December 2022

# TAXADVISER

att
Chartered Institute of Taxation.
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# The latest fiscal plan

As the end of 2022 approaches, we examine the tax implications of our third chancellor and fourth budget event this year

## R&D reliefs
The changes due in April 2023 and what can render claims invalid

## Pillars One and Two
The tax rules behind the move towards a new global framework

## Alcohol tax
Reforms to the duty structure and reduced rates for smaller producers

# HELEN WHITEMAN JANE ASHTON

# Welcome
## Achieving our objectives

In our last column, we said that the government would announce their budget plans on 31 October. As we all know, that date was pushed back to 17 November when Jeremy Hunt issued his first Autumn Statement, indicating an aspiration for stability, growth and an investment in the public services. With none of the headline tax rates being changed, the Chancellor has had to look at allowances, exemptions and temporary taxes as a means of raising additional revenue, whilst indicating that spending cuts will be required across government departments (other than defence, education, and health and social care).

Good tax administration depends both on its efficiency and on the quality of the interaction between the public and the tax department. If HMRC are to address their current customer service challenges, as well as deliver an ambitious programme of technological reform and enhancement, it is imperative that the department has the necessary resources. Some (but not all) of the current customer service issues are the result of HMRC cutting back on staffing, assuming that digitalisation would dramatically reduce telephone and postal interaction with taxpayers. Those reductions in demand are yet to happen because digitalisation has not progressed as far or as swiftly as anticipated – but the reduction in supply has.

For HMRC to achieve its objective of building a trusted modern tax administration, it needs the resources to build on the progress already made on the Personal Tax Account. It also needs the resources which will enable all the Charter principles to be translated from words into experience. We would therefore urge the government to ensure that HMRC are adequately resourced so they can fulfil their task of effectively collecting revenue.

On the day of the Autumn Statement, all our technical officers were busy digesting the information and issuing press releases which can be found on the ATT, CIOT and LITRG websites. Following this, the ATT secured appearances on Radio 5 Live and Radio Cumbria to explain to the public what the Autumn Statement meant for them; and ATT, CIOT and LITRG were featured in the Financial Times, The Times and the Telegraph over the weekend.

The CIOT President Susan Ball was delighted to launch the new Diploma in Tax Technology (DITT) at a tax technology panel debate on 21 November. The diploma reflects the way in which tax advice and the demands on tax professionals have changed immeasurably over the last two decades – partly because of technology. The DITT is a welcome and relevant addition to the learning and development offering from the CIOT. It offers learning which is accessible online through 10 modules, and includes two routes for consideration depending on the area of tax digital focus required. You can read more about the DITT on page 61, and visit www.tax.org.uk/ditt

For those wanting standalone qualifications, the ATT also offers Foundation level qualifications in Personal Taxation, Business Taxation, VAT Compliance and Transfer Pricing. These provide self-directed study, allowing students to take responsibility for their own study – and at a time that suits them because the exams are available online. There is no need to book; students simply sit the exams when they are ready. These are ideal for people who are new in tax or wish to increase their knowledge in a particular area. For more information, visit www.att.org.uk/online-courses-att-foundation-qualifications

Finally, we would like to thank Paul Benton and the Sheffield Branch for the warm welcome they extended to us at their 50th Anniversary dinner. It was lovely to once again meet in person and we hope to meet more of you in the New Year.

Best wishes for the Festive season and the New Year!

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# CONTENTS

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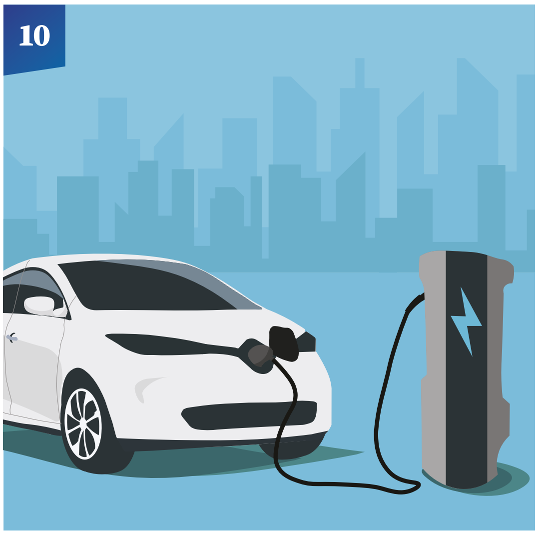



# Regulars



33


40


## ONLINE PICKS OF THE MONTH

**The cost of living crisis**
How attempts by employers to support staff can fail to deliver
bit.ly/3VbVjTQ

**The 2022 conferences**
The bloodiest battles are taking place internally
bit.ly/3guHHEp

**Disguised distributions**
'Close' company and 'loan to participator' legislation prevents anti-avoidance
bit.ly/3ExTqdn

**SUSAN BALL**
**PRESIDENT**

# With a little help from my friends

> What has struck me, more than ever, is how we interact as a tax family and the friendships we make along the way.

Reflecting on 2022, I think we can all agree that it has been an eventful year. From the Russian invasion of Ukraine, through market turmoil from a fiscal statement and the sad death of the Queen, so much has happened that has impacted on all of us in various ways.

Now, more than halfway through my Presidency, my tenure has experienced two monarchs, three prime ministers and four chancellors. It almost sounds like a seasonal carol. Let's face it, this year is one that many of us in tax will not forget.

But as it draws to a close what has struck me, more than ever, is how we interact as a tax family and the friendships we make along the way. I have talked before about how I got involved with the CIOT via the branch network. At the time, this was primarily to maintain my CPD and to meet and talk with like-minded people. But it also led back in 2005/6 to me seeing that a tax forum had been set up by Paul Tucker to enable discussion of employment tax matters by those in professional firms and also those working in-house – before the current CIOT committee had been set up. I got in touch and joined, and it's still going strong.

Our meetings have been held in the north and south of the country, and I have made some 'phone a friend's and, over time, several personal friends. It helped that we all tried not only to attend the meetings but, where possible, to fit in dinner. In fact, recently Justine Riccomini and I jointly presented a CIOT webinar on employment tax. Justine and I first met as part of the forum.

As we spend such a large part of our lives at work, it sometimes feels as if all we do is wake up, go to work, go home, eat, sleep and then repeat. So it is perhaps not a great surprise that we make some good friends along the way or even meet future partners!

Last month, I was lucky enough to go on my first trip to Belfast for the Northern Ireland branch dinner. After a whistle stop tour, courtesy of some local RSM colleagues, I found myself at the dinner, meeting up with Caroline Keenan who I worked with at my last firm. Needless to say, we reminisced on past times and on attending tax conferences internationally.

Whilst attending the 23rd Cross Atlantic & European Tax Symposium in London in November, I watched people meeting for the first time and others reconnecting, all sharing a common interest and enjoying discussion on tax. Then, at the ADIT awards ceremony I had the pleasure of welcoming those who had completed the full exams to join a tax family of 1,692 ADIT graduates in 86 countries and territories around the world. They were from every continent, every major economy and every business sector. It's a small world in tax but it's getting ever bigger.

This seems like a good time to mention one of our most exciting educational initiatives ever, launched on 21 November, the Diploma in Tax Technology. We believe it is the first time that tax professionals can undertake training in the UK to help them identify and use the technologies that are directly applicable to their working lives. Speaking as someone who started when computers were not widely used, this is a fantastic step forward as increasingly much of what we do – and indeed what HMRC does – is digital. Though I do wonder why so many tax returns are filed on Christmas Day and whether this happened when they were all on paper?!

We're almost done now but it would be remiss of me not refer to the Autumn Statement, the impact of which we will continue to experience for many years to come. I think many are going to need a little help from their friends and family in the years ahead. And on the imminent closure of the Office of Tax Simplification, let's hope that the government takes on board their report in July identifying ways to better embed the principle of simplification in the general tax policy making process, including a framework of questions for officials and ministers to consider when developing policy.

That just leaves me to offer season's greetings to you and your families from me and from the CIOT family. We are all looking forward to seeing you in 2023!

**Susan Ball**
President
president@ciot.org.uk

Chartered Institute of Taxation.

# SIMON GROOM
## DEPUTY PRESIDENT

# Getting to grips with changes

> It is worth reflecting on the benefits that are provided by virtue of being an ATT member.

Hello, and welcome to the Deputy President's page for December. I am writing this the day after the Autumn Statement, having thankfully been given an extension to the print deadline – so I didn't have to second guess what was announced. Having said that, very few of the announcements came as a surprise. They have been trailed and discussed in the press over the past few days and weeks.

It was a very significant statement of intent from the government attempting to draw a clear line between the current Prime Minister and Chancellor and the previous holders of those offices. And although we could have reasonably predicted what was coming, some of the numbers around the cumulative effect of the freezing of thresholds until 2028 in times of high inflation are quite eye-watering. When Rishi Sunak first introduced the freezing of thresholds, inflation was below 2% and we were living in very different times. All of the changes will need to be factored into advice, and they will eventually flow through to the compliance process, but yet again it means more work for ATT members in getting to grips with the changes. But at least the process of ensuring that members are up to date with the rules will satisfy, in part, the CPD obligations that members have.

And talking of CPD obligations, as the year comes to a close, subscription renewals begin to land on the doormat (or more likely appear in the inbox). Members will have received their ATT subscription renewal and included with this is the reminder to complete the Annual Return. It is a requirement for all members to complete the annual return – part of which will involve declaring that you have complied with the CPD obligations. Coming in the run up to Christmas, particularly in these difficult economic times, any request to part with hard earned cash is never welcome but it is worth reflecting on the benefits that are provided by virtue of being an ATT member.

Firstly, there are the tangible benefits – hard copies of Tolley's Tax Guide, the Finance Act Handbook, Whillans' Tax Tables and (of course) Tax Adviser, as well as the legendary ATT mouse mat with the tax rates and allowances on. I remember being part of a Steering Group which voted to discontinue the mouse mats on the grounds that nobody used them anymore and therefore they wouldn't be missed. How wrong we were! Its removal generated the biggest post bag we had ever received with members wondering where their mouse mat was. As we are an organisation that listens to its members, they were rapidly reinstated!

And, of course, we shouldn't overlook the extensive Branch Network, not to mention the intangible benefit of being a member of a leading professional body and using the designatory letters ATT.

If, like me, you have been a member of the ATT for at least 10 years then you may well have applied for, and been granted, the status of Fellow. If you have, then I hope you are enjoying the benefits that fellowship can offer. Not least, it is a recognition of your career in tax and your standing amongst your fellow professionals, but it is also an opportunity to participate in the free Fellows webinars which are an excellent way of keeping up to date (another tick in the CPD box) and networking with other members of similar standing. You will also be joining over 1,600 others who have seen the benefits and applied to become Fellows – all for just a small increase in the Annual Subscription. You can also then upgrade your designatory letters to ATT (Fellow), and what more could one want at Christmas!

As we rapidly head towards the end of the year, it means that the Self-Assessment deadline is also looming. Given the pressures that brings, there won't be an issue of Tax Adviser in January, so you will get a break from my ramblings until February.

And from an educational point of view, you might remember that I lead the Tolley Learning business at LexisNexis. As such, I am very much aware of the hundreds of students who, as I write, have just finished sitting their exams. They can now enjoy a well-deserved break from studying over Christmas whilst they await their results in January. I still remember that mix of emotions and I hope the exams have gone well and wish them luck for the results.

With best wishes for the festive season and new year.

**Simon Groom**
ATT Deputy President
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# The Autumn Statement 2022
## The latest fiscal plan

Approaching the end of 2022, we now have the chance to examine the repercussions of our fourth 'budget' this year.

**by Bill Dodwell**

After the wild exuberance of the 23 September Growth Plan, the Autumn Statement was a rather more sombre affair. The chancellor had been clear before the Statement that personal tax would rise, as would business tax. The Statement confirmed a series of tax increases, taking effect over the next two years.

### Energy levies

The biggest tax increases come from the levies on oil and gas producers and on electricity generators. The rate of the Energy Profits Levy (on UK oil and gas production) increases from 25% to 35% from 1 January 2023; and the levy period will be extended from 31 December 2025 to March 2028. The investment allowance is reduced sharply from 80% to 29%, but there is a new decarbonisation allowance, set at 80% for upstream decarbonisation expenditure.

The Electricity Generator Levy applies from 1 January 2023 to March 2028 and will be a new 45% tax on revenues (before costs) above a pre-crisis price baseline of £75 per MWh made by certain renewable, nuclear and biomass electricity generators. Generation that falls under the Contracts for Difference regime is excluded, as are small generators.

The total forecast revenues are about £41.6 billion from oil and gas and £14.2 billion from electricity – almost exactly the cost of the consumer and business energy support schemes. The biggest uncertainty relates to energy prices and whether they stay high enough to pay the forecast levy but remain low enough not to necessitate further consumer and business support. An extension of the consumer support plan has been announced, to April 2024. However, there is no planned business support after the current plan runs out in April 2023.

### Personal taxes

A much-trailed tax increase is the reduction of the additional rate threshold from £150,000 to £125,140. This odd number takes account of the tapered withdrawal of the personal allowance and so England and Northern Ireland will have income tax effective rates of 20%, 40%, 60% and 45%. Those liable to the high income child benefit charge also have a much higher effective rate on earnings between £50,000 and £60,000 (the exact rate depends on how much child benefit is paid and then withdrawn by the charge). Scotland will make its own choices in its December Budget. Theoretically, Wales also has choices over income tax rates, but its very limited devolved flexibility no doubt makes it likely that it will follow England.

The reduced threshold raises about £800 million annually. The number of individuals likely to be affected by reduction in threshold has not been released but HMRC's latest data estimated that 678,000 taxpayers in 2022/23 will have income over £150,000, with a further 902,000 with income between £100,000 and £150,000 (see bit.ly/3i9BqyF).

The income tax and NI personal allowance and thresholds will be frozen at current levels for a further two years, to April 2028 – which is of course one of the biggest tax increases, albeit postponed.

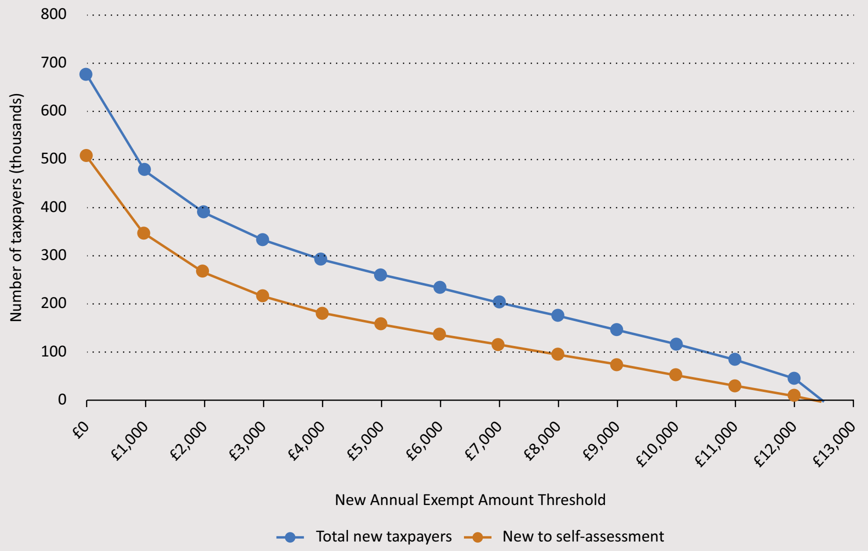
The dividend allowance will be cut from its current £2,000 level to £1,000 for 2023/24 and thereafter to £500 annually. This initially brings in £450 million, rising to £900 million a couple of years later. The published documents do not indicate how many new taxpayers will be created by the reduced allowance. HMRC statistics estimate that about 4.2 million taxpayers currently have taxable dividend income, but we do not know how many additional people will need to file a self assessment tax return to report dividend income (see bit.ly/3GCNeDF). The reduced allowance affects owner-managed companies, which may be tempted to hold additional reserves to be realised as a capital gain when the business closes.

The capital gains tax annual exempt amount will be cut from £12,300 to £6,000 in 2023/24 and then to £3,000 for 2024/25 and subsequent years. This is estimated to bring in £275 million in the first year, rising to £425 million subsequently.

The allowance was covered in the first capital gains tax report from the Office of Tax Simplification (see bit.ly/3EW1TIN). The chart opposite shows that at a £6,000 level over 220,000 new taxpayers will pay capital gains tax and about 140,000 additional taxpayers will need to complete a self assessment tax return. Those numbers rise to about 340,000 new taxpayers and over 200,000 new tax returns in the following year. The report also suggested that HMRC should consider a standalone capital gains tax return to minimise burdens on taxpayers who need to report gains. Some individuals may be unaware that they need to report gains;

## CAPITAL GAINS TAX

**Estimates of new individual taxpayers and new taxpayers to self assessment given reduced Annual Exemption Amount threshold: 2021/22 projection**




Source: HMRC

HMRC will need to consider how to mount a publicity campaign. It would be helpful if they encouraged investment managers and platforms, as well as crypto exchanges, to publicise the capital gains requirements to their customers.

