst providing what appears to be a credible and compliant audit trail.

HMRC has increased its compliance activity in this area. Notably, in late 2022 it raided nine premises in the Midlands and five criminal arrests were made of individuals suspected of selling electronic sales suppression software in the UK. This in turn led to HMRC targeting 90 businesses across the UK suspected of using the software and there were also overseas connections with similar enforcement action in the USA and Australia.

More recently, HMRC activity has been less high profile and has been focused on its go-to tool of nudge letter campaigns (discussed further below). However, the NAO suggests that HMRC is not giving sufficient priority to this issue.

Further, it appears that HMRC is not yet using the significant new electronic sales suppression penalties which are available to it. The powers contained in the Finance Act 2022 include specific information powers enabling HMRC to obtain details of those involved in the electronic sales suppression supply chain and traders suspected of or using the electronic sales suppression tools.

Schedule 14 of Finance Act 2022 now empowers HMRC to impose civil penalties of up to £50,000 each for the making, supply and promotion of electronic sales suppression software and hardware. An unlimited number of penalties of up to £50,000 each can be charged to the same person if they:

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Key Points

What is the issue?
The National Audit Office has released a report which assesses HMRC's overall approach to tax evasion in retail. It is critical of HMRC for not having a strategy for addressing tax evasion.

What does it mean for me?
Advisers may be asked to support their clients through a nudge letter or enquiry, so need to be aware of the circumstances which could prompt HMRC to make enquiries and the options available to resolve the issue.

What can I take away?
HMRC estimates that £450 million is lost annually to electronic sales suppression and £500 million is lost annually to phoenixism so the retail sector is likely to come under increased scrutiny in the future. Knowledge of HMRC's disclosure processes and working with specialist advisers in tax disputes is often necessary for effective resolution with HMRC.

- promote the electronic sales suppression 'tool' (i.e. physical devices, software, computer code, etc) on more than one occasion; and/or
- design, promote and supply an electronic sales suppression tool, as they may be liable to all three types of penalties.

The penalties can be levied on any person meeting the conditions – so employees who develop or sell an electronic sales suppression tool as part of the terms of their employment could also be penalised.

HMRC may also impose a penalty of up to £1,000 for the possession of or having access to an electronic sales suppression tool, although if it is removed within 30 days the penalty can be mitigated.

Phoenixism

The NAO report points out that HMRC is not making full use of its powers to tackle 'phoenixism', which it defines as the practice of carrying on the same business through a series of companies, where each becomes insolvent only to continue trading as a new separate company to deliberatively evade paying debts, including tax liabilities.

HMRC does have powers to pursue directors for company debt where it considers they are declaring insolvency to avoid paying tax and has powers to require securities against future tax liabilities for successor companies, where it determines there is a risk of tax loss. However, it is not clear how successful HMRC has been in using these powers because, as the NAO points out, in HMRC's 2023/24 annual report, whilst it reported partial results of its activity, it did not give a clear overview of its performance or impact.

Tighter controls and more compliance work would be likely to raise significant sums, and would be both cost effective and improve value for money.

NAO's findings

Interestingly, HMRC's own tax gap analysis estimates that £450 million and £500 million respectively are lost to electronic sales suppression and phoenixism annually. It is therefore surprising that the NAO has found that HMRC is not fully prioritising compliance activity in these areas.

The NAO found that: 'HMRC does not know how successful it is in tackling tax evasion, in aggregate or for particular taxpayer groups… It does not have a systematic way to identify and share wider learning from these evaluations or use them to consider its overall impact in tackling tax evasion or feed lessons on what works well into its plans.'

The NAO acknowledges that HMRC's overarching strategy to tackle non-compliance by preventing it from occurring is sensible, and finds that real opportunities exist for HMRC to work more systematically across government to reduce evasion. However, the report states that 'HMRC does not have a specific strategy for addressing tax evasion, focusing instead on tackling strategic risks of non-compliance to prevent the overall tax gap from increasing'. It goes on to say that HMRC's approach may not sufficiently prioritise some pervasive forms of tax evasion, such as electronic sales suppression and phoenixism.

While the government plans to give HMRC additional resources to tackle enforcement issues and we can expect to hear more details in the Budget, specific plans for how HMRC will approach retailer compliance may come later. HMRC will be updating its estimate of the scale of electronic sales suppression tax losses in December 2024, so this might also be an opportune time for it to lay out its strategy and action plans in this area.

Handling compliance activity

Readers may be aware that HMRC commenced a One to Many (or nudge letter) campaign in 2023 connected to electronic sales suppression.

In a positive step, the NAO report sets out that HMRC estimates that compliance yield from its work on electronic sales suppression increased from £17 million in 2022/23 to £98 million in 2023/24, due to increased focus and casework (from 253 cases to 1,275).

The nudge letter allows taxpayers to either voluntarily come forward to disclose any irregularities as a result of misusing till systems or to confirm that no such irregularities exist.

As with any nudge letter campaign, if taxpayers simply ignore the letter and take no action then they can be reasonably certain that HMRC will write again and/or undertake its own investigation. Given the fact that the misuse of till systems is widely regarded as fraud, such action could extend to HMRC opening civil fraud enquiries under Code of Practice 9 or even the instigation of criminal proceedings.

HMRC has an electronic sales suppression disclosure facility available

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to businesses which wish to disclose their 'misuse of a till system' and its nudge letters also direct taxpayers to this. So far, there are no statistics made publicly available regarding the use of this online disclosure facility.

However, a key point that advisers should note is that it is limited to disclosing only unpaid tax arising from sales suppression. As a consequence, this facility may not be suitable for taxpayers who come forward with other matters to disclose. In our experience, and that of HMRC, where there has been fraud or evasion it is seldom limited to a discrete tax issue and settlements frequently cover a number of tax errors.

Similarly, given the nature of the matters that are likely to be disclosed (i.e. a level of tax fraud linked to sales suppression) it is likely that a more formal route, such as Code of Practice 9, may be more suitable. The crucial benefit to making a full and complete disclosure under Code of Practice 9 is that taxpayers receive immunity from criminal prosecution. As is usually now the case, the online disclosure facility set up for electronic sales suppression does not provide this protection.

In the 2023/24 tax year, HMRC opened only 268 Code of Practice 9 cases, as set out in HMRC's latest figures (see tinyurl.com/y4wpbmmj). However, making use of Code of Practice 9 for electronic sales suppression could potentially help to recover the tax lost and help to close the tax gap caused by this evasion.

Accordingly, where taxpayers receive an electronic sales suppression nudge letter from HMRC, it is essential that specialist advice is obtained to ensure the correct disclosure route is taken in the circumstances (see CIOT's guidance at tinyurl.com/5n98d222).

Summary

The NAO is critical of HMRC's approach to tax evasion in high street and online retail and the numbers do indicate that there is much unpaid tax to collect.

Given the findings of the report, and the additional resources that HMRC is expected to receive, it is likely that we will be seeing increased levels of HMRC compliance activity in the retail sector.

It will also be interesting to see if the Budget in October 2024 offers any specific commentary on HMRC compliance activities and whether the government sees even greater scope for increasing the tax take by investing in HMRC's enforcement teams.

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WELCOME

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October Technical newsdesk

Sitting down to write this introduction made me think about this month's key event: the UK Budget. I reflected on how rare an event it is that we have a change of party in power. Typically, the Opposition party spends more than a decade planning for the day in the House of Commons when they can steer the country's fiscal reins in their favoured direction.

Even once the election is won, things do not always go 100% to plan. In 1997, Gordon Brown was forced to delay Labour's first Budget since April 1979 by a little longer than he had anticipated – from 10 June to 2 July – after British Telecom threatened legal action over the new government's plans for a windfall tax on privatised utility companies.

I expect many of you, like me, are waiting to see what changes in direction lie ahead in the country's economic and tax policy as on 30 October Rachel Reeves gives Labour's first Budget speech in 14 years, ending the growing speculation as to what she might have to say.

We have some inklings from the July Statement and manifesto commitments. The CIOT and ATT technical teams have been considering what has been published, such as the draft legislation for VAT on private school fees and feeding into the developments for non-doms – but as with anything, the devil will be in the detail. The new Chancellor has made it clear that the UK's purse is less full than the government would like, so we can expect some clarity around which of the much mooted changes will go ahead, but perhaps she will also pull one or two customary rabbits out of hats.

There is a lot of media speculation around inheritance tax and capital gains tax, and we are keen to see whether we will get any indication as to what will happen next with regards to the outstanding pre-election government consultations – for example, on potential regulation/raising standards of the tax services market and various elements of the Tax Administration Framework Review. We are also keen to understand Labour's intentions for investment in HMRC and to see the promised business tax roadmap.

I thoroughly enjoyed discussing potential options and thoughts for the roadmap with the IFS, Dominic Mathon (RLEX) and David Gauke, the Financial Secretary to the Treasury for the 2010 and 2016 roadmaps, at our latest CIOT/IFS debate early in September (tinyurl.com/yfunk9hs). We also wrote to the Exchequer Secretary before joining a roundtable with him later in the month to discuss what should be in the roadmap at the Budget (see Sacha Dalton's article below and our letter at www.tax.org.uk/ref1352). I wonder how many of our ideas will make the cut?

I also want to thank all of the firms who volunteered for the joint CIOT/ICAEW project on service levels. Since mid-September, more than 30 firms have been logging data and we look forward to sharing our report later in the year. Since I joined CIOT in April 2023, the largest number of complaints I have heard have related to HMRC's service performance, so I really hope that the new evidence will help to reset the conversation with both the new government and HMRC.

Finally, in a year of change, including over half of the world's population getting the opportunity to go to the ballot box, we will soon see who wins on the other side of the Atlantic. Closer to home, I am delighted to welcome Lindsay Scott as our new CIOT Technical Officer. Lindsay is leading on Digital and Agent Services (DASC) and Scottish taxation. She has dived straight in, working on the service levels project and with the Scottish government's launch of its new tax strategy.

GENERAL FEATURE

CIOT and LITRG Autumn Budget 2024 representations

CIOT and LITRG have made representations to HM Treasury ahead of the Autumn Budget on 30 October 2024.

CIOT representation on repayment interest and commercial restitution

There is an imbalance and unfairness in repayment and late payment interest rates. The rate of interest that HMRC pays taxpayers on money it owes them is much lower than the rate taxpayers are charged on money that they owe to HMRC. This puts businesses that are owed money by HMRC at a disadvantage. There is not a reciprocal incentive to settle debts, as there is no disadvantage to HMRC for unnecessary delay, while penalising taxpayers when they are in the position of owing HMRC money.

At a time when HMRC's service levels are widely recognised as being at an all-time low, the interest regime is doing little to incentivise timely repayments by HMRC. This is suffocating business and personal investment while monies are 'stuck' with HMRC, hurting the ability to do business and hindering growth.

We said that the government should consult on the rate and approach to repayment interest on overpaid tax. This is necessary to ensure that repayment interest provides adequate recompense for the loss of the use of the monies by the business or individual concerned, and an adequate incentive for HMRC to process repayments in a timely fashion. We made a similar representation prior to the Spring 2023 Budget.

