April 2023

TAXADVISER

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50 not out

As VAT reaches its half-century birthday, we consider the lessons from our favourite VAT cases over the last 50 years

Spring Budget 2023

The latest round of tax changes and what we should be looking out for!

The Windsor Framework

A new beginning for our trading relationship with Northern Ireland

The income record viewer

Will this online service from HMRC really make things easier for agents?

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HELEN WHITEMAN JANE ASHTON

Welcome
The importance of members

On 15 March, Jeremy Hunt delivered his first Spring Budget as Chancellor of the Exchequer heralding a 'Budget for Growth' focusing on four key priorities: Employment, Education, Enterprise and Everywhere. These can be summarised as a push by the Chancellor to get more people into work (or back into work), supported by more affordable childcare; to boost R&D and investment by businesses; and to promote investment and regeneration across the UK.

Following the Budget, the ATT issued five press releases and the CIOT seven covering areas as diverse as natural capital, R&D, capital allowances, pensions and cryptoassets and copies of these can all be found on our websites.

Whilst the announcements were not as ground-breaking as 2022's September 'mini-Budget' (and subsequent revisions), there is still plenty of interest here.

A number of consultations were also announced on the day, and we will be seeking the views of our members to aid and inform the content of our responses. You can keep an eye on our consultations page for details of the consultations we're working on.

If you want to get involved in helping ATT to develop our responses or volunteer as a contributor, then we would like to hear from you. Please just email atttechnical@att.org.uk and one of the Technical Officers will be in touch.

At the time of writing, we are pleased to say that around 80% of members have submitted their Annual Returns. Outstanding Annual Returns and related 2023 subscriptions are now well overdue (the deadline was 31 January 2023).

Completing the Annual Return is a membership requirement (exemptions do apply to a small number, such as those who are fully retired) as it is a key element in monitoring compliance with the high professional standards we uphold.

We will be continuing to contact members to ensure they bring matters up to date and you should be aware that failing to submit a return means you risk referral to the Taxation Disciplinary Board. Don't let this be you in 2023, and visit the portal at https://pilot-portal.tax.org.uk if your return is outstanding.

If you need help to submit do get in touch with our membership teams who are available to support at membership@ciot.org.uk or membership@att.org.uk.

It was lovely to see so many of you at our International Women's Day event. We hope you enjoyed this and were inspired by our speakers who described their lived experience of the challenges of coming from a lower socioeconomic background.

We know that many others were involved in events, and it was lovely to see so many schools celebrating this day and introducing students to the many and varied careers that women now have. The headteacher of the school I visited commented that she had received the highest number of emails from parents she had ever had, asking if their sons would be invited to this event – of course they were and it was nice to hear some of them talk about their mums who had interesting careers.

Finally, if any of you would like to appear on our website or in this magazine, we are looking for both ATT and CIOT members to tell us a little about their career and why they chose to follow a career in tax. Please contact shafiz@ciot.org.uk.

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bit.ly/3n6oYC5

CHARLOTTE BARBOUR
VICE PRESIDENT

We are setting standards

> Professional standards are clearly causing some concerns both in the UK and beyond.

Hello and welcome. Let me give you an update on some of the matters I have been involved with recently on behalf of the CIOT.

There have been significant concerns about HMRC service standards. We continue to raise these issues with HMRC, including when our President and CIOT staff hold meetings at different levels within HMRC. An open letter signed by a number of the professional bodies, including CIOT, has also been sent to the Chancellor.

CIOT staff put so much time and expertise into submissions and promoting awareness of tax matters, helping both CIOT members and the wider public. It's hugely important to collect feedback for HMRC, showing that the current levels of service are unsatisfactory and are holding back tax collection. This feedback is strengthened by sharing the practical experience of our members. Please send your anonymised examples to technical@ciot.org.uk.

Talking of those who give exceptional service to the CIOT, we reported in the February edition of *Tax Adviser* that we have revised the process for recognising member volunteers. Certificates of Merit are awarded to members or non-members who have played a crucial role in the whole Institute, and Branch Certificates of Appreciation are awarded to branch committee members who have significantly contributed to their branch. The full details and nomination forms are at www.tax.org.uk/instituteawards. It is important to recognise the contributions of those who give generously of their time and commitment. Nominations should be sent by 30 April.

A key topic on my desk at present is professional standards guidance. Professional Conduct in Relation to Taxation (PCRT) has been with us for many years and is regularly refreshed. It sets the bar for professional standards in tax in the UK and all CIOT and ATT members are bound by it. However, professional standards are clearly causing some concerns both in the UK and beyond. In January, HMRC issued its refreshed Standard for Agents, much of which chimes with PCRT; the revisions are largely driven by concerns with repayment agents (and hats off to CIOT's LITRG team for their work in this area).

An exposure draft of 'Tax Planning and Related Services' has also been issued by the International Ethics Standards Board for Accountants (IESBA), which requires consideration. PCRT's five fundamental principles are those in the IFAC Code of Ethics and the accountancy bodies that are PCRT co-authors, with CIOT and ATT, are bound by IFAC/IESBA so it is inevitable that this exposure draft will need to be reviewed and the PCRT bodies take account of this.

This wider interest in standards by IESBA may be helpful across the international arena. However, it means that in the UK there may now be three sets of standards to take into account, giving rise to potential differences and conflicts. I hope that meeting PCRT requirements will continue to be the standard for tax practitioners in the UK and, by doing so, they will fully meet both the Standard for Agents and the IESBA Code.

On a separate note, our 'Better Budgets' report was issued six years ago, so it was interesting to take stock of our efforts to improve tax policy making at the debate we held with the Institute for Government and the Institute for Fiscal Studies on 6 March. As the report on page 44 makes clear, there have been a few bumps in the road. The early success of Philip Hammond agreeing to hold just one annual fiscal event has been tested almost every year by seemingly exceptional events (elections, pandemics, energy shocks, changes of chancellor and economic strategy…), which have prompted emergency measures!

However, there are some positive signs. Since Better Budgets came out, the average length of Finance Act legislation per year has lessened. We are seeing more early stage consultation – though still not enough. And, as Jill Rutter pointed out in the debate, our call for the development of deeper tax expertise in the Treasury has been heard. Among other things, the Treasury is now offering full sponsorship for its staff to gain CTA and ATT qualifications. We also run a course for HMT officials on understanding how the tax advice market works.

Last but not least, my work brings me into regular contact with John Cullinane, the CIOT Director of Public Policy, who will shortly be retiring. He has served the CIOT with distinction in a number of roles. For me personally, he has been a wonderful colleague and support over many years. I should like to take this opportunity to say that I will miss him, his wise counsel and cheerful company. All the best, John.

Charlotte Barbour
Vice President
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CIOT IMPACT IN 2022

New members

19,681

is our total membership with 770 new members welcomed

CTA tax exams

4,400

CTA exams sat

ADIT exams

1,950

ADIT exams sat in 68 countries

Branch events

1,400 +

attended our face to face branch and other events

Online debates and webinars

18,000 +

watched our online debates and webinars

Providing guidance

5 Million +

visitors to CIOT's LITRG website

Consultation responses

206

consultation responses

Diploma in Tax Technology

1,500+

registered to attend the launch of the Diploma in Tax Technology

Speaking out

Featured

323

times in the mainstream media

Supporting scrutiny

Cited

88

times in parliamentary debates and reports

SUCCESSES WE CONTRIBUTED TO

Tax relief

Pension tax relief equality for low earners – draft legislation published

Easements

Easements around late filing and late payment penalties

Timetable

Longer timetable for roll out of MTD for Income Tax

Tax payer refunds

Crackdown on rogue refund companies; 60,000+ refunds from HMRC to those affected by one company

Finance Act

Improvements to Finance Act 2022 on basis period reform & uncertain tax treatment

SIMON GROOM
DEPUTY PRESIDENT

The devil is in the detail

> Behind the headline grabbing soundbites, there is a plethora of information that adds meat to the bone.

Hello, and welcome to the Deputy President's page for April. I am writing this a couple of days after the Chancellor made his budget speech and the mainstream media are still digesting the announcements. As always, the devil is in the detail and behind the headline grabbing soundbites there is a plethora of information that adds meat to the bone.

The one announcement that seems to have generated the most debate is the move on the pensions lifetime allowance. To use Mr Hunt's words: 'Some have also asked me to increase the lifetime allowance from its £1 million limit. But I have decided not to do that. Instead I will go further and abolish the lifetime allowance altogether.'

We were all expecting the lifetime allowance to increase from its current level, given the coverage in the press in the lead up to the budget. The expected figure was £1.8 million, so the announcement of abolition was the inevitable rabbit out of the hat that we have come to expect. But it's not quite as simple as that. The Policy Paper to accompany the budget says: 'Nobody will face a LTA charge from April 2023. At a future fiscal event, the government will make the necessary changes to entirely remove the LTA from pensions tax legislation.'

The delay on removing it from the statute books is apparently due to the complexity of the legislation surrounding the lifetime allowance and all of the related protections. Furthermore, whilst the lifetime allowance charge is being abolished, the ability to take a tax-free pension commencement lump sum is being capped at 25% of the current lifetime allowance.

The Labour Party have pledged to reverse this change should they win the next election. This is leading some commentators to say that this could mean an increase in retirement, as people leave the workforce earlier than they would have done in order to take advantage of the new more generous rules before they disappear. This is exactly the reverse of what Mr Hunt was trying to do with his announcement. Whatever your views on the changes, the uncertainty that this creates isn't helpful – the law of unintended consequences could well be in point here.

Talking of the detail of the budget, the time surrounding the budget day is a very busy time for the Technical Teams at the ATT and CIOT as they digest the details behind the speech and try and make sense of them, not only for members, but also for the general public.

Many members won't be aware of the technical team and the incredible work that they do. Their work not only helps the ATT to fulfil its charitable objectives, but it also adds enormously to its standing in the wider world of tax. In particular, its reputation as a respected professional body with HMRC means that the ATT is able to be at the forefront of developments and discussions.

In recent years, the team has increased in number, providing a wide breadth and range of experience. Steven Pinhey and David Wright have recently joined Emma Rawson and Helen Thornley on the team following the retirement of longstanding member Will Silsby. This expansion of the team has meant that the ATT can expand its output and widen its influence. For example, members of the team regularly speak on national television and radio to educate the wider public on tax matters. They also share their technical knowledge with members by speaking at Association events, webinars and conferences.

The team use their knowledge and experience to review consultation documents and to prepare detailed responses that help to achieve one of our key aims of helping to make the tax system as workable and fair as possible. The Technical Team are not only a key part of what we do but help the ATT to achieve its aims and objectives and we are very fortunate to have such an excellent resource.

Before I sign off, and continuing the education theme, I would remind you about the upcoming ATT Annual conferences. You can either attend the conference in person on 29 June as a full day event or join it as two morning half day online sessions on 21 and 23 June. It is an excellent way of keeping up to date with the latest developments and also helps to fulfil your CPD responsibilities. Our speakers will be Rebecca Benneyworth, and Helen Thornley, Emma Rawson and Stephen Pinhey from our excellent Technical Team.

Simon Groom
ATT Deputy President
page@att.org.uk

ATT IMPACT IN 2022

Membership

9,623

total membership

New members

503

new members welcomed

Students

6,595

students total

New students

1,612

new students registered

Exams

3,238

ATT exams sat

Meeting

28

in person branch and other events

Learning

56

webinars to help members and students continue their professional development

Events

14,000+

attended our events and webinars

Published

36

technical articles

Representing

35

HMRC groups on which ATT is represented

Responding

12

technical submissions

Speaking out

29

press releases issued

In the news

35

occasions we featured in the mainstream media

In Parliament

4

times we were cited in parliamentary debates and reports

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Spring Budget 2023 Everything, everywhere – but not all at once

On 15 March, chancellor Jeremy Hunt presented his first Budget. While more orthodox than the previous Budget, it contains some important messages for business and individuals.

by Bill Dodwell

After the tax rises from the 2022 changes, the Spring Budget reduces tax by about £13 billion in 2023-24 and each of the two years' after. The major slice – some £8-10 billion annually – goes on full expensing for plant and machinery over the next three years.

Commentators have pointed out that the forecasts from the Office of Budget Responsibility show there is no margin for error in complying with the current fiscal rules – which no doubt has affected Budget decisions. The forecasts expect that national account taxes will amount to £922 billion in 2022-23 and £950 billion in 2023-24. Two thirds of that comes from income tax, national insurance and VAT.

Perhaps the most important Budget headline is the increased investment in childcare. None of the £4-5 billion annual cost from 2025-26 comes in the form of tax relief – although it places even more focus on the huge penalty from increasing earnings over £100,000. Some estimates suggest that earnings would need to increase by 30% just to cover the withdrawal of childcare and the personal allowance above £100,000.

There is a lot of detail in the Budget documents and there's more to come. The government will bring forward a further set of tax administration and maintenance announcements later in the spring. None of those announcements will require legislation in Spring Finance Bill 2023 or have an impact on the government's finances at this stage.

Fuel duty

Extending the 5p fuel duty cut for a further year costs a whopping £4.8 billion next year and £2.5 billion annually thereafter. Fuel duty is one of those taxes which is spread very broadly – so it costs a very large amount to deliver comparatively low amounts to individuals with petrol or diesel cars (about £100 to the average motorist in both the current year and next year). In 2021, it is estimated that 45% of households had access to one car or van, with a further 33% having two or more vehicles (see bit.ly/4075v2X). 22% of households did not have a car or van. A large saving also goes to road hauliers, of course.

The OBR estimates that the cumulative cost of freezing fuel duty rates between 2010-11 and 2023-24 relative to increasing them in line with RPI inflation has risen to around £80 billion, after factoring in the expected reduced demand for fuel due to higher duty rates. Many have questioned why our forecasts continue to assume that fuel duty will increase annually with inflation, given that record.

Investing in plant and machinery

In 2021, the government introduced the 130% super-deduction to encourage companies to invest. This ends on 31 March 2023. The government is now introducing full expensing – a 100% first year allowance, from 1 April 2023 until 31 March 2026. This means that companies across the UK will be able to write off the full cost of qualifying main rate plant and machinery investment in the year of investment. Companies investing in special rate (including long life) assets will also benefit from a 50% first year allowance during this period. These new reliefs apply only to new equipment and exclude leasing. They also apply only to companies and not to individuals and partnerships. The Treasury says that moving to full expensing means the UK's plant and machinery allowances will be joint first in the OECD in Net Present Value terms, instead of dropping to 33rd.

Professor Michael Devereux from the Oxford Centre for Business Taxation (see bit.ly/3ngPetn) estimates that the effect of this change will increase UK investment even more than the OBR allowed in its forecast (see page 63 at bit.ly/3TCdQsQ). Inevitably, though, not making the reliefs permanent loses some of the benefit – although the government said it hopes to continue with full expensing provided the public finances allow. The Labour opposition has also said it supports full expensing. See the chart opposite.

The government has also decided to improve its original plans for tax relief on research and developments costs. There will be a special relief of £27 for every £100 of R&D investment for loss-making small and medium sized companies engaged in intensive R&D sectors – costing about £500 million annually from 2025-26. This gives back some of the relief removed in the Autumn Budget – but does mean that we now have three R&D schemes instead of the previous two.

Finally, the audio-visual tax reliefs will be reformed into expenditure credits with a higher rate of relief than under the current

system. The expenditure threshold for high-end TV will remain at £1 million per hour. The government will also extend the temporary higher rates of theatre, orchestra, and museums and galleries tax reliefs for two further years from April 2023 – although we may wonder why these are not grants.

Individuals and small business

The Spring Budget announces a consultation to expand the 'cash basis' – and a systematic review of HMRC guidance and key forms for small businesses, to help make the tax system easier for them to understand. The cash basis is currently used by about 1.2 million self-employed individuals and the consultation looks at removing some of the current restrictions. It focuses on four proposals, but welcomes other ideas:

- increasing the turnover thresholds for businesses to use the cash basis;
- setting the cash basis as the default, with an opt-out for accruals;
- increasing the £500 limit on interest deductions in the cash basis; and
- relaxing restrictions on using relief for losses made in the cash basis.

The current restrictions mean that about 200,000 businesses cannot currently use the cash basis.

The Budget also includes a discussion document on modernising HMRC's income tax services so taxpayers can manage their own tax affairs online, reducing the need to contact HMRC. This includes the introduction of a Single Customer Account so taxpayers can interact with all their tax information in one place.

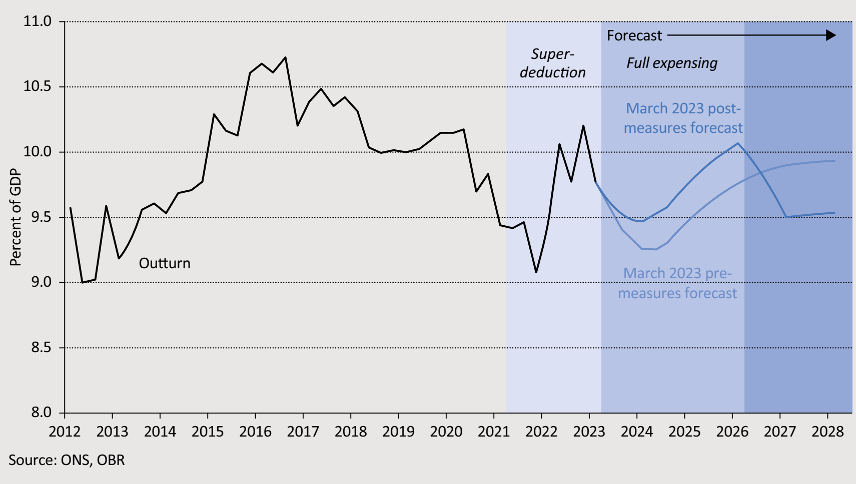
The adjusted time frame (and phasing) for Making Tax Digital for Income Tax brings a high cost, compared to numbers originally in the forecast. The changes are now expected to reduce the yield by at least £500 million annually from 2026-27, rising gently over time.

Pension saving

Reversing pension policy introduced over the last decade is an interesting move – and it carries a £1 billion annual cost. The government's objective is to increase pension saving by wealthier taxpayers, remove the disincentive for some NHS consultants to work additionally and at the same time make additional funds available to invest in the economy. Removing the lifetime allowance charge from April 2023 and then abolishing the lifetime allowance completely is estimated to cost around £800 million annually. In 2020-21, about 9,000 individuals faced lifetime allowance charges amounting to some £400 million.

Increasing the annual allowance to £60,000 from April 2023 and allowing

CHART 1: THREE-YEAR FULL EXPENSING: IMPACT ON BUSINESS INVESTMENT



Source: ONS, OBR

Pension Input Amount aggregation between open and closed public service pension schemes costs around £270 million annually. This is intended to allow members to offset any negative real growth for annual allowance purposes in legacy public service pension schemes against the annual allowance. In 2020-21, about 58,000 individuals faced annual charges, estimated at around £300 million.

Increasing the money purchase annual allowance (MPAA) to £10,000 from April 2023 is estimated to cost £35-40 million annually. The original £4,000 limit was introduced in response to 'round tripping' – where funds were withdrawn from a pension only to be reinvested with a second burst of tax relief. The minimum tapered annual allowance will also be increased from £4,000 to £10,000, and the adjusted income threshold for the taper will be increased from £240,000 to £260,000.

The tax-free lump sum will now be limited to £268,275 – 25% of the previous lifetime allowance limit of £1,073,100 and frozen thereafter. This is likely to be the start of a long-term freeze of the tax-free amount.

Finally, lump sums currently taxed for some individuals at 55% above the lifetime allowance will be taxed at an individual's marginal rate of income tax. These changes will take effect from 6 April 2023.

Pension scheme administrators will need to continue to operate lifetime allowance checks when paying benefits (for example, assessing whether an individual has available lifetime allowance) and to issue benefit crystallisation event statements (see bit.ly/3yXHorx).

Members who applied for before 15 March 2023 and hold a valid enhanced protection or any valid fixed protections will be able to accrue new pension benefits, join new arrangements or transfer without losing this protection. They will also keep their entitlement to a higher tax-free lump sum.

Fraud, tax avoidance and tax debt

The government will double the maximum sentences for the most egregious cases of tax fraud from seven to 14 years, and will consult shortly on the introduction of a new criminal offence for promoters of tax avoidance who fail to comply with a legal notice from HMRC to stop promoting a tax avoidance scheme.

The government is also investing a further £47.2 million to improve HMRC's capability to collect tax debts, including supporting those who are temporarily unable to pay. This recognises that tax debt ballooned during the pandemic and significant effort will now be needed to recover as much as possible.

And finally… crypto cash gamble

Amusingly, it is thought that amending the Self Assessment tax forms will bring in £10 million annually from crypto-asset gains from 2025-26. The OBR classed this as 'highly uncertain'; the surprise is why any number at all was put in.

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

50 not out!
The anniversary of VAT

On 1 April 2023, VAT will raise its cricket bat and celebrate its half-century birthday. Here are some of our favourite VAT cases from the last 50 years with important practical issues.

by Neil Warren

VAT is now 50 years old. That is an impressive milestone. It was first introduced to the UK on 1 April 1973 – being famously described as a 'simple tax' – and has become more important with the passing of time: the standard rate of 8% back in the 1970s increased to 15% under the Thatcher government in the 1980s; to 17.5% in the 1990s; and finally to 20% in 2011 under the Coalition government. Will the next stop be 25%? Who knows…?

To celebrate the anniversary, I will consider some of the most high-profile tribunal cases from the last 50 years and focus on their practical implications. My thanks go to fellow author Alex Millar for helping me with the list.

Best judgment

HMRC has the power to issue a 'best judgment' assessment if it thinks that VAT has been underpaid on a past return. The legislation at Value Added Tax Act (VATA) 1994 s 73(1) has been the subject of hundreds of tribunal cases – mainly relevant to output tax issues – but the most important case is perhaps *Pegasus Birds Ltd* [2004] EWCA Civ 1015.

HMRC issued an assessment for £658,388 based on underdeclared VAT inclusive sales of parrots totalling – pause for dramatic effect – over £4 million. That is a lot of off-record birds flying around, you might think; the director said that VAT had only been underpaid by £50,000.