To counter possible remittance basis planning, the Spring Finance Bill 2023 will provide that shares and securities in a non-UK company acquired in exchange for securities in a UK close company will be deemed to be located in the UK. This will have effect where an individual has a material interest in both the UK and the non-UK company and where the share exchange is carried out on or after 17 November 2022.

### Stamp duty land tax

One of the big measures in the September Growth Plan was an immediate £125,000 increase in the threshold at which stamp duty land tax applies to residential property, both for first-time buyers and everyone else. This was intended to be a permanent change, but the Autumn Statement will bring this to an end after 31 March 2025. No doubt this will aid those marketing properties in the preceding six months; the evidence of previous stamp duty land tax cuts shows that they benefit sellers more than buyers, by supporting higher house prices.

### Business rates – and no online sales tax

The chancellor announced a significant business rates relief package, underpinned by adopting an April 2023 valuation, with transitional relief with ‘upward caps’ of 5%, 15% and 30% respectively, for small, medium and large properties in 2023/24. Downwards valuations receive full benefit immediately. The business rates multipliers will be frozen in 2023/24 at 49.9 pence and 51.2 pence, which is a 6% cut worth £9.3 billion over the next five years.

Support for eligible retail, hospitality and leisure businesses is being extended and increased from 50% to 75% business rates relief up to £110,000 per business in 2023/24. Around 230,000 properties will be eligible to receive this increased support at a cost of £2.1 billion. Rates increases for the smallest businesses losing eligibility or seeing reductions in small business rate relief or rural rate relief will be capped at £600 per year from 1 April 2023, costing over £500 million over the next three years and supporting over 80,000 small businesses.

### R&D changes

The rates for R&D reliefs will change from 1 April 2023. The R&D Expenditure Credit will be increased from 13% to 20%, whilst the SME additional deduction is being reduced from 130% to 86% and the credit rate will be cut from 14.5% to 10%. This effectively equalises the value of the schemes and saves £1 billion per annum after two years.

The Financial Secretary to the Treasury, Victoria Atkins, told the House of Lords on 21 November that the government considers there is greater value from the RDEC scheme than from the SME scheme – and this was the driver of the changes, rather than the perception of possible SME scheme fraud (see bit.ly/3GGeJfx).

Treasury officials told their lordships that the changes to the scheme were intended to maintain the overall value of R&D schemes at lower cost – and added that the government was likely to consult in 2023 on whether to merge the two R&D schemes. HMRC officials told the sub-committee that HMRC now receives 60,000 R&D claims worth less than £50,000 each, which puts a strain on compliance activities. The Department is also currently conducting eight criminal investigations.

### Employer NIC

If the theme of the fiscal consolidation overall is freezing thresholds and allowances, no one can be surprised that the Employer NIC threshold will be frozen at the current level (£9,100) until April 2028, raising over £5 billion annually. The employment allowance remains unchanged at £5,000 annually.

### Pillar II goes ahead

The government confirmed that it will go ahead with adopting the minimum tax on corporate profits measures in the G20/OECD-led Pillar II, with effect for accounting years starting on or after 31 December 2023. This will impose 15% minimum tax on the UK and overseas profits of large businesses and apparently raise £2 billion, based on HMRC estimates.

### VAT frozen

The VAT registration threshold will be frozen at £85,000 at least until 31 March 2026. It is to be hoped that the government in future might consider some form of relief for businesses going just over the threshold – which currently acts as a limit on growth.

All in all, the Autumn Statement announced tax increases of over £88 billion over the next five years, on top of £21 billion announced after the Spring Statement.

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**Profile:** Bill is the 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.

# Time to charge ahead?

## Switching to electric vehicles

With the cost of living playing such a vital part in our decision making process, we explore the impact of electric vehicle company car schemes on both employees and employers.

**by Simon Down and Victoria Ternavskaya**

### Key Points

**What is the issue?**
The tax system is currently geared to offer a range of financial incentives intended to increase the take up of electric vehicles. As a result, employers are well placed to enable and accelerate the switch to electric vehicles, making a positive environmental impact and easing pressure on the cost of living.

**What does it mean for me?**
This article looks to unpick some of this complexity and shed light on how specific aspects of the tax system and electric vehicles could be used to further the UK government's sustainability agenda.

**What can I take away?**
Currently, there is a very strong business case for making the move to electric. However, there will be challenges to overcome in future, especially as the government seeks to replace much needed revenue from tax on company cars, fuel duty and vehicle excise duty.

Transport is the biggest source of greenhouse gas emissions and accounts for 27% of the UK's total emissions according to figures published by the Department for Business, Energy and Industrial Strategy. Based on the figures published, cars and taxis are responsible for 55% of the greenhouse gas emissions from transport. Switching to electric vehicles is an essential step on the UK Road to achieving Net Zero by 2050. In 2020, the government announced the end of the sale of new petrol and diesel cars by 2030, so it's now a question of 'when' people will make the switch to an electric vehicle.

Currently, there remains a price premium for electric vehicles when compared with internal combustion engine alternatives. In some cases, the price premium for electric vehicles means they are out of reach for some households. Electric vehicle registrations are growing, with recent figures published by the Society of Motor Manufacturers and Traders showing that they accounted for one in five new cars registered so far in 2022. However, with electric vehicles only accounting for around 3% of the cars on UK roads, there is a long way to go.

Company cars are typically cycled into the 'used' car market after three to four years of use. Over time, the volumes of used electric vehicles that are introduced into the company car market could help to increase the overall supply and reduce price, helping to make the move to electric vehicles a more affordable proposition for all.

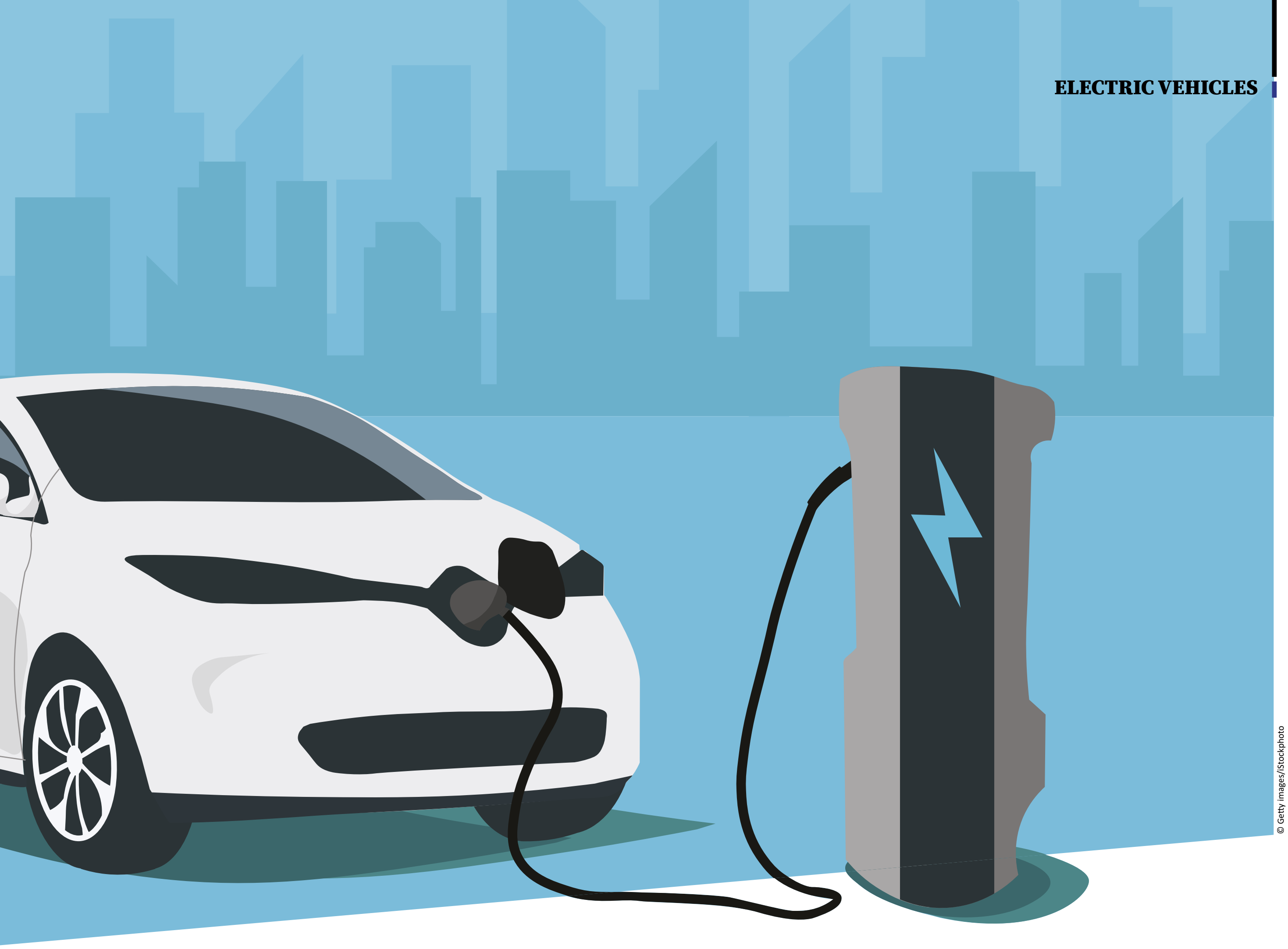
The tax system is currently geared to offer a range of financial incentives intended to increase the take up of electric vehicles. As a result, employers are well placed to enable and accelerate the switch to electric vehicles, making a positive environmental impact and helping to ease pressure on the cost of living.

### Introduction to company cars

In general, where an employee is provided with a non-cash benefit paid for by their employer, such as a company car, this is referred to as a benefit in kind. An employee will pay income tax at their marginal tax rate based on the value of the benefit in kind they receive, and the employer will also pay NICs based on the benefit in kind value.

For company cars, the benefit in kind value is broadly calculated based on the list price of the car in question, multiplied by a percentage (the 'appropriate percentage') that is determined by its $CO_2$ emissions, fuel type and electric range. Income Tax (Earnings and Pensions Act (ITEPA) 2003 ss 121 to 144 cover the method for calculating a company car benefit in kind value.

The tax rules for company cars are designed to encourage the selection of cars with lower $CO_2$ emissions. Opting for a lower emission car will result in a lower benefit in kind value, meaning less income tax to pay for the employee, and less NICs for the employer. The appropriate percentage for a battery electric vehicle is currently frozen at 2% until 5 April 2025 and will rise to a maximum of 5% in the 2027/28 tax year. The sustained low rate offers a significant



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financial incentive to opt for a zero-emission car and it is likely to be the main factor for the increase in popularity of battery electric vehicles as company cars. The latest figures from HMRC estimate that battery electric vehicles will have accounted for 7% of the company cars reported in 2020/21, a sharp rise from less than 1% the year before.

At a high level, the tax rules appear to be relatively simple and offer an incentive to switch to electric vehicles. However, as with many things, the devil is in the detail. When you start to look at the wider considerations for electric vehicles, such as charging infrastructure, provision of electricity, expenses policies, reporting requirements, HMRC compliance, etc., things can get more complicated. This article looks to unpick some of this complexity and shed light on how specific aspects of the tax system and electric vehicles could be used to further the UK government's sustainability agenda.

It is important to note that whilst this article focuses on the employment taxes impact of electric vehicles, there are also corporation tax and VAT implications for a business to consider in relation to providing company cars and associated benefits.

## Job-need company cars

Job-need company cars are commonplace in some industries and are often provided to lower paid employees. Since an employee with a job-need company car will pay income tax on the benefit in kind value of the car they have to use for work, reducing this tax burden is likely to be well received.

The example below demonstrates the impact of income tax costs for a basic rate taxpayer switching from a typical internal combustion engine company car to a comparable battery electric vehicle alternative. (Please note, the higher P11D list price for the battery electric vehicle is an example of the price premium that can apply for a comparable electric vehicle.)

| 2023/24 tax year | Internal combustion engine | Battery electric vehicle |
|---|---|---|
| P11D list price | £25,900 | £32,200 |
| Approximate % | 28% | 2% |
| Benefit in kind | £7,252 | £644 |
| Employee tax rate | 20% | 20% |
| Income tax paid on company car benefit in kind | £1,450 | £129 |
| Diff. £s | – | £1,322 |
| Diff. as % | – | 91% |

This example shows that the employee would see a 91% drop in the amount of income tax paid on the company car benefit in kind. This change in income tax would equate to an increase in take home pay of around £110 per month.

Another way of looking at this position is that the switch to an electric vehicle would deliver the same financial impact for the employee as giving them a pay rise of almost £2,000 per annum. However, it is important for job-need employees to consider the financial impact of fuel and electricity costs incurred driving business mileage.

We explore this in more detail later in this article.

The financial benefit in this example is not just for the employee. A business would see the cost of employer NICs on the company car benefit in kind fall by £912 per annum. Across a fleet of 100 cars, this could generate annual employer NICs savings of around £91,000.

## Cash or car schemes

It is fairly common practice for employers to offer employees the choice of a company car or a cash allowance.

However, if an employee wants to make the switch to an electric vehicle and reduce their carbon footprint, opting for a cash allowance may not be the right move.

| | | Internal combustion engine | | Battery electric vehicle | |
|---|---|---|---|---|---|
| 2023/24 tax year | | Company car (1) | Private car (2) | Company car (1) | Private car (2) |
| Net cost (p/a) | | £1,450 | £1,652 | £129 | £2,598 |
| Diff. | £s | – | (£202) | £1,321 | (£946) |
| | as % | – | (14%) | 91% | (57%) |

(1) Net cost for the company car is the income tax paid on company car benefit in kind.
(2) Net cost for the private car is the cost of a personal lease with maintenance and motor insurance and the income received from a cash allowance after deduction of income tax and employee Class 1 NICs.

The example above demonstrates the financial impact for a basic rate taxpayer choosing between a comparable internal combustion engine car or a battery electric vehicle, with the cars provided as a company car or a private car funded with a cash allowance. Opting for a battery electric vehicle as a company car will offer the employee a significant saving when compared to a cash allowance.

As before, the financial benefit is not just for the employee. In this example, a business funding the battery electric vehicle company car would save at least 10% when compared to funding the internal combustion engine company car or cash allowance.

Where an employee has the choice of a company car or cash allowance, the Optional Remuneration Arrangement (OpRA) legislation comes into play. The OpRA legislation largely removes the income tax and NICs advantages of arrangements where an employee gives up the right to an amount of earnings in return for a benefit. The legislation works by calculating a benefit value based on the greater of the earnings given up, or the value based on normal benefit in kind rules. However, the OpRA legislation has an exemption for vehicles with emissions of 75g/km or less, which means it doesn't apply to most electric vehicles (see ITEPA 2003 s 120A(3)(c)).

## Salary sacrifice schemes

Traditional company car schemes are only open to a limited population of a company's employees. However, introducing a salary sacrifice for an electric vehicle arrangement can allow an employer to open access to company cars to its entire workforce (subject to national minimum wage restrictions).

In a salary sacrifice, an employee agrees to a contractual reduction in their gross pay, and in return is provided with a fully insured and maintained electric vehicle as a company car. The employer saves on both the salary costs and the associated employer NICs thereon. These savings can be used to offset the costs of providing the car so the arrangement can be operated on a cost neutral basis or structured to deliver employer savings (if desired).

The following example demonstrates the financial impact for an employee of taking an electric vehicle via salary sacrifice when compared to funding the same car privately. (We have included the battery electric vehicle car used in the job-need calculation above as well as a lower cost alternative.)

**Salary sacrifice (assume 36-month term)**

| | | | |
|---|---|---|---|
| P11D list price | | £25,995 | £32,200 |
| Net cost per month | Salary sacrifice | £304 | £346 |
| | Private car | £496 | £562 |
| Diff. | £s | £192 | £216 |
| | as % | 63% | 63% |

The example shows that the employees could save up to 63% when opting for an electric vehicle via salary sacrifice compared to funding the same car privately.

While the monthly net costs for salary sacrifice represents a significant spend, the employee would get a brand new electric vehicle that is fully insured and maintained, leaving the cost of charging as their only other motoring outlay. If the employee only had the option of a private car, the much higher monthly costs might make the switch to an electric vehicle unaffordable.

It is worth noting that the example is based on a scheme designed to generate an employer saving as well, with 50% of the employer NICs saved on the sacrifice being retained by the business. Retaining some employer NICs is relatively common to offset some of the costs involved with operating the arrangement.

Given the potential benefits available, it is not surprising that in a recent Deloitte poll almost 70% of respondents said they were either considering the introduction of an electric vehicle salary sacrifice scheme or were in the process of implementing one. The respondents cited the opportunity to reduce carbon emissions (34%) and the ability to offer a new engaging employee benefit (33%) as the main drivers behind this decision.