In addition, and specifically in relation to VAT, we encouraged the government to re-introduce the concept of 'commercial restitution' when levying interest on underpaid VAT, to prevent interest from being charged in circumstances where there is no loss of tax to the Exchequer. This is an anomaly which arises due to the way the tax operates rather than due to any intentional act on the part of the taxpayer, and came into effect for VAT return periods starting on or after 1 January 2023.

A Budget representation was also made regarding Taxation of Chargeable Gains Act 1992 s 162 incorporation relief, and this is reported separately.

The full CIOT Budget representation can be found here: www.tax.org.uk/ref1361

LITRG representation on reporting rules for digital platforms

LITRG has had concerns for some time that those selling goods and services via online platforms are not adequately supported by HMRC, with a lack of helpful guidance on how such activities are taxed.

Our Budget representation highlights that an opportunity is coming to raise sellers' awareness of their tax obligations, and support them to fill in their tax returns correctly. From 31 January 2025, certain sellers using online platforms should be sent information about the amount of income earned on the platform in the preceding calendar year. This information will also be sent from the platform to HMRC. However, the current requirements on online platforms as to the provision of this information are minimal and we are concerned that the information may be indigestible, which will result in confusion and sellers taking the wrong action, or no action at all.

We have suggested that the government should amend the Platform Operators (Due Diligence and Reporting Requirements) Regulations 2023 (SI 2023/817). These regulations implement the Organisation for Economic Co-operation and Development's Model Reporting Rules for Digital Platforms. They should be amended to make them more prescriptive to ensure that seller information is easily understandable and consistent.

A HMRC template for platforms to follow as a standard could go a long way towards addressing these difficulties, and our representation included a practical illustration of how this could look.

The full LITRG Budget representation can be found here: www.litrg.org.uk/10961

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PERSONAL TAX
INHERITANCE TAX AND TRUSTS

ATT Autumn Budget 2024 representations

In advance of the Autumn Budget, the ATT has made a number of representations to government suggesting simplifications and modifications to a range of personal tax measures.

The ATT made four representations in advance of the Autumn Budget on the following topics:

- Income tax simplification measures (www.att.org.uk/ref461)
- Extending tax relief for trivial benefits (www.att.org.uk/ref462)
- Reimbursing employees fairly for using their own car for work (www.att.org.uk/ref463)
- Extending the inheritance tax relief window for deceased estates that sell shares (www.att.org.uk/ref463)

Income tax simplification measures

In this representation, we made a number of recommendations which we think would help to simplify the self-assessment system for both taxpayers and HMRC. We suggested that the government should:

- Provide an enduring 'opt-in' to Income Tax Self-Assessment (SA): Members tell us that many people who are not within HMRC's SA requirements find it much easier to manage their affairs within SA, and would prefer not to be removed and forced to re-register every year. Revised SA thresholds for 2023/24 and 2024/25 have made this a more common issue.
- Simplify jointly owned property rules: We suggested that HMRC should align the income tax treatment of assets jointly owned by co-habiting spouses/civil partners with that applying to other joint owners. This would remove the need for married couples to submit a Form 17 if they do not want the default 50/50 income split which the current rules presume.
- Relax the rules on carrying back Gift Aid donations: Currently a carry back can only be made in an original tax return and not in an amended return.
- Adjusted net income: Remove income covered by the savings allowance and dividend allowance from the calculation of adjusted net income to make this position consistent with the position for the trading and property allowances.

Trivial benefits

The ATT considers that the 'trivial benefits' rules – which provide for income tax relief on certain low value employer-provided benefits, such as gifts at Christmas or flowers sent for the birth of a child – need to be updated to increase their usefulness and relevance. We would like to see the rules amended to:

- allow relief where an employer reimburses an employee for a purchase which would have qualified as a trivial benefit, had the employer paid for it directly; and
- increase the £50 limit on benefits, which has remained at the same level since the legislation was first introduced in 2016.

Reimbursing business travel

We have previously called for approved mileage allowance payments rates to be increased as the current rates have been unchanged for over 13 years, during which time the cost of running a car has increased substantially. We have repeated the call again this time.

Extending IHT relief

Where executors of estates sell shares which have fallen in value since the date of death, they can claim relief from inheritance tax for the value that has been lost, provided that the shares are sold within 12 months of the date of death. However, some estates are struggling to obtain the required grant of probate in time due to ongoing delays in the processing of probate applications. The ATT would like to see the existing 12 month window extended to 18 or 24 months from the date of death, ideally permanently but at least on a temporary basis until ongoing probate office delays are fully resolved.

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PERSONAL TAX OMB PROPERTY TAXES

CIOT Autumn Budget 2024 representation: incorporation relief within TCGA 1992 s 162; update on ESC D32 representation

The CIOT submitted a representation to HM Treasury prior to the Autumn Budget 2024 outlining our concerns around some of the definitions within TCGA 1992 s 162. Separately, the CIOT had previously called for clarification on aspects of ESC D32.

The CIOT used HM Treasury's call for 2024 Budget representations to outline our concerns on some of the definitions contained within TCGA 1992 s 162.

The first concern surrounds the definition of 'the whole assets of the business' contained within s 162. The legislation requires that all such assets, except cash, be transferred to the limited company in order for the automatic rollover relief to be effective. However, many business owners might wish to retain debtors as well as cash (which is akin to cash for the owner); however, doing so under the current wording would render incorporation relief unavailable.

In addition, the necessity of transferring all assets to the company as a matter of principle is also questionable. Often, a business owner will want to retain some assets in their own personal name, such as property freeholds – often subsequently granting their company a lease. However, under the current rules this would mean that s 162 is not available unless the freehold is also transferred to the company, incurring additional conveyancers' costs and stamp duty land tax charges. There would appear to be no obvious policy reason for insisting that all assets are transferred to the company.

A potential resolution to this issue, suggested by CIOT, would be not only to define (within the legislation or HMRC guidance) 'whole assets' as being 'chargeable assets', but to also apply the legislative criteria solely to those chargeable assets which are actually transferred.

The second (related) concern is whether it is the transfer of the legal and beneficial titles of assets which makes an effective transfer for s 162, or just beneficial ownership. The tax rules, more generally, are concerned only with beneficial ownership and many incorporations have been executed based on that understanding. There would appear to be no obvious reason why the legal ownership should have to be transferred to the company when tax law is only concerned with beneficial ownership. However, despite this, there are some misgivings as to whether HMRC regard 'whole assets' as including the legal title of assets and whether they might disallow relief if that remains with the individual. Clarification on this point is therefore sought from HMRC.

The full CIOT submission is available here: www.tax.org.uk/ref1368

ESC D32

Following the CIOT's earlier separate submission about uncertainties in relation to the application of ESC D32, the minutes of the April 2024 meeting of HMRC's stakeholder forum, the Capital Taxes Liaison Group, indicate that HMRC will update their guidance to add clarity.

The full CIOT submission on ESC D32 and the update is here: www.tax.org.uk/ref1269.

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GENERAL FEATURE

Labour's business tax road map: CIOT's thoughts

CIOT has written to the Exchequer Secretary to the Treasury setting out our suggestions as to what should be included in the promised business tax roadmap.

The CIOT welcomed the government's intention to publish a roadmap for business taxation and to consult on this, noting the success of the 2010 corporate tax roadmap.

We consider that the roadmap should be based on some key objectives, and suggested that these could be based around what the government set out as its role in its Business Partnership for Growth (published in February 2024). These are:

- providing stability, integrity and certainty;
- setting the strategic direction;
- removing unnecessary barriers; and
- creating growth everywhere.

We also said that the policies in the roadmap should be coherent and considered in conjunction with other government priorities. That is to say, it should be clear how they fit in with other government policies, including non-tax specific policies, such as climate change and growth agendas. Finally, we suggested that the roadmap should include some process by which to monitor and evaluate progress, as well as a commitment to follow the tax policy consultation framework as much as possible.

Within these broad principles, we made suggestions around increasing the provision of pre-clearances and rulings, as well as ensuring that there is better and accessible guidance, an improvement in HMRC customer service and better targeting of compliance activity.

We also said that the UK government should say how it will use tax policy to support other key government goals, such as achieving net zero.

The tax system and its administration should work to support business activity, and our letter addressed two current issues that risk creating, rather than removing, barriers. These are HMRC service levels and digitalisation. HMRC service levels are widely recognised as being at an all-time low and need to be improved. Similarly, digitalisation should be better focused to reduce the tax gap, to avoid increasing businesses' costs for little or no benefit.

Finally, in relation to creating growth, we said that the government should use the roadmap to provide clarity of the government's longer-term strategy in relation to business investment and for giving incentives, such as capital allowances.

Our letter can be read at: www.tax.org.uk/ref1352.

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GENERAL FEATURE

Fiscal citizenship research project

CIOT and LITRG representatives discuss with academic researchers how people feel about paying tax and the role of tax advisers.

All countries have a fiscal culture, that is to say social norms around paying taxes and 'tax morale' – or how citizens feel – about paying taxes. The fiscal citizenship research project is a collaboration between the universities of Exeter, Calgary and Würzburg in the UK, Canada and Germany (countries that have all experienced a large influx of migrants from a wide range of countries, each with their own fiscal culture). It has allowed a multidisciplinary team to explore the concept, on a comparative basis, and in particular to look at the impact of demographic change in the form of migration, on established taxpaying norms.

In an event over the summer, attended by representatives of LITRG and the CIOT, the research team shared their thoughts on the academic definition and consideration of fiscal citizenship. They also shared some findings from their exploration to date, in the context of several sub-projects including:

- understanding migrants' willingness to pay income taxes;
- the impact of tax culture on tax rate structure preferences;
- a legal framework for automated risk management in tax administration; and
- the role of tax advisers.

Findings are hugely interesting and exciting, for instance in terms of how they might help HMRC and others to support the concept of fiscal citizenship and tax morale, and design their approach to migrants. You can find the project website here: tinyurl.com/bdermf3y, where a range of publications can be found. A full set of working papers from the project and the slides from the presentations are available on the website.

In the meantime, a summary of some preliminary insights from the research looking at why people do and do not use tax advisers in different countries – which we thought UK advisers would find particularly interesting – has been helpfully provided below by the lead researcher for this area, Till-Arne Hahn:

Basic statistics (UK only)

- 233 respondents have never used a tax advisor
- 315 respondents have a tax advisor (or have used one in the past)

Main reasons for not using an advisor (UK)

- 73% expressed that there was 'no need' – typically because they owe no taxes beyond what is already collected through PAYE, or alternatively because their tax situation was relatively simple and/or their income did not justify hiring a tax advisor. (Note: This was much higher than in Canada, where about 90% of the population files a return, as well as Germany, where it can often be advantageous to file a return.)
- Others stated that they were either sufficiently comfortable and/or competent to prepare their own taxes (11%) or that someone in their network assisted them with their taxes (2%).
- Some stated that tax advisors were simply too expensive (5%) or that they did not have sufficient confidence (or trust) in tax advisors (1%). (Note: While the cost concerns were much lower than in Germany, where the profession is regulated, concerns about competence (or integrity) of advisors was higher than in the two other countries. Not too much should be read into this specifically, though, given the limited responses in this regard, and the preliminary nature of the analysis overall.)