The first appeal went in favour of the taxpayer on the basis that the VAT evaded was only a fraction of the amount assessed by HMRC and the assessment should therefore be withdrawn. However, the Court of Appeal ruled that the burden was on the taxpayer to show what was the correct amount of tax due and that HMRC was only obliged to use the information at its disposal to issue a best judgment assessment.

If the officer had acted dishonestly, the assessment would be treated as having not been made but that was not the case. To quote from the tribunal report: 'The tribunal should remember that its primary task is to find the correct amount of tax, so far as possible on the material available to it, the burden resting on the taxpayer.'

Reference: HMRC VAT Assessments and Error Correction manual: VAEC1440

Input tax on motor cars

The legislation about input tax being blocked on the purchase of new cars that will be made available for private use has been in place since the 1970s. It is a revenue winner for the Exchequer because input tax is only claimed where the vehicle is a tool of trade, such as a taxi firm, driving school or car hire business. Input tax can also be claimed if a vehicle is used as a genuine pool car. I enjoy telling the tale about a client who asked if his new BMW might qualify: 'Only if it is made available to all your staff and kept overnight at the office rather than your home,' was my reply. It was never mentioned again.

The most famous case about input tax and cars involved the legendary *Mr Christopher Upton (t/a Fagomatic)* [2002] EWCA Civ 520, who gave HMRC a great run for its money. It was a bit like a non-league football team beating a Premier League giant in the first game of a two-leg cup competition, before losing in the final minute of the second match. If he had won his case in the Court of Appeal, the VAT floodgates from other businesses would have surged with more power than

Key Points

What is the issue?
Past tribunal cases provide important guidance and advice on how to deal with complex issues. For example, the 1999 case of *CPP Ltd* is still the landmark case on whether a bundle of goods or services subject to different rates of VAT and sold as a single package is a multiple or single supply.

What does it mean for me?
The fact that the judges can sometimes reach different decisions based on the same facts confirms that VAT is not the 'simple tax' it was intended to be in 1973. VAT must be considered at the planning stage of any complex deal or transaction.

What can I take away?
VAT raises over £160 billion for the Exchequer each year and continues to be one of the most important taxes in the UK, despite our departure from the EU. Complex topics such as partial exemption, HMRC powers of assessment, and land and property must be given priority to ensure that returns are correct. VAT is unlikely to be abolished for a long time!

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TWO NEW BUSINESS TESTS

To decide whether an activity is business or non-business, an entity must consider the following two questions:

1. Does the activity result in a supply of goods or services for consideration?
2. Is the supply made for the purpose of obtaining income?

Note: The tests must be applied for each separate activity, rather than being considered for the entity as a whole.

For further information, see 'Is activity deemed to be business or non-business for the purposes of VAT', *Tax Adviser* (September 2022).

Reference: HMRC VAT Business/Non-Business Manual VBNB30200

Niagara Falls during the rainy season. Mr Upton argued that his Lamborghini Diablo car was only used to deliver cigarettes to the premises of his business customers and never used for private journeys, and that had always been his intention since the day he bought the vehicle. The purpose of the vehicle was to portray a successful image to his London nightclub customers.

The lower courts agreed with him but the Court of Appeal ended his four year battle with Customs and Excise in 2002, noting that his car insurance included cover for private use and was therefore available to him in a private capacity. The officer was correct to disallow his input tax claim of £19,571.

Business or non-business?

The phrase 'Lord Fisher tests' stood the test of time until last year about whether an activity is classed as business or non-business.

Lord Fisher [1981] STC 238 organised shooting events for friends on his estate and charged a fee that was intended to cover costs, rather than make a profit. Customs and Excise decided that the income was VATable because it related to standard rated sales made in the course of business; however, Lord Fisher's representatives argued that it was a private activity and was outside the scope of VAT. The tribunal identified six different tests about whether a business or non-business activity exists and these tests have been very useful to charities and not-for-profit organisations since then.

However, HMRC changed its policy last year to take account of more recent case law; namely, *Wakefield College* [2018] EWCA Civ 952 about whether the provision of further education courses to subsidise fee-paying students was an economic activity. The Court of Appeal ruled in favour of HMRC, noting that the courses were an important part of the college's activities and fees paid by the students were significant. See ***HMRC's revised policy: two new business tests.***

What is a mixed supply?

As I ask this question, I can hear fellow VAT anoraks shouting out 'he's going to mention CPP' with as much excitement as a teenager getting an upgraded mobile phone for their birthday.

The European Court of Justice case of *Card Protection Plan Ltd* (Case C-349/96) considered whether the company was supplying exempt insurance or a standard rated administration service for its card protection business, or a combination of both. It was the first major judgment made by the European Court of Justice about mixed supplies and produced a helpful checklist to determine whether a supply is a single or multiple supply. Here are the main tests:

- Is there one principal supply with the others being incidental to the main supply? If so, the VAT charge is wholly based on the rate for the principal supply.
- Is each supply an aim in itself, or is one of them a way of enhancing the enjoyment of the main supply? For example, a zero-rated programme included as part of a hospitality package at a sporting event enhances the enjoyment of the sport for the delegates.
- How do customers perceive the supply? For example, in the case of a single price being paid for a zero-rated train journey on the Orient Express and a standard rated four-course meal with champagne, the customer expects to receive both supplies and would complain if one of them was not provided… particularly the champagne! Output tax must be apportioned because it is a mixed supply.

Other cases

Here is a summary of other important cases:

Halifax and others (Case C-255/02)

This case probably represented HMRC's best-ever victory in the European Court of Justice because it confirmed that the department has the power to disallow input tax if there is an abuse of rights.

The case involved a complex chain of companies that was intended to give input tax recovery on the construction of a new call centre for a business whose supplies were mainly exempt from VAT. The arrangements produced a tax advantage that was contrary to the purpose of the legislation and that was wrong.

Royal Opera House Covent Garden Foundation [2021] EWCA Civ 910

The curtain finally came down on the opera house in 2021 about whether fees paid to production companies for putting on shows only related to the exempt sales of tickets to watch the performance and were therefore input tax blocked with partial exemption, or whether they could be partly claimed as residual input tax because they also increased the sales of standard rated catering.

The Court of Appeal ruled that the direct link was only with the ticket sales and HMRC was right to fully disallow the input tax claimed. *Questa è la fine…* This is the end – for now.

Marks and Spencer Plc [2009] UKHL 8

HMRC decided that an output tax refund on the historic sales of zero-rated tea cakes – which had been incorrectly treated as standard rated by M&S – was blocked by 'unjust enrichment' because M&S had passed on the VAT cost to its customers rather than absorbing the tax within its own pricing structure. After a 14 year legal battle, the ECJ agreed that a refund of £3.5 million should be paid to M&S, a decision that was supported by the House of Lords when the case was remitted to the UK. (VAT Notice 700/45 ss 9 and 10)

Famous quote

To finish this anniversary article on a humorous note, VAT enthusiasts will never forget the famous words of Lord Justice Sedley in his report after the Court of Appeal case of *Royal & Sun Alliance* [2022] EWCA Civ 17:

> 'Beyond the everyday world, lies the world of VAT; a kind of fiscal theme park in which factual and legal realities are suspended or inverted.'

Here's to the next 50 years!

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The Windsor Framework
A new beginning for Northern Ireland?

The new Windsor Framework redefines the trading arrangements between Great Britain and Northern Ireland. We review the most significant changes to the Northern Ireland Protocol.

by Michael Steed

As is well known, the whole point of the Northern Ireland Protocol was to prevent a hard border on the Island of Ireland, separating the UK from the EU as a result of Brexit. It is currently the only land border that the UK has with the EU and it has been estimated that there are around 300 road crossings along the border of about 300 miles.

The Protocol provided a complex, almost bipolar existence for Northern Ireland. In one breath, it is a part of the UK; and as if by magic, in the next breath it is to all intents a mini-EU member state with Northern Ireland being kept in the EU VAT single market for goods. Northern Ireland is, however, part of the UK customs territory, whilst enforcing the EU customs code.

The most obvious practical expression of the Protocol was that the UK/EU border effectively moved into the Irish Sea. All goods arriving into Northern Ireland would need to be checked to see if the goods were 'at risk' of fleeing across the border into the EU without proper EU checks and duties paid.

The economic and political costs that resulted from this and the collapse of formal government at Stormont are

Key Points

What's the issue?
The new Windsor Framework will hopefully usher in an era of better trading and legal arrangements between Great Britain and Northern Ireland in a way that the EU can live with.

What does it mean to me?
This feels like an outbreak of common sense after a fractious period of relations between the UK and the EU and burdensome trading and tax rules.

What can I take away?
Although trading (and hence tax) arrangements are never straightforward, this has been one of the thorniest areas of Brexit for both the UK and the EU to solve. It deals with the everyday issues that people and businesses in Northern Ireland have faced as a result of the operation of the Northern Ireland Protocol.

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well-known and will not be repeated here, but suffice to say that with its 2022 Protocol Bill the UK government added fuel to the fire, as perceived by the EU. Under the Protocol Bill, the government said that the international law 'doctrine of necessity' provided a clear, temporary basis to justify the non-performance of international obligations (under Brexit) in certain exceptional circumstances.

Mercifully, with new leadership at Westminster, a less inflammatory approach towards the EU has been adopted. The Windsor Framework is the result and the Protocol Bill has been scrapped.

The agreement still needs formal approval on both sides and there are political difficulties to overcome, but it is expected to come into law in the autumn of 2023. The current arrangements will apply until then.

What is the Windsor Framework?

The Windsor Framework is an international arrangement between the UK and the EU under which the parties commit to binding international law obligations, including changes to the Protocol itself. The UK and EU have made clear in the Political Declaration accompanying the Windsor Framework that the amended Protocol is governed by the Vienna Convention on the Law of Treaties.

The Windsor Framework addresses the government's position as set out in the July 2021 Command Paper. It respects the Act of Union and the Belfast (Good Friday) Agreement, and deals with the everyday issues that people and businesses in Northern Ireland had faced as a result of the operation of the Protocol.

The main changes to the Protocol

The most significant changes to the Protocol made by the Windsor Framework include the following:

New system of checks on goods: There will be a new system of checks on goods moving from Great Britain (i.e. Scotland, England and Wales) to Northern Ireland. Goods destined to stay in Northern Ireland will go through a 'green lane'. Green lane goods will have fewer checks and controls, including no customs checks or checks on the rules of origin for customs duties purposes. In contrast, 'red lane' goods (destined for the Republic of Ireland or the rest of the EU) will be subject to full checks and controls to protect the EU's single market and the EU's customs union rules (including food safety).

Products of animal origin: Products of animal origin, such as meat and dairy, will have checks and controls reduced. Food retailers, including supermarkets, wholesalers and caterers, will be able to move agri-food via the green lane and physical checks and tests will be scrapped. (The Movement Assistance Scheme currently helps businesses to meet requirements for moving animals, plants and associated products from Great Britain to Northern Ireland. This includes advice to businesses through a dedicated helpline and pays for health certification costs.)

Data sharing and labelling arrangements: New arrangements would be used to oversee the new system.

Export declarations: Businesses moving goods between Northern Ireland and Great Britain will not be required to complete export declarations in either direction. (The UK has already taken this step unilaterally.)

Chilled meats: The prohibition on certain chilled meats such as sausages from Great Britain being sold in Northern Ireland will be removed. (The UK has already taken this step unilaterally.)

Parcels: Individuals and online businesses (such as eBay and Amazon) sending parcels to Northern Ireland will not require customs paperwork. (The UK has already taken this step unilaterally.)

State aid rules: The circumstances under which the EU can bring action against the UK for subsidies in Northern Ireland that go against EU state aid rules have been tightened.

Tariff reimbursement scheme: The framework includes a 'new, comprehensive tariff reimbursement scheme' that will be established for businesses that have moved goods into Northern Ireland but were not sure of the end-destination for their goods at the time and thus paid EU duties and VAT.

Medicines: There will be a dual regulatory system for medicines in Northern Ireland.

Second-hand cars: Northern Ireland's second-hand car market is protected into the future with a new scheme to take effect from 1 May 2023, ending two years of uncertainty for traders and consumers.

VAT and excise rules: Under the Protocol, EU VAT and excise rules applied to goods traded in Northern Ireland, preventing the UK government from introducing UK-wide VAT reforms in the region. The Windsor Framework restores UK VAT and excise rules in Northern Ireland.

Reduced and zero rate VAT: On VAT, the limit on the number of reduced and zero rates in Northern Ireland will be removed, ensuring parity with the rest of the UK. This means, for example, that the zero rating for installing energy saving materials such as heat pumps and solar panels in Great Britain will also apply in Northern Ireland. It delivers full flexibility on rates in the future by establishing new categories that can be applied for VAT purposes where goods are consumed in Northern Ireland.

What is the Stormont Brake?

The UK was unhappy that the original Brexit deal allowed the European Court of Justice to oversee how the protocol was applied, as it didn't want EU regulations to supersede UK laws. The Windsor Framework includes a new mechanism called the 'Stormont Brake' for Northern Ireland to challenge amendments to existing EU law, while keeping the European Court of Justice as the sole arbiter of EU regulations. The UK and EU have committed to resolving all future disputes relating to the operation of the Protocol through engagement in the EU-UK Joint Committee, before reverting to the dispute settlement procedures established by the Withdrawal Agreement.

Comment

Overall, these changes to the text of the original Protocol look to be positive. They guarantee Northern Ireland's position within the UK's VAT and excise area, while still maintaining frictionless trade for those businesses trading with the EU. Northern Ireland businesses will be able to benefit from new UK changes (for example in VAT).

The UK government will legislate for this unfettered NI-GB trade through the Internal Market Act, which will be reinstated after being dropped in 2020 and is expected to be law by the autumn of 2023.

As ever with Northern Ireland, nothing is straightforward and there remain political obstacles to overcome. However, the Windsor Framework looks to be a sensible pragmatic way forward that will hopefully satisfy all relevant parties.

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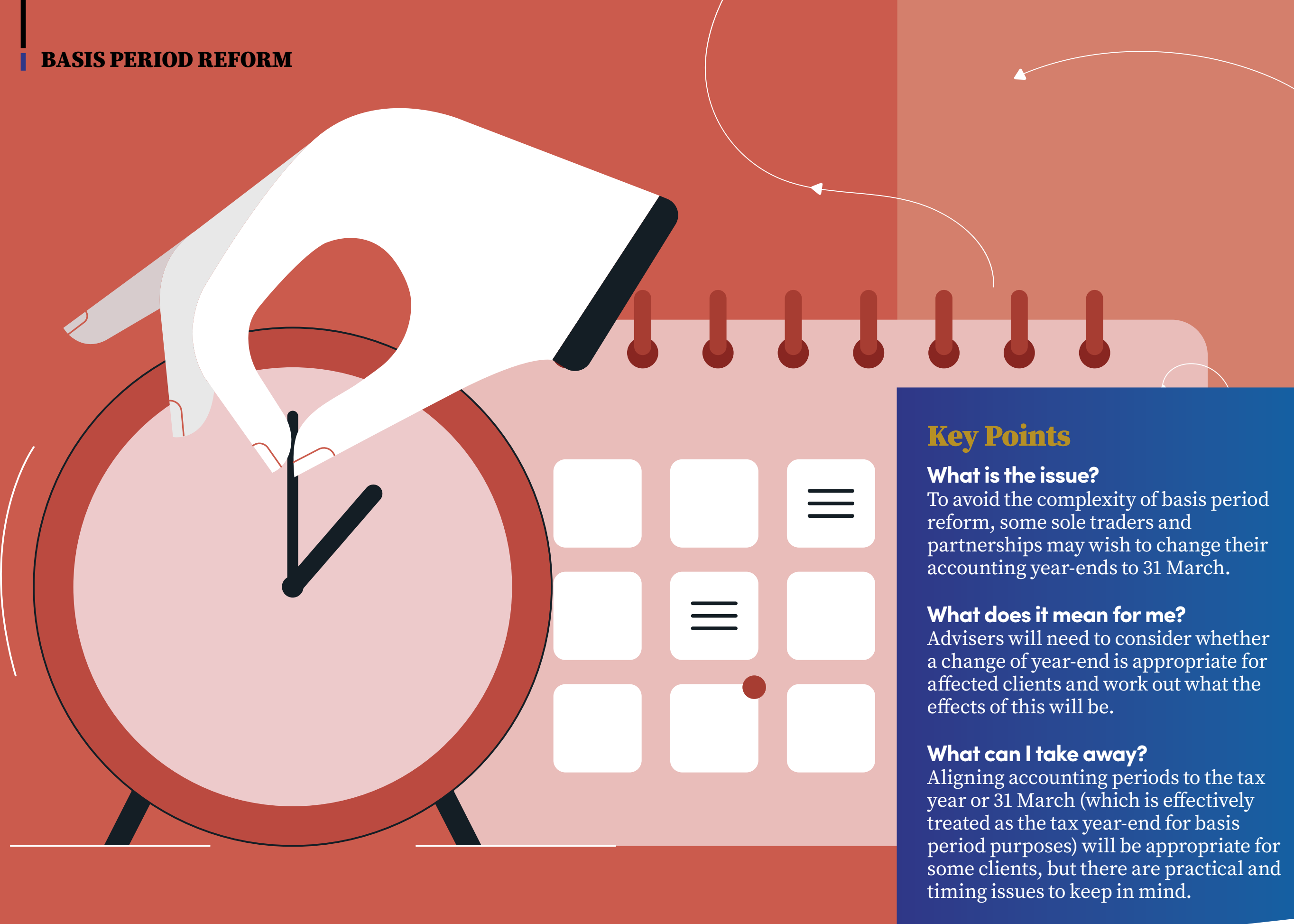

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Key Points

What is the issue?
To avoid the complexity of basis period reform, some sole traders and partnerships may wish to change their accounting year-ends to 31 March.

What does it mean for me?
Advisers will need to consider whether a change of year-end is appropriate for affected clients and work out what the effects of this will be.

What can I take away?
Aligning accounting periods to the tax year or 31 March (which is effectively treated as the tax year-end for basis period purposes) will be appropriate for some clients, but there are practical and timing issues to keep in mind.

Easier times ahead? Moving to a 31 March year-end

Moving your accounting year-end to 31 March or 5 April could iron out some of the complexities of basis period reform. We ask if it's time for a change.

by Rachel McEleney and David Carter

As set out in our article 'Basis period reform: transitional rules apply from 6 April 2023' in the March 2023 edition of *Tax Adviser*, the introduction of the tax year basis in 2024/25, and the transitional rules in 2023/24, are expected to create complexity and administrative burdens for sole traders and partnerships with accounting periods that do not run to 31 March or 5 April (about 7% of sole traders and 33% of partnerships).

In principle, this complexity goes away if the business moves its year-end to 31 March or 5 April. (31 March is effectively treated as equivalent to 5 April for overlap profit purposes per the Income Tax (Trading and Other Income) (ITTOIA) Act 2005 ss 7A-s7C, with 31 March often being the preferred date for the practical reasons summarised later in this article.)

Once basis period reform comes into effect, there will no longer be a tax-related cash flow disadvantage in moving the year-end to 31 March. However, this does not necessarily work for all businesses, particularly complex ones. The timing of the year-end change can also have an effect on the overall tax position.

Timing issues

Change in 2022/23

There are important differences in tax treatment between moving to a 31 March year-end in 2023 compared to later years. If the date is changed in 2022/23, the normal change of accounting date rules under the current year basis will apply, resulting in the acceleration of profits and the relieving of overlap profits in 2022/23. This avoids the need to consider the transitional rules in 2023/24 but it also means that the five-year spreading provisions for transition profits will not be available.

If there would not otherwise be transition profits (e.g. because overlap profits are higher than the accelerated profit), it may be appropriate to change the date in 2022/23. The rules in ITTOIA 2005 ss 216-218, which limit the effectiveness of accounting dates for basis period purposes in some circumstances, should be borne in mind (these rules cease to have effect from 2023/24 onwards).

Change in 2023/24

In most cases where a change in year-end is appropriate, accounts will be drawn to 31 March 2024. In 2023/24, continuing traders will have a basis period running from the day after the 2022/23 basis period until 5 April 2024.

The first 12 months of this period is the 'standard part'. The 'transition part' is the remaining period to 31 March 2024, with the final five days not being taxed until 2024/25.

If the profits in the transition part exceed the overlap relief, the net amount is then spread over the five tax years from 2023/24 to 2027/28. This may result in the taxable profits being broadly the same whether the year-end is changed or not, but it will depend on whether profits accrue evenly.

Oddities for partnerships

Under the current year basis, certain types of non-trading income of partnerships are taxed in accordance with the basis period for the trading profits (the 'notional business' rules). This typically affects untaxed interest and property income of partnerships. Whether a partnership's year-end is 30 April or 31 March, continuing partners would therefore normally be taxed based on the amount allocated to them for the accounting period ending in the tax year, without further adjustment.

Transitional rules apply in 2023/24, bringing income up to 5 April 2024 into charge in a similar way to trading profits, but without spreading provisions. From 2024/25, the notional business rules will no longer exist, leaving these sources of income to be taxed in the same way as personal sources. For firms with a 31 March year-end, this can create an odd situation where interest allocated to partners no longer necessarily matches the amount shown in the accounts. This is because interest is always taxed based on amounts arising between 6 April and 5 April.

Property businesses should be simpler as they can operate to a 31 March year-end from 2023/24 (ITTOIA 2005 ss 275A-275C).

EXAMPLE: IMPACT OF ACCOUNTING DATE CHANGE

Helen has traded for many years, using an accounting date of 30 April. She has overlap profits of £30,000. Her results are:

- Year to 30 April 2023: **£100,000**
- 11 months to 31 March 2024: **£100,000**; or
- Year to 30 April 2024 (i.e. if no change of accounting date): **£120,000**

If Helen changes her accounting date to 31 March 2024, her transition profits will be £70,000 (£100,000 – £30,000). She will be taxed on £14,000 of this in 2023/24, along with the £100,000 for the first 12 months (£114,000 total).

If Helen retains a 30 April year-end, her transition profits will be £80,000 (£120,000 x 11/12 – £30,000); in strictness, this would be calculated on a day's basis. She would then be taxed on £16,000 in 2023/24 along with the £100,000 for the first 12 months (£116,000 total).