Before making the decision to implement a salary sacrifice for an electric vehicle arrangement, it is important for an employer to evaluate the full range of implications to ensure that the proposed arrangement meets the needs of the business and its employees (both now and in the future). For example, a business may wish to consider the cost of implementation and ongoing operation, the range of benefits to offer, financial risks for the business and/or employees, finding the right provider, employment law impacts, etc.

## Access to charging

A key element of the transition to electric vehicles will be ensuring convenient and cost-effective access to vehicle charging facilities. It is worth noting that with the cost of electricity on the rise, charging is becoming more expensive both to the employees and the employers. This may have an impact on the charging choices made, as well as the decision to switch to an electric vehicle.

Broadly speaking, access to charging falls into the following categories:

- residential;
- public (including on the go and destination charging); and
- workplace.

Access to charging is another area where an employer can play a role and leverage the incentives offered by the tax system, although there is some complexity with the rules.

### Residential charging

Based on HMRC guidance (EIM23900), if an employer pays for a vehicle charging point to be installed at the employee's home there is no taxable benefit where it is used for a company car. This is because the installation of a charge point would meet

the conditions for ITEPA 2003 s 239 and no liability would arise for payments and benefits connected with company cars (which includes cars provided via a salary sacrifice arrangement). There would be a taxable benefit based on the cost to the employer if it was used for a private car.

HMRC guidance states that if an employer reimburses the cost of electricity used to charge an electric company car at home, the reimbursement should be taxed as earnings, with the employee being entitled to a deduction for the cost of business miles travelled. However, there is some uncertainty in relation to this guidance and whether ITEPA 2003 s 239 should also apply. If it does, the reimbursement for electricity would not trigger an income tax and NICs liability, regardless of whether it is for business or private use. This has been raised by CIOT in discussions with HMRC so we may expect a clarification to the published guidance in the future.

## Public charging

The cost associated with public charging is only likely to be the cost of electricity used and any provider subscription fees. Based on HMRC guidance, if an employer meets these costs for an employee with a company car, ITEPA 2003 s 239 should apply and no liability would arise. As before, the exemption only applies to company cars and so this would be a taxable benefit based on the cost to the employer in a private car.

## Workplace charging

The provision of workplace charging for employees with a company car meets the conditions for ITEPA 2003 s 239 to apply and so no taxable benefit should arise for the provision of charge points and the electricity provided. Since 6 April 2018, a similar exemption for workplace charging of private cars has been in place to cover charging facilities which includes the provision of electricity (see ITEPA 2003 s 237A). The exemption applies on the condition that the facilities are made available generally to the employer's employees at that workplace.

We are seeing more employers help their employees make the move to electric vehicles. The employer provision of access to charging facilities and electricity can help to reduce the financial burden for employees and the tax system provides a mechanism to help.

## Electricity costs

The wholesale price of electricity has risen sharply, such that the government felt it was necessary to introduce the energy price guarantee. This effectively caps the cost of residential electricity until April 2023, with a review planned in the meantime to determine how best to help households after the guarantee ends. The result of this is that the cost per mile for electricity has risen from around 5p-8p at this point last year, to around 10p-14p now (assuming an electricity price at the 34p/kWh energy price guarantee).

While this has removed some of the financial benefits of switching to an electric vehicle, charging at home can still offer a cheaper cost per mile than petrol or diesel. However, if an employee can only charge in public, often where electricity costs are much higher, then the cost per mile of using an electric vehicle could be higher than a petrol or diesel car.

A key challenge for employers is setting a policy for reimbursing business mileage in electric vehicles. The HMRC advisory electric rate is set to rise from 5p to 8p per mile on 1 December. Despite the increase, some employees undertaking business mileage in an electric vehicle may still be significantly out of pocket when reimbursed at this rate. As with fuel, employers can opt to reimburse employees based on the actual cost incurred to ensure they aren't left out of pocket. However, when you look at what is needed to measure and track electricity from home and public charge points, and the interaction of workplace charging, care needs to be taken to implement this in a way that is aligned with HMRC guidance.

## The Autumn Statement

In the Autumn Statement, the government announced the rates affecting company cars for three further tax years (with rates now known up to 5 April 2028). The extension of the low rates for EVs will give greater certainty and a longer-term financial incentive to help boost the take up of EVs. However, it is important to note that the government also announced that EVs will begin to pay vehicle excise duty in the same way as petrol and diesel cars from 1 April 2025. The change to VED will reduce some of the financial incentive currently available for people making the move to an EV.

## Looking ahead to the future

Currently, there is a very strong business case for making the move to electric, with significant environmental and financial benefits. The design of the tax system means employers are uniquely placed to enable and accelerate the switch to electric vehicles, and in some cases make it a financially viable option that otherwise would not be open to some employees.

A key factor enabling the move is the financial incentive offered by the tax system. However, there will be challenges to overcome, especially as the government may seek to replace much needed revenue from tax on company cars, fuel duty and vehicle excise duty as more people make the switch to electric vehicles.

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# Three's a crowd
# The need for structure

We consider two recent tribunal cases where input tax was unnecessarily lost by the taxpayers because deals were not properly structured.

**by Neil Warren**


## Key Points

**What is the issue?**
Input tax can only be claimed by a business if an expense is for the purpose of its business and for its own taxable supplies. It cannot claim input tax on an expense that belongs to a different business, even if that business has paid the bill.

**What does it mean for me?**
Any deal involving three different parties needs to be considered in advance to make sure that VAT will be dealt with correctly, both in relation to output tax and input tax issues. HMRC has the power to raise an assessment going back four years to correct past errors.

**What can I take away?**
In the case of property rental/lease agreements, a business can claim input tax in many cases, even if the lease is between the landlord and an individual person – such as a director or shareholder – rather than the business. However, certain conditions must be met as explained in the article.

VAT on deals involving three parties has always been a hotbed of potential problems. It is a classic case of how things can go wrong in the shark infested waters of the nation's favourite tax. This is because there is scope for invoices to be issued to the wrong business; for input tax to be claimed by the business that has paid the bill rather than received the supply; for when one party that should be registered for VAT turns out not to be... The list goes on!

## INPUT TAX: PROPERTY LEASES TO NAMED INDIVIDUALS

If a landlord grants a lease to a named individual, the business using the premises can still claim input tax if the following conditions are met:

- The individual person is not registered for VAT.
- The individual gives the rent invoices to the business. The business directly pays the landlord and records the full amount as expenditure in its accounts.
- The whole of the premises is used for the purpose of its business.

If these conditions are met, the director is deemed by HMRC to be involved in the rental agreement 'in a purely nominal way'; i.e. they are not engaged in business themselves.

*HMRC Internal Manual: VAT Input Tax VIT13440*

In recent months, two separate cases have been heard in the First-tier Tribunal where input tax was disallowed by HMRC – correctly in both cases – but where this would not have been an issue in the first place if the deals had been structured properly.

### Incorporation problem

VAT was not a problem when Mr Latifi traded as a sole trader for his bed and breakfast business and paid rent to Oxford City Council (*Star Services Oxford v HMRC* [2022] UKFTT 291). The council charged him £8,750 plus VAT each quarter, the invoices being issued to Mr Latifi in accordance with the lease agreement. Mr Latifi was registered for VAT and claimed input tax.

The fun and games started when Mr Latifi incorporated his business in November 2013 and traded thereafter as Star Services Oxford Ltd. Readers can probably guess the next stage in the VAT saga and you are correct: Mr Latifi continued to pay rent to Oxford City Council in accordance with the lease but claimed input tax through his trading company. But there is more: he also sublet part of the premises to a separate business called 'Stitch', which personally paid him rent of £600 per month. And then a separate sublet to a coffee shop was agreed between the shop and Star Services, which paid £7,500 plus VAT for quarterly rent.

HMRC disallowed input tax claimed by Star Services on Oxford City Council invoices on the basis that the supply of rent was from the council to Mr Latifi, who was trading as a property rental business in his own name (a separate legal entity to Star Services). The taxpayer's representative argued that the beneficial interest in the land belonged to Star Services so it was entitled to claim input tax. HMRC issued an assessment for £26,250 covering periods June 2014 to December 2017.

The judge dismissed the taxpayer's appeal because Star Services had no right to claim input tax:

> **Two separate cases have recently been heard in the FTT where input tax was disallowed by HMRC.**

> 'We have found that the legal relationship in the appeal before us was between Oxford City Council and Mr Latifi, not the appellant. This is in addition to the fact that the invoices were addressed to Mr Latifi, and the fact that the appellant is carrying on a separate business.'

The taxpayer claimed that it was an 'administrative mistake' not changing the Oxford City Council lease from Mr Latifi to Star Services and that HMRC had exploited this oversight by issuing the assessment. However, the waters were muddied with the two sublet arrangements and the tribunal rightly considered the legal relationship between the various parties.

### The solution?

I am guessing that 'Stitch' was not registered for VAT as a small business, which was why Mr Latifi charged that business rent, rather than Star Services, because he was not registered either. If this was the case, he would be trying to have his cake and eat it, claiming all input tax on Oxford City Council costs but escaping output tax on some income!

The reality is that the VAT problem could have been prevented if Mr Latifi had registered for VAT in his own name, opted to tax the property in question, and charged VAT on the rent to both Star Services and the sub tenant. That didn't happen. The main learning point from this case is that it again shows how difficult it is to resolve a VAT and property problem retrospectively – after the horse has bolted from its stable, so to speak.

### Repair and improvement costs

In the case of *Majid and Miah Properties v HMRC* [2022] UKFTT 327, Majid and Miah Properties purchased a commercial property, registered for VAT and made an option to tax election with HMRC on the building. The partners spent large amounts of money improving the premises so that an associated company could trade as an Indian restaurant, namely Mehfil (Properties) Ltd. A lease was effective from 1 September 2015, agreeing a rental charge of £500 per week to the company by the partnership.

The complications arose because some purchase invoices were addressed to the builder who did the work – who was not VAT registered – and other costs were paid for by the company. HMRC issued an assessment for £30,446 in 2017 because input tax was claimed on the partnership VAT returns on expenses that HMRC deemed had been supplied to a different business, either the builder or Mehfil (Properties) Ltd.

The judge accepted that some purchase invoices were relevant to the landlord's responsibilities within the lease agreement; namely that the partnership was responsible for

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improvement works. Even though some invoices for building materials were addressed to the builder, it was clear that this had been done as an agency arrangement, so input tax could still be claimed by the partnership. The input tax assessment was reduced from £30,446 to £27,360, so the appeal was only partly successful.

### Who is receiving a supply?

Many VAT challenges need to be clear about the key question: who is supplying what and to whom? In the cases considered above, the key part of this question is 'to whom'.

To give a practical example, imagine that a business consists of two associated companies: an estate agency selling houses on a commission basis; and a financial services company earning commission selling mortgages. They both trade from the same premises but only the estate agency company is registered for VAT because its income is VATable; the income of the other company is exempt. So, what is the situation with office telephone bills, which are issued to – and paid by – the estate agency company, even though staff from both companies use the phones and incur costs?

> **Each three-party arrangement needs to be considered on an individual basis to determine the correct VAT treatment.**

There are two routes here:

- Option 1: The company must carry out an input tax apportionment on the bills because it is only partly using the phones for its 'taxable' business activities.
- Option 2: The estate agency should make a commercial recharge to the mortgage company for its use of the telephones, adding 20% VAT.

The argument that the estate agency company can fully claim input tax because it is paying the entire bill to the telephone supplier is incorrect.

### Lease agreements with directors

There are occasions when a landlord will insist that a rental or lease contract is agreed with the individual director, rather than a limited company with minimal assets. This is a prudent tactic by the landlords to avoid them having a potential bad debt in the future. In this situation, there is an opportunity for the director to register for VAT as a sole trader and opt to tax the property in question if the landlord is charging VAT on the rent. The director will charge output tax on the rent recharged to his company and therefore claim input tax on the rent invoices issued by the landlord.

However, there is a simpler route that is not widely appreciated (see ***Input tax – property leases to named individuals***).

### Online sales of services

The issue of three-party transactions is very relevant as far as trading on the internet is concerned. VAT enthusiasts will recall the recent dispute about whether the global taxi firm Uber was supplying taxi rides to its UK customers, subject to VAT; or whether the self-employed driver was making this supply, with Uber charging a commission to the drivers. The courts ruled that it was Uber.

Another case involved the website OnlyFans, which also went in favour of HMRC, with the tribunal agreeing that the content was being sold by the website, rather than the individual content providers who received 30% of the fee paid by the punters.

### Conclusion

For both output and input tax purposes, each three-party arrangement needs to be considered on an individual basis to determine the correct VAT treatment. Unfortunately, there have been many situations where business owners have opted for the best VAT saving outcome but then faced problems when HMRC has come knocking at the door and challenged the structure of a deal.

The four-year assessment powers given by the legislation can make any backpedalling a massive issue if, say, output tax is payable on 100% of the payments made by customers rather than a lower profit/commission figure of perhaps 25% to 30%. VAT and three-party transactions must be flagged up for regular reviews to avert a potential problem.... as Mr Latifi found to his cost.


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# Refocusing R&D

## A feeling of relief?

A number of changes to R&D reliefs are due with effect from April 2023. We examine what these changes will entail, and whether they will impact levels of suspicious activity in the relief sector.

**by David O'Keeffe**

### Key Points

**What is the issue?**
The government has proposed a number of changes to the R&D reliefs. Some are due to come into effect from April 2023, while others will be rolled out soon after.

**What does it mean for me?**
Any company that has not made either an R&D claim or a claim notification in any of the previous three accounting periods will be required to make a claim notification within the six months following the end of the relevant accounting period or their claim will be invalid.

**What can I take away?**
The company will only be able to include the appropriate amount of expenditure in its R&D claim where the expenditure is 'UK or qualifying overseas expenditure'.

Research and development (R&D) tax relief is in the news a lot these days, not always for the right reasons. The relief has been around since April 2000, originally only for SMEs but extended in 2002 to also provide relief for large companies. In the intervening years, there have been lots of changes, both to the legislation governing the relief and to the 'marketplace' for R&D tax advice.

The tax relief for SMEs is very generous. It gives a tax deduction for an amount in excess of the actual expenditure and, in many cases, a payment for surrendered losses. It is perhaps not surprising that it has become a magnet for unscrupulous advisers wishing to take advantage and profit from it.

### Suspicious activity

Members of professional bodies are governed by professional and ethical standards, both of their governing body and, for many in tax, by Professional Conduct in Relation to Taxation (PCRT). Regrettably, not everyone providing R&D tax relief services operates to such professional standards.

HMRC has long been concerned that 'rogue advisers' are targeting the R&D relief and submitting claims that, at the very least, push the boundary. More recently, it announced that it had detected significant levels of suspicious activity within the R&D relief sector. As a result, routine processing of claims was paused to allow resources to be allocated to investigating these suspicious claims.

Indeed, HMRC recently announced that it has arrested eight individuals in connection with attempts to fraudulently claim more than £16 million of R&D relief.

While HMRC used to have a target of processing 95% of SME claims within 28 days, this target was extended to 40 days to allow for additional checks to be carried out. Indeed, HMRC has even gone so far as to suggest that some of these claims are clearly fraudulent. Letters have been sent from HMRC's Fraud Investigation Service to some claimants, although at a recent R&D Communication Forum meeting HMRC specialists denied that any company had actually been accused of fraud. Correspondence I have seen has not always been in accordance with this claim.

### Changes to R&D relief

The government has proposed a number of changes to the R&D reliefs. Some are due to come into effect from April 2023, while others will be rolled out soon after. On 20 July, draft legislation was published for those changes that will take effect from April 2023, with further changes announced by the Chancellor on 17 November in his Autumn Statement. In addition to a number of miscellaneous changes, the key proposals are described below.

### Claim notifications

Companies will be subject to a new requirement to make claim notifications under certain conditions. Any company that has not made either an R&D claim or a claim notification in any of the previous three accounting periods will be required to make a claim notification within the six months following the end of the relevant accounting period or their claim will be invalid. The requirement will apply both to claims under the SME relief and R&D expenditure credits. We are still waiting for secondary legislation that will be introduced with effect from April 2023, setting out the details of the notification and how it is to be made.

This change is being billed as an anti-abuse provision to prevent the misuse of R&D relief. However, it will place a burden on all businesses carrying out R&D, and penalising everyone seems a harsh way of dealing with this problem. Many impacted businesses, especially SMEs, will not be aware of the changes and the need to make claim notifications, making it likely that they will lose out on R&D reliefs. This will particularly penalise start-ups and growing small businesses.

This requirement is also likely to result in HMRC being inundated with 'protective' notifications submitted in advance where there is any uncertainty about whether expenditure qualifies for R&D relief.

### Provision of additional information

Claims will be invalid unless the company provides the required additional information. This is expected to include information with regard to the nature of the qualifying activities and a breakdown of the eligible expenditure making up the claim. I understand that this information must be provided using an online form.

It is likely that the form will also require the company to provide the name of the senior officer in the company taking responsibility for the claim, as well as the name of any adviser assisting or advising the company in respect of the claim.