Main reasons for having an advisor (UK)

- The single most frequent reason for having hired an advisor (as in the two other countries) was that a specific circumstance demanded it (28% in the UK and 29% overall). Most commonly, this was because the respondent had business (or self-employment) income (15%).
- Other reasons related mainly to dealing with other specific tax matters, such as an estate or a certain investment, or a cross-border matter or tax dispute. (Note: These other reasons were typically lower in the UK than in Canada or Germany.)
- Perhaps encouragingly, the second most frequently cited reason overall (12%) and in the UK specifically (17%) was a desire 'to get things right'.
- Less positive are reasons related to the complexity of tax laws. Some expressed frustration with the difficulty of understanding the laws (as well as dealing with HMRC) and relatedly others stated that they did not feel sufficiently competent to prepare their own returns, even if they may believe themselves to be intelligent and numerate otherwise (and may also feel that they should be able to take care of their tax matters on their own).
- For others (8%), possibly tied in with the above reasons, it was simply a matter of convenience.
- Perhaps surprisingly, and arguably contrary to popular perceptions, only 4% specifically cited tax savings as their main reason for hiring a tax advisor. (It should be noted, though, that given the possibility of social desirability bias affecting the responses, this number is likely to be at least somewhat underreported.)

Overall takeaways

- To the extent that taxpayers do not turn to tax advisors because their tax situation does not warrant it, and do when it does, things appear to be ok.
- The concern that our preliminary results potentially raise is with the situations where taxpayers may not know that they might have potential tax issues (e.g. because of dealing with cross-borders matters), or where they need (or could use) an advisor but cannot afford it.

Going forward

- A second survey was conducted earlier this year (the results of which have not yet been analysed), which delved more deeply into the relative importance of the different reasons for hiring an advisor, as well as the particular reasons for choosing a specific advisor, and the main sources of tax information for those who do not rely on tax advisors.
- Those who are interested in participating in future studies or otherwise expressing their views are encouraged to contact us by email.

The CIOT and LITRG technical teams will continue to monitor the progress of this project and any further outputs, discuss emerging principles and implications and input thoughts as to future research directions.

If you would like to know more about the research in general or Till-Arne's work, or even collaborate in some way, please email me, with the subject line 'Fiscal citizenship project' and I will put you in touch with the team.

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PERSONAL TAX OMB

HMRC guidance on the salaried members rules: CIOT comments

The CIOT has written to HMRC outlining concerns about the application and fairness of their updated guidance on the salaried limited liability partnership members rules.

The 2014 salaried members rules ('the rules') remove the self-employment presumption of members whom HMRC believe are effectively employees. In February 2024, they updated some of their guidance.

The rules, introduced through the Finance Act 2014 and now contained within Income Tax (Trading and Other Income) Act 2005 ss 863A-G, impose three conditions upon members of limited liability partnerships (LLPs) and if all are met, the member is treated as an employee for income tax purposes. The conditions concern:

- Condition A (disguised salary);
- Condition B (significant influence); and
- Condition C (capital contribution).

A targeted anti-avoidance rule (TAAR) is also embedded within s 863G, which disregards those arrangements where the main purpose is to ensure a member is not deemed an employee under the rules.

Of particular concern is HMRC's approach to Condition C. HMRC's February 2024 updates to guidance seem to suggest that instances of a member contributing their own capital and accepting the corresponding business and personal risks, might still render themselves susceptible to the TAAR. In one example within the guidance, a member tops up their capital contribution having already fallen foul of Condition C four years previously. HMRC's updated guidance seems to suggest that this latest contribution will fall foul of the TAAR as the (presumed) intention behind it was to extricate themselves from Condition C. Elsewhere in the guidance, HMRC state that a genuine contribution made by the individual will not trigger the TAAR, but that this is subject to its main purpose not being to avoid the rules.

The CIOT understands there can be a fine line between genuine commercial arrangements and those deliberately made to avoid the salaried members rule. However, while the TAAR was supposed to be reserved for those few 'abusive' arrangements, some genuine capital contributions now seem susceptible to finding themselves in the same category.

In addition, this approach by HMRC will be applied to those contributions made in good faith many years beforehand and which followed prevailing guidance; to subject members to enquiries on historic transactions with this new approach is arguably unfair.

The CIOT believes that HMRC's application of the TAAR goes beyond the original intention behind the rules and that it should be restricted to those cases which are clearly abusive. When a member contributes to an LLP, they are providing a valuable source of working capital. That member also takes on a corresponding share of risks and personal liabilities, especially as most have to take out a bank loan to fund their contribution. A genuine, self-employed LLP member would not undertake this lightly.

In our letter, we therefore urged HMRC to reverse the February 2024 guidance updates and cease compliance activities based on this new practice where the member complied with prevailing advice.

The full CIOT letter to HMRC can be found here: www.tax.org.uk/ref1364

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PERSONAL TAX EMPLOYMENT TAX

Tax treatment of carried interest: a call for evidence: CIOT comments

The CIOT submitted a response to a HM Treasury call for evidence considering how carried interest should be taxed in light of the Chancellor's pledge to remove the 'loophole' of capital treatment.

Broadly, carried interest is the allocation of an equity fund's profit share paid to investment managers in connection with their management activities. In our response, the CIOT advised that any decision to subject these payments to income tax, rather than capital gains tax, should be made with a complete understanding of the likely commercial implications (particularly amongst international markets). Thought should also be given to how any changes would apply to non-UK resident individuals and entities as part of a wider review of the rules.

The full CIOT submission can be found here: www.tax.org.uk/ref1354

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OMB PROPERTY TAX

Abolition of the furnished holiday lets regime

The CIOT and ATT commented on the draft legislation abolishing the furnished holiday lettings regime.

In July, the government published draft legislation to remove the specific tax treatment for income and gains from furnished holiday lets (FHLs) from April 2025. Legislation will be introduced in the next Finance Bill.

Both CIOT and ATT's central concern is that following abolition, there may be costly disputes and litigation in relation to claims for trading status. This is because of uncertainty in relation to the status of former FHL businesses where there is a high level of services and management and/or similarity to holiday accommodation currently accepted as trading by HMRC. For example, 'aparthotels' are relatively common – these vary in levels of facilities but usually involve self-contained apartments with access to a range of facilities.

In the absence of the certainty of a 'bright line' statutory test, as suggested by the Office of Tax Simplification, the CIOT suggest that consideration might be given to a Hansard statement during the passage of the Finance Bill setting out the government's policy intention in relation to the status of furnished holiday accommodation. Together with enhanced and updated guidance, which the ATT also called for, this action would go some way to reducing the likelihood of challenge and provide greater certainty for the holiday letting sector of the policy intent.

In addition, the CIOT and ATT raised technical points on the drafting and practical issues arising from the abolition.

Business asset disposal relief

It is not clear from the drafting whether there is a deemed cessation as at 5 April 2025 for the purposes of business asset disposal relief as a consequence of the repeal of TCGA 1992 s 241. We suggested the draft legislation should be amended to clarify the position.

'Relevant period' for an FHL business starting in 2024/25

If a new FHL business starts in 2024/25, the relevant period of 12 months begins on the first day in the tax year (or accounting period) on which it is let and may therefore extend into 2025/26. We asked HMRC to confirm whether the

relevant period in these circumstances will include any part of the 12 month period that falls within 2025/26 and therefore post-abolition.

Roll-over relief

The policy paper indicates that where the criteria for relief includes conditions that apply in a future year, those rules will not be disturbed. It is not clear whether this means acquisitions of qualifying assets post 6 April 2025 are qualifying replacement assets or not.

Anti-forestalling measure

One of the filters of this provision is that 'no purpose of entering the contract was to avoid the amendments made by Part 4 having effect in relation to the disposal'. Those amendments were only known once the draft legislation was published on 29 July 2024. However, we understand the intention is that the anti-forestalling measure applies from the date of the original announcement (6 March 2024).

Claims for relevant CGT reliefs in respect of disposals made after that date will require an accompanying statement that the anti-forestalling measure does not apply. The ATT suggest publication of a template statement which HMRC will accept for these purposes.

Form 17 (the 50:50 rule in Income Tax Act 2007 s 836)

While a property is in the FHL rules, the 50:50 rule in Income Tax Act 2007 s 836 is not in point because of exceptions for FHLs. This carve out will fall away immediately on 6 April 2025, so jointly held FHLs will immediately be within the 50:50 rule unless a valid form 17 (s 837 election) is made. If income and capital shares do not match, it is not possible to make the election.

It is not uncommon for one spouse to be able to justify a higher share of income due to doing more work. These sorts of splits will not be possible unless capital shares are changed to match. However, changing capital shares may not be practical; for example, if there is a mortgage on the property any transfer may trigger a stamp duty land tax charge even if nothing is paid for the transfer.

Even if capital and income shares do correspond, there is a practical problem: s 837 elections cannot be backdated. They are only effective from the date they are made. Strictly speaking, those who want their tax treatment to be undisturbed would therefore need to sign the form on 6 April 2025. Otherwise, income from 6 April to the date of the election will need to be split 50:50.

We are concerned that taxpayers will be unaware of the practical consequences and the need to make the election. It would be helpful if new guidance relating to abolition and transitional measures highlighted the need to consider a s 837 election.

Capital allowances

The CIOT suggest it would be useful to remind taxpayers of the Capital Allowances Act (CAA) 2001 s 56A small pool allowance, allowing for write off where there is £1,000 or less in the capital allowance pool. Guidance could also confirm that it is possible to make a CAA 2001 s 198 election where an existing FHL business is sold after the commencement date and the FHL business has an ongoing capital allowances pool.

Other suggestions

The CIOT suggest that as part of the guidance relating to the abolition of the FHL regime, the opportunity should be taken to confirm the VAT and business rates treatment post abolition to avoid any uncertainty for taxpayers.

The ATT call for clarification on the treatment of losses carried forward at 5 April 2025 in respect of FHLs within partnerships. Losses on partnership FHLs remain within the partnership and

GENERAL FEATURE

A new tax strategy for Scotland: roundtable engagement

The Scottish government is planning to publish a tax strategy alongside its draft Budget for 2025/26. CIOT, LITRG and ATT are among the stakeholders with whom the Scottish government is seeking engagement through a series of roundtables.

The Scottish government is planning to publish a tax strategy alongside the draft Budget for 2025/26, which is expected to be on 4 December 2024. The Scottish government sought feedback as to what the tax strategy should contain from a wide range of stakeholders, including the CIOT, LITRG and ATT earlier in 2024. The initial intention had been to publish a draft for written consultation in the early summer. However, due to various political events, this proved impossible. The Scottish government is therefore using a number of roundtables to obtain further feedback from stakeholders prior to publication of the final tax strategy.