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Practical issues

For sole traders, changing the accounting date is fairly straightforward in principle. They do not need to file accounts, so they can normally choose the date that best suits them and then file their tax returns accordingly. For very simple businesses, particularly those on the cash basis, there might be no practical difference between a 31 March year-end and any other.

Not all businesses are this simple, however. For seasonal businesses, moving the year-end could create disruption to the business (e.g. it could push stock-takes and other accounting activities into the busiest time of year). Additionally, some taxpayers might already need to prepare accounts to a particular date for overseas tax reasons (e.g. a US resident entertainer with UK activities might need to prepare accounts to 31 December in any event).

Partnerships may be attracted to a 31 March year-end which, as noted above, is treated as co-terminous to the UK tax year to avoid the need to pro-rate accounting periods and profit allocations. There is the attraction of relative simplicity and clarity for individual partners as their personal tax returns can readily be reconciled to the partnership tax return and associated financial accounts. When Making Tax Digital (MTD) is extended to partnerships, a 31 March year-end will almost certainly make the transition to MTD easier.

A 31 March year-end date allows the longest period between the accounting period ending and the associated tax returns being due (10 months). This is time that a partnership may need, particularly those firms that prepared audited accounts and/or have complex profit-sharing arrangements which are not finalised for some months after the year-end date.

Despite the attractiveness of the 31 March year-end, there may be many partnerships which choose to retain their current year-end date. This may be because there is limited choice; for example, US headed partnerships may be unable to change their year-end date.

Large and/or complex partnerships face a number of practical issues, such as:

- partner admission and retirement dates;
- adjustment of accounting systems and processes;
- the need to revisit audit timetables;
- changes to billing/cash collection cycles; and
- the need to consider year-end performance reviews, holiday period entitlement, and so on.

For partnerships with international offices, there may be non-UK tax considerations of changing their year-end date. Partnerships need to weigh up the possible benefits of a year-end date change with the effort expended on this change. There will be some partnerships where the benefits of a change to 31 March are limited; for example, those who will not be able to finalise their tax computations and double tax relief claims by the filing deadline regardless of their choice of year-end date.

VAT

Businesses registered for VAT may wish to change their VAT reporting periods to align with their new accounting year end (see bit.ly/3Jnfeek). This can be done online or by filing a VAT 484 form.

Concluding remarks

For those sole traders or partnerships that can change their year-end date to 31 March without significant disruption to their business (e.g. non-seasonal businesses), the simplicity and clarity of a year-end date co-terminous with the tax year may be attractive. For larger and more complex businesses, the benefits of a year-end change may be limited and need to be weighed against what can be significant practical challenges of a year-end date change.

The income record viewer A digital handshake

HMRC has rolled out its income viewer service, making it easier for agents to access the details of their clients' pay. While it is a welcome service, there are still some teething problems.

by Helen Thornley

Key Points

What is the issue?
HMRC has rolled out its income record viewer service after a period in private beta testing. This online service allows agents to see details of their clients' pay and tax details for the current tax year on a real time basis, plus the previous four years.

What does it mean for me?
Providing richer and more timely data than previously available, this is potentially a very useful service to agents. When authorisation can be achieved, feedback has been positive.

What can I take away?
In order to access the income record viewer for a client, clients must first have a Government Gateway account, enabling agents to complete a digital handshake. Feedback shows that this part of the process can be time consuming and challenging.

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In one ideal world, clients would provide their agents with details of their employment income in a timely fashion. In another, since HMRC already receives employment data on a regular basis thanks to Real Time Information, agents should be able to access the information that HMRC already holds about their clients easily and quickly.

Whichever view you subscribe to, we are getting a bit closer to the latter, thanks to the opening up of the income record viewer service last year after a period in private beta testing. This online service allows agents to see details of their clients' pay and tax details for the current tax year, plus the previous four tax years.

Providing richer and more timely data than previously available, this is potentially a very useful service to agents. The only issue is a hurdle the height of which varies depending on the digital capability of clients. To access the service, agents and clients need to be able to complete a *digital handshake,* as any existing authorisation via a 64-8 is not considered by HMRC to be sufficient.

Background

Once upon a time, HMRC was willing to provide employment income information to agents over the phone. This was quick and easy for agents, but costly for HMRC. In 2017, it was reported that HMRC received 2.7 million such calls each year, driven in part by high demand from repayment agents seeking details to make expense claims. Significant HMRC resources were consumed in supplying data which it felt clients should already have.

The phone service was significantly curtailed in 2017, when HMRC moved to only supplying the information by letter, and has since been further restricted. In addition to discouraging calls, the changes were intended to address security concerns about giving sensitive data over the phone.

Since then, there have been various digital approaches designed to help agents get employment income information.

Pre-population

Pre-population allows an agent's self-assessment software to download employment data (P60s, etc.) direct from HMRC. While this can work, every year we get a lot of feedback from agents frustrated that data is not available, incomplete or incorrect.

Problems arise because the pre-population service can only access data once HMRC has completed the annual reconciliation for that taxpayer. This is a massive exercise involving millions of records and processing runs, and takes until at least October after each tax year. Until a client's record has been reconciled, no data can be supplied by the

pre-population service, and it is impossible for the agent to know when reconciliation has occurred for any individual client.

Even after reconciliation, last year ATT members helped HMRC to spot that not all PAYE data is available to the service. HMRC is investigating this problem, but it may be too costly to fix.

Developing the income record viewer

The latest approach should address some of the shortcomings of the pre-population approach because the data comes from a different source. The income review viewer accesses Real Time Information data held by HMRC directly, in real time, with no need to wait for the annual reconciliation process.

The income record viewer has been in private beta testing since July 2017, which means that a handful of agents have been using the service and giving feedback to HMRC for the last few years. A lack of funding appears to have slowed subsequent expansion but on 16 November 2022 the service finally moved to public beta. This means that *all* agents can now access the service via their agent services account. We understand that in the first few months since the move to public beta, over 1,000 agents have used the income record viewer.

What can agents access?

According to the guidance (see bit.ly/3SKFB28), it is possible to access the following information about a client using the income record viewer:

- PAYE information for the current year plus the four previous tax years;
- employment records, including for each employment: pay and tax details, PAYE reference, and time in employment;
- any student loan repayments collected through the payroll;
- the latest tax code for the current tax year, including allowances and deductions;
- taxable benefits, such as company car and medical insurance, and whether these are forecasted (P11D not received yet) or actual (P11D received);
- state and private pension information; and
- details of any underpaid tax and other debts such as tax credits or Class 2 National Insurance contributions collected through the tax code.

The list of information is quite extensive and it may be necessary to click through several screens to get to detail such as the PAYE reference. (This is now a much more useful piece of information since it became a required entry on form P87.)

This is a 'view only' service, so data for self-assessment purposes will need to be manually entered into tax return software. It would be sensible to keep a screenshot of the data obtained to support any entries.

Although state pension information is available, other taxable benefits such as employment support allowance, jobseeker's allowance and carer's allowances are not shared with HMRC and are not available.

Accessing the income record viewer

The income record viewer should appear in the agent services account under the heading 'View a client's income record'. Once authorisation is complete, the journey starts with the client's National Insurance number and then selecting the desired tax year.

Authorisation

In order to access the income record viewer for a client, agents must first complete a digital handshake. The digital handshake will already be familiar to agents involved in residential property disposals or trusts. In brief, it requires the agent to log into their agent services account, enter the client's National Insurance number and date of birth, and generate an authorisation link. This can then be sent to their client via email. The client follows the link, signs in with their Government Gateway account and approves the request.

A client who already has a Government Gateway account will use the same username and password to sign in via the authorisation link. Otherwise, they will need to set one up by following the instructions at www.gov.uk/personal-tax-account.

Agents frequently report how time consuming it can be to help clients through the process of setting up a Government Gateway account. We have asked for improved guidance on many occasions and will keep pressing. More generally, we are also working with HMRC on improving agent authorisation routes. We understand that, once completed, the handshake is a 'once and done' authorisation that should endure.

Digitally excluded

The income record viewer team have already received feedback that completing the digital handshake is the most challenging part of the process.

If a client cannot complete a digital handshake, either due to a lack of computing skills or because they cannot verify their identity online, then they (not the agent) will need to call HMRC and ask for the Extra Support team to provide assistance. Given current helpline waiting times, this approach has its own challenges.

Multiple authorisations

It is worth knowing that a client authorisation link is specific to the agent, not the client. Having generated a link for one client, HMRC advises that the same link can be pasted into a mailing to all clients. Each client then signs in with their individual Government Gateway credentials to complete authorisation. Be warned, though, that while the same link can be used by multiple clients, it will still expire within 21 days of generation.

Deceased clients

Since it is not possible for an executor to set up a Government Gateway for the estate, the income record viewer is not currently available for agents trying to finalise the affairs of a deceased taxpayer. We understand that HMRC is looking at possible solutions.

Incorrect information

HMRC's digital service update for November 2022 suggests that if any of the information provided by the service is wrong, either the agent will need to contact the Agent Dedicated Line or the client will need to speak to their employer, their pension provider or the DWP as the source of the information supplied.

Summary

Gaining efficient access to employment information has been a problem for agents for a number of years. Those in practice will appreciate just how challenging it can be to obtain this (or indeed any!) information from certain clients. We therefore welcome HMRC's efforts to make this information available to agents on a real time basis. It is also possible to access data for PAYE only clients. With pre-population, PAYE data can only be obtained for clients in self-assessment.

HMRC will be reviewing the income record viewer service in early 2023, including whether authorisation via the 64-8 might be possible. In the meantime, feedback on experiences of the income record viewer is always welcome.

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Deal! But at what cost?

M&A transaction costs

In part two of the series on mergers and acquisitions, we look at the deductibility of transaction costs and how this has changed following the decision in *Centrica*.

by Graeme Connell

This article is the second in a series of three exploring some of the tax issues faced by companies or groups in relation to mergers and acquisitions. This article focuses on the corporation tax deductibility of the various transaction costs arising in an M&A context.

Where costs are recharged to other members of the corporate group, the tax deductibility analysis should be relevant only to the company ultimately bearing the costs.

Transaction costs incurred

M&A transactions will inevitably give rise to a range of professional and other costs relating to the transaction, whether incurred by the buyer (buy-side) or the seller (sell-side).

Common examples of such costs include:

- pre-sale restructuring of the target;
- debt financing costs;
- project management;
- consultancy/advisory costs;
- legal services;
- corporate finance advice, which may include fees linked to the success and value of the transaction;
- financial, tax, commercial and operational due diligence;
- share purchase agreement support;
- tax and investment structuring;
- equity co-investment and equity commitment costs;
- vendor due diligence;
- vendor tax advice; and
- post-completion integration costs.

Costs relating to debt finance

Some of the above costs, or elements of them, will relate to debt financing – these could be the financial institution's costs of issuing new debt or refinancing existing debt, or associated legal and tax advisory fees.

Amounts arising in respect of loan relationships are deducted from profits as they are recognised in the company's accounts. Such amounts include 'expenses incurred by the company under or for the purposes of those relationships and transactions' (Corporation Tax Act (CTA) 2009 s 306A). The legislation includes a list of these expenses, which can only be deducted if, amongst other things, they are incurred in bringing any loan relationship into existence or making payments under the loan relationship.

HMRC's guidance in its Corporation Finance Manual at CFM33060 includes a non-exhaustive list of examples of the above expenses, which includes arrangement fees with banks, fees or commissions for loan guarantees, legal fees on the transfer of a security and early redemption penalties.

The loan relationship legislation makes no distinction between capital and revenue items but does distinguish between trading and non-trading costs.

As a result, costs directly related to the cancellation or elimination of existing debt, or of obtaining new debt facilities should be deductible when expensed in the accounts. Furthermore, to the extent that costs are incurred on behalf of third parties for the purposes of effecting a refinancing, it should be reasonable to treat these as costs of obtaining new debt facilities.

There are a number of provisions that can deny deductibility of finance costs, such as the anti-hybrid, thin capitalisation, unallowable purpose and corporate

> **Key Points**
>
> **What is the issue?**
> The scope for companies deducting transaction costs in relation to acquisitions or disposals has been narrowed by the recent Court of Appeal decision in *Centrica*.
>
> **What does it mean for me?**
> If you advise companies on the acquisition or disposal of investments, you should consider to what extent professional and other costs will be able to be deducted for tax purposes. Early planning may increase deductibility.
>
> **What can I take away?**
> Some transaction costs may be deductible as loan relationship debits, which have no capital/revenue distinction. Some may be treated as management expenses although, in practice, this may be limited. Management expenses are subject to a capital restriction which, following the Court of Appeal decision in *Centrica*, may mean that all costs arising after a commercial decision has been taken to buy or sell are not tax deductible.

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interest restriction rules, all of which will be covered in the third article in the series.

Expenses of management

Transaction costs are most commonly incurred by a company carrying on an investment business rather than a trading company. Where a company's business consists 'wholly or partly of making investments' (CTA 2009 s 1218), such that it is a 'company with investment business', it can deduct the expenses incurred in the management of its investment business for tax purposes.

Management expenses are not defined in legislation but are limited to those incurred in respect of:

- so much of the company's investment business as consists of making investments; and
- investments which are not held for an unallowable purpose.

HMRC accepts that the holding of shares which generate dividends or gains which are exempt from tax would not cause the investment to be treated as being for an unallowable purpose.

Historic case law has provided some guidance as to what constitutes expenses of management. The cost of acquiring an investment, including stamp duty and brokerage fees, cannot be a management expense (*Sun Life Assurance Society v Davidson* (1957) 37 TC 330). There must also be an identifiable connection between the expense and the investment business (*Dawsongroup v HMRC* [2010] EWHC 1061).

However, the most notable (and relied upon) case in relation to management expenses, until recently, was *Camas v Atkinson* [2004] EWCA Civ 541. The *Camas* case determined that:

- expenses incurred in contemplation of an acquisition should be treated as expenses of management, as part of managerial decision making; and
- the date on which a decision was taken to acquire a particular target is generally (but not always) seen to be the point at which subsequent costs relate to the acquisition stage and are therefore no longer expenses of management.

The above applies equally to both acquisitions and disposals. It is generally accepted that a number of transaction costs in the list above, e.g. due diligence costs incurred prior to agreeing heads of terms or any general management consultancy or advisory costs of running the target's business, can therefore qualify as expenses of management.

Practical position

However, in reality, it is likely that the majority of the expenditure will have been incurred only once a decision has been taken in relation to acquiring a particular target company, due to the nature of the work involved.

Where acquisition costs are incurred by a newly formed Bidco, as is often the case, it is normally also the case that Bidco is not formed until a decision has been made to acquire a specific target business. Due diligence costs are not likely to be regarded as expenses of management or loan relationship debits, especially where these are not conditions precedent of the external lenders and the lenders do not seek to rely on the findings. Similarly, a share purchase agreement would not normally be drafted, or require support, until the acquisition was determined. Tax and equity co-investment structuring work is also not likely to be required until the target has been decided.

Further difficulties may arise in determining whether, and how, individual costs can be split between those relating to the equity and the debt elements of the investment, with the result that it may be prudent to treat the costs as neither debt-related costs nor expenses of management.

Capital expenditure

When the management expenses legislation was originally drafted, in the Income and Corporation Taxes Act 1988, there was no provision prohibiting a deduction for expenses of a capital nature. This restriction was introduced into CTA 2009 s 1219(3) by Finance Act 2004, as a result of the *Camas* case, and took effect from 1 April 2004. HMRC guidance in the Company Taxation Manual at CTM08190 confirms that there are now two questions to be considered:

1. Is the expenditure an expense of managing the investment business?
2. Is the expenditure capital in nature?

The first substantive case law which includes the issue of capital expenditure is *HMRC v Centrica Overseas Holdings Limited* [2022] EWCA Civ 1520 and its related appeals – the latest judgment being the Court of Appeal decision released in November 2022 (see bit.ly/3n2TSeN). The details of the case are not repeated in this article, but it concerned various sell-side costs in relation to the disposal of a loss-making subsidiary. The Court of Appeal considered the two questions above in relation to these costs.

The Court rejected HMRC's appeal that certain costs were not expenses of management and accepted that the First-tier Tribunal (and the Upper Tribunal) had properly applied the legal principles arising from earlier case law, such as *Camas*, in determining that most of the costs could be argued to be expenses of management.

However, in relation to whether the expenditure was capital in nature, the court upheld HMRC's appeal and applied the principles derived from centuries of case law relating to the revenue/capital divide in trading businesses. The court not only accepted HMRC's argument that certain costs were capital in nature but went further and concluded that, once a commercial decision was taken to sell the business (even before identifying a specific purchaser), the related expenses were capital in nature and therefore disallowable. The court was clear that a different test applied to that used to determine whether the costs were management expenses. Companies should therefore avoid premature statements of intention to buy or sell.

The current position

The Court of Appeal's judgment produces the result that expenses incurred before a decision is taken to sell a business to a specific purchaser qualify as expenses of management, but expenses incurred after a commercial decision is taken to sell the business (even if no purchaser is identified) are capital in nature. Based on this approach, the scope for deductibility will, in nearly all cases, be decided by applying the revenue/capital analysis.

This decision has significantly brought forward the point from which most advisors would previously have considered that expenses of management would be considered not to be tax deductible.

Although this case concerned sell-side costs, the same principle (although obviously untested) is expected to apply to buy-side costs. Once it has been determined that an acquisition will be made, even before the target business has been identified then, applying the decision in *Centrica*, the transaction costs from this point are likely to be treated as capital expenditure.

Reviewing options for investments (including potential transactions) should not, on its own, create an issue. Where it can be shown (with sufficient evidence) that the relevant fees were incurred to help inform the decision as to whether to buy or sell a business, rather than how to buy or sell it, then there may be increased scope for deductibility. The terms of engagement letters should therefore be worded carefully, potentially with separate instructions and invoices for non-transaction-related advice.

Centrica may still choose to appeal the decision to the Supreme Court and this would undoubtedly throw up some interesting questions.

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Business exits
An underused route

Why more business owners will be turning to employee ownership trusts in the months ahead.

by Charlie Hewlett

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Employee ownership trusts have enjoyed a surge of popularity in the last few years. First introduced by the Finance Act 2014, only 56 were established in the year to September 2020, increasing to 235 the following year and almost 500 the year after that. This is an astonishing rise.

The roster of companies owned by employee ownership trusts now includes Richer Sounds, Go Ape and Aardman Animations, the creators of Wallace and Gromit. This is no surprise, given that they can be a very tax efficient way for shareholders to exit a company, whilst benefiting their employees too. The main legislation covering the taxation of employee ownership trusts is in the Taxation of Capital Gains Act 1992 Part 7 ss 236H to 236U and HMRC's guidance is at bit.ly/409tRsg

What is an employee ownership trust?

An employee ownership trust is a trust for the benefit of a company's employees (often incorporated as a company limited by guarantee). The employee ownership trust acts as the vehicle that purchases a target company from its owners at the outset of the transaction, before then acting as the shareholder of the target post-completion.

In employee ownership trust transactions, the business owners typically sell to the trust for a 'fair' price, as determined with an independent valuation. The consideration for the sale is normally in the form of cash and loan notes, which ultimately derive from the cash generated by the target company.

Where to begin?

There are five main conditions which must be satisfied for a shareholder to be eligible for the tax benefits of selling to an employee ownership trust:

1. The target must be a trading company or the holding company of a trading group.
2. The target must have a minimum proportion of employees who are not the owners or connected persons (such as spouses).
3. The trustee of the employee ownership trust must hold a controlling interest in the target. This means that it should hold more than 50% of the company's ordinary share capital, hold the majority of the voting rights in the company and be entitled to more than 50% of the profits, among other requirements.
4. The employee ownership trust must be established for the benefit of all employees on the same terms, though the amounts paid to employees can vary by reference to remuneration, length of service or hours worked.
5. The selling shareholder must be an individual (not a corporate or institution) and have UK tax residency status.

The process of this sale typically takes between three to five months to complete. This involves getting the company valued, getting clearance from HMRC, drafting the sale documentation and setting up the employee ownership trust structure. The sale documentation is similar in many ways to that of a normal sale but tends to be shorter and with fewer warranties. Additional documents, such as a trust deed, are needed but these are rarely heavily negotiated.

Employee ownership trusts can even be combined with an enterprise management incentive scheme, which can be a particularly helpful way of keeping the management incentivised while a lot of the cash generated by the business is being used to pay the purchase price to the owner.

Key Points

What is the issue?
An employee ownership trust is a trust for the benefit of a company's employees (often incorporated as a company limited by guarantee). It acts as the vehicle that purchases a target company from its owners at the outset of the transaction, before then acting as the shareholder of the target post-completion.

What does it mean for me?
Generous tax incentives for business owners selling to an employee ownership trust have led to these trusts rising in popularity.

What can I take away?
There are five main conditions which must be satisfied for a shareholder to be eligible for the tax benefits of selling to an employee ownership trust.

Employee ownership trusts on the rise

There is a clear reason for employee ownership trusts rising in popularity: the generous tax incentives for business owners selling to an employee ownership trust. The main tax advantages are relief from capital gains tax on all of the gain arising from a sale to an employee ownership trust. The relief is given by treating the sale as a no gain, no loss transaction – which means that the trust acquires the business at the seller's tax base cost.

This compares very favourably to the 20% capital gains tax rate that would otherwise be payable (or 10% if business asset disposal relief is available, capped at

the first £1 million of gain). There is also a limited exemption from income tax on bonus payments of up to £3,600 per year for the target's employees. During the current economic climate, it is unsurprising that these tax advantages are catching the eyes of business owners.

There are also significant non-tax related advantages to owners exiting to an employee ownership trust. Many owners like the idea of passing the benefit of their business to its employees, who are often the ones who have contributed to the value in the business in the first place.

The sale process can also be simpler than on a trade sale. HMRC clearance is required and there is some work establishing the employee ownership trust structure; however, a lot of time and expense is saved by not having to find an external buyer. Minimal due diligence is required by the buying entity, there is relatively little negotiation of deal terms, and the risk of a failed sale is low.