### Refocusing R&D relief towards activities undertaken in the UK

The UK's R&D relief schemes have traditionally been quite generous in that they did not have any territoriality restrictions regarding where the R&D was undertaken. This was clearly attractive in that it allowed companies to utilise specialised (and less costly) expert resource that happened to be located overseas and still benefit from the relief.

The arguable drawback of this approach, of course, was that the UK exchequer was rewarding and incentivising the development of this specialist expertise outside the UK. This proposal seeks to address that concern.

> **The proposed changes will cover work contracted out, contributions to independent R&D and externally provided workers.**

The proposed changes will cover work contracted out, contributions to independent R&D and the use of externally provided workers. They will apply to both the SME relief and the large company RDEC relief.

### Contracted out R&D

Where work is contracted out by the company, it will only be able to include the appropriate amount of expenditure in its R&D claim where the expenditure is 'UK or qualifying overseas expenditure'. These terms are defined in the new section 1138A of Corporation Tax Act 2009.

Expenditure will be UK expenditure if it is attributable to R&D activity undertaken in the UK.

### Qualifying overseas expenditure

Expenditure will be 'qualifying overseas expenditure' if the circumstances set out in s 1138A(2) apply. These state that the conditions necessary for the R&D are not present in the UK but are present in the place where the R&D is actually undertaken; and where it would be wholly unreasonable for those conditions to be replicated by the company in the UK.

The draft legislation provides that these conditions could be geographical, environmental or social. There could also be legal or regulatory requirements that mean the R&D had to be undertaken outside the UK.

Importantly, the legislation makes clear that neither the cost of the R&D, nor the availability of workers will be considered to be relevant conditions. Accordingly, the fact that expertise in a particular field is cheaper to obtain overseas, or that the expertise can only be found overseas, will not be considered conditions that mean the expenditure is qualifying overseas expenditure.

This might seem a little harsh, particularly with regard to the availability of the expertise, but the aim appears to be to encourage the development of the expertise within the UK. In a recent discussion on these proposals, HMRC did suggest that the inability to develop the required expertise in the UK within a reasonable time frame might be a 'relevant condition'. The Treasury can add to the list of things that are not 'conditions' for the purpose of qualifying overseas expenditure.

**R&D expenditure credits:** For claims under R&D expenditure credits, the payment to the subcontractor (which must be a qualifying body, an individual or a partnership of individuals) will be eligible provided the expenditure meets the definition of 'UK or qualifying overseas expenditure.'

**SME relief:** For claims under the SME relief, the qualifying amount will depend on whether or not the company and the subcontractor are connected (i.e. where the subcontractor is under common control with the company contracting out the work):

- Where the parties are connected, the definition of the subcontractor's relevant expenditure in s 1134 is extended to include the requirement that it also be 'UK or qualifying overseas expenditure'.
- Where the parties are not connected – and no connected party election has been made under s 1135 – the definition of the qualifying element of the subcontractor payment is amended to be '65% of so much of the subcontractor payment as comprises UK or qualifying overseas expenditure'. If it is necessary to apportion any expenditure for this purpose, this should be done on a just and reasonable basis.

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In order to comply with these additional conditions, companies that contract work out will need to ensure that they can correctly identify any element of the work done by the subcontractor that is not UK or qualifying overseas expenditure. This should not be a problem where the parties are connected, but contracts with unconnected parties should take account of this requirement.

### Externally provided workers

There will also be a restriction where companies are using externally provided workers to undertake R&D. In this case, rather than the restriction being by reference to where the work is undertaken, it will be by reference to the place of taxation of the relevant earnings of the individual externally provided worker. The legislation will introduce a new section 1132A in the Corporation Tax Act 2009, which will provide a definition of 'qualifying earnings' in relation to externally provided workers. These will be any amount of the worker's earnings where either:

- the staff controller has a liability, in respect of those earnings, to account to HMRC for an amount in respect of income tax under PAYE and class 1 NICs; or
- the earnings are in respect of relevant R&D undertaken outside the UK but where the 'conditions' defined in s 1138A (2) apply (see above).

This definition then feeds into the calculation of the expenditure on externally provided workers that can be included in the R&D claim.

**Connected parties:** Where the connected party provisions in s 1129 apply, the eligible expenditure remains the lower of the actual expenditure and the staff controller's relevant expenditure. The definition of the staff controller's relevant expenditure is amended to include a requirement that it also be 'qualifying earnings' of externally provided workers.

**Non-connected parties:** For non-connected party cases, s 1131(2) is amended so that the reference to 65% of the staff provision payment will now be to '65% of so much of the staff provision payment as is incurred in respect of qualifying earnings of externally provided workers.' Again, if expenditure needs to be apportioned in order to satisfy this requirement it should be done on a just and reasonable basis. This means that companies will need to confirm that the earnings of the externally provided workers are relevant earnings so that they can be sure they only claim the correct amount.

> **The legislation will provide a definition of 'qualifying earnings' in relation to externally provided workers.**

As a result of the way the definitions of R&D contracted out (both connected and unconnected) are drafted for the purposes of calculating the R&D fraction for patent box, the changes above will not have any impact on that relief. To ensure consistency in that calculation, this draft legislation includes a provision that ensures the new rules relating to externally provided workers do not flow through for patent box purposes.

### Contributions to independent research

This applies to claims by large companies and Corporation Tax Act 2009 s 104L will be amended to include the requirement that the expenditure is UK or qualifying overseas expenditure.

## Changes to eligible expenditure

The intention is that Corporation Tax Act 2009 s 1125 will be amended to also allow expenditure on data and cloud computing costs to be included in R&D claims.

Currently, companies may include the cost of relevant computer software, which HMRC considers means the cost of software licences. However, the software world has moved on considerably, with more and more software being provided by means of 'software as a service' (SaaS), rather than by licensing copies of the software. In addition, R&D is increasingly undertaken using datasets that are acquired specifically for the purposes of the R&D activity, with processing being undertaken via remote, cloud-based resource. These changes seek to better reflect the current needs of businesses undertaking this type of R&D.

### Data

Relief will be given for the costs of a data licence. For this purpose, a data licence will be a licence to access and use a collection of digital data within an R&D project.

There will be some limitations on the eligibility of data costs. The company acquiring the licence must not have the right to sell that data, or to publish or share the data with a third party, other than as part of the R&D activity. Finally, expenditure on a data licence will not be eligible expenditure if the licence is attributable to a qualifying indirect activity.

### Cloud computing

Relief will be given for expenditure on cloud computing services to the extent that they are directly relevant to qualifying R&D activity. Cloud computing services include the provision of access to, and maintenance of, remote data storage, operating systems, software platforms or hardware facilities.

The same limitations as above will also apply to expenditure on cloud services.

## Rate changes

In his Autumn Statement the Chancellor announced that the rates were being changed for both the SME relief and for RDEC. The changes will apply to expenditure incurred on or after 1 April 2023.

The rate of superdeduction for the SME relief is to be reduced from 130% to 86%, while the rate that losses can be surrendered for payable credit is being reduced from 14.5% to 10%. It is clear that this is, at least in part, an attempt to make the SME scheme less attractive to the sort of fraud attacks recently foiled by HMRC.

At the same time, the RDEC rate will rise from 13% to 20%. The RDEC is a taxable credit so the forthcoming increase in the main rate of corporation tax to 25% would have reduced the effective benefit of the relief if the headline rate had not been increased. An increase to 14% would have been sufficient to maintain the effective benefit, so an increase to 20% shows the intent to make the RDEC more attractive.

The changes taken together will close the gap between the two schemes in terms of the benefit to claimants, although the SME scheme is still marginally more attractive. This is unsurprising when you realise that the government is considering a move to a single scheme, which is likely to be based on the existing RDEC.

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# Women in Tax Annual Debate: Taxing the wealthy – what is fair?

Chartered Institute of Taxation.

**Date: 12 January 2023**
**Time: 17:30 – 20:00 GMT**
**Location: Reynolds Porter Chamberlain LLP, London E1W 1AA**

The Women In Tax Annual Debate, hosted by RPC LLP and chaired by Tasneem Kadiri, Chair of Women in Tax will welcome a great line up of speakers including:

- Robert Waterson, Tax Partner, RPC LLP
- Catherine Grum, Head of Family Office Services, BDO LLP
- Dr. Ben Tippet, Lecturer in Economics at The University of Greenwich
- Kristina Johannson, director of the Solberga Foundation, Co-founder of Resource Justice, and a Founding member of Patriotic Millionaires UK.

The debate will explore whether the wealthy are paying their "fair share" of tax.

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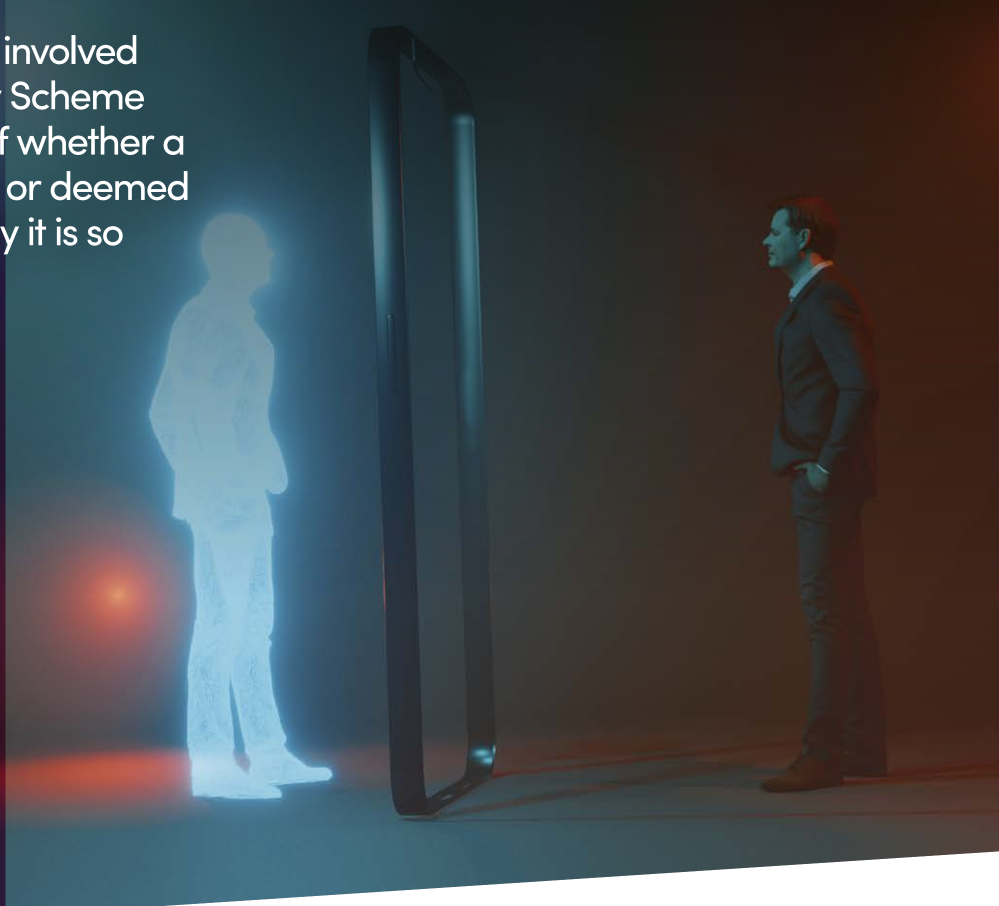
# Businesses going mainstream

## What are you deemed to be?

One of the potential pitfalls involved in the Construction Industry Scheme revolves around the issue of whether a contractor is a mainstream or deemed contractor. We examine why it is so important to get this right.





### Key Points

**What is the issue?**
Following on from our previous *Tax Adviser* article on the Construction Industry Scheme in October 2022, we consider one of the potential pitfalls in more detail; namely, the issue of whether a contractor is a mainstream or deemed contractor, and why getting this right is so important.

**What does it mean for me?**
If a business does not identify it is a CIS contractor when applicable, then it will be at risk of failing to operate CIS. This could potentially result in the business being held liable for under-deducted CIS tax, HMRC penalties and HMRC interest charges.

**What can I take away?**
Businesses undertaking construction operations and incurring construction expenditure must properly consider how CIS applies to their business and the issue of whether mainstream or deemed contractor status applies is central to this analysis.

**by Lee Knight and James Walkerdine**

The Construction Industry Scheme (CIS) is a tax withholding and reporting regime that applies to payments from contractors to subcontractors, made under contracts which include construction operations undertaken in the UK or within UK territorial waters. An important question that businesses brought within the scheme as contractors need to consider is whether they are 'mainstream' or 'deemed' contractors.

### Mainstream or deemed contractor status

The terms mainstream and deemed are HMRC terms which are not specifically defined in legislation, but there accepted meanings can be briefly summarised as follows:

#### A mainstream contractor

A mainstream contractor is a business which includes the carrying out of construction operations and might include a construction business or property developer.

It will need to register as a CIS contractor with HMRC, regardless of the level of its construction expenditure, before making its first payments to subcontractors.

#### A deemed contractor

A deemed contractor is a business (or other organisation) that is not a mainstream contractor but whose cumulative VAT exclusive expenditure on construction operations within the previous 12 month period exceeds £3 million. Ongoing monitoring of construction expenditure against the threshold is therefore required.

It will need to register as a CIS contractor with HMRC only when it has exceeded (or is expected to exceed) this threshold. Furthermore, for deemed contractors the following factors apply:

1. HMRC can allow a period of grace before the business needs to start operating CIS, recognising that it can take time for such a business to set up the appropriate procedures to operate CIS correctly. Since 6 April 2021, this period of grace has been included in legislation, allowing deemed contractors to agree an extension of up to 90 days with HMRC before they must operate CIS. This period of grace is not available to mainstream contractors.
2. Deemed contractors can deregister from the CIS if their construction expenditure falls below the £3 million threshold in the previous 12 month period, and the business does not expect to incur more construction expenditure in the future which would cause it to exceed the £3 million threshold again. Deemed contractors can do this by writing to HMRC or calling HMRC's CIS helpline but should continue to operate CIS until HMRC has approved the deregistration. The ability to deregister for the CIS when construction expenditure falls below the £3 million threshold does not apply to mainstream contractors.
3. Under Regulation 22 of the Income Tax (Construction Industry Scheme) Regulations 2005, certain deemed contractors do not need to operate CIS on construction expenditure relating to premises that are used in its business, the business of another company within the same group, or another company in which the deemed contractor holds at least 50% of the shares. This is provided that the premises are not for sale, let out (unless the letting out is incidental) or otherwise held as an investment. Regulation 22 does not apply to mainstream contractors.

## Establishing whether a business is a mainstream or deemed contractor

The terms mainstream and deemed contractor are used by HMRC to add context to and try and make sense of the legislative definitions at Finance Act 2004 s 59(1). The main distinction between the two contractor types is whether the contractor's business includes the carrying out of construction operations or not. If it does, mainstream status applies; otherwise deemed contractor status applies if the construction expenditure exceeds the £3 million threshold.

The problem is understanding what is actually meant by the term 'includes the carrying out of construction operations'. HMRC's guidance does not clearly explain its interpretation of this term, nor is it defined in the primary legislation within ss 57 to 77 and Schedules 11 and 12 of Finance Act 2004 or the secondary legislation within the Income Tax (Construction Industry Scheme) Regulations 2005.

So, what does the term mean? In our experience of dealing with this point, the key consideration is whether the carrying out of construction operations is fundamental to or incidental to the business being carried on.

If the carrying out of construction operations is fundamental to the business model, then the business 'includes the carrying out of construction operations' and mainstream contractor status applies. If the construction expenditure a business incurs is incidental to its business model, the business does not 'include the carrying out of construction operations' and deemed contractor status applies but only if construction expenditure is large enough.

Sometimes the position will be clear. Take the example of a building company which builds new homes for others. The carrying out of construction operations is clearly fundamental to its business of building homes, and if it uses subcontractors to undertake construction work it will need to register as a mainstream contractor.

Contrast that with a retail company whose main business is retail. It has many stores and a head office which it uses in its retail business, all of which need to be maintained (repairs to the structure of the building, painting and decorating, light refurbishments, etc.), meaning that it will incur construction expenditure.

Its main business is retail and the construction operations undertaken are incidental to that main business activity. It is not a mainstream contractor but if its construction expenditure is large enough and exceeds the deemed contractor threshold, it will need to register as a deemed contractor. There is then an additional consideration as to whether Regulation 22 can apply to its construction expenditure.

There will, however, be circumstances and cases where the distinction is not as clear. The classic problem area is the issue of property investment and property development businesses, and when property investors start to undertake activities attributable to property development.

## Property investment vs property development

At the time of writing, HMRC's guidance (at CISR12080) states the following about property developers:

> 'Property developers are included within the meaning of mainstream contractors because their business activity is the creation of new buildings, or the renovation or conversion of existing buildings, or other civil engineering works. The same is true of a speculative builder.'

The same guidance goes on to say the following regarding property investment businesses.

> 'A property investment business acquires and disposes of buildings for capital gain or uses the buildings for rental; it need not be involved in the construction, alteration or extension of buildings. Even so, if its property estate is substantial enough, its expenditure on construction operations may well cause it to fall within the meaning of a "deemed contractor".'