In late August and early September, the CIOT attended two roundtables. CIOT, LITRG and ATT are all attending either one or two roundtables in late September and early October.

The first roundtable was organised and chaired by the David Hume Institute (DHI) on behalf of the Scottish government. The DHI is an independent research institute based in Scotland, and it hosted a cross-sector roundtable to enable the sharing of views on the role of tax in the economy in Scotland, as well as interventions to support growing the tax base.

The second roundtable was organised by the Scottish government and chaired by the Cabinet Secretary for Finance and Local Government, Shona Robison MSP.

The final two roundtables have been organised by the Scottish government, and will be chaired by Lorraine King, Deputy Director, Tax Strategy, Engagement and Performance from the Directorate for Tax Revenues. One of the roundtables will focus on future priorities for the Scottish tax system, including the proposed tax literacy framework, and how to expand the Scottish tax base. The other roundtable will focus on the current Scottish tax system, public understanding of tax, and how the Scottish government can better provide stability and certainty to taxpayers.

Our organisations' contributions so far have focused on the importance of improving tax education and tax literacy, given that this can support tax compliance, growth of the tax base and encourage positive attitudes towards the tax authority and tax system:

- Better understanding of tax can help people make informed decisions, that are better not only for their own finances, but also for the economy.
- Telling people about their entitlements and making it easy to obtain them can generate trust.
- Making tax processes easier to understand can help people comply.

We have also made contributions on the importance of a better and more transparent legislative process for making policy changes, and the need to carry out a revaluation of domestic properties for council tax.

All three bodies continue to engage with the Scottish government in relation to devolved tax powers.

Joanne Walker *jwalker@litrg.org.uk*

are not allocated to individual partners, so it is currently unclear how such losses will be relieved following abolition of the FHL regime.

The full CIOT submission can be found here: www.tax.org.uk/ref1353

The full ATT submission can be found here: www.att.org.uk/ref467

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David Wright dwright@att.org.uk

INDIRECT TAXES

VAT treatment of private hire vehicles: ATT response

The ATT has responded to a recent joint consultation by HM Treasury, HMRC and the Department for Transport on the VAT treatment of private hire vehicles.

The consultation, first launched in April 2024, looks at the potential tax impacts of the earlier *Uber Britannia Limited v Sefton Borough Council* and *Uber London Limited v Transport for London* High Court judgments on the private hire vehicle (PHV) sector.

PHV services have always been standard rated for VAT. However, to date it has been argued in many cases that it is the individual driver making the supply as principal, with the booking firm or PHV operator merely acting as an intermediary or agent. As the vast majority of drivers are below the VAT threshold, the result of this is that VAT is not charged on most PHV fares.

Whilst the *Uber* decisions were not VAT cases, they did find that, for licensing purposes, the PHV operator has to be acting as principal and not the driver. A knock-on effect of this could be that VAT becomes chargeable on the majority of PHV fares.

The consultation invited views on potential government interventions that could help to mitigate any undue adverse effects of VAT changes on the PHV sector and its passengers.

Suggestions made in the consultation included:

- changing either the transport or VAT legislation to mean no VAT would be chargeable on PHV fares – estimated to have a cost to the Exchequer of £750 million a year;
- making PHV services subject to the reduced rate or zero rate of VAT (expected Exchequer cost of £1 billion or £1.5 billion a year respectively);
- introduce a new VAT margin scheme for PHVs (expected Exchequer cost of £750 million a year); and
- targeted interventions to help mitigate the impacts on customers, particularly those vulnerable individuals who are dependent on PHV services.

Overall, the ATT believes that the changes to the VAT system proposed by the consultation would have an unreasonably high cost to the Exchequer and introduce additional complexity into the VAT regime. Instead, targeted interventions such as broadening existing schemes (for example, the disabled person's bus pass, bus service operators grant or community transport provision) should be considered, as these are likely to be the most cost effective way of supporting vulnerable customers, whilst limiting the costs and avoiding additional unwarranted complexity.

The full ATT response is available at: www.att.org.uk/ref459

Emma Rawson erawson@att.org.uk

CIOT		Date sent
Managing Scotland's Public Finances: A Strategic Approach	www.tax.org.uk/ref1339	12/08/2024
LLP salaried members rules	www.tax.org.uk/ref1364	22/08/2024
Uncertainties in relation to the application of ESC D32	www.tax.org.uk/ref1269	27/08/2024
Furnished holiday lettings tax regime abolition	www.tax.org.uk/ref1353	27/08/2024
Budget representation on TCGA s 162	www.tax.org.uk/ref1368	29/08/2024
The tax treatment of carried interest	www.tax.org.uk/ref1354	30/08/2024
Budget representation on repayment interest	www.tax.org.uk/ref1361	10/09/2024
Letter to James Murray MP re Business Tax Roadmap	www.tax.org.uk/ref1352	11/09/2024
Letter to HMRC re definition of ordinary share capital and fixed rate shares	www.tax.org.uk/ref1355	12/09/2024
VAT and private school fees	www.tax.org.uk/ref1362	16/06/2024
ATT		
VAT Treatment of Private Hire Vehicles	www.att.org.uk/ref459	06/08/2024
Budget representation: Income Tax Simplification	www.att.org.uk/ref461	05/09/2024
Budget representation: Trivial Benefits	www.att.org.uk/ref462	05/09/2024
Budget representation: Mileage Allowances	www.att.org.uk/ref463	05/09/2024
Budget representation: IHT reliefs on shares which have lost value	www.att.org.uk/ref464	05/09/2024
Changes to the taxation of non-UK domiciled individuals	www.att.org.uk/ref465	06/09/2024
Furnished holiday lettings tax regime abolition	www.att.org.uk/ref467	10/09/2024
VAT and private school fees	www.att.org.uk/ref466	13/09/2024
LITRG		
Finance and Public Administration Committee inquiry: Managing Scotland's Public Finances: A Strategic Approach	www.litrg.org.uk/10949	12/08/2024
Budget representation: online platforms reporting rules	www.litrg.org.uk/10961	09/12/2024

Debate

What should be in the business tax roadmap?

Predictability and a clear direction of travel to promote investment, said speakers at a CIOT-IFS debate on 4 September.

Helen Miller of IFS opened the debate, providing an overview of the current corporation tax regime. She said that the priority for the 2010 roadmap had been cutting the corporation tax rate, and it would be interesting to see how the next roadmap, promised before the end of the year, will address this. 'Labour have said they don't want to raise it any further, but should we now see 25% as a stable rate – or is there any condition under which a rate cut would be seen?'

(L to R) Dominic Mathon, Charlotte Barbour, Helen Miller, David Gauke and Ellen Milner

The speaker after Helen was former tax minister David Gauke, who had introduced that 2010 roadmap. He said the aim had been to give the government the opportunity to 'set out a pro-growth, pro-openness, pro-investment case in a time of austerity'. He felt the 2010 roadmap was a 'good move' and the Conservative government then had 'exceeded what we set out to' in terms of tax cuts. However, he acknowledged that over the whole 14 years that it was in power, that government could be accused of a lack of consistency on corporation tax. '2016 was where things started to go wrong,' he suggested. 'George Osborne left office and business investment fell substantially due to the Brexit vote and the uncertainty that followed.'

David said that the abolition last year of the Office of Tax Simplification was a 'great shame'. He was positive about Labour's plan for a roadmap but warned that both money and politics make significant cuts to corporation tax unlikely.

Dominic Mathon, Head of Tax and Treasury at RELX, said that a few years ago the UK was considered a 'pretty competitive place' for businesses, due to the relatively low corporation tax rate and some certainty and idea of the direction of travel. However, the dramatic increase in the rate had changed that. 'Our effective rate of tax is now lower in the US than in the UK,' he commented. 'That's something I never envisaged that I'd be able to say.'

Dominic said that heads of tax at large businesses are 'mystified' by the government's focus on 'full expensing'. 'It's of very little value to us,' he explained, and if there were a trade-off they would rather scrap full expensing and have 'a little bit of movement' on the rate. He didn't expect it to happen though.

The final speaker, CIOT's Ellen Milner, emphasised the importance of small businesses and the need for them to be included in the roadmap. She noted that small businesses are responsible for a majority of the tax gap, especially through error and carelessness. She laid out some of the problems very small businesses face with tax, providing the example of an electrician whose tax situation was made far more complicated when he became an incorporated business.

Asked whether a reduction in the rate could result in a greater tax yield, Helen said: 'The general rule is no, the evidence doesn't back it up.' Dominic disagreed, saying: 'It's really hard to tell when you look at all the different factors. So much depends on profits.' He said that when the 100 Group look at the impact of rate changes, they do so company by company, and there are instances where a lower rate has increased the take.

A few days after the debate, CIOT wrote to the tax minister setting out the Institute's views on what should be in the roadmap (see Technical Newsdesk, page 43). Ellen was among the attendees at a meeting with the Exchequer Secretary on the same topic.

Read a fuller report on the debate or watch a recording at: tinyurl.com/roadmap-debate

Political update

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

CIOT, ATT and LITRG have attended a number of meetings with ministers and advisers since the election, including a discussion on which reforms to the tax system we would prioritise and how the tax system can support economic growth. (Views expressed broadly reflected our letters published at tinyurl.com/ATT-XST and tinyurl.com/CIOT-XST24, and Charlotte Barbour's article at tinyurl.com/TaxFT.)

CIOT and ATT have identified 30 to 40 new MPs as having a connection or interest in tax, economics or finance. As MPs returned to Westminster after the summer recess, we wrote to congratulate them, introduce ourselves and offer a meeting. We are attending Liberal Democrat, Labour and Conservative party conferences this year to make connections and report on policy developments, but we are not holding events of our own this year, having taken a decision early in the year that uncertainty around the election date made this difficult.

Among the MPs we've written to is the new Conservative member for Reigate, Rebecca Paul, who is a Chartered Tax Adviser and former Head of UK Tax for Diageo. Her election keeps the tally of CTAs in the Commons at two, following Craig Mackinlay's decision to step down at the election. We look forward to seeing Craig take his seat in the House of Lords shortly, joining Lord Leigh of Hurley CTA, who chaired the House of Lords Finance Bill Sub-Committee in the last Parliament. We also congratulate Dame Karen Bradley CTA on her election as chair of the House of Commons Home Affairs Select Committee. We look forward to all the select committees being formed and beginning their important scrutiny work in October.

Advice

Online sellers urged to check their tax position

Individuals selling online need to make sure they are up to date with their tax affairs before HMRC come knocking, says the ATT.

This follows changes introduced in January this year, under which digital platforms (such as Etsy, eBay, Vinted and Airbnb) will have to make annual reports to HMRC about those who sell goods or services through them.

Senga Prior, Chair of the ATT Technical Steering Group and the Association's President, said: 'It's important to remember that the tax rules for individuals selling goods or services online have not changed. These new rules just mean HMRC will have more information about what taxpayers are doing.'