Finally, the exiting shareholder can stay in the management of the business post-completion. It is not uncommon for a seller to stay on as a director of the target and wind down their day-to-day involvement with the business over a number of years as their loan notes are redeemed.

From an employee's perspective, in addition to the tax advantage mentioned above, the main advantage of the arrangement is that the business will be run for their benefit and they get to share in the profits generated. This is often very attractive compared to the potential upheaval that can follow trade sales.

> **Despite a few disadvantages, it is not surprising that employee ownership trusts have surged in popularity.**

Disqualifying events

A claim may not be made and relief previously given will be withdrawn if certain events occur in the tax year next following the year of disposal. Those are known as 'disqualifying events' and they occur when:

- the target company ceases to meet the 'trading requirement';
- the employee ownership trust ceases to meet the 'all-employee benefit requirement';
- the employee ownership trust ceases to meet the 'controlling interest requirement';
- the 'participator fraction' exceeds two-fifths; or
- the trustees act in a way which the trusts, as required by the 'all-employee benefit requirement', do not permit.

Where the disqualifying event takes place at a later date, i.e. after the next tax year following the disposal to the trust, the trustees are treated as making a disposal and immediate reacquisition of the ordinary share capital of the target company, potentially triggering gains.

The risks to be aware of

From an owner's perspective, a key disadvantage of this route is that they will often have to wait a number of years to be paid out (frequently five years or more). This is often because the target is unlikely to be able to fund the full purchase price upfront from its own resources and it is currently uncommon for lenders to finance the gap.

This is especially an issue for targets that do not consistently throw off cash, or whose value is a high multiple of earnings. The delay that may be encountered is food for thought but, as many private merger and acquisition transactions have a sizeable part of the purchase price deferred or subject to earn-outs, the benefits will often outweigh this.

Another consideration is how the employee ownership trust route may also close off strategic buyers, who may be willing to pay a premium to the 'fair value' (e.g. for special synergies between the buyer and the target).

For employees, the time taken to pay the business owner out may be frustrating. While the purchase price is outstanding, the bulk of the profits generated by the business will go to paying off the owner, rather than to the employees. It is, however, possible to mitigate this downside by permitting some of the business's profits to go to the employees, even if some of the purchase price is outstanding.

Although there are a few disadvantages to this process, it is not surprising that employee ownership trusts have surged in popularity. Business owners get a tax-advantaged sale (with less deal risk and due diligence stress) that also gives something back to their employees and often keeps management disruption to a minimum.

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Using FOTRA securities

A question of residence

For inheritance tax purposes, owners of FOTRA shares (Free of Tax to Residents Abroad) are required to be simply non-resident, not non-domiciled, to meet the conditions for exemption. This can result in some significant advantages.

by Oliver Conolly

Key Points

What is the issue?
Inheritance tax planning on the basis of attaining or retaining non-domiciled status can be difficult owing to the deemed domicile rules. Transfers of value involving FOTRA securities (Free of Tax to Residents Abroad) can be a powerful tool when it comes to planning.

What does it mean for me?
Inheritance Tax Act 1984 s 6(2) provides for excluded property status for FOTRA securities in circumstances which no longer require the owner to be non-domiciled, but simply non-resident.

What can I take away?
The purpose of this article is to highlight the virtues of inheritance tax planning with FOTRA securities, in terms of certainty, simplicity and the relative lack of transaction costs and volatility in value.

There are not very many tools in the inheritance tax planning toolbox. One of the most powerful of these tools is that of making transfers of value involving FOTRA – 'Free of Tax to Residents Abroad' – securities. They are defined in ITTOIA 2005 s 713, in part by reference to Finance (No. 2) Act 1931 s 22.

The current position is simple (apart from an exception for future issue of the 3½% War Loan) and is stated clearly by HMRC: 'All government securities acquired on or after 6 April 2013 will be exempt provided the beneficial owner is resident outside the UK' (IHTM 04291).

FOTRA securities have income tax advantages in certain circumstances, and disposals of gilts are also exempt from capital gains tax. However, the focus of this article is on their very

considerable inheritance tax advantages, as FOTRA securities held by a non-resident are excluded property under Inheritance Tax Act (IHTA) 1984 s 6. This article discusses the UK inheritance tax issues and does not consider investment aspects, on which advice should be sought.

FOTRA securities held outright

When an individual transfers a beneficial interest in excluded property to another person, no account is taken of that property in quantifying the loss to the estate of the transferor (IHTA 1984 s 3(2)). A lifetime transfer by an individual, either outright to another individual or to the trustees of a settlement, is outside the scope of inheritance tax to the extent that it is comprised of excluded property. Excluded property is also deemed not to form part of the person's estate immediately prior to their death (IHTA 1984 s 5(1)(b)).

'Excluded property', as it applies to property in which an individual has a beneficial interest, is defined in IHTA 1984 s 6. Property is excluded under IHTA 1984 s 6(1) if it meets two conditions: the property is outside the UK; and it is owned by a non-UK domiciled individual. There are other definitions; for example, investment in open-ended investment companies in the UK is still excluded property, but the owner must be non-UK domiciled.

Section 6(2), however, provides for excluded property status for FOTRA securities in circumstances where the owners meet the conditions for exemption. These no longer require the owner to be non-domiciled, but simply non-resident.

FOTRA securities held in trust

FOTRA securities held in trust will be deemed to be excluded property if they meet the conditions in IHTA 1984 sub-s 48(4) relating to 'qualifying interest in possession'. Practitioners are most likely to encounter this in interest in possession trusts, to which an individual became entitled prior to 22 March 2006, and immediate post-death interest.

Where an individual has a qualifying IIP, it is their residence status that matters when considering whether gilts held on trust are excluded property. The residence status of the trust or the domicile of the settlor is irrelevant (sub-s 48(4)(a)).

Where no qualifying IIP subsists in the settled property (for example, where it is a discretionary trust), then excluded property status will be conferred on the trust assets (thereby avoiding relevant property status) if only non-UK resident persons could conceivably benefit from the settlement (sub-s 48(4)(b)). The conditions are stringent, and may not be acceptable in practice.

This type of trust may be appropriate where there is a realistic prospect of the intended beneficiaries themselves becoming non-resident at some point in the future, even if they are not so resident at present. A decision to implement a trust meeting the conditions under sub-s 48(4)(b) would require careful thought.

In situations when the trust assets do not benefit from excluded property status because the beneficiaries include UK resident individuals, the use of FOTRA securities can still provide very substantial advantages by the absence of an immediate charge on the creation of such a settlement.

Planning with lifetime outright gifts

First, we consider making outright gifts to individuals. Normally, such gifts are potentially exempt transfers and will only escape the UK net if the donor survives seven years.

Example 1: Mr Brown moves abroad

Mr Brown, who is UK domiciled, becomes non-UK resident in 2021/22. In that year, he gifts £1 million in FOTRA securities to his son and daughter in equal shares. He returns to the UK and dies in 2023/24.

It is possible for an individual to become non-resident without necessarily becoming resident in any other country in a given tax year. It would be possible for Mr Brown to become non-UK resident by spending time in, say, France, Spain and Germany in 2021/22, without becoming resident for tax purposes in any of those countries. (He retains no home in the UK and ensures that he spends more time in one other country than the UK in that year.)

As far as UK inheritance tax is concerned, the gift will not be a potentially exempt transfer. Rather, as a gift of excluded property, it will not be taken into account for inheritance tax purposes. Mr Brown will need to consider the inheritance tax/gift position in any of the countries where he spends time.

No statutory holding period

Unlike with business property relief (BPR) or agricultural property relief (APR) assets, there is no holding period necessary for the exemption under FOTRA securities to apply and no clawback. However, in its Inheritance Tax Manual (IHTM 04292), HMRC states: 'If a worthwhile amount of tax is at stake you should investigate the possibility of a last-minute purchase.'

It is unclear what grounds for challenge HMRC may have in mind in view of the absence of a statutory holding period. If gilts are acquired last minute, then gifted, and immediately sold, HMRC *may* mount a challenge to the effect that the gift is in reality a gift of cash and not FOTRA securities. This will depend on all the circumstances. A reasonable holding period between the acquisition by the donor and the gift, and between the acquisition by the donee and their sale, should cover off any such challenge.

Disclosure of tax avoidance schemes?

HMRC has declined to state categorically that arrangements involving gilts would never be caught by the disclosure of tax avoidance scheme (DOTAS) rules. Thought will need to be given on a case by case basis, but it is suggested that it is unlikely that planning involving gilts in any of the examples considered in this article would meet the conditions required for DOTAS to apply.

Planning with deemed lifetime gifts

The termination of a qualifying interest in possession in settled property, such that one or more individuals become absolutely entitled to it, is a potentially exempt transfer in normal circumstances. For example, where a widow is entitled to an immediate post-death interest in property settled in her late husband's will and terminates her interest in possession in circumstances where her children become absolutely entitled to the property.

Such standard immediate post-death interest trusts could benefit from investment in FOTRA securities.

Example 2: Investment in FOTRA securities

Mrs White is a widow. She is entitled to an immediate post death interest in a trust fund of £1 million, settled in her late husband's will. The fund is comprised of FOTRA securities.

Mrs White becomes non-UK resident in the 2022/23 tax year. The trustees exercise their overriding powers of appointment to make an appointment of the trust to her two adult children. Termination of a qualifying interest in possession in circumstances when individuals become entitled is *deemed* to be a transfer of value by that individual under UK law. As the termination of Mrs White's interest in possession is a transfer of value of the FOTRA securities, it is a transfer of excluded property so there is no charge.

ACHIEVING NON-RESIDENCE

Any planning involving the use of FOTRA securities will necessitate an individual either being or becoming non-UK resident.

The requirement that the owner now merely be not UK resident has made planning with FOTRA securities a good deal easier than it was before 6 April 2013, when both residence and ordinary residence tests were difficult to operate. It is usually fairly clear under the statutory residence test whether someone is or is not UK resident.

For an individual to become non-UK resident in any given tax year, even if they have previously been UK resident for their whole lives, it is only necessary to ensure that they are not caught by the automatic UK residence test or by the sufficient ties test (Finance Act 2013 Sch 45 para 3). Under the sufficient ties test, the threshold for the number of days spent in the UK needed to trigger UK residence is lower than for those who have not been resident in the UK in any of the three previous years (paras 18 and 19). However, non-UK residence can still be achieved even against a backcloth of long-standing prior UK residence.

Becoming non-UK resident may be easier after individuals retire, which is of course when their minds are likely to turn towards inheritance tax planning. They will no longer work in the UK, and thus no longer have a work tie. If their children are grown up, they will not have a family tie by virtue of having minor children in the UK. And if their spouse or civil partner becomes non-UK resident too, they will not have a family tie by virtue of their spouse remaining in the UK.

Mrs White will need to consider the inheritance tax/gift tax position in any of the countries where she spends time.

Planning with lifetime settled gifts

Where an individual makes a transfer of value to a settlement, whether a discretionary settlement or an IIP settlement, such transfers are immediately chargeable at 20% under Inheritance Tax Act 1984 s 7(2). This is, of course, a significant deterrent to the creation of settlements.

The transfer by a non-domiciled individual to trustees of a settlement of non-UK situs property is not chargeable, due to being a transfer of excluded property under s 6(1). However, the same result can be arrived at by an individual who is non-UK resident, and makes a transfer of FOTRA securities to trustees of a settlement.

Example 3: A discretionary family trust

Mr Grey, who is UK domiciled, ceases to be UK resident in that year in the tax year 2022/23. He transfers gilts worth £1 million into a discretionary family trust, with UK resident trustees. The beneficiaries include UK resident family members. Mr Grey returns to the UK in 2023/24. Under the terms of the settlement, he is wholly excluded from benefiting from the trust.

From a UK perspective, the transfer of the gilts into trust will be a transfer of excluded property and will therefore not be liable to the 20% charge. Mr Grey will need to consider the inheritance tax/gift tax position in any of the countries where he spends time.

Once settled, the trust fund is subject to the relevant property regime, with 6% ten-yearly charges. If the trust is UK resident, the trustees will be liable to income tax and capital gains tax on an arising basis, and none of the costs and complications attending offshore trusts will apply. Further, the Transfer of Assets Abroad provisions will not apply as assets will have been transferred to UK resident trustees by a non-resident individual.

Finally, if Mr Grey is wholly excluded from benefiting from the trust fund, he will not have reserved an interest in it for the purpose of the gifts with reservation of benefit (GROB) rules. If the GROB rules did apply, this would be problematic because the trust fund would not be excluded property in itself; and on his death Mr Grey would be deemed to own the trust assets for inheritance tax purposes.

Planning with the inheritance tax charge on death

It is never possible to predict the time at which an individual will die. Nor it is possible to predict whether the length of the time that they have spent abroad will mean that a foreign state will seek to impose inheritance tax on their assets.

If an individual is resident abroad in the year of death (or is likely to be), it is possible to plan for the eventuality that on their deaths, they will be subject to UK inheritance tax. Should that eventuality materialise, it would clearly be beneficial for their liquid assets to be transferred into FOTRA securities, thus securing excluded property status.

Example 4: Overseas residence at time of death

Mrs Pink, a widow, moves to Italy from the UK in March 2022. She is diagnosed with a terminal illness in May 2022, and remains in Italy until her death on 4 July 2022.

Mrs Pink has liquid assets of £1 million. She decides to invest her assets in FOTRA securities, which remain in her estate until her death.

From a UK inheritance tax point of view, Mrs Pink will be deemed domiciled for UK inheritance tax. She may be factually domiciled in the UK on death, depending on whether she had a settled intention to remain in Italy permanently. It will be a question of Italian law whether she is subject to Italian tax, which is at a much lower rate than UK inheritance tax.

Calculating residence at time of death

If Mrs Pink was UK domiciled on death (for UK tax law purposes, and if necessary under the Treaty), then the critical question for the purposes of determining whether the £1 million is excluded property and therefore escapes inheritance tax is whether she was non-UK resident in the year of death.

There is a special rule for applying the 'sufficient UK ties' test in the year of death, contained in Finance Act 2013 Sch 45 para 20. This rule applies where an individual dies before 1 March, as per the above example. The overall effect of that provision is to treat the year of death as a mini-year and to adjust the day count requirements accordingly (Sch 45 paras 18 and 19). The other statutory residence text rule relevant to the year of death is the fourth automatic overseas test (Sch 45 para 15).

It is possible that in the year of death, the individual is neither UK resident nor resident in (say) Italy. Italian tax advice would be needed on the Italian position. They may be resident nowhere.

In Example 4, it may not be predictable how Mrs Pink's residence or domicile position would ultimately be dealt with by the relevant authorities. The decision to move her liquid assets into FOTRA securities has the effect of protecting her inheritance tax position in the event that her estate was subject to UK (as opposed to Italian) inheritance tax, but that she was non-UK resident in that year.

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ATT ANNUAL CONFERENCES 2023

SAVE THE DATE

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

Details of our conferences are as follows:

- Monday 19 June 2023, 9.30 – 13.30 (Live Online Session)
- Wednesday 21 June 2023, 9.30 – 13.30 (Live Online Session)
- Thursday 29 June 2023, 9.30 – 16.30, 30 Monck Street, London (Face to Face Session)

If you sign up for one of the online sessions, you will also receive the afternoon material as three recorded webinars to watch at a time that suits you.

Our Speakers:

Rebecca Benneyworth MBE FCA

Supported by our Technical Officers:

Steven Pinhey
Emma Rawson
Helen Thornley

ATT FELLOWS' WEBINAR

Wednesday 19 April 2023
13:00 – 14:30

The President and Council of the Association would like to invite all Fellows of the Association to our next Fellows' Webinar on Wednesday 19 April 2023.

This free event provides a unique opportunity for all Fellows to enjoy the company of members of similar standing within the Association and participate in discussion sessions led by our Technical Officers.

On the day:

Welcome from the President, David Bradshaw.

Followed by a talk with Steven Pinhey on What do points make? Penalties (A look at the new late VAT filing penalties) (with Q&A).

After Steven's talk you can choose to attend one of the following discussion groups led by our Technical Officers:

- Basis period reform – what's keeping clients and agents up at night? – Emma Rawson
- HMRC One-To-Many Letters – the good, the bad and the ugly – David Wright
- How has the popularity of cryptoassets affected your practice? – Helen Thornley

Book online: www.att.org.uk/attfellowswebinar2023

Any questions? Email us: events@att.org.uk

Good work, Mr Chips

Cash-only businesses

The case of *Georgiou v HMRC* involved an investigation into a chain of fish and chip shops.

by Keith Gordon

In the more than 30 years that I have been in the tax profession, certain types of business have been seen as likely candidates for an old-fashioned 'back duty' investigation. At or very near the top of that list will be a local takeaway catering establishment. Indeed, even training exercises provided for tax advisers outside HMRC, looking at how to respond to such investigations, are likely to focus on these kinds of business.

The case of *Georgiou v HMRC* [2022] UKFTT 455 (TC) concerns such a case.

The facts of the case

Background facts

Mr Georgiou was a director of Georgiou & Co Ltd (the company). He owned 25% of the shares of the company.

As at 2013, the company had owned four fish and chip shops, which operated on a cash-only basis. During the 2014/15 tax year, the company ceased trading at two shops but retained the premises. It let them to other businesses and received rental income for the premises. The two retained premises were known as Dove House and Harvey's. The company ceased trading altogether on 18 November 2017, again with the premises rented out to unconnected companies. Mr Georgiou continued working at Dove House as an employee of the new owner. By March 2018, the company was insolvent and entered a creditors' voluntary liquidation.

In the meantime, the company had been assessed for the following:

- a VAT assessment of £141,238 for undeclared output tax for nine quarters up to March 2016;
- a deliberate behaviour penalty amounting to £84,037;
- corporation tax discovery assessments for the three years ended 31 March 2016 totalling £230,647.40;
- a corresponding penalty assessment of £137,235.55 (later reduced to £121,090 to reflect co-operation not previously recognised); and
- a notice of determination of corporation tax for the year ended 31 March 2017 charging £68,833.

The corporation tax assessments included sums due under the loans to participator rules (as well as in relation to under-assessed profits).

The company's appeal was brought by the liquidator. In addition, Mr Georgiou faced a £64,885.32 personal liability notice in relation to the VAT penalty. This was later reduced to £47,857.76 in partial recognition of the fact that Mr Georgiou had not taken over control of the business until April 2015 following his father's death.

Dove House and Harvey's were the company's original sites acquired in 2011 and 2012. Dove House was in a more affluent area, as well as being well positioned on a main road. Harvey's was not so well sited, nor was its local clientele as affluent.

Until his death, Mr Georgiou's father was the driving force behind the business and the one who dealt with the company's finances. Mr Georgiou's English was better than his father's and he often dealt with suppliers to the company. Mr Georgiou also did the actual cooking. Mr Georgiou's wife and mother (the other two shareholders) assisted with the cooking and cleaning. There were no external staff.

Key Points

What is the issue?
Georgiou & Co Ltd operated cash-only fish and chip shops. Following an investigation by HMRC, the First-tier Tribunal found that HMRC had based VAT assessments on a flawed methodology.

What does it mean for me?
Apart from a single issue related to the timing of the assessments, the taxpayers were completely successful in their appeals. The company was able to demonstrate that HMRC's calculations were riddled with errors, thereby undermining their credibility.

What can I take away?
It is important to engage an experienced adviser. In this case, the adviser not only identified flaws in HMRC's methodology but also looked at the background facts that underlay the figures and was able to set out his case with clarity to the tribunal.

The investigation

The investigation started in February 2016. The officer requested documents showing the shops' sales and cash purchases for the year ended 31 March 2015. The exercise was to ascertain how much cash would have passed through the business in the year. Twelve of the sheets were missing.

From the sheets made available, the total came to £490,000. By taking an average, given the missing sheets, the officer estimated the total for the year to be £552,450. The officer noted that the declared sales, however, came to only £507,000.

A similar exercise for the December 2015 quarter showed total cash of £117,030 compared with gross sales in the VAT return of £88,025. The officer noted a similar shortfall in the purchases, amounting to £33,000. Although he recognised that a possible explanation would have been that purchases were being accounted for in the wrong period, the officer reached the conclusion that this was further evidence of suppression of trading activity.

Similar shortfalls of £3,000 (sales) and £17,000 (purchases) were identified for the September 2016 trading quarter.

HMRC also raised concerns about the till data known as Z-readings. Z-readings show the daily totals and will, ordinarily, contain a date or other marker to allow the readings to be kept in sequence. However, the company's tills appeared to be reset each day making such sequencing impossible. HMRC had also asked for the records of the individual sales but the company claimed that these were unavailable due to an apparent fault in the tills – the only records of the sales were within the Z-readings themselves.

Following a change of HMRC officer leading the investigation, the new officer made an unannounced visit to both shops in July 2017 but was refused entry by Mr Georgiou's wife. This was on the basis that Mr Georgiou was not present.

In the meantime, the company purchased new tills (which were said to be HMRC-compliant) but bought those at the bottom of the range. HMRC asked the company's accountant to provide HMRC with the electronic journal for each shop. Instead, the accountant sent only the Z-readings, saying that he considered those to be the same thing.

A further visit was arranged at which a representative of the tills' supplier would also be present. HMRC's own till specialists explained what information was wanted from the tills and this was taken by the supplier's representative and saved onto a brand new USB stick. However, it transpired that the records taken by HMRC were not complete as there was nothing in the folders for the individual records. HMRC concluded that these had been deleted or somehow not recorded by the new tills. On the company's behalf, it was suggested that the new tills were faulty but it was unable to afford any further replacement.

Covert observations were carried out at both shops on Friday 17 and Wednesday 22 November 2017. On the second occasion, officers also made test purchases. During the observation, it was noted that at one stage, a large payment was taken whilst the till was already open, with no keying into the till at that time. There were other instances when the till was kept open but, on those occasions, individual sales were keyed in.

The assessments

Having been told of the cessation of the business, HMRC then proceeded to make assessments on the basis of the information that it had. The Z-readings for Dove House in the September 2016 quarter showed the number of transactions in the quarter, allowing an average transaction of £7.31 to be calculated. The officer derived an average number of transactions for Fridays and Wednesdays which were then taken as representative for weekend and weekday trading days. As no Z-readings were taken for Harvey's, the sales information for Dove House was used instead.