This guidance is clear up to this point. For a property investment business, construction operations undertaken in keeping its investment properties in good repair (such as painting and decorating, and minor repairs) are incidental to its main business as a property investor, and it therefore should only register as a contractor if it exceeds the deemed contractor threshold.

The position is more complicated and less clear when a property investor starts to undertake property development activities. The HMRC guidance at CISR12080 goes on to say that where a business that is ordinarily a property investor undertakes some activities attributed to those of 'property development', they will not usually be considered a mainstream contractor during the period of that development. This is because the usual nature of the business is 'property investment' and not 'property development'.

However, the guidance continues:

> 'Where the property investment business enters into multiple or substantial contracts relating to construction operations for the purposes of development of one or more properties, you will need to decide if the nature of that business has now changed from "property investor" to "property developer", in which case they would now be considered to be mainstream

contractors as the nature of their business has changed.'

HMRC clearly accepts that some limited activities of property development undertaken by a property investment business would not usually cause its business to change such that it should be treated as a mainstream contractor. But once it enters into multiple or substantial contracts relating to construction operations for the purposes of development of one or more properties, mainstream contractor status could be triggered.

### How this works in practice

The HMRC guidance goes on to provide an example of a property investor becoming a mainstream contractor.

### Example: Property investment business

'A property investment business acquires a number of properties which it intends to let, but before letting, minor refurbishment is required to bring the properties up to a suitable standard to be able to let them. For CIS purposes, we would see this as the normal activities of a property investor, and where the expenditure on such activities exceeds £3 million in a rolling 12 month period then CIS applies.

'The property investment business then acquires a large dilapidated hotel to add to its portfolio, and decides to convert the building into a series of flats which it will then individually let out. As a result, substantial development is required to the property to change the building to its new use.

In respect of this particular development and contract, we would regard the property investment business as having taken on the mantle of a mainstream contractor as its business activity is now that of construction operations.'

### What to draw from this

This example confirms that HMRC regards 'minor refurbishment' works as incidental to a property investment business. However, where construction works are undertaken to enable a change in the use of a building, HMRC would view the construction work as then being fundamental to its business and regard the property investor as having become a property developer and mainstream contractor for CIS purposes during the development.

It is important to note in this example that the property investment business's intention to let these converted flats out is, in HMRC's view, unimportant. Neither do the property investor's longer-term intentions appear to be important to HMRC; there is no mention in this example of whether the property investor intends to undertake similar projects in the future, or whether this is a one-off. It is the fact that substantial works have been carried out (even without a view to sale and without needing to understand the property investor's longer term intentions) that triggers mainstream status.

In this example, which involves a substantial project to develop a dilapidated hotel and change the use of the building to residential flats, it is understandable that HMRC would regard the property investor as having changed its business model and become a mainstream contractor. But these are two very different situations at either end of a scale and there will be other cases in the middle ground which might not be so clear and which the HMRC guidance does not address. In these circumstances it may be appropriate to obtain HMRC's view on the position.

### Why is it important to get this right?

If the business does not identify that it is a CIS contractor, then it will be at risk of failing to operate CIS.

This could potentially result in the business being held liable for under-deducted CIS tax, HMRC penalties, and interest charges which HMRC could, if the business did not exercise reasonable care, recover within a six-year time limit (from the end of the relevant tax year).

Not identifying that it is a contractor over an extended period could therefore be an expensive mistake for a business to make. While claims under Regulation 9 of the Income Tax (Construction Industry Scheme) Regulations 2005 could mitigate the liabilities due to HMRC (for example, under Regulation 9(5) HMRC may direct that a contractor is not liable to pay CIS tax if HMRC is satisfied that the subcontractor paid by the contractor is not chargeable to tax on those payments, or has included those payments when computing profits liable to income tax and Class 4 NIC/corporation tax), such claims are by no means guaranteed and cannot be relied on.

The issue of underpaid CIS liabilities, penalties and HMRC interest charges are a key risk where a business incorrectly determines that it is a deemed rather than mainstream contractor. There are several areas of risk; for example, the business making this mistake might:

- never register as a contractor if it never exceeds the deemed contractor threshold (this threshold would not apply to a mainstream contractor);
- recognise that it exceeded the threshold and register as a contractor, but there could be a period before registration when it was incurring construction expenditure and paying subcontractors where it has not correctly operated CIS (i.e. the business registers too late);
- incorrectly applying Regulation 22 to construction expenditure on property it uses in its own business (for example, a property investment business which applies Regulation 22 to construction expenditure it incurs on refurbishing its own head office at a time when it would be regarded as a mainstream contractor);
- deregister because its construction expenditure drops below the £3 million threshold in a 12 month period after registration (deregistration for these reasons would not be open to a mainstream contractor); -or
- cause VAT issues because of the interaction with the VAT reverse charge for building and construction services.

### Summary

Businesses undertaking construction operations and incurring construction expenditure must properly consider how CIS applies to their business and the issue of whether mainstream or deemed contractor status applies is central to this analysis. Getting this wrong can be a major headache and an expensive mistake.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# Pillars One and Two
## Global tax reform

We examine the tax rules that lie behind Pillar One and Pillar Two, and ask where we are now in the move towards a new global framework.

**by Alison Lobb and Lisa Shipley**

It has been just over a year since political agreement was reached by more than 135 of the G20/Inclusive Framework on BEPS ('the Inclusive Framework') member countries on the 'two-pillar' approach:

- Pillar One: rules for reallocating profits to market countries; and
- Pillar Two: introducing global minimum tax rules.

Significant work has been undertaken by the OECD Inclusive Framework over the last 12 months and, as 2023 will see a move into the implementation phases of the work, it is important to take stock of the latest developments on the different workstreams.

### Pillar One

#### Amount A: nexus and profit allocation rules

Progress has been made over the last 12 months on the development of draft model rules from a technical perspective, but political challenges remain – particularly in relation to US domestic approval of the changes, which will be essential for implementation.

Amount A is, at least for now, of relevance only to the very largest groups as it applies to multinational businesses with:

- global annual turnover above €20 billion; and
- profitability above a 10% margin.

Exclusions apply for businesses in the extractive and regulated financial services sectors. The rules are initially expected to apply to around 100 businesses globally, but the global annual turnover threshold may be reduced to €10 billion in the future, depending on a successful implementation of Amount A.

The 'Amount A' proposal reallocates taxing rights in favour of market countries through the creation of a new taxing right. In-scope businesses will reallocate 25% of their residual profit above a 10% profit level to market countries using a revenue-based allocation key. A progress report containing draft domestic model rules was released in July and followed seven earlier smaller consultations on the 'building blocks' of the rules. A second progress report, released in October, set out proposals for the tax administration and tax certainty aspects of Pillar One.

There remain a number of open issues and points of detail to be developed and agreed, including in relation to withholding taxes (in particular on royalties), which already give taxing rights to market countries. Further work is also being undertaken on the proposed marketing and distribution safe harbour to address 'double counting' issues where a market country already taxes the same item of residual profit. Elimination of double taxation swiftly and efficiently remains key to the 'reallocation' objective of Amount A and is a significant concern for businesses.

The intention is for the Amount A rules to be included in a multilateral convention, which will enter into force only after ratification by a 'critical mass' of countries. This includes countries of the parent entities of a substantial majority of in-scope groups (e.g. the US, Japan, Germany, the UK, France), as well as key additional countries (the 'investment hubs') that will have the obligation to provide double tax relief. The OECD has indicated that the multilateral convention will be available for signature in the first half of 2023. If ratified by sufficient countries, the OECD's intention is for the Amount A rules to enter into force in 2024.

#### Interaction with digital services taxes

A key component of the Inclusive Framework political agreement remains the commitment for the implementation of Pillar One to be coordinated with the

removal of unilateral digital services taxes and other relevant similar measures. This will apply for all companies irrespective of their size and is not limited to those in the scope for Amount A.

If Amount A fails to be implemented by the end of 2023, countries will be free to introduce new digital services taxes if they wish. Canada has already introduced legislation for a digital services tax to apply from 1 January 2024 if the Amount A rules are not in force which would be backdated to 1 January 2022. Similarly, agreements made between the US and other countries such as the UK, France, Italy, Spain, Austria, India and Turkey – to allow offset of excess digital services taxes against future Amount A tax in return for the suspension of trade sanctions in respect of existing digital services taxes – applies until 31 December 2023 (and 31 March 2024 for India).

As part of the ongoing work on the definition of digital services taxes and other similar measures that will be repealed, the OECD will produce, by the end of 2022, a draft list of digital services taxes and relevant similar measures using factors such as whether the regimes:

- impose tax based on market-based criteria;
- are ring-fenced to foreign and foreign-owned businesses;
- are outside the income tax system/tax treaties.

### Amount B: Fixed transfer pricing return for marketing and distribution activities

Amount B, which is an amendment to existing transfer pricing rules, is expected to apply much more widely than Amount A. Amount B looks to establish a definition of 'baseline marketing and distribution activities' undertaken by group distributors.

The proposal is that Amount B would set a fixed benchmarked return for in-scope activities, potentially varying by industry and/or region. These rules might, and logically would, be implemented as part of the OECD's Transfer Pricing Guidelines. A consultation document on how Amount B will work is expected to be released by the end of 2022. This will include information on the scope of Amount B, including whether it will apply only to buy/sell distributors that take legal title to goods, or more broadly.

### Pillar Two: global minimum tax rules

The Pillar Two global minimum tax rules are the most developed component of the OECD's two-pillar approach, with OECD model rules published in December 2021 and subsequent OECD commentary published in March 2022. The rules apply to large multinational groups with annual consolidated group revenue of at least €750 million (broadly those in the scope of country-by-country reporting) and have two key components:

- **An income inclusion rule:** This rule applies on a 'top-down' basis. In most cases, including for most UK headed groups, any tax due is calculated and paid by the ultimate parent company to the tax authority in its country. The tax due is the 'top-up' amount needed to bring the overall tax on the profits in each country where the group operates up to the minimum effective tax rate of 15%.
- **The undertaxed profits rule:** This rule (sometimes referred to as the undertaxed payments rule) will apply as a secondary (backstop) rule in cases where the effective tax rate in a country is below the minimum rate of 15%, but the income inclusion rule has not been fully applied. The top-up tax is allocated to countries which have adopted the undertaxed profits rule based on a formula.

The OECD model rules use a mixture of accounting and tax concepts and will, in effect, require businesses to keep a third set of books for Pillar Two effective tax rate calculation purposes. The result is inevitably complex, and there remains a number of areas which are not addressed by the OECD commentary and/or where further clarity is needed.

The OECD held a public consultation in March 2022 and received extensive feedback on areas where internationally agreed certainty is needed to allow businesses to efficiently prepare for the introduction of the rules. Key areas include:

- situations where there is a loss in the year but a top-up tax arises under specific rules;
- the data source for deferred taxes (this is expected to be group consolidated financial statements but the language of the model rules suggests individual entity statutory accounts);
- clarification in respect of transition rules, including the meaning of 'basis' for assets transferred between group entities and what to do with tax paid on exit when assets are transferred; and
- clarification of when there is a requirement to hypothesise different parent consolidated financial statements when consolidated financial statements are already prepared, e.g. trusts or foundations.

It is hoped that these, and other issues, will be addressed when the OECD publishes an 'Implementation Framework' for Pillar Two, expected to be released by the end of 2022. However, it is likely that regular updates will be needed to address areas of uncertainty as they emerge. This approach would be in line with that taken for the OECD Guidance on the Implementation of Country-by-Country Reporting, where regular updates played an important role in ensuring consistent application by different countries.

## Implementation

The Inclusive Framework political agreement does not require countries to implement the Pillar Two rules but those that do must do so on a consistent basis. Many governments, including the UK, are currently working towards implementation for accounting periods beginning on or after 31 December 2023.

In the UK, HMRC published draft legislation in respect of the implementation of an income inclusion rule in July 2022. The UK's 'multinational top-up tax' will operate as a new tax, separate from the existing corporation tax regime. The draft legislation covers scope, determination of covered taxes and the tax base for the effective tax rate calculation, the calculation of top-up tax amounts, and administration. The UK government has confirmed that a UK qualified domestic minimum top-up tax will also apply alongside the income inclusion rule. There will be a later update on the undertaxed profits rule, which will apply no earlier than accounting periods beginning on or after 31 December 2024.

The UK government approach is to closely follow the OECD model rules. There remain gaps in the UK's draft legislation, particularly in relation to areas where the OECD is continuing its work, such as on potential safe harbours. The draft legislation includes powers for the amendment of the UK rules to align with the OECD framework, including any future guidance or commentary published by the OECD. Because UK legislative terms and ordering have been used and these differ from the OECD model rules, it is hoped that HMRC will publish a 'map' cross-referencing the UK legislation to the OECD model rules to help other tax authorities as well as businesses.

A draft directive for the implementation of Pillar Two in the EU was published immediately after the OECD model rules were released, but it has not yet been possible to obtain the required unanimous agreement from all 27 EU member states, in particular due to current objections from Hungary.

The five largest EU countries – Germany, France, Italy, Spain and the Netherlands – issued a joint statement in September 2022 to say that they will implement the Pillar Two rules directly if unanimity cannot be reached for a directive. This will be achieved through

domestic legislation. The Netherlands has subsequently published draft legislation to implement the income inclusion rule, undertaxed profits rule and domestic minimum tax rules.

An increasing number of other countries are also in the process of considering how to introduce the rules into their domestic legislation and/or have issued public consultations, including Australia, Canada, Ireland, Hong Kong, Japan, Malaysia, Singapore, South Korea and Switzerland.

In respect of the US, the Biden Administration legislative proposals to amend the GILTI rules to align more closely with the Pillar Two rules have not been passed. Although the Inflation Reduction Act included a corporate alternative minimum tax of 15%, it does not apply on the same basis and is not a qualified income inclusion rule in Pillar Two terms. US headed groups will be subject to overseas income inclusion rules at an intermediate holding company level where one exists, with the undertaxed profits rule applying to any remaining low-taxed profits, including in respect of activities in the US itself.

> The Inclusive Framework political agreement does not require countries to implement the Pillar Two rules but those that do must do so on a consistent basis.

## Qualified domestic minimum top-up taxes

The OECD model rules allow for countries to introduce domestic minimum top-up taxes based on the Pillar Two rules. Top-up taxes due in respect of any low-taxed profits of a group's entities within that country would then be paid to the local tax authority, rather than being collected by other countries under either the income inclusion rule or undertaxed profits rule mechanisms. Qualified domestic minimum top-up taxes are perhaps expected to closely follow the OECD model rules but it is not yet clear whether any local country differences will emerge.

The UK government has confirmed that it will implement a UK domestic minimum top-up tax for accounting periods beginning on or after 31 December 2023. It will apply to groups operating in the UK with global revenues over the Pillar Two €750 million revenue threshold, including those operating exclusively in the UK. Other countries are also exploring the introduction of a domestic minimum top-up tax, including Australia, Canada, Hong Kong, Ireland, Malaysia, the Netherlands and Singapore.

## Development of safe harbours

For many businesses, the biggest challenge will be compliance with the complex new rules and collection of the necessary data. The OECD has therefore been working on the development of safe harbours to limit the compliance and administration burden for operations that are likely to be taxable at or above 15% on a jurisdictional basis.

Consideration is being given to the use of country-by-country reporting data, potentially on a temporary basis. The final design of any safe harbours will be reflected in an Implementation Framework, due to be released by the end of 2022.

## Reporting process and administration

Pillar Two will require a step-change for in-scope businesses in terms of global tax compliance – including understanding the rules, collating data, performing and processing the calculations, understanding accounting treatments and adjusting for changes in prior periods, as well as filing additional Pillar Two calculation returns and notifications.

The approach to reporting processes and administration will be set out in the OECD Implementation Framework due to be released by the end of 2022, and will be open to public consultation. A standard template will be developed for an 'Information Return' which will include information on: group members; corporate structure; elections and 'information necessary to compute' the effective tax rate for each country and top-up tax allocated to each country/group member. Comments from governments indicate that the draft return is lengthy and detailed. It will be important for businesses to provide feedback to assist in developing streamlined approaches wherever possible.

Administration will follow a similar approach to that taken for country-by-country reporting, with the ultimate parent company filing the 'Information Return' with its local tax authority, who will then exchange the return with other tax authorities where a qualifying competent authority agreement is in place. The deadline for filing the return will be 15 months after the last day of the accounting period, extended to 18 months for a group's first return.

Local registration and filing requirements will also be required. The UK rules include an annual short domestic return to confirm entities' UK top-up tax liabilities, to be filed with HMRC via a digital service outside of the corporation tax return process. The filing deadline will align with the group's Pillar Two 'Information Return'. Following consultation, top-up tax is to be paid in a single instalment with the payment date also aligned with the filing date for the 'Information Return'.