Information shared with HMRC about sellers will include identifying information and how much they have earned. This will help HMRC to identify those who haven't been paying tax when they should have been.

Senga continued: 'Just because you sell online, it doesn't necessarily mean you will have tax to pay. In order to be taxable, you have to be carrying out a trade – for example, buying in or making things with a view to selling them online. If you are just clearing out the attic or selling old clothes you no longer need that shouldn't be a trade, and tax shouldn't be payable. Even if you are trading, you can earn up to £1,000 of income (before expenses) a year without having tax to pay.'

ATT is advising online sellers to keep a record of any costs they incur, including buying goods, packaging or postage, as they will be able to claim a deduction for these.

Advice

HMRC must act now to defuse side hustle 'time-bomb'

CIOT's Low Incomes Tax Reform Group (LITRG) is warning that the spectre of another 'side hustle' tax controversy looms as online platforms start sending reports to HMRC on the income of their sellers (see story above).

In a new paper, 'Online platforms – the changing landscape for the self-employed', LITRG warns that HMRC has failed to do enough to make sellers aware of the fact they may need to file a tax return and pay tax on their online trading income.

Although there is no change to the existing tax rules, HMRC will have more information on who is earning income using online platforms and therefore may be more likely to find out who owes tax on their earnings.

LITRG's concerns include:

- sellers receiving information on their activities from platforms based on a calendar year of activity, not by tax year, making it harder to understand and calculate when tax may be due;
- the lack of a standard reporting format, meaning sellers could receive different forms from different online platforms; and
- reports being produced during one of HMRC's busiest times of the year, when it can be hardest to access help. LITRG is concerned that sellers could ignore the information, creating problems further down the line.

LITRG is calling on HMRC to strengthen its guidance for those using online platforms. It wants to see the information that HMRC and sellers receive standardised across platforms so users can easily understand it and report their earnings by tax year.

In the news

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

'We continue to be concerned by the damaging impacts caused by poor HMRC customer service.'

Richard Wild, CIOT head of tax technical, Daily Telegraph, 31 July

'Emma Chamberlain, barrister at Pump Court Tax Chambers, said it demonstrated a "careful approach", citing the review of offshore anti-avoidance legislation – previously called for by the Chartered Institute of Taxation, a professional body.'

The Financial Times on proposed reforms to non-dom rules, 2 August

'The Chartered Institute of Taxation has called this approach "very concerning". It said companies should be given the "ability to respond and explain" where the tax authority suspected a claim may not qualify.'

The Times on HMRC rejecting thousands of claims for R&D tax relief, 19 August

'There's a lot more data in the hands of HMRC and other government agencies than the general public realise in this space.'

Gary Ashford, chair of the CIOT/ATT crypto assets working group, Financial Times article on cryptocurrencies, 23 August

'We're expecting potentially some changes around capital gains tax, so that applies to people who sell assets, or inheritance tax, which applies on death. It's all a little bit uncertain.'

ATT technical officer Helen Thornley on BBC Radio Cumbria on potential tax announcements in the Budget, 28 August

'The fact that council tax remains based on property valuations from over 30 years ago means there are lots of inconsistencies. While we agreed that the shelved 2023 proposal to increase the amount of council tax paid by homes in bands E to H would help to address the regressive nature of the council tax system, we stressed that an essential precursor to this would be a full revaluation of all domestic property.'

LITRG's Joanne Walker, in The Scotsman on Scottish council tax, 1 September

Membership

The ATT's 10,000th member

The ATT welcomed Molly Eldridge into ATT membership in September 2024. We took the opportunity to ask her about her ATT qualification and how it felt to be our 10,000th member.

Molly Eldridge

Congratulations on completing your ATT qualification, becoming our 10,000th ATT member and joining the ATT Community.

Thank you! I was so pleased to find out that I qualified and even more so that I was the 10,000th ATT member.

What made you study the ATT qualification?

As the daughter of a small business owner, I saw the devastating effects of the Covid pandemic on small businesses. My family turned to accountants and tax advisers for help, so from a young age I wanted to follow this path to help small business owners better understand their taxes to allow for better planning.

What motivated you to want to become an ATT member?

I have been lucky throughout my career so far to work for a lovely firm called Kendall Wadley. My seniors and bosses here have been so supportive and encouraging – it really made the process a lot easier. I genuinely found the qualification very interesting and I loved learning about the intricacies of tax legislation.

How do you think achieving the ATT membership designation will help your career development?

Throughout the qualification, I was becoming more confident in the rules and legislation. The ATT course has given me the confidence to research new and interesting topics and meet with clients on a regular basis.

What benefits do you think your ATT membership will bring to your employer?

It is important for our firm to build long-lasting relationships with our clients to provide the highest standards possible. The designatory letters after our names ensures that clients can trust us, which is an important building block for our compliance work, as well as getting more client referrals.

What has been the highlight of your career so far?

I'm proud of my development in my career so far – in particular, having qualified at the age of 20. Most of my peers are in university which, although it carries its own benefits, never stood out as the best option for me.

I decided to start my career straight out of sixth form. My teachers and peers told me that I was challenging myself too much, and that I should take some more time to figure things out. I'm so glad that I didn't take that advice. These last two

HMRC forums

Individuals Stakeholder Forum and Additional Needs Working Group

As part of our ongoing spotlights focusing on our engagement with HMRC and policymakers, this month we take a look at the work of the Individuals Stakeholder Forum and the Additional Needs Working Group.

The Individuals Stakeholder Forum and the Additional Needs Working Group are two important consultative forums established by HMRC to enhance the delivery of services to individual taxpayers, particularly those who are unrepresented or have additional needs.

These forums are attended by LITRG technical officers, along with other professional bodies and voluntary sector organisations, such as the tax charities, welfare rights organisations and charities representing people with disabilities.

The Individuals Stakeholder Forum

This serves as HMRC's primary consultation platform for the voluntary and community sectors. The Individuals Stakeholder Forum provides a space for HMRC to discuss the implications of proposed changes to policies, products and processes that could affect individuals. LITRG, along with other stakeholders, are able to offer early feedback on proposed initiatives and guidance, helping to ensure that the diverse needs of individual taxpayers are considered and that changes are clearly communicated.

LITRG's membership of this forum has established a vital two-way communication route with HMRC and the relationships built up via our involvement with the forum have been important to our work and mission. This has included:

- feeding into the development of HMRC's internal Digital Inclusion Strategy;
- ongoing dialogue with the team responsible for Simple Assessment and the collection of tax on state pensioners;
- presentations from teams in HMRC developing new interactive tools and services, allowing us to raise concerns and suggest improvements prior to launch;
- follow-up 'walk-throughs' for new services, enabling LITRG to provide better user-focused guidance on its website; and
- providing post-launch feedback on measures introduced where prior stakeholder engagement was not possible.

The Additional Needs Working Group

The Additional Needs Working Group is focused on supporting customers who require extra assistance when using HMRC services. The group's purpose is to help HMRC address equality issues, identify and explore ways to remove barriers faced by certain taxpayers, share best practice

years have been the best of my life so far. I have learnt so much, had the flexibility to holiday abroad and, most importantly, proved myself right!

What was your perception of taxation before you started your ATT training and how has this changed?

My perception of tax before my ATT training was that it was very black and white. I wasn't expecting to be learning new things daily or for there to be quite so many intricacies.

I'm excited to spend every day within my tax career learning more about the legislation.

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

Do it! Even if you doubt yourself. It is a great foundation to your career, and you will meet some great people along the way.

Tell us something about yourself that others may not know about you?

I love to ice skate. It is something I started three years ago, and I fell in love with it. It is the place where I can really switch off. I help with coaching at my local rink and I am currently learning to do Lutz jumps and sit spins.

for those with additional needs and work towards a more accessible tax system.

The forum provides stakeholders with a space to share experiences and feedback on the impact of HMRC's strategies on customers with additional needs. LITRG's involvement means that we can give a voice to individuals requiring extra support and ensure that their needs are reflected in service development.

Making Tax Digital tends to be a rolling agenda item for the Additional Needs Working Group meetings, albeit at rather high level. The broader 'drive to digital' is also a consistent theme, and stakeholders continually advocate on behalf of those who are digitally excluded or digitally unconfident, holding HMRC to account in ensuring that non-digital routes are available and accessible to those that need them.

Both the Individuals Stakeholder Forum and the Additional Needs Working Group play a crucial role in improving HMRC's engagement with individual taxpayers, many of whom are unrepresented, and LITRG very much values its attendance at both.

Disciplinary reports

NOTIFICATIONS

Mr Adam Hart

At its hearing on 16 April 2024, the Disciplinary Tribunal of the Taxation Disciplinary Board (TDB) determined that Mr Adam Hart of Guernsey, a member of the CIOT, 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:

1. Rule 2.2.2 in that Mr Hart engaged in or was party to illegal activity; and
2. 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 of £2,493.

Mr Dilip Patel

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

1. 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
2. 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.

Mr Alan Rodgers

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

1. 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
2. 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:

1. Rule 2.2.1, in that he knowingly failed to provide relevant information; and
2. Rule 2.6.3, in that he had:
   a) 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
   b) 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.
3. 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 of £2,733.

The decisions of the Tribunal can be found at: www.tax-board.org.uk.

Membership

Make the most of your membership: support your branch

Engage with your local branch and take full advantage of the resources available to you. Your professional growth depends on it! CIOT President Charlotte Barbour shares her thoughts.

Charlotte Barbour

As President, I often get asked about my role and whether I enjoy it. The answer is a resounding yes! My year has been filled with opportunities to connect with fellow members and participate in both social and technical branch events. These branches are essential for networking and staying updated on industry changes.

Throughout my time with the CIOT, I've primarily engaged with the branch network locally. This year, however, I've had the privilege of attending events across the country. I want to share some highlights to encourage you to engage with your local branches.

In-person technical events

Recently, the East Midlands branch held its annual one-day technical conference in Belper, Derbyshire. This exemplified what the CIOT does best: offering a range of technical updates presented by members for members. The morning session provided valuable insights into advising owner-managed businesses, featuring practical examples that consolidated various points. The afternoon included topical updates that broadened our knowledge base.

Every face-to-face meeting reinforces the benefits of in-person interactions. Stepping away from my desk allows for better concentration, and discussing tax points informally with colleagues enhances understanding. The East Midlands branch also organised a dinner after the conference, making the day even more enjoyable.

This autumn, I'm looking forward to specialist events like the Indirect Taxes Conference on 12 November, and the 25th Cross Atlantic and European Tax Symposium on 14 November, hosted by the European Branch and ADIT in collaboration with the International Fiscal Association UK Branch.

In-person social events

I encourage you to join branch social activities. The Leeds branch recently hosted an enjoyable 'end of year' tax party in an Italian tapas bar, complete with food, wine and networking opportunities. Similarly, the Manchester branch's evening event in July was a success.

You can find upcoming events listed at www.tax.org.uk/local-branches. All members and students receive our twice-weekly emails about local events. If you're not receiving these or would like to suggest events, please contact branches@tax.org.uk.