These average transactions were lower than those actually observed in November 2017. For example, the recorded data showed 104 transactions on average in the September 2016 quarter, whereas 163 were observed on Wednesday 22 November 2017. HMRC thus calculated a 36% suppression rate. In the company's favour, HMRC ignored the fact that Dove House was also open at lunchtimes.

By adopting a similar method, the suppression rate for weekends was calculated as 49%. For Harvey's, suppression rates of 26% (weekends) and 19% (weekdays) were calculated.

It was noted by HMRC, however, that declared sales went up significantly once the investigation started. Therefore, in later periods, the suppression rates were taken to be lower.

Subject to those adjustments and an estimate as to the split of the turnover between the different shops, this enabled HMRC to estimate the under-assessments and to quantify the penalties.

The company and Mr Georgiou appealed against the assessments and penalties. A point was taken by the company's representative that the VAT assessments were late because they were made more than a year after the original meeting at which point HMRC had obtained the cash figures.

The First-tier Tribunal's decision

The case was heard by Judge Marilyn McKeever and Member Susan Stott.

As for the initial question about the timing of the assessments, the tribunal dismissed the company's argument. Although the cash figures, as HMRC put it, suggested that there had been suppression, HMRC was not able to quantify the assessments until after the covert observations in 2017. The VAT assessments were made well within a year of those observations. They were therefore made in time.

But for that single point, the taxpayers were completely successful in their appeals. The company was able to demonstrate that HMRC's calculations were riddled with errors, thereby undermining their credibility.

HMRC had identified anomalous trading figures on the VAT returns comparing the March 2014 and March 2015 figures. However, the company was able to show that the March 2014 return reflected the period from the commencement of trading (seven and a half months) compared with the 12 month trading period for the following return. Once the period lengths were properly taken account of, the trading pattern was smoother.

Secondly, HMRC had failed to reflect the fact that the company was operating four shops at the beginning of the period under investigation, and only two by the end. Once one also factored in the fact that the shops effectively closed following Mr Georgiou's father's death, the reported figures looked considerably more realistic.

Thirdly, HMRC had not taken account of the business problems that arose around the time of and subsequent to the father's death. Not only did the business close during the busiest period of the year because of a flood (in the run up to Christmas) but the company employed casual staff when Mr Georgiou was away in Cyprus in the aftermath of his father's death. At that stage, portion sizes and the quality of the output varied, leading to a loss of clientele, something that Mr Georgiou attempted to stabilise following his return to the helm.

Fourthly, HMRC's totting up of all bankings failed to exclude the rental income received from two of the premises.

Fifthly, although the analysis of purchases correctly disregarded expenditure that was clearly personal in nature, there were still a number of outgoings marked 'cheque' or 'transfer' that did not necessarily relate to purchases of stock.

Sixthly, it was only when the 'missing' cash sheets were factored in that HMRC's methodology gave rise to any possible under-assessment.

Seventhly, the observations, which lay at the heart of HMRC's case, were not sufficiently reliable. First, they took place too closely together. Secondly, the second one was carried out when the business was no longer being carried out by the company.

Cash is inherently hard to trace, trading activity can be hectic and it is rare to have a dedicated bookkeeper.

Eighthly, HMRC seemed to work on the basis of there being 15 Wednesdays in any particular quarter (when usually there are only 13, occasionally 14).

Ninthly, the absence of evidence from any of the officers conducting the observations undermined the reliability of the evidence derived from those occasions. Although hearsay evidence is admissible in the tribunal, it is often weak, particularly when there are uncertainties as to what was observed and recorded. In particular, the record that there were 56 customers arriving between 5pm and 5.30pm was considered unlikely by the tribunal, given that photographs show it looking full with only 20 individuals present. Indeed, a later visit several months later showed Dove House to be 'almost empty' at 5.50pm.

Tenthly, HMRC had failed to factor in (and refused to acknowledge) the difference in the two remaining shops' locations and the fact that a local factory (which provides a number of customers) closes for two weeks during the summer.

Finally, HMRC had failed to exercise any credibility check to the numbers calculated. The tribunal noted that Mr Georgiou was cooking and not handling the cash. Indeed, the observations showed that all transactions were being keyed in – the exception observed related to a telephoned order which was keyed in when the order was made and therefore not duplicated when the cash was received a little later that evening.

As the tribunal noted, HMRC's figures suggested that £850,000 of profits had been taken from the business over a four year period. HMRC had not checked whether these alleged takings had impacted upon Mr Georgiou's lifestyle. The HMRC officer had failed to recognise that this was simply loss-making business (which was eventually required to close).

The tribunal concluded that the VAT assessments were not made to best judgment. The penalties and other matters were set aside for similar (and in some cases additional) reasons.

Commentary

Reverting to my opening comments, I do not doubt that cash businesses such as this represent a risk for HMRC. Cash is inherently hard to trace, trading activity can be hectic and it is rare for such businesses to have a dedicated bookkeeper. But it is, in my view, fundamentally wrong to proceed on the assumption that the proprietors of such businesses are routinely suppressing sales so as to evade their tax liabilities.

However, this case suggests that HMRC officers proceeded from that assumption. Indeed, the tribunal itself noted that 'following the cash reconciliations which "suggested" the suppression of sales and purchases, [the officer] concluded that was the case and interpreted all the information provided and other evidence in a way which supported that conclusion'.

What to do next

Fortunately, Mr Georgiou appears to have engaged an experienced adviser who not only identified flaws in HMRC's methodology but also looked at the background facts that underlay the figures and was able to set out his case with clarity to the tribunal. In cases such as this, it can often be impossible to show what the correct numbers should be. However, if HMRC's assessments are so fundamentally flawed (for lack of objectivity), it will be unnecessary for the taxpayer to prove to a tribunal what the correct figures should be.

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Land diversification
The complexity of supply

The case of *Netbusters Ltd* literally 'bust the net' on the supply of land for the playing of sport being able to qualify as an exempt supply for VAT.

by Julie Butler

Farm diversification is, by definition, alternative land use – the supply of land for activities such as the provision of stables, the hire of riding schools and dog walking areas. The supply of land is therefore a large source of farming income. However, the VAT and inheritance treatment of such a supply is very complex for advisers. The recent Upper Tribunal case of *HMRC v Netbusters (UK) Ltd* [2022] UKUT 175 explored the VAT exemption status in some depth, and so is useful guidance moving forward.

The result of this case lies against the backdrop of the 'call for evidence' as part of simplifying VAT on the supply of land. It is, however, a review that has been sidelined.

The hire of land within the exemption

If the character of the supply of land is predominantly the hire of land, and the ancillary services are viewed as additional, the hire or lease of the land may stay within the exemption of VAT. The Value Added Tax Act 1994 Sch 9 Group 1 exempts the grant of any interest in or right over land, or of any licence to occupy land, subject to a number of exceptions.

The importance of the *Netbusters* case for farming and equine businesses is key for diversification areas such as the supply of land for equine events, and the hire of the menage to school horses for such sports. Likewise, farmers supplying land for sports activity should achieve VAT exemption provided that the conditions are met.

Netbusters: the facts of the case

Netbusters Ltd organises competitive five-a-side football and netball leagues. The company makes block bookings of pitches from third parties, such as local authorities and schools, entering into binding agreements to hire venues for set periods of time. The company then hires these pitches out to teams in the leagues to enable them to play their league fixtures. Most of the pitches are hired either as a block booking for the season or one-off bookings. Netbusters also manages all aspects of league administration.

The question was whether this was a supply of an interest in land (which would be exempt) or a supply of sports league services (which would be standard rated)? Netbusters considered the supply to be a single exempt supply as a grant or right over land, whereas HMRC took the view that the supply was subject to VAT as the company was supplying competitive league sports management services.

Following the case of *Goals Soccer Centres* [2012] UKFTT 576, Netbusters submitted a claim for over-declared output VAT of £414,622 on the basis that its supplies were partly exempt (the supply of the pitch or court); and partly taxable (the supply of league management services). Netbusters also appealed against assessments totalling £218,542.

Key Points

What is the issue?
Netbusters Ltd leases pitches to football and netball leagues. Is this a supply of an interest in land (tax exempt) or a supply of sports league services (standard rated)?

What does it mean for me?
If the character of the supply of land is predominantly the hire of land, and the ancillary services are viewed as additional, the hire or lease of the land may stay within the exemption of VAT.

What can I take away?
If there was to be a move to standard rated from being exempt, the impact on farming of short-term lets of land would be significant.

The hire of the facilities in the *Netbusters* case was for a defined period of time and no other party had the right to access the pitches during those times. The hire could be either a block or a one-off booking. Netbusters contended that the supplies were exempt via Value Added Tax Act 1994 Sch 9 Group 1: 'The grant of any interest in or right over land or of any licence to occupy land...'

However, Item 1(m) excludes 'the grant of facilities for playing any sport or participating in any physical recreation', in which case such supply becomes standard rated. To add complexity, Item 1(16) overrides the exception for sporting facilities (so they are exempt) if the grant of the facilities is for:

a) a continuous period of use exceeding 24 hours; or
b) a series of 10 or more periods, whether or not exceeding 24 hours in total, where the following conditions are satisfied:
   (i) each period is in respect of the same activity carried on at the

same place;
(ii) the interval between each period is not less than one day and not more than 14 days;
(iii) consideration is payable by reference to the whole series and is evidenced by written agreement;
(iv) the grantee has exclusive use of the facilities; and
(v) the grantee is a school, a club, an association or an organisation representing affiliated clubs or constituent associations.

One of the suggestions of the 'supply of land call for evidence' was to make all lets standard rated.

The First-tier Tribunal decision

The First-tier Tribunal originally found in favour of Netbusters. The tribunals needed to establish whether or not the supply fell within the VAT exemption as 'the grant of any interest in or right over land or of any licence to occupy land'. It was agreed that:

- Netbusters made a single supply to its customers. The pitch hire provided by Netbusters went hand-in-hand with participation in one of the leagues organised.
- This differentiated it from the decision in *Goals Soccer Centres*, where two separate supplies were made.
- The nature of Netbusters' single supply was the granting of interests in rights over or licenses to occupy land: an exempt supply.

The Upper Tribunal decision

HMRC argued to the Upper Tribunal that the First-tier Tribunal had failed to consider the 'passivity principle' of the letting of land or the objective character or economic reality of Netbusters' supplies. HMRC considered this to be neither the grant of a licence to occupy land nor the hiring out of pitches, but rather the supply of league administration services.

The Upper Tribunal dismissed HMRC's appeal and found that the First-tier Tribunal had applied the correct tests in law. Based on the facts available, the Upper Tribunal was entitled to reach the conclusion that the supplies were exempt from VAT.

Should any farmer, landowner or organisation be involved in letting facilities in similar circumstances, they should consider whether this decision could impact current VAT accounting. *Netbusters* is an important case that could allow a claim of overpaid output tax to HMRC where standard rate VAT has been overcharged.

OTHER FORMS OF DIVERSIFICATION

A basic (and dare we say iconic) form of farm diversification for a number of decades has been the car boot sale and the selling of pitches to stallholders.

Understanding the VAT status of such a supply is of importance when assessing the VAT treatment of other supplies of land. It is therefore interesting that the First-tier Tribunal decision in the case of *Rufforth Park Ltd v HMRC* [2022] UKFTT 43 lends clarity to the VAT treatment of car boot pitch fees. The case was concerned with whether pitches for car boot sales were subject to VAT or were a simple licence to occupy land and therefore exempt.

Following a random inspection, HMRC concluded that Rufforth Park provided a number of services that jointly formed a standard rated supply and assessed for VAT on that basis. Rufforth Park appealed against the decision, submitting that it supplied a single pitch rental, which was 'a relatively passive activity linked simply to the passage of time and not generating any significant added value'.

The court found that that the nature of the supply provided in return for the pitch fees is a licence to occupy land within Value Added Tax Act 1994 Sch 9 Group 1 Item 1 and accordingly the fees were exempt. The appeal was allowed.

The VAT position on stall and pitch fees have been an area of debate by HMRC in recent years. For example, in the case of *Craft Carnival* [2016] UKUT 433, the Upper Tribunal saw the supply of stalls at craft fayres made by Craft Carnival as being payments for so much more than merely the right to occupy a pitch and therefore saw these as taxable supplies of services in that instance; i.e. with standard rate VAT.

The key is the licence to occupy. It is understood from HMRC's call for evidence in its review of the land exemption that the possibility of making all forms of short-term letting standard rated were considered. However, it is understood that the review has been sidelined and in the meantime the need to forensically understand supply is essential.

Standard compared to exempt rates

One of the suggestions of the 'supply of land call for evidence' was to make all short-term lets standard rated. If there was to be a move to standard rated from being exempt, the impact on farming of short-term lets of land would be significant.

Much of farm diversification is currently exempt, and the *Netbusters* treatment favours the situation where there are private users, such as liveries, car boot sales and barns used for private purposes. Farms have become experienced at carrying out the partial exemption calculation and the negative financial impact is not too great, but the standard rate charge could be very negative for small businesses. Calculations and review of the facts should be carried out in advance of any new supply so that the businesses are prepared for change.

There are already some farm short-term lets that should be charging standard rate VAT; e.g. storage, furnished holiday accommodation, camping, schooling and breaking liveries, and event organisation with services.

Some farmers could welcome the change to standard rated status as they can reclaim input VAT. Many will also welcome the distinct advantage of clarity, as well not having to cope with the partial exemption. However, farmers also have low profits and tight margins and the change of status could have serious consequences.

Arrangements beyond passive exploitation

When looking at the VAT status of the supply of land, it is important to consider if there is a judicial dictum now that, for a letting of land to be exempt, it must have certain characteristics. The arrangement must relate to:

1. a defined area of immovable property;
2. it must confer a right to occupy that property, to the exclusion of all others;
3. for an agreed period; and
4. for payment.

The *Netbusters* case has been a timely reminder for those who supply the interest in land to check if there has been over or underpaid VAT as a result of the decision and that the VAT is being dealt with correctly.

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WELCOME

April Technical newsdesk

I am writing this introduction the day after the Chancellor delivered his Budget. It seems that (for users of the phonetic alphabet) E is no longer for echo; rather it is for enterprise, employment, education and everywhere.

As usual, the CIOT, ATT and LITRG technical teams will continue to work through the relevant announcements, though we did issue some initial reactions on Budget Day.

One of the biggest announcements, certainly from a cost perspective (over £27 billion over the next three years), was the introduction of full capital expensing. This will increase incentives for businesses to invest, as well as being a welcome simplification (see 'Full expensing a "welcome simplification"' at tinyurl.com/2p8e4k7u). However, only a small number of companies are likely to benefit as the vast majority of businesses already benefit from the £1 million Annual Investment Allowance (AIA).

We are pleased, though, that the anomaly in the AIA for accounting periods spanning 1 April 2023 has been addressed (see 'No real winners in capital allowance changes' at tinyurl.com/45t6pbvd).

R&D makes a regular appearance at fiscal events, and this year did not buck that trend. Interestingly, while the government says that it has not yet decided whether to merge the two different R&D schemes (the consultation on this topic having only just closed), the promise of draft legislation in the summer might be taken as a suggestion that its mind is already made up. We also wonder whether the changes go far enough to help small and medium sized enterprises, especially if they have to adopt a new scheme from April 2024 (see 'R&D relief changes still leave SMEs out of pocket' at tinyurl.com/3t2t4swp).

Changes to the pensions allowances were also significant, although not as costly as might be expected – 'only' £2.5 billion over the next three years). While they are welcome to the extent that they remove the disincentive for NHS doctors and consultants from remaining in work, the very highest earners could still face a tax charge (see 'Pension allowances could still bite for some higher-paid workers' at tinyurl.com/yc4r957d). While the higher pension savings allowance is good news for retirees returning to work, the obligation to notify your pension provider remains (see 'Higher pension savings allowance: good news for retirees returning to work – but watch the small print' at tinyurl.com/2s3amhbp).

Members will know that we are disappointed at the closure of the Office of Tax Simplification, and any hopes of an eleventh hour reprieve were dashed when its demise was confirmed. However, the Budget contained several 'pro-simplification' announcements, to which we gave a cautious welcome (see 'Cautious welcome for pro-simplification measures in today's Budget' at tinyurl.com/4e44unbt). Both CIOT and ATT welcomed the inclusion of crypto assets questions in tax returns from 2024/25 (see 'Crypto assets changes to tax return welcomed' at tinyurl.com/ay6ktj3u). ATT also welcomed the new cryptoasset transactions requirement for tax returns (see tinyurl.com/2w32rmdr). LITRG welcomed the extension of the help to save scheme (see 'LITRG welcomes Help-to-Save extension and proposed savings review' at tinyurl.com/mrupsyu2) and that assignments of income tax repayments will no longer be valid (see 'Assignments announcement closes window of opportunity' at tinyurl.com/mrupsyu2).

Making Tax Digital did not, of itself, get a mention, as its deferral and re-scoping had been announced in December. However, the government's estimated 'cost' of that decision (over £1.75 billion) was published in the Budget (see 'Making Tax Digital deferral makes tax disappear' at tinyurl.com/2ykk8ap4).

The announcement of a call for evidence on the taxation of voluntary carbon credits was welcomed (see 'ATT welcomes wide-ranging call for evidence on carbon credits' at tinyurl.com/25bmnpxb).

Several tax consultations were launched on Budget Day. Perhaps the most significant one is about expanding the cash basis, but there were others around the tax administration framework, VAT energy savings materials relief and the taxation of environmental land management and ecosystem service markets. These and other consultations can be found on HMRC's new tax consultation tracker tool (see tinyurl.com/mryu7z6w). We are also expecting further consultations on a variety of other matters, including promoters of tax avoidance and business rates. We may see these on 'Tax Administration and Maintenance Day', which we understand will be in late April.

We submitted several Budget Representations early in February (see tinyurl.com/dyxfzxeu and tinyurl.com/2p8sd7uf). We do this as much to raise awareness of issues than in the expectation of a specific Budget announcement. That said, in its Budget representation on the annual investment allowance, the ATT had specifically called for the unintended consequences for businesses with qualifying expenditure in the 'second straddling period' to be addressed; and we are pleased to see that they have been. We are also pleased that the periods for notifying business rates information to the Valuation Office Agency, and for notifying an EMI option, were both extended as we had called for. We will continue to pursue the other issues we raised.

If you have any comments on the Budget announcements, particularly those aspects which are being consulted on, please send them to: technical@ciot.org.uk, atttechnical@att.org.uk or LITRG@ciot.org.uk.

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GENERAL FEATURE

HMRC's annual stakeholder conference

CIOT, ATT and LITRG report on HMRC's annual stakeholder conference held on 16 February.

Over 200 stakeholders joined many senior HMRC personnel at their annual stakeholder conference held at the QE2 Centre in London. This was the first fully in-person event since the start of the COVID pandemic and, understandably, was well attended.

After a pre-recorded message from Victoria Atkins MP (Financial Secretary to the Treasury), some introductory remarks were made by Jim Harra (First Permanent Secretary) and Angela MacDonald (Second Permanent Secretary). They were both candid about the challenges being faced by HMRC, including those brought about by the cost of living crisis and the high rate of inflation, underlining the fact that government departments are not immune to such financial and resourcing pressures.

But the real purpose of the conference, something that all stakeholders welcomed, was the opportunity to have two-way interaction with HMRC during a series of workshop sessions; all of which were held twice – once in the morning and again in the afternoon. Those sessions were:

- Simplifying services: transforming tax for our customers;
- Working together to help small businesses get their tax right;
- Working together to create a UK border that promotes UK growth;
- How can HMRC and intermediaries collaborate to create a healthy tax system?;
- Working together to simplify the tax system; and
- Short term solutions to customer challenges in the tax system.

CIOT, ATT and LITRG staff and volunteers attended each of these sessions, and we have summarised some of the discussions below.

Simplifying services: transforming tax for our customers

Jo Rowland (Director General for Transformation) ran this session with support from Stuart Miller (Head of UK Product Compliance and Industry Engagement at Xero, and member of the joint ATT/CIOT Digitalisation and Agent Services Committee). It focused on the opportunities and challenges that digitalisation can bring for agents and taxpayers alike.

HMRC outlined their vision of the increased role of digital tools, data and processes in tax compliance. There was a lively debate amongst those attending. Although the majority agreed that digitalisation could bring clear benefits, and that it was inevitable in many ways, there were concerns about HMRC's past delivery of new digital services and their ability to cope with more ambitious change.

Working together to help small businesses get their tax right

This session was run by Marc Gill (Director, Individuals and Small Business Compliance) with support from Dame Teresa Graham (Administrative Burdens Advisory Board).

HMRC showed a short video outlining the contribution that small businesses play in the UK economy and tax ecosystem. Individual tables then discussed the challenges faced by small businesses and how compliance processes could be improved for them. This generated many ideas, but a common theme was that small businesses had distinct needs – they are not merely large businesses run on a smaller scale. Another key theme emerging was the need for compliance to be streamlined and as simple as possible for small businesses. The more time they spend on tax matters, the less time they have to actually run and grow their business.

Working together to create a UK border that promotes UK growth

Aidan Reilly (Director, Customs Policy and Strategy), assisted by Liam Smyth (Director of Trade Facilitation, British Chambers of Commerce), led this discussion focusing on the UK border. It was noted that there is much work ongoing under the umbrella of the 2025 UK Border Strategy project (tinyurl.com/yetn29p7), which seeks to deliver improvements such as reducing administration and increasing the speed of goods physically passing through the ports, so stakeholders discussed other ideas that may fall outside of this project. These included:

- improving engagement with the expanded numbers of newer (and possibly smaller) services providers required post-Brexit, such as customs agents and logistics providers;
- seeking to increase the 'tell us once' approach for customs administration across systems and agencies; and
- considering how future net zero initiatives/taxes could impact customs administration, for example the

carbon border adjustment mechanism.

HMRC were interested in hearing about any innovations or efficiencies experienced at other international borders and were keen to keep dialogue open.

How can HMRC and intermediaries collaborate to create a healthy tax system?