## Subject to tax rule

The political agreement also included a 'subject to tax' rule to allow developing countries to deduct tax from payments of intra-group interest, royalties and a defined set of other payments. Countries that apply nominal rates of tax below a minimum 9% rate to such receipts will be required to amend tax treaties on request by developing countries. The taxing right will operate as a top up to the minimum rate of 9%. No further details have yet been published by the OECD.

## What's next?

There have undoubtedly been significant developments throughout 2022 and the pace is set to continue in December, with updates expected from the OECD in many areas, including the Pillar Two Implementation Framework (including safe harbours), Amount B, and digital services taxes and other similar measures. Countries are continuing to work on the domestic implementation of the OECD model rules for Pillar Two and more countries are expected to release draft legislation over the coming months. 2023 will be a key year for businesses to ensure that they are ready to comply with the rules as they begin to take effect in 2024.

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# Changes to alcohol tax
## Roll out the barrel

**We examine the changes to the duty structure for alcohol that are to be introduced by the new Alcohol Duty Bill, as well as the reduced rates for smaller producers and low alcohol products.**

**by Alan Powell**

Many years ago, HM Customs and Excise's Revenue Duties Divisions found themselves relocated from the South Bank of the Thames to the south bank of the River Irwell. There was an ongoing major programme called the Excise and Inland Customs Strategy to bring the (mainly excise) control in line with then best practice in indirect tax; namely, systems-based controls.

In 1995, a key objective was to replace the consolidated 1979 excise duty Acts with a modern, simplified and unified Act, encompassing all the excise products (alcohol, tobacco and hydrocarbon oil), their classification, duty rates and simplified administration. The project was derailed when Labour took office in 1997 and had no legislative space for such a big change.

However, a few years ago, Boris Johnson's government committed to a 'fairer' alcohol tax system, free from the constraints of EU law (which was largely based on what had been UK law). There was intense lobbying from the big spirits industries for a lower spirits duty rate, or equivalent taxation with other alcohol products. This led to the Alcohol Duty Review in 2020, and to a draft Alcohol Duty Bill which when enacted will repeal the Alcoholic Liquor Duties Act 1979 and be the first of the excise product taxes to be modernised.

### The Alcohol Duty Bill

As an overview, the Alcohol Duty Bill has a simplified structure and has discarded otiose law that clutters up the Alcoholic Liquor Duties Act 1979. It also incorporates fragmented excise legislation, such as duty drawback provisions and alcoholic ingredients relief to relieve excise duty on alcohol used in soft drinks or food manufacture. Alcoholic ingredients relief is currently

### Key Points

**What's the issue?**
The Alcohol Duty Bill planned for the next Finance Bill will repeal the Alcoholic Liquor Duties Act 1979 to bring into effect a new alcohol duty structure and replace archaic law.

**What does it mean to me?**
The new Act will make changes to the duty structure for alcohol, moving from product-specific duties and bands to (nearly) a single duty on all alcoholic products and a standardised series of tax bands based on alcoholic strength.

**What can I take away?**
As well as a new duty structure, the current fragmented law for approval of alcohol producers will be much simplified under a fairer uniform 'drinks factory' approval in a modernised and simplified package.

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contained in Finance Act 1995 s 4.

‘Alcohol’ is defined succinctly as ‘ethanol’ but an alcohol product is not subject to duty if it does not exceed 1.2% alcohol by volume. The alcohol product classifications are identified in the initial clause of the Alcohol Duty Bill and specifically defined by reference to a schedule. HMRC can change or add classifications by means of regulations.

The historic definitions under the Alcoholic Liquor Duties Act 1979 are retained for spirits, beer, wine and cider. However, the definition of ‘made-wine’, a confusing term, will be changed to ‘other fermented products’, which is also the heading of 2206 for the Harmonized System for such products.

What is really significant is that under Chapter 5 of the Alcohol Duty Bill, producers of all alcohols in duty suspension may be authorised by HMRC to produce and store any type of alcohol ‘under the same roof’ – what we called a ‘drinks factory’ 30 years ago. An authorised manufacturer of alcohol products may also receive equivalent bulk goods to package in the approved premises (currently restricted to brewers).

The ‘drinks factory’ will encompass traditional distillers and maturation processes, as well as the production of gin or flavoured alcohol (‘rectifying and compounding’) from high strength grain neutral spirits. Currently, such maturation and production has to take place in a highly regulated excise warehouse approved by HMRC either under the Alcoholic Liquor Duties Act 1979 s 15 or the Customs and Excise Management Act 1979 s 92.

This consequentially means that there will no longer be the archaic requirement for the licensing of distillers, rectifiers/compounders of spirits, wine producers and made-wine producers. Similarly, the rectifying and compounding of duty-paid spirits (e.g. to make gin outside duty suspension) will no longer require a licence or the ‘making of an entry’.

The details of the registration and approval of alcohol producers will be by regulations. According to HMRC, there will be a single duty return for all products that are released to home use (i.e. at the duty point) and with the duty ‘deferment’ period for payment to be a maximum of six weeks. (This is the period for beer duty and will extend by two weeks the current deferment period for wine, made-wine and cider, and for spirits released from an excise warehouse.)

The potential fly in the ointment will be any requirement for a deferment guarantee, which spirits businesses in particular may not be able to provide due to cost of indemnifying the guarantor. There will need to be an option (as currently) to ‘pay on the day’ when goods are released for consumption (or ‘brew by brew’ as it is called in the beer regime).

## Duty charge and rates

As is the case under the Alcoholic Liquor Duties Act 1979, alcohol products will be charged with duty when they are produced in or imported into the UK (subject to reliefs or exemptions for qualifying products such as ethanol used for scientific purposes). The applicable rates of duty are set out for all products in a schedule, except for products that are subject to small producer’s relief and relief for product in draught (i.e. larger containers for use in the ‘on’ trade), which are subject to individual clauses.

The new alcohol duty rate and reliefs will take effect in August 2023. There still isn’t uniformity of tax treatment for alcohol products but, overall, things are much fairer. The structure is actually fairly simple with four duty bands in which rates for each product are to be applied:

| Alcohol by volume (ABV) | Duty per litre of alcohol in the product (LPA) |
|---|---|
| Under 3.5% | £8.42 |
| 3.5% to 8.5% | The rates diverge:<br>• cider is £8.78<br>• beer is £19.09<br>• wine, other fermented products and spirits is £22.50 |
| 8.5% to 22% | £25.88 |
| Over 22% | £28.74 |

'Plain' cider has a very significantly lower duty rate than other products; however, flavoured cider will still be classified as a 'made-wine' and taxed at that much higher rate. There will also be transitional provisions for a period of 18 months to enable wine of fresh grape between 11.5% and 14.5% ABV to adapt to the strength-based system.

### Draught alcohol relief

The Bill introduces a relief that applies to all alcoholic products under 8.5% ABV intended to be sold 'on draught'. This relief is relatively straightforward, applying a small duty reduction on products which, at the excise duty point, are packaged in large draught containers (minimum 20 litres capacity).

### Small producer relief

The Bill also replaces and extends small brewers relief with a small producer relief that will apply to alcoholic products under 8.5% ABV, produced by those making less than 4,500 hectolitres of pure alcohol per year.

The provisions take up considerable space in the Bill and the details are complicated. All products under 8.5% ABV will be eligible; therefore including beer, cider, flavoured cider and other fermented products (and some ready-to-drink spirits) but excluding wine of fresh grape and full strength spirits. The Treasury has indicated that producers of ready-to-drink spirits made from 'bought in' high-strength spirits would already benefit from the benefits of scale of the original large producer/supplier, so may be excluded from small producer relief. It will be taking views from the industry.

> **Producers of all alcohols in duty suspension may be authorised to produce and store any type of alcohol under the same roof.**

The other contentious element to small producer relief is that all alcohol production is to count towards the maximum production (the 'taper calculation'), instead of each type of product having access to the relief. This means that a small brewer who also produces spirits would have to total all the litres of alcohol produced and could exceed the taper.

### Excise warehousing

Finally, it should be noted that the excises warehousing regime provided for by the Customs and Excise Management Act 1979 s 92 ('bonded warehousing') will not be changed fundamentally, since excise warehouses enable private and third party duty suspension for all excise goods, not just alcohol after production. Excise warehousing is a crucial element of alcohol, tobacco and, in particular, hydrocarbon oils storage on import or immediately after refining.

The changes won't be to everyone's liking but if it's not a wholly brave new world, it's a less timid one and generally fairer and clearer. I'll drink to that!

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# The golden age? Enterprise zone allowances

We revisit a case which looks at the viability of enterprise zone allowance claims on the basis of a 'golden contract'.

**by Keith Gordon**

## Key Points

**What is the issue?**
Enterprise zone allowances were ordinarily available in respect of expenditure incurred within ten years of the site being included in the zone. However, under the Capital Allowances Act 2001 s 298, 'golden contracts' effectively doubled the period in which the favourable capital allowance regime was available in enterprise zones.

**What does it mean for me?**
The decision in this case looks as if it fully vindicates HMRC's views that there is only so far that one can stretch a golden contract.

**What can I take away?**
The question of whether the golden contract has been rescinded is not always that relevant: what matters is whether or not the revised contractual terms form part of that contract or whether they are the result of a fresh agreement.

In my article 'A golden contract' in the February 2020 issue of *Tax Adviser,* I discussed the Upper Tribunal's decision in favour of the taxpayer in the case of *Cobalt Data Centre 2 LLP and Cobalt Data Centre 3 LLP v HMRC*. HMRC appealed against the decision and the case has now been heard by the Court of Appeal ([2022] EWCA Civ 1422).

### The facts of the case

At the heart of the case is a provision in the Capital Allowances Act 2001 s 298, which concerns expenditure on the construction of a building situated within an enterprise zone.

Enhanced capital allowances (enterprise zone allowances) were ordinarily available in respect of expenditure incurred within ten years of the site being included in the zone. However, s 298 provided a slight relaxation of this rule. Provided that the expenditure was incurred under a contract entered into within that ten year period (colloquially referred to as a 'golden contract'), qualifying expenditure could actually be incurred any time within 20 years of the site first being included within the relevant enterprise zone. In other words, these golden contracts effectively doubled the period in which the favourable capital allowance regime was available in enterprise zones.

The case concerns a site which, since February 1996, was located within the Tyne Riverside Enterprise Zone. Just a day before the ten year period was due to expire (i.e. in February 2006), a contract was entered into between a developer and a contractor in respect of the site. Rather than specify a single development project, the contract proposed various options in relation to three different areas on the site.

Subsequently, in accordance with a clause of the 2006 contract, the entered parties varied the nature of the work to be undertaken on the site. Furthermore, in 2011, it was agreed that the construction should now be of a data centre for £54 million plus VAT instead of what had been previously agreed, being the construction of a semiconductor manufacturing facility.

Shortly after this change, Cobalt Data Centre 2 LLP (Cobalt) acquired an interest in the project for £153 million. HMRC argued that Cobalt's expenditure did not qualify under s 298.

### The Court of Appeal's decision

The case came before Lord Justice Lewison, Lord Justice Newey and Lady Justice Andrews. All three gave judgments, although the main judgment was given by Lewison LJ. Although all judges reached the same conclusion, the reasoning differed slightly, with Newey LJ being in a minority.

Lewison LJ disagreed with the first limb of HMRC's case. HMRC had tried to suggest that to qualify for allowances under s 298, expenditure had to have been something that the payer was unconditionally obliged to pay under the original ten year period. (This would mean that the golden contract must commit the payer to incur the expenditure, even if the actual incidence of the expenditure would arise outside the ten year period.)

The judge felt that this was to put in restrictions that were not found in the legislation itself. Therefore, as argued for by Cobalt, it was sufficient to show that the expenditure was incurred under the golden contract within the extended ten year period: the golden contract itself did not have to make that expenditure inevitable.

However, as the judge made clear, the actual expenditure had to be under the original contract. For example, it would not be appropriate for a golden contract to lead to one building being constructed (within the normal ten year period) and then that contract purportedly varied at a later date so as to lead to the construction of a second building. That purported variation, the judge said, would in fact amount to a fresh contract (and, if made outside the normal ten year period, would not attract enterprise zone allowances).

Furthermore, the judge considered the relevance of the parties' subjective intentions; i.e. whether their revised agreement should be treated as a variation of the original contract or a wholly new agreement. Agreeing with the Upper Tribunal, he held that those subjective intentions were relevant to the nature of any varied agreement. However, disagreeing with the Upper Tribunal, he held that they were not determinative: instead, they would be relevant only in borderline cases. It is for a court to decide the categorisation of the parties' revised agreement. (In those few cases, such as the present, where it actually matters, it is ordinarily of little consequence for the parties themselves as they would usually be more concerned with their respective rights and obligations under the revised agreement and not the legal classification of the change.)

As to how this applies in any particular case will ultimately depend on the precise circumstances and whether the revised terms can be reconciled with the previous agreement between the parties. Referring to the facts of the present case, the judge remarked that 'a contract to construct a materially different building on a wholly different site and at a substantially different price ... results in a new contract rather than a variation'. That is what happened in this case and therefore Lewison LJ allowed HMRC's appeal.

Lord Justice Newey reached a similar result but by a marginally different route. Of particular interest was his conclusion that a desire to fall within (or outside) a particular tax treatment can be a relevant determination when ascertaining the parties' subjective intentions. However, on the facts of the case, the tax position was considered not to be sufficiently significant to justify a conclusion that the revised agreement was merely a variation of the original contract.

Lady Justice Andrews said that she agreed with Lewison LJ. However, in a short concurring judgment of her own, she summarised the essence of the court's decision in the present case:

> 'Since the developer was requiring the contractor to carry out building work which was wholly outside the existing scope of the golden contract, for a consideration not mentioned in that contract, and on a part of the site not covered by the works option which it had already exercised, then if the contractor agreed to do the work for that price, in my judgment the correct analysis is that they made a fresh contractual bargain.'

For these reasons, HMRC's appeal was allowed.

## Commentary

This decision therefore looks as if it fully vindicates HMRC's views that there is only so far that one can stretch a so-called golden contract. However, HMRC's victory is likely to be Pyrrhic. As I explained in my earlier article, specialists who had been working in the world of enterprise zones and their HMRC (previously, Inland Revenue) counterparts had long had a joint understanding that would permit enterprise zone allowances to be claimed in such circumstances. It was only a change of HMRC's approach in around 2011 that put the previous practice in doubt. However, HMRC then sought to apply its new (and now vindicated) interpretation to prior expenditure.

As I said in 2020, there is something unedifying about governments encouraging expenditure to be incurred (a disadvantaged area gets the desired investment and the investor gets tax relief) only for the tax relief to be withdrawn retrospectively. Quite sensibly, the taxpayers in the present case launched judicial review proceedings in order to preserve the benefit of the previous HMRC position (irrespective of its correctness in law).

At the previous hearing, the Upper Tribunal allowed the judicial review claim and that decision was not subject to further appeal. As a result, it looks as if the Court of Appeal's decision will be of benefit to HMRC only in respect of those cases where a judicial review was not commenced or to those cases (if any) where expenditure was incurred after HMRC's change of position became known.

One of the interesting features of this case is the fundamental difference between the approach of the Upper Tribunal and that of the Court of Appeal and, in a similar vein, between the respective approaches of the parties. Accordingly, a lot of the arguments had focused on the question as to whether the golden contract had been rescinded (i.e. on the assumption that the revised terms were so different from those previously agreed) so that the revised agreement represented a new contract altogether.

However, the Court of Appeal has shown that matters are a little more nuanced than that. As the court made clear, the question of whether the golden contract has been rescinded is not always that relevant: what matters is whether or not the revised contractual terms form part of that contract or whether they are the result of a fresh agreement. Even in the latter scenario, the original contract might continue in effect.

## What to do next

Advisers with similar enterprise zone allowance cases will, of course, realise that the Court of Appeal's decision means that the allowances are not strictly available. However, they should first ascertain whether their clients are protected by judicial review proceedings.

The court's decision will also be relevant if new legislation is ever introduced to replicate the enterprise zone rules. However, at the time of writing (shortly before the 17 November Autumn Statement), the fate of the proposed investment zones lies somewhat in the balance.


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# Which way are we headed?

## The IR35 hokey cokey

The IR35 rules have always been complex but the back and forth changes in recent months are unprecedented. We take a look at where we are now – and a brief explanation of how we got here.

by Matt Parfitt

**Key Points**

**What is the issue?**
Then Chancellor Kwasi Kwarteng's announcement in the 'mini budget' on 23 September that the off-payroll working reforms were to be scrapped from April 2023 took most of us by surprise. They were followed almost immediately by Jeremy Hunt's reversal to the April 2021 position.

**What does it mean for me?**
This article attempts to clarify the position as it stands at the time of writing, as well as explaining how we got here and where we could yet go regarding this complex and controversial legislation.

**What can I take away?**
Taking the time to accurately assess engagements and consider an appropriate approach to the rules holistically may end up more than paying for itself.

The rules relating to off-payroll working and IR35 have long been a contentious issue for self-employed (or not) contractors and, more recently, organisations utilising their services. This is truer than ever in recent months, following the farce of the 'mini budget' and some misleading information in the public domain.