Continuing professional development (CPD)

Ongoing CPD is crucial for professionalism. HMRC's 'Raising Standards' initiative is examining CPD undertaken by tax advisers, focusing on its effectiveness. The CIOT and ATT branch network offers a wide range of CPD opportunities, both in-person and online, along with social events. I encourage you to actively support and attend these offerings.

There are also numerous opportunities to volunteer within the branches. Whether serving as a branch chair, committee member or speaker at events, your involvement can yield significant professional benefits and count towards CPD. Supporting your local branch is a two-way street – the more you engage, the more you gain.

Online events

For those who prefer online learning, the branch network provides a wealth of choices. These events range from technical updates to practice management and regulatory requirements, making them accessible either in real-time or as recorded sessions. Many options are free or low-cost.

I recently spoke with a training partner about their approach to webinars. They emphasised the importance of staff watching specified online updates together in a designated training room, followed by discussion. This approach maximises the benefits of webinars, ensuring that participants stay engaged.

Charlotte Barbour, CIOT President

> 'The Branch Network offers a great opportunity to meet with tax professionals in your locality, as well as providing vital CPD. The ability to discuss current tax issues and technical changes is valuable and gives reassurance that you are not alone! Volunteering for branch committees or offering to speak on your specialist subject is rewarding and raises your professional profile.'
>
> Senga Prior, ATT President

CIOT council

New CIOT Council member: Sofia Thomas

The CIOT are delighted to welcome Sofia Thomas Msc (Oxon) CTA (Fellow) and Partner at Juno Tax as a recently appointed Council member since this summer.

Sofia is also Chair of the International Sports Tax Association, a member of the ATT Technical Steering Group, a member of HMRC Wealthy External Forum and a member of the AAT Tax Panel.

Sofia is co-author of *Tax Implications of Family Breakdown* (1st and 2nd edition) and author of *Taxation and the Elite Athlete* (awaiting publication). Sofia is a regular tax commentator in the press. We are delighted to welcome Sofia to the CIOT Council.

Tax Charities

Running the length of Britain: fundraising for vital tax charities

Andrew Disley ran the length of Great Britain to raise vital funds for TaxAid and Tax Help for Older People.

Andrew Disley

Almost every morning for 35 days, Andrew Disley laced up his running shoes determined to make a difference for people in need. Inspired by his long career in tax and dedication to volunteering for the tax charities, Andrew took on the 1,030 mile 'Run Britannia' challenge across the UK. Through this incredible feat he has so far raised over £3,500 for TaxAid and Tax Help for Older People.

The journey of 1,034 miles (including four 'bonus' miles resulting from navigation issues and four rest days) covered over 90,000 feet of ascent. Andrew was on his feet for almost exactly 300 hours – approximately 10 hours per day of running.

For Andrew, the highlight of the challenge was running across the Quantock Hills and the camaraderie of his fellow runners: 'The views and scenery in Somerset were wonderful and there was nobody else around. We also had a very supportive group and crew helping each other through the highs and lows.'

Follow the QR Code to explore our events. Every mile, every effort and every donation counts.

The charities behind the miles: TaxAid and Tax Help for Older People

TaxAid and Tax Help for Older People are UK charities that provide tax advice and support for people on low incomes who are unable to afford the tax advice they desperately need. At our heart, we believe that no one should pay more tax than they owe, simply because they cannot afford to pay for tax advice.

In 2023/24, 18,667 people contacted our helplines, seeking help often at a point of crisis. Through the tax expertise of our staff and volunteers, the charities generated tax refunds of £315,937 and cancelled tax debt of £1,063,139 for people suffering financial hardship.

There are many people in the UK who need our help and we aim to help everyone who needs us. But to do so, we need the support of people like Andrew and our supporters within the tax community to help us.

Individual efforts, like Andrew's, make an incredible difference to TaxAid and Tax Help for Older People. The support of the outstanding tax community allows us to continue our service, develop how we help people, and ensure more people who need our service know we are here to help them.

Please donate to Andrew's fundraiser by following this link: www.justgiving.com/page/andrew-disley-1717839701965

Andrew's motivation

'I have been volunteering with TaxAid for ten years now and see in my weekly work the great difficulties that our clients encounter and the huge need for TaxAid's services. I saw this run as a great opportunity to raise money for the cause. It was a significant challenge but also very enjoyable with fantastic scenery and great company.'

Every step counts: here's how you can get involved

We have just launched several new fundraising events on our website, including the Hackney Half Marathon, Ride London-Essex, Santa in the City and various events nationwide. Follow the QR code to explore our events. Every mile, every donation and every effort counts. Thank you for your support. And thank you again to Andrew Disley for taking on this monumental challenge and supporting the charities for over 10 years.

WCoTA

Worshipful Company of Tax Advisers: Get involved

You may have heard about the Worshipful Company of Tax Advisers but do you know about the Livery as a whole and where the company fits in?

There are 111 Livery Companies based in the City of London – the oldest dating from the 12th century and the newest set up this year. Originally, they guaranteed that members were trustworthy and qualified and that goods were of reputable quality. They also provided alms for members in difficulty, and education and training for those who had no access to it.

The trades of some companies died out long ago, and they have evolved into being primarily charitable foundations for their professions and general charities. Those with current trades maintain contact with their professional bodies. Some require relevant professional qualifications for membership, whilst others exercise powers of regulation, inspection and enforcement. All Livery Companies have provided support to schools, colleges and universities, churches, the armed forces, cadet and civilian services.

Richard Geldard

Benefits and opportunities of membership

Networking: You have the chance to meet with like-minded individuals in a profession or trade, facilitating collaboration and the sharing of knowledge, and identifying potential business opportunities.

Socialising: You have the chance to socialise at formal and informal events, dinners and gatherings, with the members of your own company, and increasingly with members of other companies.

Charitable and civic engagement: Livery companies follow the traditions of philanthropy and community service, supporting charities both financially and practically, supporting education and engaging in civic activities, giving a sense of social responsibility and positive impacts.

ADIT

Exam success includes firsts in Bangladesh and Colombia

More than 500 international tax professionals have successfully passed exams for the Chartered Institute of Taxation's ADIT (Advanced Diploma in International Taxation) qualification.

Online exams took place in June in 63 different countries, with 509 students passing at least one exam and 116 completing ADIT in full by passing a third ADIT module, including the first students to achieve the qualification in Bangladesh and Colombia. Of the new ADIT holders, 16 were awarded a distinction grade for excellence in their exams.

CIOT President Charlotte Barbour said: 'It is with great pride that I extend my congratulations to our most recent cohort of ADIT graduates. These latest exam results are a testament to the dedication, intellect and aspiration of our students and mark a significant milestone in their professional journeys that it is a privilege to be a part of.

'In particular, I would like to applaud the recipients of our seven medals and prizes, generously sponsored by leaders of the tax industry, the newest of which is the International VAT Association Prize, awarded to the best overall performance in the EU VAT option.'

The ADIT qualification is now held by 2,116 tax practitioners in 94 countries and territories, more than 400 of whom have chosen to subscribe with the CIOT as International Tax Affiliates since attaining the qualification.

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

- Eoghan Murphy of Dundalk, Ireland is awarded the Heather Self Medal for the best overall performance in Module 1 Principles of International Taxation.
- Sharnjit Brach of Birmingham is awarded the Raymond Kelly Medal for the best overall performance in Module 2.09 United Kingdom option.
- Kai Ho Lam of London, who sat Module 2.04 Hong Kong option, is awarded the Worshipful Company of Tax Advisers Prize for the highest mark in Module 2 (All other options).
- Ioannis Kekeris of Athens, Greece is awarded the Tom O'Shea Prize for the best overall performance in Module 3.01 EU Direct Tax option.
- Tiphaine Lemaire of Bois-Colombes, France is awarded the inaugural IVA Prize for the best overall performance in Module 3.02 EU VAT option.
- Clarence Frank of London is awarded the Croner-i Prize for the best overall performance in Module 3.03 Transfer Pricing option.
- Shahinoor Khanum of Dhaka, Bangladesh is awarded the Wood Mackenzie Prize for the best overall performance in Module 3.04 Energy Resources option.

Preservation of tradition and heritage: Some companies have rich historical artifacts, traditions and customs. Members can participate and contribute to their preservation.

The Worshipful Company of Tax Advisers

The Worshipful Company of Tax Advisers was founded as a Guild in 1995 by leading members of the Chartered Institute of Taxation. It became the 107th livery company in 2005 and was granted a Royal Charter in 2009. Its members are all current or former tax practitioners, including chartered tax advisers, tax technicians, accountants, lawyers, tax practitioners from industry, tax publishers and tax officials.

In addition to the benefits of joining mentioned above, we undertake a number of other activities to support the City of London, the government and the UK. For example, before each of the Lord Mayor's overseas visits, and in respect of some domestic tax matters, the Company provides a tax briefing to support the discussions and engagement with officials and government ministers.

The Company is a member of the Financial Services Group of 13 Livery Companies, which aims to coordinate the efforts of its members in supporting the Lord Mayor and the City of London Corporation in promoting the City of London financial and business services sector. In addition, its member companies organise events that are of interest across the Livery and provide opportunities for individuals to network across the group.

The Worshipful Company of Tax Advisers is pleased to confirm that Richard Geldard has been installed as its new Master. Many tax professionals will know Richard, as he is a Past President of the Association of Taxation Technicians.

We are always looking to welcome new members and Richard is particularly keen to grow both our membership and our charitable activities.

If you wish to join and become involved in our activities, please visit our website at www.taxadvisers.org.uk. Here you will be able to watch and listen to some of our members explaining why they joined the Company and how it benefits them.

You will also find our application form or you can contact Michael Ashdown, who chairs our Membership Committee at mjashdown@hotmail.com.

Lorraine Parkin, Court Assistant, Chair of WCTA's Charity Committee

A MEMBER'S VIEW

Sharon K. Dosanjh

Associate in Tax and Private Client, Crowe UK LLP

This month's ATT member spotlight is on Sharon K. Dosanjh, Associate in Tax and Private Client at Crowe UK LLP.

How did you discover tax?

I stumbled upon my passion for tax while studying Accounting and Finance at De Montfort University and tax quickly became my favourite subject. The engaging lecturers made the complexities of tax law come alive. Michael Crowe, my mentor, encouraged me to pursue a career in tax. Starting my training at PwC was a big leap, but now, as an Associate in Crowe's Private Clients team, I find every day exciting and rewarding.

Why is the ATT qualification important?

The ATT qualification is crucial for anyone serious about a career in UK tax. It provides a solid foundation. The exams are challenging but they're essential for the credibility and expertise they offer. I'm currently completing my CTA qualification, and the ATT has been indispensable in preparing me for this next step.

Why did you choose a career in tax?

Tax is more than just numbers, it's about strategic thinking and solving complex issues. In my role with high net worth individuals, I find tax matters particularly rewarding – helping clients navigate the tax implications of divorce can be challenging and impactful. Tax can significantly affect my clients' financial and personal lives, reinforcing my passion for the field.