Rob Jones (Director, Intermediaries Directorate) led this session, with support from Valerie Boggs (CEO, TaxAid and Tax Help for Older People). The Directorate is responsible for the delivery of HMRC's intermediaries' strategy that seeks to increase effectiveness when intermediaries interact with HMRC and enhance taxpayer experiences. 'Intermediaries' is the term used by HMRC to describe everyone who interacts with them in an intermediary capacity on behalf of taxpayers – so predominantly agents, but also friends and family, tax charities and software.

Stakeholders were split into groups to discuss ways to improve collaboration, which were then fed back to the group as a whole. Feedback ideas included the following:

- Recognise that most agents who are acting for taxpayers, and dealing with HMRC either via the Agent Service Account or by a 64-8 authorisation, are bound by the Professional Conduct in Relation to Taxation principles and that this status should be meaningful.
- Improve agent communications so that the default position is that the agent is routinely copied in on taxpayer communications, and the circumstances where the agent will not be copied are clear to HMRC, agents and the taxpayer.
- Look at fixing the issues that arise with the 64-8 process when there are multiple agents.
- Ensure that new and existing taxes allow agent support to be provided to taxpayers from the outset; for example, agents cannot currently complete registrations for plastic packaging tax.
- Encourage HMRC to continue to engage with stakeholders after comments have been provided in response to consultations or in HMRC forums and before making the final decisions.
- Ensure that HMRC are engaged in other government department projects; for example, net zero projects by the Department for Environment,Food & Rural Affairs and the Department for Energy Security and Net Zero have tax consequences and these should be being considered from the outset.

Working together to simplify the tax system

Jonathan Athow (Director General for Customer Strategy & Tax Design), supported by Paul Aplin OBE, led discussions on this topic. The main issues revolved around the degree of taxpayers' interaction with HMRC and concerns about the inherent compliance costs.

HMRC's priority seemed to be that taxpayers should be able to interact more easily with HMRC through apps and software, whereas the audience's view was that their clients wanted minimal interaction in the first place. The high income child benefit charge was cited as an example of unwanted compliance and interaction with HMRC – families on PAYE having to complete returns when (despite the UK having individual taxation) a single family member's income exceeds £50,000.

It was also noted that the impending lowering of the capital gains tax annual exemption and dividend allowance will bring more people into the self-assessment net and require tax returns for the first time.

Whilst HMRC were also keen to publicise the simplicity and utility of compliance tools, Paul Aplin gave a very useful summary and oversight of the issues, giving an analogy of using a TV remote – as long as it turns the TV on when we press the button, we do not care how the workings and electronics do the job.

Short-term solutions to customer challenges in the tax system

This session was led by Richard Hawthorn (Director Operational Excellence Support Services), with assistance from Richard Wild (CIOT Head of Tax Technical). Attendees were encouraged to consider 'pain points' in dealing with HMRC, why they exist and how they could be overcome, including whether more processes could be automated to increase efficiency.

There were lively discussions with many suggestions being made by participants. A selection of these include: a YouTube video on how to set up a government gateway account; HMRC ensuring the 'basics' are done well, for example quoting reference numbers on all correspondence; more accurate estimates of timescales for replies; greater ability for employers and agents to 'self-serve'; not sending reminders to people who have already complied; better information and functionality for HMRC forums; and even a suggestions scheme for within HMRC.

We have already started following up with HMRC to build on what was discussed during these sessions.

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LARGE CORPORATE OMB

R&D: update and recent developments

There is a lot going on in relation to R&D. There are new compliance measures due to come into effect from April 2023 and the CIOT and ATT have commented on the draft guidance for those. We have also met with HMRC to discuss R&D operational issues and responded to the consultation on a single scheme for R&D for the future.

April 2023 compliance measures

A number of changes to R&D reliefs are due with effect from April 2023. These were outlined in an article by David O'Keeffe in the November edition of *Tax Adviser* (tinyurl.com/mr33rapj).

In December 2022, HMRC published some draft guidance on these new measures. CIOT and ATT submitted comments. Both welcomed the draft guidance, but also said that it was difficult to comment as only the draft legislation for these measures, published in July 2022, was available. The consultation on the guidance was predicated on the fact that the final form legislation may differ from the draft legislation. Indeed, recently HMRC have confirmed that some aspects of the rules will change from what had previously been published. Significant changes include:

- The additional information form will be required for all R&D claims submitted on or after 1 August 2023 (regardless of the accounting period to which they relate).
- A claims notification (the advance notification of R&D tax relief claim) will not be required if the actual R&D tax relief claim is made within six months of the end of the accounting period.

Our full comments on the draft guidance can be read at: www.att.org.uk/ref412 and www.tax.org.uk/ref1066.

EMPLOYMENT TAX

Calculating holiday entitlement for part-year and irregular hours workers

Following the recent Supreme Court judgment in *Harpur Trust v Brazel* [2022] UKSC 21, the government has consulted on the calculation of holiday entitlement received by workers who work part of the year only (part-year) and/or irregular hours. The proposals may be of interest to employment tax advisers or payroll providers.

Although it has no statutory basis, until fairly recently, it has been widely accepted that using a formula of 12.07% to calculate holiday entitlement for staff without normal working hours was a simple and effective 'rule of thumb'. Broadly, the rule worked such that 12.07% x hours worked was given as holiday entitlement.

The UK Supreme Court has recently confirmed in *Harpur Trust v Brazel* [2022] UKSC 21 that the 12.07% holiday entitlement calculation method is incorrect for part-year workers on permanent contracts. In this case, by using the 12.07% method, the Harper Trust had pro-rated Mrs Brazel's holiday entitlement both on the basis that she was part time (zero hours), but also on the basis that she only worked part of the year (term time). This resulted in less holiday pay than the alternative basis, which took into account her average earnings (and therefore that she was part time), but not that she only worked part year.

The Court said the 12.07% approach was wrong. Mrs Brazel was entitled to the full statutory minimum of 5.6 weeks (28 days) paid holiday entitlement per year, based on her average earnings. The result of the judgment in this case is that part-year workers are now entitled to a larger holiday entitlement than part-time workers who work the same total number of hours across the year.

An example of the impact of this, at the extreme end, is where an exam invigilator works one week a year and earns £100. If they remain employed for the remainder of the year, they would essentially be entitled to 5.6 weeks of holiday x £100, so £560.

In a consultation on the calculation of holiday entitlement following the judgment, the government proposes to introduce a holiday entitlement reference period for part-year and irregular hours workers, to ensure that their holiday entitlement is directly proportionate to the time they spend working. As well as dealing with the disparity between part-year and part-time workers caused by the *Brazel* case, the proposal would effectively formalise the 12.07% method for irregular-hours workers, which many employers already use and workers understand and know well.

LITRG has responded to the consultation, particularly focusing on agency workers who work through an umbrella company, given they are often irregular-hours workers and this is a specific area of interest for LITRG.

Our own analysis shows that the *Brazel* judgment should only affect umbrella workers where there are unpredictable periods when they will neither be working, nor on paid leave, but where the engagement nevertheless continues. Our 2021 'umbrella' report showed that (for various reasons) this was fairly unlikely, except for specific cases like supply teachers, etc. where there are often non-worked weeks. Although the reality, in our view, is that most umbrella workers are not really 'Brazel' type part-year workers at all (but full-year workers who just have variable hours each week), we welcome the proposals as an opportunity to bring clarity, certainty and consistency to what is a typically considered a very difficult and technical area.

In our response, we said that workers will benefit from having improved clarity on their holiday entitlement, allowing them to know when they are not receiving their full entitlement. Umbrella companies will also benefit from the greater clarity in legislation, which will help them avoid accidental non-compliance. This should help workers receive the paid holiday they are entitled to. As an added benefit, holiday pay is taxable as normal income; this in turn will help to raise Exchequer receipts.

We also urged the government to state their position on rolled up holiday pay and to move forward with proposals to enable state enforcement of holiday pay as soon as possible – starting with a consultation to try and identify the most appropriate organisation for doing so.

Given that the proposal for a single enforcement body to protect workers' rights seems to have been put on hold, we wonder whether the idea that HMRC should undertake this role will be resurrected. We also wish to see any improved guidance for employers around holiday pay, including tailored guidance for the umbrella sector covering things like requirements for communicating about holiday entitlement.

The consultation closed on 9 March and although we can expect a swift response and next steps, until the proposals come into law, holiday entitlement for part-year workers should be calculated in line with the principles set out by the court in *Brazel*.

Our response can be found here: www.litrg.org.uk/ref2737

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It is also frustrating for taxpayers that, as well as waiting for the final legislation that will implement these new compliance measures, the final additional information form has not yet been published (although HMRC gave some demonstrations of drafts of the form in development in December and January to give some idea of what will be expected). It is clear that the earlier date of 1 August 2023 will be challenging for advisers. They will have to ensure that their systems are able to deal with this new compliance measure and that tax compliance teams are properly trained. Previously the form would have been required in respect of claims made for accounting periods beginning on or after 1 April 2023, so would not have been required until claims were made after the end of those accounting periods, in most cases from 31 March 2024 onwards.

The CIOT is continuing to raise with HMRC points of detail around how the form will work in practice, such as:

- Who should complete the form where the tax agent and the R&D advisor are not the same? Is it the tax agent (using their Agent Services Account) or the R&D advisor (using their Agent Services Account)?
- How will the Additional Information Form interact with the CT600, and will it be possible to file an Additional Information Form without filing the CT600? And what will happen if either is amended?

If you have any practical questions around these new compliance measures, please do let us know.

We will write more about these compliance measures and how the Professional Conduct in Relation to

GENERAL FEATURE PERSONAL TAX

Getting help to people who do not speak English

LITRG have developed a short video, translated into 12 different languages, to help migrant workers understand where to get tax help.

Most of us are approached at some point in our careers as tax practitioners to help out a vulnerable friend or acquaintance.

Knowing what to do in such circumstances can be hard, especially if the person who needs help is from overseas and does not speak good English, does not have funds to pay for professional advice and/or has other capability or confidence barriers. This, as you know from your experience of the system, means that the problem is likely to go unresolved and will fester.

Where can they get help? With the assistance of some volunteer translators (some of whom are busy ATT/CIOT members who have given up their spare time to help with this – thank you!), LITRG have posted a short set of videos setting out 'Where to get help with tax if you do not speak English' in 12 different languages. The videos cover:

- that help with a tax problem is available and people should not suffer in silence;
- some basic information about HMRC;
- reassurance that HMRC have a Charter that should govern how they deal with taxpayers;
- how to get through to HMRC by telephone, including navigating the voice recognition system;
- how to find relevant information on GOV.UK about support available from HMRC: tinyurl.com/23upkv25;
- that HMRC can provide a translator service, something which is not well-known; and
- that TaxAid is there if HMRC really cannot help and can be contacted
  - – with the help of a translation tool
  - – by an online form.

Please share our videos as much as possible! We are planning to add to this initial tranche of 12 videos with other languages including Mandarin, Japanese, Arabic and Farsi. We would love to hear from people who speak additional foreign languages – particularly any Indian subcontinent, Baltic or South East Asian languages – and who may be able to help us increase our reach.

Our news article explaining more about the background to the project and with links to the videos can be found on the LITRG website: tinyurl.com/29wspm9u

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Taxation rules apply in relation to them in future publications.

HMRC/CIOT/ICAEW R&D Workshop

In February, CIOT representatives attended a workshop with HMRC to discuss operational matters relating to the delivery of R&D.

The processing times of R&D tax relief credits: Following the attack on the tax system last year, which resulted in a temporary suspension of payments of R&D tax relief credits, HMRC's aim continues to be to either pay the payable tax credit or contact the taxpayer regarding the claim within 40 days. This remains longer than the previous period of 28 days. HMRC confirmed their ambition to return to the standard 28-day processing time. The workshop welcomed this, but also noted that the most important thing to taxpayers is certainty around when the payment will be made (assuming that there is no enquiry).

It was suggested that it would be helpful for taxpayers to understand what HMRC meant by the 'process' in this context, as there seemed to be two stages: firstly, a review or consideration of the claim itself, after which the decision whether or not the tax credit should be paid was taken; and secondly, the security steps around actually making the payment. There was also some debate around whether a longer period was preferable if HMRC could deliver greater certainty as a result.

Tackling rogue agents: HMRC said that they had begun a project looking at the advertising claims made by some agents in relation to their services in undertaking R&D claims. Where agents are making claims that are demonstrably false, HMRC intend to take steps to report this to the Advertising Standards Authority.

Enquiries into R&D claims: Those at the meeting raised concerns with HMRC about the approach they were currently taking in relation to enquiries into R&D claims. The general view of those present was that HMRC were opening many more enquiries into SME R&D claims and that these were being conducted by teams at HMRC who lacked the necessary expertise around R&D. The enquiries are being conducted in a confrontational manner and with a lack of willingness to engage with the taxpayer to discuss or understand the technical issues.

HMRC confirmed that there was a new team undertaking R&D enquiries and that they were being conducted with a 'volume', formulaic approach in order to increase the number of enquiries. HMRC said that they did recognise some of the issues facing taxpayers and that were raised by their advisers, and that training of the relevant people was ongoing.

Representatives said that perhaps a volume, process-driven compliance approach was not suitable for R&D, which required subjective analysis and engagement with the taxpayer, etc.

HMRC said that they were identifying many errors through this approach and they were being encouraged to be more transparent about these errors and to share them with taxpayers and advisers.

We would like to hear about your recent experience of R&D tax relief enquiries and whether you consider these are generally being handled well or badly by HMRC. Please send examples or brief details of your cases to us at technical@tax.org.uk or technical@att.org.uk

A single scheme for R&D tax relief?

Finally, both the CIOT and ATT have responded to the consultation (tinyurl.com/2mkc62ut) on whether or not there should be a single scheme for R&D tax relief. Our responses can be found at: www.tax.org.uk/ref1076 and www.att.org.uk/ref413. We will write more about this in next month's Technical Newsdesk.

The Spring Budget announced that the government is 'considering the responses and no decision has been made'. But the Red Book (at paragraph 4.52) also says that draft legislation will be published in the summer alongside the Finance Bill, which suggests that this may be a done deal?

The Spring Budget also announced additional tax relief for 'R&D intensive SMEs', which suggests that further debate will be required around the trade-off between the potential simplification of a merged scheme and policy decisions to provide additional support to SMEs (or some of them) through different rates of relief.

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INDIRECT TAX

Net zero initiatives: carbon credits and VAT

The CIOT and ATT continue to consider the tax issues arising from the developing markets in innovative net zero projects.

Following on from our March 2023 article, 'Tax and the Woodland and Peatland Codes' (tinyurl.com/54rdynd5) in which the ATT's Natural Capital Working Group mentioned that it would set up further sub-groups, CIOT representatives and other stakeholders attended the inaugural meeting of the VAT sub-group to discuss particular complexities experienced when providing VAT advice on Woodland and Peatland Code projects. These projects allow landowners who plant trees or restore peatbogs to earn income when the landowner sells carbon credits to third parties.

The sub-group discussed scenarios where VAT complexities arise or are anticipated within biodiversity net gain projects, particularly voluntary carbon credits. Voluntary carbon credits are outside the scope of VAT, as sales of these credits do not meet the conditions to be 'consumption' envisaged by the VAT system. The voluntary market is so-called because these carbon credits arrangements operate outside of the regulated compliance carbon credits market and cannot currently be used to meet greenhouse gas emissions targets.

HMRC's guidance on carbon credits is in the VAT manuals at VATSC06580 (tinyurl.com/4etjcwwn), with voluntary carbon credits, also referred to as 'VERs' in HMRC's guidance (meaning either Voluntary or Verified Emission Reductions), covered in VATSC06583 and VATSC06584.

Although the position that the credits are outside the scope of VAT appears clear enough, we discussed that advisers are seeing landowners getting involved in more complicated arrangements, where there may be multiple parties involved in a site simultaneously used for both leasing and biodiversity investment, and with multiple parties in the contractual arrangements. The sub-group would like to ensure that taxpayers have clarity on the VAT treatment for all of the supplies in more complex arrangements, particularly if one party may have other obligations as part of the arrangements, for example, a local authority.

We also discussed the possible impact on input VAT of the receipt of non-business income from voluntary carbon credits in the light of Revenue & Customs Brief 10/22 (tinyurl.com/v9evjbwu). To date, stakeholders were not aware this has been an issue for straightforward projects, though we would like clarity for more complex arrangements.

The group will raise these issues within its current engagement with the Natural Capital Working Group and other HMRC engagement.

If members are experiencing VAT or other tax uncertainties involving natural capital projects, and the position is not clear from HMRC's guidance, we can raise these examples with HMRC via the Natural Capital forums. Please contact technical@ciot.org.uk or atttechnical@att.org.uk.

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INDIRECT TAX

Response to the VAT treatment of fund management services consultation

Budget 2020 announced a review of the UK's funds regime that covered tax and regulation. The government held a consultation on regulatory issues and direct tax in 2021, and launched its VAT consultation, the 'VAT treatment of fund management services', in December 2022.

Following stakeholder suggestions that the UK could enhance the position of the fund management industry by introducing new innovative types of funds to the marketplace, and as part of the review into the UK's funds regime, the consultation document on VAT (tinyurl.com/58safjcf) contains the proposed reforms which seek to simplify the decision-making process to identify the VAT liability of a supply of fund management. The consultation stresses that reformed legislation is not intended to result in policy change, so fund managers currently relying on UK legislation or the direct effect of EU law should not see a change in the VAT liabilities for the management of existing special investment funds (SIFs).

Proposed changes

The consultation document set out the following legislative proposals:

- Retain the current list of qualifying financial products in VAT Act 1994 Schedule 9 (as items 9 and 10 of Group 5). However, this list will not be expanded in the future. Instead, for new products, the VAT position will be determined by applying a set of principles (see below).
- Make legislative changes to bring relevant case law and guidance into UK law.

It is proposed that the following criteria would determine whether a fund qualified as a SIF:

- the fund must be a collective investment;
- the fund must operate on the principle of risk-spreading;
- the return on the investment must depend on the performance of the investments, and the holders must bear the risk connected with the fund; and
- the fund must be subject to the same conditions of competition and appeal to the same circle of investors as an Undertakings for Collective Investment in Transferable Securities (UCITS).

There is also a proposed departure from the criteria set out in the European Commission's EU VAT Committee guidelines, which require that SIFs must be subject to 'state supervision'.

The CIOT response

In its response (www.tax.org.uk/ref1065), the CIOT welcomed reform which translates policy into statute accurately and effectively, without unintended consequences, and where such reform increases clarity and certainty for taxpayers and their advisers. We also welcomed that the existing legislative provisions in items 9 and 10 would remain embedded within new legislation, as this provides certainty for services provided prior to the changes.

In order to provide clarity, the CIOT would like the terms used in the proposed principles to be clearly defined. We noted that the principles contain a reference to 'UCITS'; as this term is currently defined by reference to EU

legislation and guidelines, however, it may need to be revised. We would like the proposed principles to include the words 'the management of' so it is clear that it relates to management services.

The CIOT noted that HMRC's VAT forum for this sector, the Finance Liaison Group, has had its meeting schedule paused since the pandemic and we would like to see that restarted soon so that stakeholders, including the CIOT, may engage via that route.

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GENERAL FEATURE

The HMRC Standard for Agents update

The updated HMRC Standard for Agents was published on 23 February 2023 and includes a number of obligations on agents not previously included. CIOT and ATT will be feeding back to HMRC on this, and the interaction with Professional Conduct in Relation to Taxation.

The HMRC Standard for Agents (the Standard) sets out HMRC's guidance on minimum standards expected of tax agents, and the update, developed in 2022 and issued on 23 February 2023, is part of HMRC's work around raising standards in the tax advice market (see tinyurl.com/425cn5c3).

The Standard sets out a number of requirements on agents that were not previously included and in particular includes the following requirements:

- provide HMRC with relevant information when asked or when appropriate (s 2.1);
- provide clients with relevant and material information before, during and, when necessary, after their engagement (s 2.1);
- report suspicions of tax fraud or evasion to HMRC (s 2.2);
- offer a period of at least 14 days in which a client can cancel any agreement (s 2.3.3); and
- have clear terms of engagement with clients and confirmation that the client understands and accepts them (s 2.3.3).

In general, where members are meeting the requirements placed on them under Professional Conduct in Relation to Taxation (PCRT) (tinyurl.com/yckn8yzx), HMRC say that they are likely to be meeting the requirements of the Standard. However, there are some areas where we are considering carefully how the requirements interact not only with PCRT, but also with other legal requirements. One example is where the Standard requires agents to 'report suspicions of tax fraud or evasion to HMRC' (s 2.2). Members have a legal obligation (and therefore legal protection when doing so) to submit a suspicious activity report (SAR) to the National Crime Agency where there is knowledge or suspicion of money laundering. They would potentially risk breaching client confidentiality (a fundamental principle set out in PCRT) if they reported these suspicions directly to HMRC without the client's permission.

Another area where clarification is required is the 14 day cancellation period. At first sight, this seems to be drawn from consumer protection legislation, but it ignores the caveats of that legislation for urgent work and the limitation of scope of that legislation to individual consumers.

HMRC recognise that the Standard sets out minimum standards for all agents, but 'in particular, those that are not related to any professional body'. Effective enforcement will be key in raising standards across the profession and, in particular, where agents are not subject to PCRT requirements and associated professional body disciplinary processes. The recent HMRC action taken against Tax Credits Ltd (tinyurl.com/bdd3rcdb) illustrates the powers that HMRC can use where agent standards and legal requirements are not being met.

The CIOT and ATT are planning further liaison with HMRC in relation to various aspects of the Standard and its interaction with PCRT, and we will provide further updates to members as these discussions progress.