In this article, I attempt to clarify the position as it stands at the time of writing – as well as explaining the hokey cokey legislative dance behind how we got here and where we could yet go regarding this complex and controversial legislation.

### 2000: Intermediaries legislation

The intermediaries legislation was first mentioned in a 1999 Inland Revenue press release named 'IR35' – which was how it was known colloquially when it became law in 2000. It was introduced to combat the growing issue of contractors (particularly in IT) working through their own limited company in order to prevent an employment relationship with an organisation using their services, even if they were ostensibly working in an identical manner to their employed peers.

In addition to the genuine flexibility and apparently reduced employment rights, there was a motivation for employers to be complicit in such arrangements due to the NIC savings. A personal service company (PSC) avoided PAYE withholding and Class 1 NIC for both the contractor and the engager. The contractor could structure their affairs in a more tax and NIC efficient manner by taking a small salary (up to the NIC primary threshold) and dividends, as well as potentially claiming relief on commuting costs and other expenses to which an employee would not be entitled (this was stopped more recently). Some would even pay a small salary to an otherwise non-earning spouse in order to utilise their tax-free personal allowance.

The original IR35 legislation required contractors operating through a PSC to self-assess their deemed employment status by reference to a hypothetical contract existing between the contractor and the engaging entity. They were required to ignore the existence of the PSC and look through the contractual arrangements to determine the substance of the arrangement and whether the relationship between the contractor and engager was akin to employment.

As the tests for what constitutes an employment relationship are based upon a myriad of case law, this was a highly complex and subjective test, despite HMRC's supporting guidance and later its online tool to check status (which had severe limitations, including the ease by which it could be manipulated).

The more artificial arrangements would no longer be effective under the new legislation. Those contractors genuinely operating as a business for commercial reasons and the flexibility of working as a self-employed consultant were technically unaffected. However, honest and compliant contractors were being tarred by the same brush so unsurprisingly IR35 proved unpopular with almost all contractors. Ignorance of the new rules or more deliberate


non-compliance led to numerous challenges from HMRC, which took up a lot of resource for limited success.

During this era, the standard advice to organisations engaging with contractors was that there was no tax risk to them as long as there was a genuine B2B relationship with a (UK) PSC. However, organisations had to be wary of additional future legislation which could potentially interact with some arrangements, including the 2007 managed service companies (MSC) legislation and the 2014 'offshore intermediaries' legislation, which strengthened the host-employer rules.

Later, the much maligned 2019 loan charge was a particular challenge for contractors using some umbrella company arrangements. A detailed discussion of these other legislative regimes and their interaction with IR35 is beyond the scope of this article and would not make light reading.

## 2017: Public sector responsibilities

April 2017 saw the introduction of new legislation building upon the existing provisions in Income Tax (Earnings and Pensions) Act (ITEPA) 2003 Part 2 Chapter 8. The new ITEPA 2003 Chapter 10 legislation was known as the off-payroll working rules but the term 'IR35' continued to be used. It only applied to the public sector and primarily changed who was responsible for assessing the deemed employment relationship. Where the engager was a public sector body, that 'end client' was obliged to assess status and inform the contractor of the result. If the engagement was deemed to be an employment ('inside IR35') then the end client (or the entity paying the fee to the contractor and their PSC) was required to operate PAYE on related payments to the contractor or their PSC.

Failing to assess IR35 status accurately, or to operate PAYE correctly where necessary, would result in the end client being responsible for any under-withheld PAYE and NIC. However, instead of undertaking balanced and accurate assessments, public sector bodies took a more prudent approach to compliance. Numerous contractors were deemed to be inside IR35 when they should perhaps have been outside if accurately assessed. Worse, many organisations deemed all of their contractors as inside IR35, regardless of the facts, or simply put in place a ban on working with PSCs outside of PAYE.

This wasn't helped by the revamped HMRC tool now known as Check Employment Status for Tax (CEST), which appeared to give over-prudent results, did not give an answer on borderline cases when certainty was most needed, and failed to take into account the concept of (the potential lack of) mutuality of obligation (MoO). Additionally, results from the short questionnaire were easily modified by simply changing the answers. Contractors completing CEST would often obtain a different result than an end client. The statutory right of appeal for contractors was perhaps another reason that many organisations completely blocked PSC engagements.

The expanded legislation was widely seen by many as a stepping stone to roll out the reforms to the private sector.

## 2020: Plans to expand to the private sector

It was announced that in April 2020 the off-payroll working reforms would be expanded to the private sector. To combat concerns about the compliance burden, the rules would only apply to medium and larger businesses. This led to more complexity regarding defining a small business and the transition from small to 'not small' and vice versa.

The updated legislation also introduced some changes to Chapter 10 which would impact the public sector as well. The legislative right for a contractor to appeal was tweaked and some ambiguous transfer of liability provisions were introduced, as well as the need to exercise 'reasonable care' on assessment.

Similar results emerged in the private sector as had previously been seen in the public sector: rationalisation of contractors and blanket bans. There was also a growth in the use of umbrella company arrangements, often opaque or even unknown to the end client. HMRC issued increasing warnings about non-compliant arrangements and guidance for end clients to undertake appropriate supply chain due diligence to avoid liabilities for non-compliance being passed up the supply chain.

Many businesses appeared to struggle with the issue of even identifying what contractors they used. The common business practice was highlighted of limiting headcount by using a contractor as a pseudo-permanent member of a department, thereby raising the question of whether they should be treated as an employee. Other ambiguous scenarios included the use of outsourced services or ‘Statement of Work’ contractors. At what point is an outsourced service actually a supply of labour and personal service needing to be assessed for IR35? Is it when the same individuals spend significant time delivering the service, or when they are named, perhaps vetted or requested by name by the end client?

Another key challenge was understanding how far to go regarding supply chain due diligence. Was it sufficient to take an agency’s word that there were no PSCs further down the chain or that PAYE was being operated? Businesses were baffled due to the uncertainties in the rules and the insufficient published guidance, although this has been expanded since.

When the Covid-19 pandemic arrived, the expansion of the rules to the private sector was delayed by one year. This was universally welcomed and gave businesses more time to prepare, albeit it is doubtful whether many used the time to do so with other priorities taking their focus. The legislation took effect from April 2021. HMRC did offer a ‘light touch’ approach to compliance during the first year.

## September 2022: The Liz Truss curveball

More recent events have caught most of us by surprise. Even with Liz Truss saying that she wanted to review IR35, I don’t think many were expecting the curveball announced by the then Chancellor Kwasi Kwarteng, who announced in the ‘mini budget’ on 23 September that the off-payroll working reforms were to be scrapped from April 2023.

Most businesses appeared to welcome the news, although some were likely irritated by the now irrelevance of all the hard work they had put in to be compliant. HMRC was perhaps somewhat confused and silent on the issue. Many questioned the opportunity for contractors to evade tax, as well as the impact on the Criminal Finances Act 2017 and the corporate criminal offence of failing to prevent the facilitation of tax evasion.

Many contractors took to social media to herald the death of IR35. This was a potentially misleading statement, however, as it was only the 2017 and 2021 changes – i.e. Chapter 10 – that were to be repealed. As we understood at the time, the original Chapter 8 rules would still apply from April 2023, meaning that contractors would again have the obligation to assess their own IR35 status. This would mean that the risk moved back to contractors and threw up a number of questions, including how HMRC would regard an arrangement suddenly flipped from being seen as inside IR35 to outside IR35. Regardless, the conjecture was short lived and we didn’t have long to consider these questions.

## October 2022: The next swift U-Turn

By 17 October, Jeremy Hunt was Chancellor and announced the reversal of much of the mini budget announcements of his predecessor. This included the repeal of the IR35 changes and hence we were back to the April 2021 position. At the time of writing, the expanded IR35 rules continue to place the onus on end client engagers in the public sector and also in medium and large private sector businesses to assess the IR35 status of the PSC contractors in their supply chain.

## So what does this mean?

It’s possible that there could be another reversal, but the political damage of constant flip-flopping on policy, combined with the fact that such a move would be expected to increase the budget deficit even further, probably makes that unlikely in the immediate future. For now, the April 2021 legislation continues to apply. The main thing for organisations and contractors is to keep calm and carry on.

However, there could be some tweaks around the edges of the legislation and supporting guidance. Business might welcome more certainty regarding the widely drafted transfer of liability provisions, how this applies to outsourced or contracted-out services, and more complex supply chains. We continue to have a regime which requires end users to assess status, often without full visibility of all of the facts applying to a contractor and their PSC. They may be forced to make assumptions or rely on potentially misrepresented facts by the contractor or agency. And CEST continues to have serious flaws and provide false assurance.

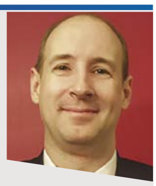
One argument often made about IR35 is that it is only necessary because the UK tax regime differentiates between the employed and self-employed. Another challenge is the sheer complexity and ambiguity of status case law. A statutory employment test or an alignment of the tax treatment for employed and self-employed has been ruled out but is perhaps something that a future government might revisit. In my view, this is an area which needs to be properly reviewed and simplified.

Regarding HMRC’s approach going forwards, we will have to wait and see how it enforces IR35 compliance but any organisation taking a laissez-faire approach would be well advised to rethink and ensure that they take the rules seriously.

Be aware that some agencies don’t fully understand the rules or are deliberately vague about the use of PSCs further down the supply chain. For anyone entering into agency and Statement of Work contracts, the importance of supply chain due diligence cannot be underestimated. Contracts are often unfortunately drafted, which can lead to the engagement being directly between the individual and the engager, instead of a B2B contract with the PSC or agency. I would also urge any organisation with a policy that prohibits the use of PSCs to consider whether this is the right approach. This could actually *increase* the risk of non-compliance by driving PSC use underground. A ban on PSCs could also lead to the mistaken belief that appropriate governance and controls in this area are not required.

Any public or private sector organisation must consider how to assess arrangements in scope of the off-payroll working legislation, whether knowingly entered into or due to indirect PSCs in the supply chain. Using HMRC’s CEST is likely better than doing nothing and constitutes a valid Status Determination Statement (SDS) but you should also consider its limitations. There are also commercial status assessment tools in the market which could be a good option but need to be well researched and understood.

Specialist external professional advice can be an option, both in terms of assessing individual arrangements and regarding the suitability of existing policies, processes and governance. Whatever the chosen route, taking the time to accurately assess engagements and consider an appropriate approach to the rules holistically may end up more than paying for itself. Regardless of what the future may hold, one thing is certain: IR35 remains a great example of the complexity and ambiguity in the UK tax system, the challenges for businesses in complying, and the challenges for HMRC in enforcing compliance.



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# Class 2 NICs changes
# The impact on traders with lower profits


We consider the 2022/23 changes that will apply to Class 2 National Insurance for self-employed individuals with lower profits and how to see through the practical implications that may arise.

**by Antonia Stokes**

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## Key Points

**What is the issue?**
From 2022/23, self-employed individuals with profits falling between the small profits threshold and lower profits limit benefit from Class 2 NICs 'treated as paid'. Those with profits below the small profits threshold may need to make voluntary Class 2 NICs to secure a qualifying year.

**What does it mean for me?**
Traders may wish to understand whether they can bring their profit level over the small profit threshold.

**What can I take away?**
A trader's overall tax position should always be borne in mind, as should their potential access to NI credits already given under the benefits system.

It has been a busy year for changes to National Insurance contributions (NICs). Following Rishi Sunak's Spring Statement, in April 2022 we saw the rates of both Class 1 and Class 4 NICs increase by 1.25 percentage points as a precursor to the (now abandoned) Health and Social Care Levy. The rates were then brought back down again following Kwasi Kwarteng's September 2022 'Mini Budget' – one of the few measures not reversed by his replacement, Jeremy Hunt! For the self-employed paying Class 4 NICs on an annual basis, the rate has been set at an averaged 9.73%.

Planted in the middle of the rate changes, in July 2022 the National Insurance payment threshold for employed workers was increased to align with the personal allowance. For the self-employed, this change resulted in an annualised lower profits limit (the point at which both Class 4 and Class 2 NICs becomes payable) of £11,908 for the 2022/23 tax year, but this will follow the personal allowance from 2023/24 onwards.

With all of the above, it is easy to overlook a lesser discussed change that came out of the Spring Statement relating to Class 2 NICs for lower earning self-employed individuals. For these purposes, 'self-employed individuals' means sole traders and individual partners in partnerships. In the government's Spring Statement document, the measure was described as follows:

> 'The government is also taking steps to ensure that self-employed individuals with lower earnings fully benefit. Spring Statement announces that from April 2022 self-employed individuals with profits between the small profits threshold and lower profits limit will continue to build up National Insurance credits but will not pay any Class 2 NICs.'

Class 2 NICs are important for the self-employed, as they are the determining factor for having a 'qualifying year' for state pension entitlement and contributory state benefits.

The effect of the Spring Statement changes for self-employed individuals is as follows:

- **Situation A:** Those with tax adjusted profits **over** the lower profits limit (£11,908 for the 2022/23 tax year and in line with the personal allowance in future years) will be required to pay Class 2 NICs as normal, at a rate of £3.15 per week.
- **Situation B:** Those with tax adjusted profits **below** the lower profits limit, but **more than** the small profits threshold (£6,725 for the 2022/23 tax year), will not be required to pay Class 2 NICs, but will be treated as having paid Class 2 NICs for the year. (We discuss below exactly what is meant by this.)
- **Situation C:** Those with tax adjusted profits **below** the small profits threshold will not be treated as

having paid Class 2 NICs, so may need to pay voluntary Class 2 NICs (at the same rate of £3.15 per week) if they wish to maintain their entitlement to contributory state benefits.

Consequently, those with the very lowest profits (situation C above) will *potentially* need to pay voluntary Class 2 NICs if they are to secure a qualifying year for National Insurance purposes, whereas a person with slightly higher profits, up to £11,908 (situation B), will not need to pay anything to have a qualifying year.

So what could this mean in practice?

## National insurance: 'credits' versus 'treated as paid'

As noted above, the Spring Statement documents all referred to National Insurance 'credits'. However, the National Insurance Contributions (Increase of Thresholds) Act 2022 s 3(2) sets out the intention that those with profits below the lower profits limit will be *treated as though they had paid* Class 2 NICs. This is actually quite different to receiving a National Insurance credit.

Note that the legislation referenced above merely provides that the Treasury *may* make provision that a person with profits under the lower profits limit is treated as having made Class 2 contributions, and that these regulations can apply with retrospective effect to no earlier than 6 April 2022. The regulations themselves have not yet appeared.

## What are National Insurance credits?

There are two types of 'National Insurance credits': Class 1 NI credits and Class 3 NI credits. They are available in certain circumstances where people are not able to work or might only have a limited ability to work; and where they receive certain means-tested benefits (including working tax credit). The type of credit received will dictate the benefit that the recipients will obtain:



- Class 1 NI credits count towards state pension entitlement and some other state benefits.
- Class 3 NI credits count towards state pension entitlement only.
- A list of the different circumstances qualifying for each type of National Insurance credit is available on GOV.UK (see bit.ly/3TTmNNE).

### What is National Insurance 'treated as paid'?

The concept of National Insurance being 'treated as paid' was already in existence for Class 1 NICs. Employees earning over the lower earnings limit but beneath the primary threshold are treated as having paid Class 1 NICs without actually having to physically make a payment.

The concept now being introduced for Class 2 NICs purposes is broadly similar. However, it could be argued that the opportunity to fall inside or outside the band in which it applies (between the small profits threshold and the lower profits limit) depends on rather more subjective principles, since the calculation of taxable trading profit relies on certain decisions being made relating to allowable expenditure and tax adjustments.

It is worth pointing out here that chargeability to Class 2 NICs is aligned with the profits as chargeable to income tax under the Income Tax (Trading and Other Income) Act (ITTOIA) 2005 Part 2 Chapter 2.

### How is profit calculated?

Consider an individual who has gross self-employed income in excess of the small profits threshold, but where after expenses and tax adjustments their net profit falls below the threshold. In this case, it can be easy to see that the trader might question whether it would be sensible not to claim all of their business expenses on the tax return. In doing this, the trader might be able to 'engineer' a higher profit figure for the purposes of the tax return and, by extension, qualify for Class 2 NICs treated as paid. But is this sort of profit engineering legitimate or permissible?

ITTOIA 2005 s 25 says that profits of a trade must be calculated in accordance with generally accepted accounting practice (UK GAAP).

Under UK GAAP, the accounts must be a true reflection of the financial performance of the business. Therefore, assuming that we are dealing with a trader who is not using cash accounting or the trading allowance, it seems that a trader cannot decide *not to declare* business expenses simply to inflate the taxable profit. So is there anything else to consider?

### Review tax adjustments

It can be the case that tax adjustments for private use are carried forward each year with little consideration given as to whether the position might have changed. It might therefore be advisable, when a trader prepares their 2022/23 accounts, to give these adjustments some renewed attention to ensure they continue to be realistic and supportable.