Describe yourself in three words.

Dynamic. Insightful. Proactive.

Who has influenced your career?

Two people stand out. First, Nicky Owen, Partner and Head of Professional Practices at Crowe UK, has been a tremendous influence. Her tax knowledge, advice and honest feedback have pushed me to think more creatively and consider multiple perspectives when tackling tax problems. Dipti Thakrar, tax specialist and mentor to young professionals, has also had a transformative impact. As a person of colour, seeing someone like me succeed in the field has been inspiring. Dipti has reshaped my confidence, enabling me to engage meaningfully in any professional setting. Her belief in me has been pivotal in my personal and professional growth.

How would you advise someone considering the ATT qualification?

Treat the ATT as the foundation of your tax career. While it's demanding, it remains indispensable for building a strong understanding of tax principles. Engage fully with the material and view it as preparation for more advanced qualifications like the CTA. Don't be shy – speak up and ask for help when needed.

What do you predict for tax advisers and the industry?

I think tax advisers will need increasingly advanced qualifications as regulations evolve. Technology will play a bigger role, but the human element – professional judgement and client relationships – will remain crucial.

What advice would you give your future self?

Make sure to complete your professional exams earlier in your career and strive for a good balance between work and personal life. Nurture your relationships while pursuing your career goals and keep seeking opportunities for professional growth.

Tell us something people may not know about you.

I'm passionate about charitable work and was an ambassador for the Teenage Cancer Trust, where I organised fundraising events to support young people battling cancer. I was also recently shortlisted as a nominee for one of the Top 50 Women in Accounting, which is a tremendous honour.

Contact

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

Examinations Committee Volunteer

Would you like to be part of the group that oversees the review and administration of the CTA Exams on behalf of the CIOT Council?

If you are a CIOT member with at least three years post qualification experience, especially if you specialise in IHT or Corporate Tax, we would like to hear from you*.

Volunteering with the Examinations Committee will provide you with a range of experiences including contributing to setting the standards for admitting new CIOT members as well as gaining experience in governing an examination and qualification process and making judgement calls on difficult decisions. You will also be able to also grow your skills in diplomacy, delegation, communication and governance, as well as forming relationships with others in the profession with a shared interest in the education, training, and qualification of aspiring members.

More information on this opportunity can be found at **www.tax.org.uk/vacancies** and you are very welcome to contact Jude Maidment **jmaidment@ciot.org.uk** or Vicky Purtill **vpurtill@ciot.org.uk** before submitting a brief CV to discuss the role if you are interested.

*Those who work in the tax tutorial bodies delivering the CTA qualification are unable to apply for this role.

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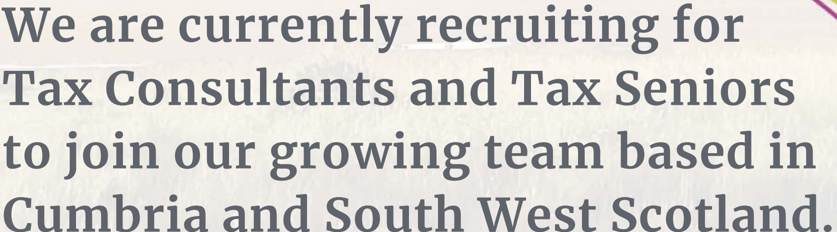

We are currently recruiting for Tax Consultants and Tax Seniors to join our growing team based in Cumbria and South West Scotland.

At David Allen, our mission is to provide an exceptional employee experience, empowering our people to thrive in all they do. We are more than just an accountancy firm - offering services in IT, Recovery Solutions, Financial Services and Wills and Probate.

We are currently recruiting for Tax Consultants and Tax Seniors to deliver excellent tax advice and client service. These roles offer the chance to work across areas including Inheritance Tax, Capital Gains Tax, Trusts and Estates and Corporation Tax.

If this sounds like the role for you, we are offering a relocation allowance to support your move.

Visit our website for more details, and send your CV along with a brief summary of why you think you are a good fit for us, to recruitment@david-allen.co.uk.

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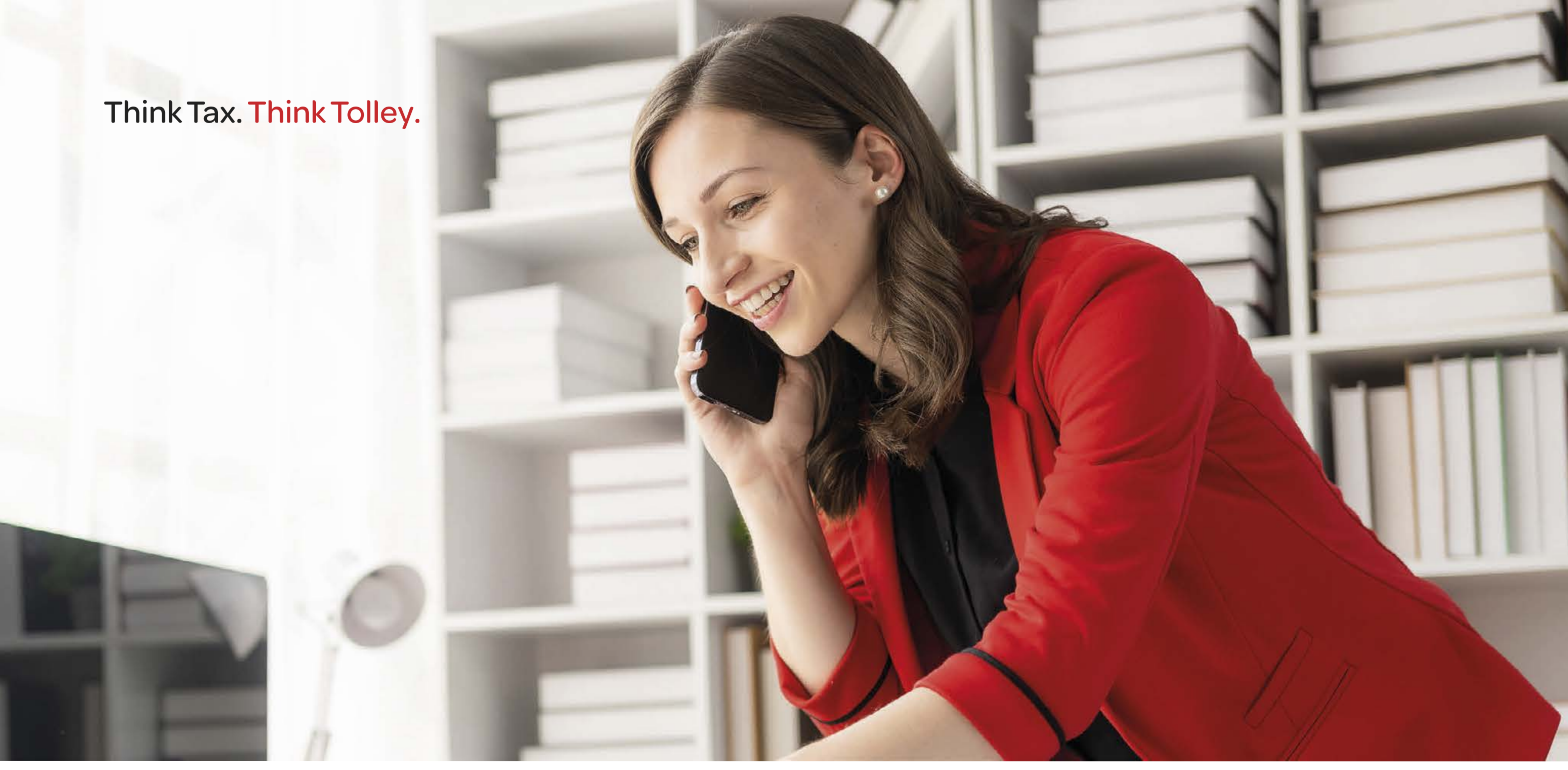

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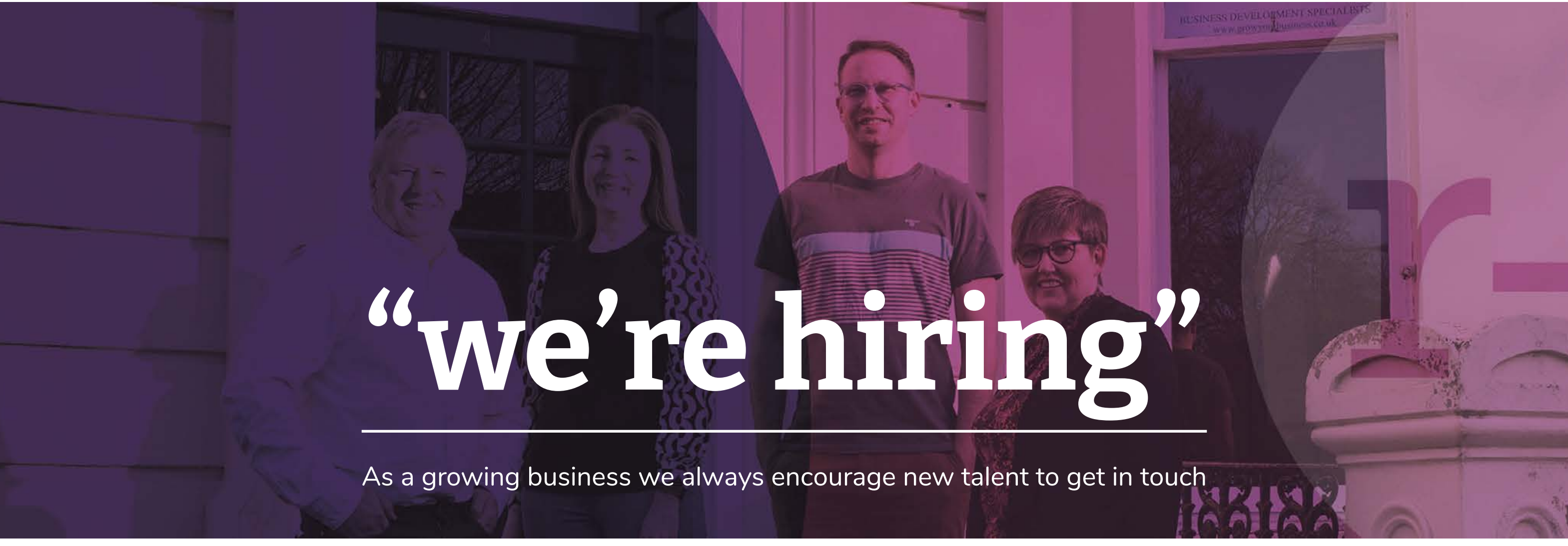


Do you love helping business owners?

Our core mission is Making Lives Better. This is central to everything we do!

Preparing a tax return is one thing – but helping owners by giving them more time, helping them to grow their business, get that new house, take their family on that holiday of a lifetime, or help to show them that they can afford to take on a new employee and free up their time is valuable.