Marc Leach mleach@ciot.org.uk

CIOT		Date sent
VAT treatment of fund management	www.tax.org.uk/ref1065	10/02/2023
Draft guidance: Research and Development (R&D) tax reliefs	www.tax.org.uk/ref1066	28/02/2023
R&D Tax Reliefs Review: Consultation on a single scheme	www.tax.org.uk/ref1076	13/03/2023
ATT		
Uprating Mileage Allowances – Budget representation	www.att.org.uk/ref414	01/02/2023
Extending relief for self-employed training costs – Budget representation	www.att.org.uk/ref415	01/02/2023
Extending the window for inheritance tax relief for losses on share sales from deceased estates – Budget representation	www.att.org.uk/ref416	01/02/2023
Annual Investment Allowance (AIA) – Budget representation	www.att.org.uk/ref417	01/02/2023
Draft guidance: Research and Development (R&D) tax reliefs	www.att.org.uk/ref412	13/02/2023
R&D Tax Reliefs Review: Consultation on a single scheme	www.att.org.uk/ref413	13/03/2023
LITRG		
Calculating holiday entitlement for part-year and irregular hours workers	www.litrg.org.uk/ref2737	08/03/2023

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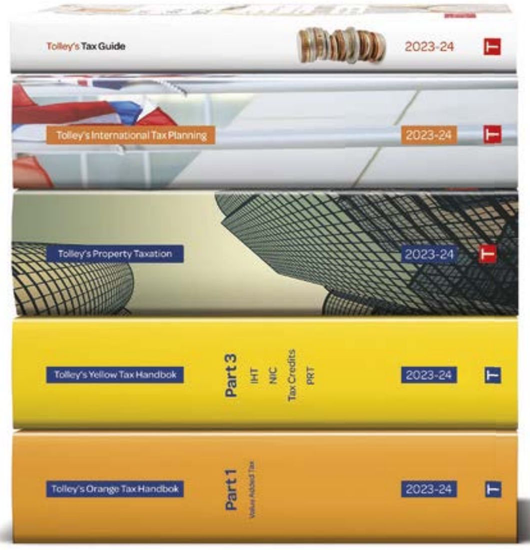

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CIOT debate with IFS and IfG

Have we made Budgets Better?

Economic shocks and political instability have led to 'regression rather than progress' in tax policy making since the publication of the 'Better Budgets: Making tax policy better' report six years ago, say some of its authors. A debate hosted by CIOT, IfG and IFS – who jointly published the report – asked again how Budgets can be improved.

The Better Budgets report was published jointly by CIOT, the Institute for Government (IfG) and the Institute for Fiscal Studies (IFS) in January 2017, and the three institutes hosted a debate on 6 March to consider progress on the agenda it set out.

Welcoming guests to the debate, CIOT chief executive Helen Whiteman said the origins of the report were in an event the CIOT co-organised in 2015: 'All the speakers had critiques of the tax policy process from different perspectives and, of course, had their share of differences. But there were some unmistakable common threads. At the heart of some of these was the idea that when it came to tax policy, governments should try to do less but do it better.'

Based on extensive interviews with tax policy stakeholders, the Better Budgets report concluded that the tax policy making process was not fit for purpose and that – to reduce taxpayer confusion, cut down costly errors and avoid embarrassing U-turns – the government must change the way it makes tax and budget decisions.

Fiscal events and tax proliferation

Opening the debate, IfG's Jill Rutter – the report's lead author – said that then Chancellor Philip Hammond's commitment to holding just one fiscal event a year was the first 'big win' from the report, but that has since fallen away under his successors. She added that tax measures have continued to proliferate in recent years, though some of these were a result of the 'unprecedented problems' caused by Covid and the energy shock.

Bill Dodwell, who co-authored the report during his time as CIOT President, agreed on the exceptional nature of some of the measures, saying: 'Handing out money on Covid, you call it a fiscal event but there's not much law that comes from it.'

More active consultation

Rutter said that more still needs to be done around consultation on tax issues, adding that it was 'not clear how welcome internal challenge is'. She said that while the scrutiny of Finance Bills has not improved, the Treasury select committee 'is engaging a bit more on tax'.

(left to right) Sir Edward Troup, Bill Dodwell, Gemma Tetlow of IfG (chair), Paul Johnson, Jill Rutter

Dodwell agreed that 'any form of external input' is absent from the process, suggesting that if reviews of proposed new policy could be commissioned before the policy was devised, it could flesh out the issues, allowing ministers to 'take what they want'.

Long-term strategy and roadmaps

Paul Johnson of the IFS – another report co-author – said it remains difficult to have a coherent plan, given the number of chancellors and prime ministers the country has been through in recent years. 'Exactly what the government wants I don't really know – and it's that not knowing where the direction is that tells you something about the lack of strategy.' He said that the Treasury compares unfavourably with other parts of government, which 'have strategy coming out of our ears'.

He blamed the 'dysfunctional process' of Budgets, with Sir Edward Troup – formerly of HMRC – agreeing that the 'theatre' of Budget Day 'does encourage that behaviour'. He added: 'If you had a more consultative process then that would not happen.'

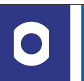
Johnson questioned why tax policy was made so separately from other policy. Troup replied that there was a 'bright line' between tax and the rest of government policy, which is about paying out money rather than collecting it, and that changing this would be 'completely impossible and very damaging' to the tax system.

Read the full report on the debate or watch a recording: tinyurl.com/BetBud23

TEN STEPS TO CREATING BETTER BUDGETS

1. Stick to the commitment to a single principal annual fiscal event and cut down Budget measure proliferation
2. Establish clear guiding principles and priorities for tax policy
3. Extend the road-map approach
4. Start consultation at an earlier stage
5. Develop more active approaches to consultation
6. Prepare the ground for future reform – and engage the public
7. Address the perceived capability gap around tax policy making
8. Overhaul internal processes
9. Enhance Parliament's (and the public's) ability to scrutinise tax proposals
10. Institutionalise and enable evaluations of tax measures

Making Tax Digital



MTD: Making tax disappear?

Figures published alongside the Budget on 15 March estimate that the government's deferral of Making Tax Digital for Income Tax Self-Assessment will cost the Exchequer more than £1.75 billion over the next five years.

ATT and CIOT said that while the decision to defer and then stage the implementation of MTD for ITSA was the right one, the programme's benefits might have begun to flow more quickly if the government had consulted earlier and worked more closely in partnership with stakeholders.

Alison Hobbs

Alison Hobbs, Chair of the joint ATT and CIOT Digitalisation and Agent Strategy Committee, explained: 'While we have spent the last seven years engaging with HMRC on MTD, it started too late in the policy development process.

'Key decisions, such as who would be in scope, what they need to do, and the implementation timetable were already decided. If consultation had begun at an earlier stage, the tax profession could have worked with HMRC to identify options to meet the policy objectives of reducing errors and mistakes and using the opportunities that technology provides to make it easier for taxpayers to meet their tax obligations.

'It's not too late to learn this lesson for the future,' she concluded.

Budget

Cautious welcome for full expensing

CIOT and ATT have both given cautious welcomes to the announcement that the government are to introduce full capital expensing for plant and machinery costs.

Adrian Rudd
Senga Prior

Adrian Rudd, chair of CIOT's Corporate Taxes Committee, called it 'a welcome simplification' as, if an item is considered to be plant, it will not be necessary to determine whether the expenditure on it is capital or revenue. However, he added, the extent to which it will incentivise investment is hard to predict, especially if business does not believe that it will last: 'This is why making the change for just a three year initial period is unhelpful.'

Senga Prior, chair of ATT's Technical Steering Group, said that while the introduction of full expensing would help the largest companies with investments in plant and machinery of over £1 million, 'it will do nothing to assist the 99% of companies whose qualifying expenditure on plant and machinery is below that level and for whom the annual investment allowance already provides full relief.'

In the news

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

'John Cullinane, director of public policy at the CIOT, said the "sacred cow" of the UK's high VAT threshold had been "too much of a political nettle to grasp". He recommended that the government consider a "smoothing mechanism".'

Financial Times, 27 Jan

'The CIOT has called on the government to urgently review interest rates on late taxes, which are charged at 6.5%, more than double the 3% rate that applies to tax refunds. Richard Wild, of the CIOT, said the differential ... was "simply equitable".'

Daily Telegraph, 10 Feb

'Half of all Scots want council tax scrapped according to a new poll amid warnings local authority chiefs are not ruling out a 10% hike this year. The survey was carried out for the CIOT by pollster Mark Diffley from 12 to 17 January.'

The Herald, 12 Feb

'The ATT has urged the government to reform employment laws, saying taxation rules around homeworking are "surprisingly complex" and inconsistent. Technical officer Helen Thornley said the ATT was aware of "reports that for staff with flats in London, the typical office desk that an employer might look to supply to them just doesn't fit. But they can't go out and buy their own and claim it back from their employer – even if the employer is quite happy to pay – without a tax issue arising".'

Financial Times, 13 Feb

'Emma Rawson, technical officer at the ATT, added that there is a lack of awareness around the need to pay tax on free products given to influencers for promotional purposes. "Normally, you would have to work out what it's worth and how much tax you owe," she said.'

Financial Times, 17 Feb

'Firms will up the ante before the new measures come in… It's long been our view that you can't ever imagine a taxpayer wanting to give a tax rebate firm legal authority over their tax affairs.'

Meredith McCammond of LITRG on tax rebate firms ramping up activity ahead of the introduction of new protections for taxpayers, Daily Telegraph, 19 Feb

Technical Officers

How do we spend our time?

ATT's Technical Officer Steven Pinhey explains the many varied elements of the job that keep the team of technical officers so busy!

Steven Pinhey

Prior to starting my position as a technical officer of the ATT on 1 November 2022, I must confess that I had little appreciation or understanding of the breath and diversity of the role played by the technical officers on behalf of the members. On discussing this with Jane Ashton, our CEO, we thought that it would be helpful if I wrote an article outlining exactly how we technical officers spend our time.

Six months into the position, I now feel that I can write that article. However, I am sure that there will still be plenty of new challenges and opportunities on the horizon, which I look forward to, and which made this position so appealing in the first place.

So, who are the technical officers? There are currently four technical officers with the ATT: Emma Rawson and Helen Thornley, both of whom have been in the post since September 2017; David Wright, who started on 1 February this year; and me. We have all been recruited from practice but bring a diverse range of interests, specialisms and knowledge.

As an educational charity, we seek to promote and further the education of taxation in society, and work for a better, more efficient tax system for all affected by it – taxpayers, their advisers and the authorities. Technical officers assist with these goals in several ways, from going into schools and talking to students, to writing articles for national newspapers, trade publications, our website and social media. With a combined membership (members and students) of over 14,500, we seek to represent their views, opinions and concerns via HMRC and Treasury consultations, submissions and participation in stakeholder groups and forums.

Technical officers are responsible for ensuring that the technical content we provide to our members and the public via our website and through social media outlets such as Twitter and LinkedIn is kept completely up to date. The content needs to be informative, accessible and practical, and it is the technical officer's role to ensure that this is the case.

As technical officers, we are often asked to make technical presentations either in-person or more likely via online platforms. In June, we will be presenting at our ATT Annual Conference on such diverse subjects as Basis Period Reform, Capital Taxes Update and the HMRC Enquiry Lifecycle.

If you are interested in attending the conference, you can find out more at: www.att.org.uk/attconf2023

Steven Pinhey, Technical Officer, ATT

ADIT

Ukrainian student to join ranks of ADIT graduates

A Ukrainian tax professional is among those to secure a prestigious international tax qualification, less than a year after Russia's invasion of the country.

Vlad Kupriienko

Vlad Kupriienko, a senior associate for PwC Ukraine in Kyiv, graduated from the ADIT (Advanced Diploma in International Taxation) following exams in December 2022. He was one of the 570 students to sit 609 online exams, despite his preparation being thrown into turmoil by the Russian invasion of Ukraine in February last year.

Vlad, who is 27, was visiting his mother-in-law in the Dnipro region at the time and was due to return home to Kyiv on the day of the invasion. Instead, he and his wife stayed for several months, with the region subject to numerous missile attacks from Russian forces.

He said: 'My mother-in-law lives there alone, not far from a combat zone. In the early months of the war, it was unclear how the events would unfold, so we couldn't leave her for quite a long time.

'A large part of my family, including my parents, currently lives in Sevastopol. It was autumn 2021 when I saw them last time, and I can't say how soon I'll be able to see them again.

'It has definitely been mentally difficult for everyone. Now almost everyone in Ukraine lives with regular missile shelling and electricity outages – yet, of course, that's totally unmatched to what it's like at the front line.'

When the couple were finally able to return home, they still found regular reminders of the war in Kyiv.

Vlad said: 'We live not far from a power plant which is regularly targeted. One day missile debris landed in the children's playground near our house. So however far you seem to be from the war, you never really are.

'Being neither a combatant nor internally displaced person, I've never had "direct touch" with the war. However, there is a constant feeling that something has unequivocally changed, that there is no turning back to your previous life. Yet Ukrainians have become stronger, more mature, determined and united than ever before. I think people are now rethinking their existence, trying to live in the moment and to value simple, ordinary things.'

Vlad said: 'I certainly consider my ADIT qualification to be a great accomplishment. I vividly remember hearing about the ADIT qualifications for the first time and I thought I would consider it as a personal triumph if I managed to complete the full set. I feel grateful. To live on and take exams can now be considered a luxury that few can afford.'

Despite the ongoing turmoil, Vlad continued to study, putting in many hours of extra preparation for his exams in December. The hard work paid off when he received his results, but Vlad says he is not done yet. He now intends to join the CIOT as an International Tax Affiliate and is considering studying for further qualifications to expand his professional services repertoire.

We wish him all the best.

South African Institute of Taxation

Spotlight on South Africa: how the CTA designation is going

It has been one year since the South African Institute of Taxation (SAIT) was granted the licence to offer South Africans the Chartered Tax Adviser (CTA) designation. We shine a spotlight on the effects of this change.

The Chartered Tax Adviser designation was – and continues to be – a very welcome development for South African tax professionals. Given the premiere status of the designation, SAIT is navigating standards so that only members with elite tax expertise are becoming part of the designation.

With SAIT being the only professional body to offer the distinguished CTA designation in South Africa, a great deal of work has gone into shaping the tax profession and attracting qualifying members. Unlike other local tax designations, the CTA is internationally recognised by world class clientele and tax firms.

All of these undertakings have occurred during a period when the South African Revenue of Service (SARS) has altered the tax professional landscape by demanding higher standards to practise tax. South African tax practitioners must now:

- satisfy criminal clearance;
- have a clean tax status with no debt owing to the SARS;
- have a higher level of experience and education to practise tax;
- pass an entry examination in terms of SARS systems; and
- face increased monitoring of standards to maintain tax registration with SARS.

> **A great deal of work has gone into shaping the tax profession and attracting qualifying members.**

Taxpayers need to know that they can hire tax practitioners who they can trust in terms of integrity and skill. The main goal of tax practitioners is 'assurance' for their clients that all work submitted to SARS is accurate and can withstand scrutiny.

There is a danger that heightened standards can produce some inequitable results, including leaving honest taxpayers more vulnerable to audit penalties without recourse in a system that dismisses safe-harbour provisions. There is also the danger that tax professionals may be lost to the unregulated 'ghost practitioner' market, leading to the failure to eliminate unregistered tax professionals.

However, SAIT currently has a constituency of more than 180 registered chartered tax advisers. Over 250 members are waiting to be converted, which will mean that SAIT's CTA pool will exceed 400 practitioners. The journey has been remarkable with proven industry benefits and excitement at the opportunity to become a chartered tax adviser.

SAIT continues to strive to enhance its training programme to require higher entry standards for new trainees. This will initially lead to trainees gaining Tax Advisory status, with eligibility for CTA status at a later stage. Basic skills mainly focus on compliance in different specialised fields, while higher qualifications focus on advisory and litigation.

SAIT currently has three main designations: the Chartered Tax Adviser; the General Tax Practitioner; and the Tax Technician Practitioner. SAIT has expanded into customs and other speciality areas. With the CTA in hand, SAIT expects to grow in numbers and prestige for many years to come.

> 'SAIT has come a long way since its humble beginning in 2007. With the CTA, membership in SAIT is the premiere hallmark of professionalism in the South African tax field.'
>
> *Keith Engel, CEO of SAIT*

> 'I am officially recognised by SAIT as a Chartered Tax Adviser. I could not share this milestone without thanking Keith Engel and the Chartered Institute of Taxation (CIOT) for partnering with SAIT.'
>
> *Suzanne Smit, Fidelis Vox*

> 'Thank you, South African Institute of Taxation, for this honour. Congratulations to SAIT on bringing this international recognised designation to South Africa – what an achievement! I am proud to be part of SAIT.'
>
> *Nico Theron, Unicus Tax Academy*

AGM

CIOT: Notice of Annual General Meeting

The Annual General Meeting of Members of the Chartered Institute of Taxation will be held on Tuesday 30 May 2023 at 16.45. The meeting will be held via Zoom.

Civica Election Services have been appointed as scrutineers for the CIOT AGM 2023. Access to the AGM Notice, Annual Report and Statutory Accounts and information regarding those standing for election to Council will be provided through links in an email, sent to members by Civica in late April. The Civica proxy voting site can also be accessed via that email, together with information on how to book attendance at the virtual AGM. There will be a reminder email sent in May.

If you prefer to receive a hard copy of the proxy form, please email: support@cesvotes.com or telephone: 0208 889 9203 and a form will be sent to you in the post with a reply-paid envelope. You will have until 26 May 2023 at 10am to return the form.

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

DISCIPLINARY REPORTS

NOTIFICATION

Mr Nur Miah

At a hearing on 29 September 2022, the Disciplinary Tribunal of the Taxation Disciplinary Board determined that Mr Nur Miah, a student member of the Chartered Institute of Taxation, was guilty of the following charges, namely:

1. On or around 17 March 2022, Mr Miah pleaded guilty at Dudley Magistrates Court to three charges.
2. On or around 17 March 2022, Mr Miah was issued with a fine of £533 in respect of one of the charges.
3. On or around 27 May 2022, Mr Miah was sentenced at Wolverhampton Crown Court in respect of two of the charges to the following:
   a. 20 months' imprisonment, suspended for two years;
   b. an unpaid work requirement of 120 hours; and
   c. participation in a Rehabilitation Activity Requirement(s) for a maximum of 30 days.

The tribunal found that Mr Miah had:
a) failed to avoid any action which discredits the profession, contrary to rule 2.1 of the Professional Rules and Practice Guildelines (PRPG);
b) engaged in or been party to illegal activity, contrary to rule 2.2.2 of the PRPG;
c) failed to uphold the professional standards of the CIOT contrary to rule 2.6.2 of the PRPG; and
d) conducted himself in an unbefitting, unlawful or illegal manner which tends to bring discredit upon himself and/or may harm the standing of the profession and/or the CIOT, contrary to rule 2.6.3 of the PRPG.

The tribunal determined that Mr Miah be expelled from membership of the Chartered Institute of Taxation and pay costs in the sum of £2,948.

NOTIFICATION

Mr David Christian

At a hearing on 29 September 2022, the Disciplinary Tribunal of the Taxation Disciplinary Board determined that Mr David Christian of the Isle of Man, a member of the Association of Taxation Technicians, was guilty on his own admission of the following charges, namely:

1. Mr Christian owned and at all material times operated the 'Piebaps' User Account on the Contractor UK internet forum.
2. Between 1 February 2020 and May 2021, Mr Christian posted offensive comments on the HMRC Scheme Enquiries section of the Contractor UK internet forum.
3. Mr Christian is in breach of rule 2.6.3, in that he conducted himself in an unbefitting manner which tended to bring discredit upon him and/or could harm the standing of the ATT.

The tribunal made an Order that the complaint lie on file for a period of three years from the date of its decision. It also ordered that Mr Christian pay costs of £2,906.

NOTIFICATION

Mr Cho Han Michael Feng

At hearings on 27 July 2022, 6 October 2022 and 25 January 2023, the Disciplinary Tribunal of the Taxation Disciplinary Board determined that Mr Cho Han Michael Feng of Willesden, London, a member of the Association of Taxation Technicians, was guilty of the following charges, namely:

1. On 21 May 2019, Mr Feng sent an email containing a document referred to as a 'witness statement' to a church with which his client (Mrs L) had an association, disclosing thereby to the recipients of the email information provided by his client, in breach of:
   a. rule 2.5.1, in that by sending the document Mr Feng breached the duty of confidentiality he owed to Mrs L in respect of the information he disclosed;
   b. rule 2.5.2, in that he divulged information acquired in the course of his work without the consent of Mrs L to do so or a legal or professional right or duty to disclose the information; and
   c. rule 2.6.3 in that by virtue of his reason for divulging such information he conducted himself in an unbefitting manner which tends to bring discredit upon a member and/or may harm the standing of the profession and/or the ATT.

The tribunal determined that Mr Feng be suspended from membership of the Association of Taxation Technicians for a period of 12 months and pay costs in the sum of £17,461.50.

Links to the Tribunal's decisions can be found on the TDB's website www.Tax-Board.org.uk.

DITT
CIOT speaks to its first candidate to complete the Diploma in Tax Technology

Since the launch of the DITT qualification in November 2022, we are delighted to talk to Tristan Noyes, Director and Group Head of Tax at B-FLEXION, about his experience and reflections having successfully completed the DITT.

Tristan's career started at KPMG Bristol as a school leaver in the private client tax team, completing trust tax returns and accounts. Initially, this was a gap year before starting university but he stayed on at KPMG for over ten years. Tristan currently works as Director and Group Head of Tax for B-FLEXION, an international investment firm, where he has worked for 13 years and has successfully completed ATT, CTA and ADIT assessments.

What area of tax do you work in and how will the Diploma in Tax Technology help you in your day to day job?

I had recently completed the ADIT qualification when I saw the DITT advert and thought it sounded interesting. B-FLEXION is currently undertaking a financial transformation project to help increase efficiencies and better incorporate technology in our finance team. I wanted to make sure the tax team got the most out of that project.

We have been hiring IT consultants and technical people and I thought that studying the DITT would help me to speak more knowledgeably with colleagues whilst working on this project. The syllabus was very pertinent to what I was doing in the firm at that time.

What motivated you to undertake this qualification?

The DITT was launched at the right time for me when I was looking to learn more about tax technology. I liked the syllabus, and the modular nature of the

Tristan Noyes

programme allowed me to study when I was on holiday and on the train during my commute to and from work. I found it useful to fit in my learning around my job and my life.

How do you think this programme will benefit the profession?
Technology is coming. Making Tax Digital is already in place, so anyone working in tax must get on board with it and get in front of it, or else you will be dragged behind. Studying the DITT course helps tax professionals to embrace technology and see where it can be incorporated into their existing or new processes. Also, the Diploma encourages us to pursue further learning in this area.

What kept you motivated throughout the programme?
The immediateness of receiving a score from the module assessments kept me motivated. As I was using the information on the course in my day job at work, it was really useful when having conversations with the tech team members. It is pertinent to the work I am doing right now.

Would you recommend this programme to others?
Yes, I would. You can study relatively leisurely, so it doesn't feel like a massive investment of time. The learning material is digestible and manageable.

I feel I got a lot out of it for the amount of investment I put in. The cost isn't prohibitive and all of the learning resources (the Learning Dashboard and assessment Centre) are all found in the one place online.

Read Tristan's DITT story in full at: www.tax.org.uk/case-studies-tristan-noyes

A MEMBER'S VIEW

Jivaan Bennett

Senior Associate, Linklaters LLP

This month we shine a spotlight on CTA member Jivaan Bennett, who tells us about his motivation and passion for taxation.

How did you find out about a career in tax?
In my first week as a final year undergrad law student, I had the privilege of shadowing two extremely impressive tax barristers – Keith Gordon and Ximena Manzano (both now of Temple Tax Chambers). That experience left me so intrigued to know more about tax law. What gripped my attention the most was how intellectually stimulating taxation is. Taxation is so multifaceted; it covers a range of disciplines from law and economics to accounting.

While studying for the Bar, I followed up the mini-pupillage with a week of shadowing a (now former) tax judge (Dr Kameel Khan). This confirmed that a profession as a tax lawyer was for me. It has been pure bliss since.

Why is the CTA qualification important?
I practise as a tax disputes lawyer. This involves, in some cases, observing a particular aspect of tax law under a microscope and arguing for a particular interpretation. However, the best tax disputes lawyers I've observed have a panoramic view of the legislative landscape such that they can draw from other areas of tax law in relation to the particular area of law in dispute.

The CTA allows me the opportunity to quickly broaden my knowledge of tax law to areas I do not often come into contact with in practice, while specialising in a particular area of tax.

How would you describe yourself in three words?
Adventurous, tenacious (or maybe stubbornly persistent?) and unrelentingly optimistic.

Who has influenced you in your career?
I've been very blessed that they are too many to name and I wouldn't wish to inadvertently omit anyone. Different persons have had leading roles at different stages in my career. Mentors and sponsors have been crucial to my career to date and have enabled me to learn from their wisdom and benefit from their support.

What advice would you give to someone starting off in their career?
Three pieces of advice would be:
- There are no shortcuts. Invest time and effort in continuously developing your skill set (both technical skills and soft skills) and building relationships.
- Treat EVERYONE the way you would want to be treated.
- Run your own race – comparison with others' career journey tends to be the cause of bitterness or vanity.

What are your predictions for tax advisers and the tax industry in the future?
We continue to see a push to regulate the standard of tax advice provided to clients. This is an interesting development and I am keen to see how it develops.

What advice would you give to your future self?
Hard to say. If instead I had to offer advice to my younger self, it would be to travel even more.

Tell me something about yourself that others may not know about you.
Although I fail on a daily basis to drink enough of it, I love everything associated with water, whether it is swimming, scuba diving, kayaking or discovering new waterfalls. If a career as a tax lawyer did not work out, a promising, fun-filled life as a fisherman on the island of Tobago awaits me.

Contact

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

COMMUNICATE

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International Corporate Tax Manager – 100% Advisory

Fully remote – Up to £75,000 pa + bonus & benefits

A rapidly growing business consultancy are looking for a Corporate International Tax Advisor to join their team. This hire will have the opportunity to advise businesses during their first period of international expansion, meaning they will have unique access to some of the most exciting start-ups in Finance and Tech across the globe. Off the back of their most successful years on record, multiple acquisitions and a growing client base, they are looking to expand their team at a variety of levels. Promotions opportunities are plentiful so this is a perfect opportunity for an ambitious individual.

International VAT Specialist - 100% Advisory

Fully Remote – Up to £65,000 pa + bonus & benefits

Our client, a leading corporate services provider, is currently recruiting for an Assistant Tax Manager. This is a rare opportunity to work fully remotely within a rapidly expanding, highly acquisitive company. The position is perfect for someone looking to establish themselves within a growing company and liaise with global businesses across a variety of sectors. You will also be providing technical advice on a wide range of Indirect tax problems.

Head of Tax (Greenfield, Fintech, High-Growth)

London – Up to £130,000 pa + 20% bonus & benefits

A rapidly growing, London-based Fintech business are looking to hire their first Head of Tax to in-house their tax function. The business are well funded with several well-known backers, all of which have a proven track-record of growing businesses at scale. The ultimate goal for the next five years will be to take the business through IPO. The team work in the central London office 1-3 days a week dependent on individual's requirements. Excitingly, our client is proud to be rated as one of the Best Places to Work in their field.

International Tax Manager - Hybrid, In-House

London – Up to £90,000 per annum + bonus & benefits

A global Oil and Gas company based in London are looking to add an International Tax Specialist to their fast-growing team. The group are looking for an experienced tax professional to help manage their international expansion. With plans to move into six new territories every year, this role ensures an exciting variety of work and the opportunity to leave a lasting effect on a well-known business.

To apply, please email your CV to Will Hanson on will.hanson@communicate-rs.com
For more opportunities, please visit our website **communicate-rs.com**

HOWELLS CONSULTING

Specialists in Private Client Appointments

Director – Personal Tax
London / Hybrid
£100,000 – £130,000 + Bens

An exceptional opportunity to join one of London's high-profile Private Client Tax teams and be supported with progression to Partnership. Our client advises UHNW individuals, business owners, entrepreneurs and family offices on all areas of personal taxation, trusts and asset structuring. Many of the clients are UK res non dom in nature. Client relationship management is a key element of the role and you will also participate in business development. **Ref 5049**

Personal Tax Advisory Manager
London / Hybrid
£60,000 – £70,000

A CTA qualified personal tax manager is sought by a highly-rated Private Client-focused firm, to advise wealthy international clients on capital taxes planning, residence, domicile and remittance issues. Knowledge of offshore trusts also welcome. Develop your career with respected peers and benefit from a supported route to Senior Manager in a modern forward-thinking environment. **Ref 5059**

Trust Managers
London / Hybrid
£60,000 – £70,000

We are keen to speak with Trusts Managers and Assistant Managers, who may be interested in two roles we are handling for leading Private Client teams. One an accountancy firm, the other a law firm. Both operate in the UHNW field and are independently recognised for their Private Client expertise. Trust accounts and tax return preparation / review experience is essential. **Ref 679**

Personal Tax Assistant Manager – Advisory
Cambridgeshire / Hybrid
£45,000 – £50,000

A strategic hire by one of the region's leading Private Client teams. They seek a CTA Assistant Manager to work closely with one of their prominent personal tax Partners. Acting as their assistant, you will undertake ad hoc projects on their portfolio, in very much a client-facing role. Fast-track Manager and Senior Manager opportunities exist for the right individual. **Ref 5070**

Personal Tax Planning Senior Manager
London / Hybrid
£75,000 – £85,000

An advisory-focused role, providing ad hoc personal tax planning advice to HNW UK res non doms and their families. Play a key role in one of London's award-winning Private Client teams. Work closely with highly rated Partners on an impressive international client base. Assist with networking and business development initiatives. The team has a strong track-record of promoting its Senior Managers to Director and Partner grades. **Ref 5064**

Tax Technical Manager
London / Hybrid
£60,000 – £70,000

Escape time-sheets by moving into a tax technical role with a prominent accountancy firm. They seek a CTA qualified personal, corporate or mixed tax Manager, with a broad awareness of UK tax issues, to provide tax advice and support to their fee-earners. Keep the teams updated on the latest rule changes and case law, and draft news articles. **Ref 5069**

International Personal Tax Manager
London / Hybrid
£60,000 – £70,000

Join a specialist Private Client Tax boutique with a strong reputation for advising international HNWIs. Our client seeks a CTA personal tax manager with strong UK res non dom tax experience. Perform very much a client-facing role, undertaking both compliance and advisory work, supported by highly-experienced senior managers and partners. Flexible working between London, Surrey and home. **Ref 5045**

Personal Tax Senior / Assistant Manager
Bristol
£35,000 – £45,000

Develop your career with one of the region's top Private Client teams. Handle new and old money personal tax work for a top-quality portfolio of HNWIs, family offices, landed estates and business owners. Gain exposure to a broad range of personal tax issues and work closely with some of the profession's leading Private Client specialists. **Ref 5010**

Our clients support hybrid working and offer scope for homeworking 2–3 days a week, if one wishes.

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TAXATION-JOBS

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Job	Description
Tax Accountant – 12 months – CT & VAT London £depending on experience brewer morris	Joining an established in-house tax team, the Tax Accountant will support the Corporate Tax Manager and the Indirect Tax Manager evenly with key VAT and corporate tax responsibilities. To be considered for this role it is not essential to have corporate tax and VAT experience combined as the tax team are happy to support someone in training in either of the tax areas. However, it is essential to have either corporate tax or VAT experience and to have an interest and willingness to learn the other area of tax.
Corporate Tax Partner London £negotiable 	Top 40 Accountancy Firm who have offices throughout the UK wishes to appoint a senior corporate tax professional to lead their London team. If you are an ambitious Corporate Tax Director looking for their step in to Partnership this year or an experienced Corporate Tax Partner looking for a fresh challenge where they can build out a team, putting their stamp on the market I want to hear from you.
Employment Tax Director Berkshire 	International top tier firm has ambitious plans to grow its employment tax offering and would welcome someone with the vision to drive this forward. As a senior professional at this firm, you will be part of the strategic decision-making process and have the opportunity to contribute to the direction of the firm. As a member of the employment tax team department, you will provide original & creative thinking to solve the tax problems of your clients and work to develop your team's offering further. Progression is actively encouraged, and the opportunity for advancement is genuine. Build your business and your network, and you will be looking at a business case for partner.
UK and International Tax Manager Birmingham To £60,000 + benefits 	This firm is one of the fastest growing in the Midlands and as part of its spectacular growth, it is looking for a corporate tax specialist to join as a manager to build their international tax experience. The role will be to manage a portfolio of inbound and outbound clients based across the region and help them with their international tax issues. The clients range from listed to large OMBs and PE backed companies across a broad range of sectors, all of which have a significant presence in the Midlands. The right person will have good UK corporate tax experience and a keen interest in building their international tax exposure. This could suit someone from a Top 20, independent firm or HMRC looking to broaden out their technical skillset.
Private Client Tax Director / Manager Suffolk £negotiable 	Private Client Tax Manager or Director role with a mid-tier firm in East Anglia – flexible on office location and hybrid working available. This team is expanding fast, and they have an exciting opportunity for an ambitious professional, who has significant previous Private Client Tax experience to join them as a Manager or Director. The role could offer future partnership potential to the right candidate. Your client portfolio will range across the Private Client spectrum including high net worth individuals and families, business owners, company directors, land and property owners, entrepreneurs, retirees, and family trusts. You will head up the Private Client Tax team, and work closely with the Private Client Tax Partner and with the rest of the team across the region.

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Looking for a career change?

Opportunity to become a UK / Australian Dual Tax Handler in Reading, UK

Fantastic opportunity for a skilled Private Client or Mixed Tax Manager looking for a unique role.

Our ideal candidate

- UK private client or mixed tax background with strong technical experience
- Exceptional written and communication skills with a client focused mindset
- Has a proactive and positive attitude
- No prior Australian tax knowledge required
- CTA / ATT / ACA / ACCA qualifications are highly regarded

Our firm is growing

- One of the world's few UK / Australian Dual Tax Handling teams
- Unique client base
- Training provided by highly-skilled Australian tax experts
- Central serviced office location
- Opportunities for secondment to our mid-tier partner firm in Australia

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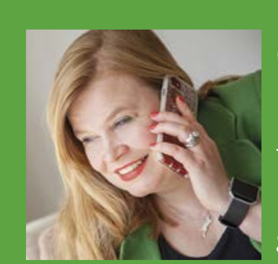

GEORGIANA HEAD

Director

Tel: 0113 426 6672
Mob: 07957 842 402

georgiana@ghrtax.com

Tax Due Diligence and Valuations
Leeds
£60,000 to £80,000 + benefits

Our client is a rapidly growing independent accountancy firm. For the next stage of their development, they seek a specialist to assist the transaction team with tax due diligence and share valuation work. A key part of your role will be to review historical risks or potential future tax costs of mergers, joint ventures, disposals etc. This is a great opportunity for a qualified tax professional who wants to develop their own niche in a fast-growing practice. Full and part time working considered and hybrid working available. About to move into brand new plush offices in Leeds. **Call Georgiana Ref: 3351**

Group Tax Reporting Manager
Hull and Remote
Part time

This role offers an ACA / CTA qualified tax manager the opportunity to work in the central finance function of a global business based out of Hull. The role offers a flexible working pattern, and part time applicants will be considered. The role reports to the group's Head of Tax and Treasury, and is ideal for someone looking for a new challenge with an international remit. You will manage direct and indirect tax on a day-to-day basis. You will oversee compliance in the UK and Europe and will run the relationship with advisors and HMRC. Some travel to Hull required. **Call Georgiana Ref:3353**

Group Tax Role
Lincoln – clear promotion prospects
£excellent + share scheme + bonus

Our client is a UK based group in the construction sector. They seek a qualified tax professional (ideally ACA, ICAS, ACCA or CTA) to join an in-house tax function. What differentiates this opportunity is that the position is part of the succession plan for the Group Tax Manager and could lead to a Head of Tax role. This role is office based in Lincoln and includes parking (and is near a train station). This is a friendly finance team looking for a practical tax person who will enjoy being at the heart of a successful UK business. **Call Georgiana Ref: 3336**

VAT Senior Manager/Director
Leeds
£60,000 to £80,000 + benefits

This is an opportunity to develop an indirect tax offering within an established practice which focuses on tax investigations. Many of the team are former HMRC inspectors. This role would suit an experienced VAT specialist who is looking for something a bit different. You will help with investigation work including VAT tribunals, and will also help other areas of the business including clients with large property investment portfolios. Great scope for promotion and really interesting technical work. Hybrid working available, new offices in the city centre of Leeds. **Call Georgiana Ref: 3349**

Advisory Corporate Tax
Manchester
£excellent

As an Advisory Associate Director in this Tax department based in central Manchester, you will manage ad-hoc tax advisory projects across a varied portfolio of clients ranging from dynamic OMBs to UK offices of overseas parents. You will find that your broad tax experience will be put to good use. Could suit a manager looking for a step up to senior manager/associate director or a more experienced person. There is a plenty of scope for promotion in this growing team of a Top 20 firm. Hybrid working and part time available. **Call Georgiana Ref 3352**

Corporate International Tax
Guernsey
£excellent and low tax

Looking for something different? Our client is based in Guernsey in the Channel Islands, and they are looking for a corporate tax specialist to join their tax team. This is an ideal job for an individual that wants to be in the middle of the offshore trust industry, working on the tax issues affecting corporates and property groups trading from and into Guernsey. It is likely that you will be manager level or above with a relevant professional qualification (CTA, ACA, or ICAS). This firm will provide sponsorship for the role to enable you to relocate to Guernsey. **Call Georgiana Ref: 3354**

www.georgianaheadrecruitment.com

Senior Tax Analyst/Assistant Manager
In-house – Bradford, Manchester, Liverpool or Chertsey
£50,000 to £60,000 + benefits

Univar Solutions is a global partner to our customers and suppliers for the value-added distribution of chemistry and related products and services. We are a committed ally, with the capabilities and know-how to help their business run smoothly, and the expertise to help them anticipate, navigate and leverage meaningful growth opportunities.

Our in-house tax team seeks a qualified corporate tax professional to join our team in Bradford. The role could also be based out of any of Univar's offices in the UK, including Manchester, Liverpool and Chertsey. In this role you will deal with all round corporate tax compliance and reporting work and you will also assist with advisory work. Your role will include: -

Compliance responsibilities:

- Preparing quarterly tax provision packages for companies within the EMEA region following US GAAP principles.
- Preparing consolidation schedules for the EMEA region for quarterly and year end US GAAP tax reporting.
- Reviewing information received from business controllers each quarter and addressing the impact of this on tax provision estimates.
- Preparing Return to Provision (RTP) reconciliations to identify prior year adjustments required once final returns are submitted.
- Completing the initial review of Corporate Income Tax Returns prepared by an external firm.
- Management of data repositories on Sharepoint such as financial statements, tax returns, DAC6 and similar submissions.
- Obtaining tax residence certificates and tax treaty clearances as needed.
- Monitoring and assessing the impact of tax legislation changes across the region and globally
- Assisting with the gathering of data and the responding to Tax Authority corporate tax audits in the region.

Advisory responsibilities:

- Preparing tax advice on proposed transactions in EMEA jurisdictions.
- Assisting with tax analysis and research on projects led from outside Tax Dept.
- Identifying tax savings in EMEA entities and the wider group, together with assisting on the research and implementation of viable opportunities
- Liaising with business leads alongside Senior Tax Manager to advise on proposals, changes to current arrangements that may impact tax positions, and communicate legislative or other changes.
- Preparing DAC6 memoranda and determining whether DAC6 should apply to an arrangement.

What you'll need:

- Experience of working in a fast paced, large corporate environment whether that be an accountancy firm or in-house.
- Qualified ACA, CTA or equivalent
- Minimum of 3-5 years of relevant experience.
- Strong interpersonal and communication skills, to build credible relationships, and influence all levels of the Finance team
- Knowledge and understanding of US GAAP and tax compliance reporting would be advantageous.
- A self-starter with the ability to tackle issues as they arise.
- Competence with Excel and other MS Office software.

This role has clear potential for progression and hybrid working is available (minimum of 2 days a week in the office).

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

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

PRIVATE CLIENT ASSISTANT M'GER

MANCHESTER To £48k dep on exp

Our exclusive client is a specialist tax firm focused on providing Big 4 quality advice to Big 4 quality clients that include families, HNWIs and entrepreneurs. It seeks a Private Client AM to join its high calibre team to provide support on wide ranging private client advisory work, the quality of which is rarely seen outside of the large accounting firms. This role would suit someone who is CTA part or fully-qualified currently working at a large firm that wants to be part of something unique with great prospects for the future. Fully flexible working including remote working. **REF: C3446**

CORPORATE TAX MANAGER

MANCHESTER £Highly competitive

This national firm with a global reach, has a focus on career and personal development, combined with interesting work. You will feel valued, respected and enjoy working with a fantastic team. This role would suit an experienced Assistant Manager or recently promoted Manager who wishes to gain exposure to more interesting and complex corporate tax work (including R&D) whilst managing and reviewing compliance for a high profile and varied client based (Not for Profit through to large multi-national, international and listed organisations.) **REF: C3439**

TRANSFER PRICING MANAGER

STAFFORDSHIRE £excellent dep on exp

Exciting opportunity for a Transfer Pricing Manager / Senior Manager to join the inhouse Tax team of this global and growing group in a role where you will assist in managing transfer pricing affairs globally. In addition to strong tax technical capabilities, the candidate must be practical and demonstrate proven project management skills across multi-functional teams. **REF: R3447**

IN HOUSE TAX ACCOUNTANT

WARRINGTON £48k to £58k

A newly created opportunity to join of one of the UK's largest private companies with operations in the UK, USA and Northern Europe. The role will include preparation of UK year end provision workings, assisting with UK corporation tax returns as well as technical research to support various tax and accounting projects. This would be the ideal role for a newly or partly qualified accountant, with an interest in expanding on both their tax and general group accounting experience within a commercial business environment. **REF: R3438**

PRIVATE CLIENT TAX MANAGER

NORTH YORKSHIRE To £54k dep on exp

Excellent career development opportunity for a Personal Tax professional to join an outstanding topflight specialist firm in its North Yorkshire office. You will be working with a diverse and genuinely exciting range of clients, on interesting and at times challenging complex tax technical work. This role will suit a CTA qualified; someone who is confident in their ability, who thrives on hard work and wants the opportunity to demonstrate and be noticed for their experience and ability. An attractive and competitive package is on offer, together with attainable medium to longer-term career progression prospects. **REF: C3440**

GROUP TAX MANAGER

MANCHESTER To £85,000+ car + bonus

Our impressive commercial client is currently recruiting for a Senior Tax Manager to manage all aspects of the Group corporation tax, VAT, and employment tax matters, working closely with the senior Finance Management Team on the overall finance & tax strategy. A broad role with responsibilities spanning compliance, reporting, as well as providing advice in response to ad hoc business tax queries. You will need to be comfortable working in a stand alone basis from a tax perspective. **REF: R3431**

TAX PARTNER

LEEDS £six figures

Unique opportunity for a senior tax professional to join this rapidly growing and forward-thinking independent firm. You will ideally have a background in working with OMB clients and a proven track record of winning new business as you will play a key role in the growth and development of the Leeds office. Would suit either an established tax partner or a director looking to make a step up. **REF: A3345**

PRIVATE BUSINESS M / SM

THE NORTH To £85,000 dep on exp

Fantastic opportunity for a corporate or mixed tax specialist with experience in advising privately owned businesses and business owners on a broad range of complex tax advisory matters. If you are looking to take your career to the next level with a global business this is the role for you. Flexible / hybrid working on offer and a market leading remuneration package. Part-time roles available.

REF: A3409

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Mike Longman FCA CTA: mike@taxrecruit.co.uk; **Ian Riley ACA:** ian@taxrecruit.co.uk; **Alison Riordan:** alison@taxrecruit.co.uk; **Claire Randerson Smith:** claire@taxrecruit.co.uk

Fancy Trying Life In A Hotter Climate?

AVTR Recruitment has built up an incredible network in the Middle East over the years, and we are delighted to say that we now have a team of people based permanently in Dubai!

The introduction of Corporation Tax across the Emirates has seen a massive increase in opportunities in the region. Let us give you first-hand advice on this thriving market.

If you would like to know more about these exciting developments, please contact us!

Interested in finding your next opportunity?

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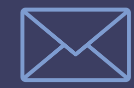
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