Are you straight-talking with integrity, someone who can create empathy with clients and help them to achieve their goals?

Do you strive to be the best version of yourself? Not simply settling but continually striving and looking for new ways to develop!

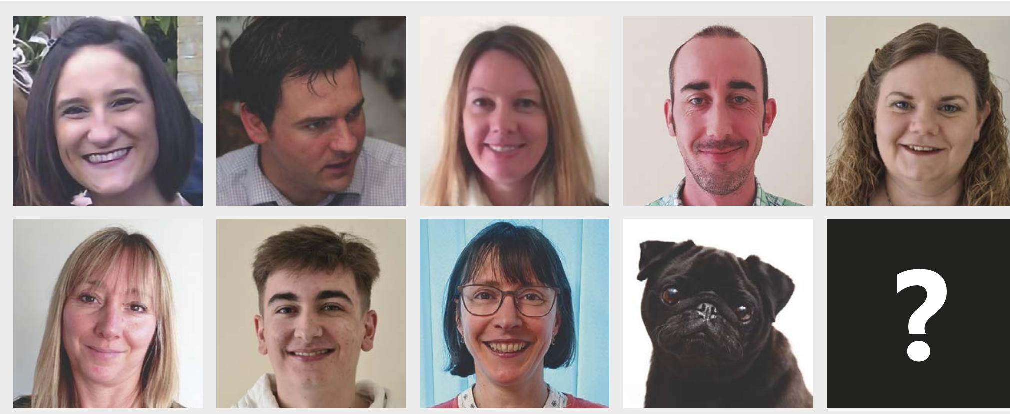
Do you love working as part of a team? When the going gets tough are you the one to step up and play your part? We are always there when it matters: for our team, our clients and the wider community through our charitable work.

Are you willing to challenge clients to get the most out of their businesses and keep them on the straight and narrow? If you see something wrong are you the one to highlight that and stand against the tide? "No you can't put that new hot tub through as a business expense".

If this sounds like you then we are looking for a number of people to join our growing team here at russell + russell.

We are currently hiring for a Qualified Tax Senior and a Tax Trainee Part Qualified. Please scan the QR code for more details on these roles!

Gander Tax Services



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.

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UK Tax Accountant

A&O SHEARMAN

IN HOUSE UK TAX ACCOUNTANT (MIXED TAX ROLE – LARGE GROUP)

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As a UK Tax Accountant, you will act as a key member of the growing in-house Tax team. You will work closely with and support the Senior UK Tax Manager in the management of the UK (direct and indirect) tax affairs of the A&O Shearman group, to ensure all statutory deadlines are complied with, and any compliance risk is minimised, as well as becoming a trusted adviser to the business on ad hoc advisory aspects.

The role would be most suitable for a person who has good corporate/mixed tax compliance experience and is currently working at the level of 'newly qualified' up to 'tax senior' or equivalent level. Applications from part-qualified candidates will be considered, where they have demonstrable experience of working in a tax team and have good technical corporate tax skills. Study support may be available to complete a relevant qualification, and there is clear scope for development in this role.

THE ROLE INVOLVES:

- Preparing business tax computations (corporate and partnership) for group entities, including the primary LLP's trading income (GBP500m+), and ensure timely submission of tax returns to HMRC.
- Preparing and submitting governance returns (SAO, Economic Crime Levy) for the Group's corporate entities.
- Playing a key role in year-end closing, including Deferred Tax calculations.
- Assisting with tax accounting and tax notes for statutory accounts.
- Completing and reconciling UK VAT returns; advise on complex VAT matters.
- Supporting on various projects, including research on complex tax issues, capital allowances, employment tax, digitalisation (MTD), business restructuring, and international tax.

WHAT YOU WILL HAVE

- Experience in the preparation of UK tax computations for entities within a large group.
- Strong analytical and numeracy skills with an ability to focus on detail, and strong IT skills, specifically with the use of excel.
- Ability to analyse and communicate complex technical tax and accounting matters and provide clear/accurate advice both orally and in writing to non-specialists. (Previous VAT experience is not a pre-requisite, but UK corporate tax experience is.)
- Experience of submitting corporate and partnership tax returns online using tax software packages, including Alphatax and CCH Personal Tax or similar, would be desirable, although training on this software will be provided.
- The role will involve interactions with partners, external tax advisers, HMRC, finance teams and other support functions. The ability to communicate effectively and build strong relationships with these stakeholders will therefore be critical.
- Collaborative approach and ability to build strong relationships with PAT team colleagues and more broadly in London and Belfast, as well as with colleagues in other teams located across the globe.
- Knowledge of tax issues affecting professional partnerships is desirable.
- An appropriate professional financial qualification, CTA/ACA/ACCA/ATT with experience of working in Tax is essential.

Interested?
Scan the QR code for more information

Belong. Excel.

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GEORGIANA HEAD

Director

Tel: 0113 418 0767
Mob: 07957 842 402

georgiana@ghrtax.com

Tax Directors
Bristol, Exeter, Poole or Southampton

PKF Francis Clark is the largest firm of independent chartered accountants and business advisors in South West England. We have nine offices in Bristol, Exeter, Plymouth, Poole, Salisbury, Southampton, Taunton, Torquay and Truro.

The firm, which celebrated its centenary in 2019, has annual revenue of over £65 million and a 900-strong team based across our offices. Our dedicated specialist tax department comprises nearly 150 individuals, from trainees to partners. We're one of the largest tax practices of any regional firm in the UK. As part of the next stage of the expansion of our tax practice, we seek two key hires:

Transaction Tax Director – based in Bristol, Exeter or Poole

This pivotal role sees you working alongside our award-winning corporate finance team to provide advisory services to our well-established portfolio of large corporate clients and private equity houses. You will deal with a wide range of M&A tax work, including: due diligence projects; vendor advice, including clearances and pre-sale structuring; structuring for PE-backed transactions; corporate restructuring, demergers, reorganisations and management buy-outs. Providing deal support such as reviewing SPAs; liaising with non-UK firms in the PKF network to obtain input on international tax projects. Alongside technical work you will assist the partners in the strategy and development of the Transaction Tax team, managing team members, developing client relationships and internal networks.

Corporate Tax Director – based in Bristol, Exeter, Southampton or Poole

A fantastic role in our tax team for an individual with significant compliance and advisory experience. You will help manage and develop our corporate tax team and a well-established portfolio of OMB/SME and large corporate clients, providing a mix of compliance and advisory services. You will play a key and leading role in developing and maintaining relationships with our corporate clients and will build strong links with the accounts and audit team to ensure a comprehensive tax service to clients. You will provide technical and mentoring support to team members and be a key point of contact for HMRC. There is the opportunity to become involved in developing tax technical material and to prepare and present at internal and external meetings and seminars.

Both roles come with flexible, hybrid working, with plenty of opportunities to develop and grow your tax career. Both roles require UK-based corporate tax experience and ideally you will be CTA qualified or equivalent. We welcome applications from individuals looking to relocate to the South West for a better work-life balance.

We offer a supportive and flexible culture, taking your career seriously to enable you to be the best you can be. We've been certified as a Great Place to Work since 2022 and are ranked 24th among large organisations in the UK's Best Workplaces 2024. We were also a Best Employer in Tax finalist at Tolley's Taxation Awards 2023.

For further information, please contact our retained consultant Georgiana Head on 07957 842 402 or email her at georgiana@ghrtax.com.

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- Helping lead the personal tax offering across Yorkshire.
- Managing and developing a team of staff (currently 14 people).
- Day-to-day client management of a diverse client base which includes HNW individuals and families, entrepreneurs, landed estates, trusts and individuals with cross border wealth.
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The key attribute for this role is high level private client experience dealing with ultra high net worth individuals with complex wealth. You will need experience of managing teams, and are likely to either be an experienced director looking for a step up, or already a partner.

We will consider applications from candidates looking to relocate to the North of England.

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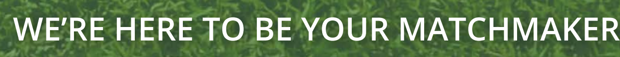

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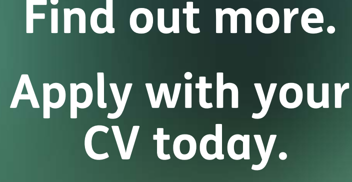

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R&D TAX MANAGER

MANCHESTER To c£60,000 dep on exp

Due to the continued growth of its Innovation Tax Relief service line, our client is seeking a CTA-qualified Tax Manager. You will currently be working in either a specialist tax relief role or a mixed role, however, you must be CTA qualified or equivalent. The role would particularly suit someone that is looking for a change of environment outside of the large accounting firms but without compromising on the quality of work. **REF: C3598**

CORPORATE TAX SM

NORTH ENGLAND To £90,000 dep on exp

This large international firm is looking to recruit driven and dynamic corporate tax senior managers across the North. The opportunity would be great for either an established senior manager or an ambitious Manager looking to move for a promotion. In this client facing role, you will work on a range of interesting corporate tax clients and be involved in the management of the corporate tax compliance process as well as wide ranging corporate tax advisory projects and business development. **REF: A3590**

IN-HOUSE DIRECT TAX SPECIALIST

CHESHIRE To £65,000+ bonus

A fantastic opportunity to join a large multinational based in Stockport. You will be responsible for the completion of direct tax returns, including managing external tax advisers as well as advising on tax issues related to business reorganisation, M&A and divestment projects and efficient tax structures. The role would suit someone either working in practice or industry and part-time hours will be considered. **REF: R3600**

PRIVATE CLIENT ASSISTANT M'GER

MANCHESTER To £48,000

Our global client is seeking a proactive tax professional to join the team as an Assistant Manager with a clear pathway to Manager. This award-winning team manages the complex affairs of individuals, families, entrepreneurs, trusts, and businesses. The ideal candidate will either be part of fully CTA qualfied with the ability to work independently and collaboratively. A strong understanding of tax compliance is crucial, with the potential to become involved with advisory projects. **REF: C3601**

TAX PARTNER

YORKSHIRE To £125,000 dep on exp

Modern and progressive firm of accountants looking to recruit a tax partner to lead its thriving tax business. If you're an ambitious tax professional aiming to leverage your expertise in a dynamic environment, this position promises significant professional growth and exposure to a diverse client portfolio. Strong mixed tax knowledge in the OMB space is essential. **REF: A3605**

PRIVATE CLIENT M / SM (TRUSTS AND ESTATES)

LEEDS £competitive

Our client is a leading firm in the North of England, and it is seeking a CTA Qualified Personal Tax Manager or Senior Manager in Leeds to work on a portfolio of HNWIs and leading on delivering advisory project work. In particular, the portfolio includes many clients with significant land and rural interests, comprising both landed estates and trusts. Experience in this area is therefore essential. This is a challenging and interesting client facing role which provides an excellent and un-paralleled range of work for someone with a strong tax background in trust and landed estate clients. **REF: C3544**

Tel: 0333 939 0190 Web: www.taxrecruit.co.uk

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