Another thing to bear in mind is that traders do have a choice when it comes to capital allowances. Might the trader be better off disclaiming allowances?

Of course, care would need to be taken for any newly acquired plant and machinery, bearing in mind that if the annual investment allowance is not claimed in the year the expenditure is incurred, the trader will not be able to claim the 100% deduction in later years, and would only be entitled to less generous writing down allowances. This may or may not be in the trader's favour depending on the overall circumstances in both current and future tax years.

### Alternative ways of calculating taxable profit

What other ways might there be to legitimately increase the profit figure on the self-assessment return? There are a few other options to consider:

- a possible switch to cash basis (or vice versa to accruals basis);
- the use of simplified expenses; and
- claiming the £1,000 trading allowance.

### Use of the cash basis

Under the cash basis (see ITTOIA 2005 Chapter 3A Part 2), income and expenses are only recorded when actually paid and received. This could provide the trader with the opportunity to plan purchases or delay paying bills until just after the year end so that the expense falls into the following tax year.

In addition, a trader who uses the cash basis of accounting is restricted to £500 of allowable finance costs. This restriction to finance costs may prove beneficial to the trader if their actual finance costs are higher than this and they are hoping to legitimately increase their taxable profit for Class 2 NICs purposes.

Once a trader has elected to use the cash basis of accounting, then they must generally continue to do so unless they have a commercial reason to return to the accruals basis (or the level of their turnover exceeds the permitted turnover limits). There are also transitional rules that apply on entering the cash basis.

### Use of simplified expenses

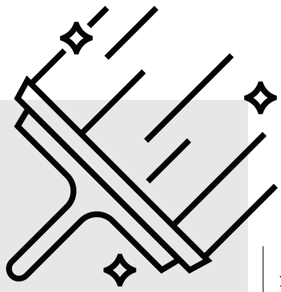
Simplified (or fixed rate) expenses (see ITTOIA 2005 Chapter 5A Part 2) mean that traders are able to make certain flat rate deductions for three key categories of business expense:

- motor vehicles;
- use of home for business purposes; and
- private use of business premises.

Using these could be of use to a trader whose actual expenses exceed the flat rates allowable under the simplified method. As a reminder, simplified expenses cannot be used for motoring expenses if capital allowances have already been claimed in respect of a particular vehicle. Further, if simplified expenses are used in respect of a particular vehicle, then the trader must stick with that approach for the duration of that vehicle's use in the business.

### Use of the trading allowance

Another way that a lower income trader might legitimately create a higher taxable



## WINDOW CLEANER TIMOTHY: CHOOSING WHETHER TO CLAIM TRADING ALLOWANCE

Timothy is a window cleaner who lives in England and makes his accounts up to the 5 April each year. His turnover for the year ending 5 April 2023 is £8,000 and his total business expenses are £2,500. After tax adjustments of £200, Timothy's taxable profit is £5,300 – below the small profits threshold. He also inherited two rental properties in 2021. The profit from his property business is £12,700 for the year ending 5 April 2023.

Timothy wants to know if he would be better off claiming the trading allowance to bring his trading profit above the small profits threshold.

**Claim for trading allowance**

| | £ |
|---|---|
| Trading income (8,000 less trading allowance) | 7,000 |
| Property income | 12,700 |
| | 19,700 |
| Less: Personal allowance | (12,570) |
| Taxable income | 7,130 |
| **Income tax at 20%** | **1,426** |

In this case, Timothy's level of profit will fall within the small profits threshold and lower profits limit. Therefore, Class 2 NICs will be *treated as paid*, without him having to actually make a payment.

**No claim for trading allowance**

| | £ |
|---|---|
| Trading income (under usual principles) | 5,300 |
| Property income | 12,700 |
| | 18,000 |
| Less: Personal allowance | (12,570) |
| Taxable income | 5,430 |
| **Income tax at 20%** | **1,086** |

In this case, Timothy would pay less income tax overall, but his profits would fall below the small profits threshold. He would therefore need to make voluntary Class 2 NICs to ensure that he had a qualifying year for his National Insurance record. Taking Timothy's combined income tax and voluntary Class 2 NICs liability (£3.15 x 52 = £164), his total liability for the year is £1,250, compared to £1,426 where a claim for the trading allowance is made. In this case, Timothy is better off accepting that his profits are less than the small profits threshold and paying voluntary Class 2 NICs contributions to secure a qualifying year.

**PODCAST AVAILABLE**
**Interview with Susan Ball**
Angela Partington interviews Susan Bell, president of the CIOT, about her role: **https://spoti.fi/3UozX5N**

profit figure is by making use of the trading allowance (see ITTOIA 2005 Chapter 1 Part 6A).

This might be an option where the allowable expenses and tax adjustments are more than £1,000. By claiming partial relief of the trading allowance, the trader is only allowed a flat deduction of £1,000 against their gross trading income, meaning a higher taxable profit where their actual expenses are greater than this.

### The bigger picture

Of course, when thinking about any of the above methods to increase the trader's profit so that it falls between the small profits threshold and the lower profits limit, consideration must be given to the trader's other income. It could be counterproductive to secure a saving of Class 2 NICs (by removing a trader's need to make voluntary contributions), but then face an even higher income tax liability overall.

### Benefits claimants

As always when advising those on lower incomes, it is important to bear in mind any interaction that planning might have with benefits entitlements.

As already discussed above, if a trader is receiving means-tested benefits (including working tax credit or universal credit), then they may also be entitled to Class 1 or Class 3 NI credits. Traders in this situation will be less likely to be concerned about securing Class 2 National Insurance 'treated as paid', as they might already have a 'qualifying year' for National Insurance purposes.

It cannot, however, be assumed that a trader with low profits will be otherwise receiving means-tested benefits that will provide Class 1 or Class 3 NI credits. For example, a trader might have low self-employed profits and low levels of overall income but have a wealthier partner, which may mean they are ineligible for means-tested benefits based on their household income. This trader's priority may be to ensure they are still entitled to a full state pension on retirement and so will be very keen to ensure that they have a full contribution record.

It is worth remembering that child benefit claimants will also be entitled to Class 3 NI credits, unless they elect for the credits to be allocated to another family member providing childcare as 'specified adult childcare credits'. Indeed, on the flipside you might be dealing with a trader who is entitled to claim specified adult childcare credits if they provide care for a related child under the age of 12, and the person who claims child benefit for that child does not need the associated NI credit. These are all potential areas to explore before considering the Class 2 NICs position.

### In summary

It is probably safe to say that in the grand scheme of tax savings, spending a lot of time looking at this issue is unlikely to be terribly high priority for many advisers. However, it is useful to highlight these changes to Class 2 NICs as, for some traders, ensuring they have a qualifying year for NI purposes is important.

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**Position:** Technical Officer
**Employer:** Low Incomes Tax Reform Group
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**Profile:** Antonia Stokes is a chartered tax adviser and member of STEP. Particular areas of interest include the taxation of savings and property income, pensions tax issues, National Insurance for employees, and tax issues connected with bereavement, including trusts and estates.

# It's time to complete your 2022 Annual Return.

# Don't get caught out. Stay compliant.

All members (excluding those who are students or fully retired) are required to complete an Annual Return confirming their contact and work details, plus compliance with legal and membership obligations such as:

- Continuing Professional Development
- Anti-Money Laundering supervision
- Professional Indemnity Insurance.

Please check that you have completed your return before the deadline of 31 January 2023 by logging on to the Members portal (https://pilot-portal.tax.org.uk) then click on the banner 'Annual return 2022 now open'.

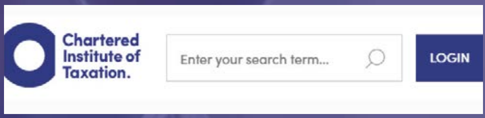
Or you can navigate to Secure area/Members Area/Compliance/Annual Return and select 2022 Annual Return.

## STEP BY STEP GUIDE TO COMPLETING YOUR 2022 ANNUAL RETURN

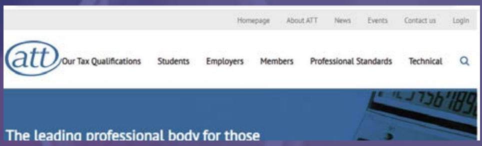
### 1. Login

On the ATT or CIOT website click 'Login' located in the top right corner of each home page.

www.tax.org.uk



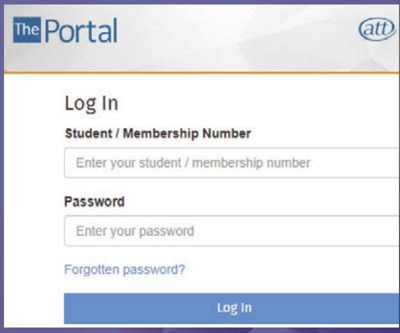

www.att.org.uk




### 2. Portal

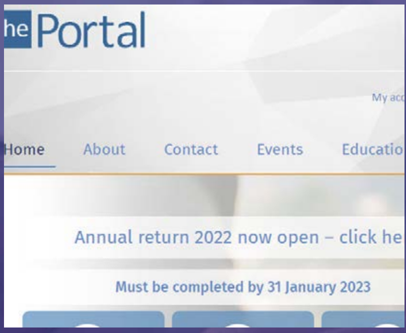
To access your account on the portal please use your:

- **member number**
- **email address**




### 3. Submit

Click on the banner 'Annual return 2022 now open'.




**Questions on how to complete the form?** Please see our FAQs: https://www.tax.org.uk/annual-return-guidance | https://www.att.org.uk/annual-return-guidance.

**31 January 2023 is the deadline for submission.** Failure to complete an Annual Return is contrary to membership obligations and will result in referral to the Taxation Disciplinary Board.

**Key Points**

**What is the issue?**
In cases of separation and divorce of individual parties, a financial provision order may require detailed capital gains tax analysis accompanied by computations from an independent tax expert. In order to calculate the likely tax burden on personal assets that require disposal, a number of questions need clarification.

**What does it mean for me?**
The Court's Procedure Rules must be adhered to when this information is provided by the expert.

**What can I take away?**
The provision of such capital gains tax calculations to the court entails an in-depth understanding of the parties' assets with adjunct latent tax problems.

# Separation and divorce

# Let no CGT put asunder!

We consider the complex issues that impact the calculation of capital gains tax on property in cases of separation and divorce.

**by Jon Golding**

During a marriage ceremony, we are likely to have heard the phrase: '...let no man put asunder'. Following the Covid lockdown, it may have been that many couples spent too much time together and this is leading them to separate and divorce. Currently, the new rules on 'no fault divorce' as detailed in the Divorce, Dissolution and Separation Act 2020 came into force on 6 April 2022, allowing for new legislation that avoids the acrimony associated with the previous rules. Note that new terminology applies now so that a 'decree nisi' is termed a 'conditional order' and a 'decree absolute' is a 'final order'.

Whilst this is very welcome after years of campaigning by many, it still does not avoid the cost associated with the financial negotiations that follow the decision to part. In this regard, there has always been 'negotiation' as to assets held by each party and the values of those assets in financial remedy proceedings before the Court's Family Division. One of the areas that will be addressed is the capital gains tax that would be payable by each party on assets (commercial and private property, shares, etc.) they each hold should the assets need to be liquidated. The Finance Bill 2022/23 has been issued with draft capital gains tax changes expected to apply from 6 April 2023.

> **There are additional matters requiring clarification by advisers which may affect the subsequent calculations.**

It is common for a capital gains tax specialist, when provided with the relevant information, to calculate the tax that would be due, the payment date and any possible mitigations of that amount of capital gains tax. Also, when advising the court of the findings, reference must be made to the Court's Procedure Rules: Practice Direction 25B with special attention paid to para 9.1. Invariably, the capital gains tax specialist will require answers to many seemingly mundane and irrelevant follow-up questions on assets held by the parties!

However, to get a clear picture and hence the correct capital gains tax liability of the applicant (formerly the petitioner) and respondent for the court, this process must be accomplished (see ***Example: Gina – issues to consider***).

### Preliminary capital gains tax issues

There are additional matters requiring clarification by advisers which may affect the subsequent calculations:

- Estimated deductions for costs of sale – say, equal to 3% of the value in respect of all properties to be included in the calculations – are normally included.
- The mortgages and loans outstanding on the properties are deemed not to be part of the capital gains tax computations (see CG12706) and therefore are not included.
- Has any part of any of the properties been used exclusively for business purposes at any point and therefore attract certain capital gains tax reliefs?
- Have there been any capital enhancement costs in respect of any of the properties?
- Provide any details of capital losses of the couple to set off against any capital gains liabilities.
- The value of any foreign property.
- If the yearly income of the two parties in the tax year exceeds the personal tax allowance and the basic rate band, this will result in the parties being charged to capital gains tax at the higher property rate of 28% and not the lower rate of 18%. Also, assets other than property (e.g. shareholdings) may be subject to 10% or 20% capital gains tax.
- The individuals' capital gains tax annual exemption of £12,300 (2022/23) each may be deducted in these computations. Following the Autumn Statement, the allowance will be reduced to £6,000 in 2023/24 and to £3,000 in 2024/25.

### Mitigating the capital gains tax

The capital gains tax adviser may also be asked to address possible methods of reducing the amount of capital tax due and to advise on the likely effects of any mitigation on the amounts of tax due.

### Transfers between spouses and civil partners

The Taxation of Chargeable Gains Act (TCGA) 1992 s 58 provides that where spouses are living together, transfers of interests in assets from one to the other that are chargeable to capital gains are deemed to take place on a 'no gain/ no loss basis'. Effectively, the transferee obtains the asset for the same base cost for which the transferor acquired it.

From 6 April 2023, following government acceptance of a recommendation from the Office of Tax Simplification, s 58 is amended to include sub-sections (1A) and (1B), ensuring that this applies where the disposal is made while the parties are married or are civil partners and are living together.

### Transfers between spouses and civil partners ceasing to live together

By virtue of TCGA 1992 s 286(2), whilst the couple remain married, the two individuals are 'connected persons' and market value is used. From 6 April 2023,

## EXAMPLE: JIM AND CHARLES – CEASING TO LIVE TOGETHER

Jim and Charles, a couple in a civil partnership, separate in the year ending 5 April 2023.

Barring the earlier issue of the final order (previously decree absolute) or a court order dissolving or annulling their partnership, then assets may be transferred between them until 5 April 2026.

This extension is a welcome change as the Family Courts throughout the country currently have substantial delays.

## EXAMPLE: GINA – ISSUES TO CONSIDER

Gina (the applicant) owns 50% of a property in Rome. Gina's brother in Italy owns the other 50% of the property. The property was owned originally by their mother who died on 25 June 2017 and is now valued at €500,000.

The shared discount on the property of 10% to 15% in market value where a property is owned jointly as tenants in common must be taken into account.

Any pound to euro exchange rates must be calculated at the spot rates on the appropriate dates.

An original death valuation in June 2017 was made at €335,000. In Italy, if a property has been owned for more than five years, there is normally no Italian capital gains tax payable. Gina's domicile and UK residence position should also be addressed prior to undertaking the capital gains tax calculation.

s 58(1C) provides for a transfer of assets on a 'no gain/no loss basis' whilst the parties are married or civil partners but have *ceased to live together*, when the disposal is made before the earlier of:

a) the last day of the third year of assessment after the year of assessment in which the parties ceased to live together (see ***Example: Jim and Charles***); or
b) the day on which a court grants the order or decree for the parties divorce, annulment of their marriage, dissolution or annulment of their civil partnership, judicial separation, or their separation in accordance with a separation order.

Additionally, from 6 April 2023, TCGA 1992 s 58(1D) states that the assets transferred are treated on a 'no gain no loss' basis where the parties *ceased or are ceasing* to be married or civil partners; and disposal of the asset is in accordance with an agreement or order under s 225B(2)(a) or (b) ('Disposals in connection with divorce, etc').

### Deeming the former marital home as a main residence under s 225B

The election enabled by TCGA 1992 s 225B provided for the right to receive continuing principal private residence relief on the previously shared family home. Where an individual ceases to live with their spouse or civil partner in what was their only or main residence, a s 225B claim means principal private residence relief is given for the former family home. This means therefore that principal private residence relief would be lost on the other subsequent occupied properties. In view of this, it was always recommended that care should be taken when calculating the benefit of an s 225B election.

From 6 April 2023, TCGA 1992, s 58(3) amends s 225B and extends the principal private residence relief claim until it is eventually disposed of to someone other than the former spouse; i.e. sold to a third party. Separately, a disposal to the former partner is in any case to be treated on a 'no gain/no loss basis' within new s 58(1D).

### Deferred property proceeds paid

Currently, the court order may require that the family home is transferred to, say, the applicant, such that a deferred sum is due to the respondent at a later date when the family home is sold or transferred (e.g. Mesher or Martin orders). Any future payments are capital sums derived from assets (under TCGA 1992 s 22) which are specifically not a debt under TCGA 1992 s 251. Once the future payment is paid to the respondent, it is subject to capital gains tax with a base cost of that right being a sum that the respondent was originally assessed on, notwithstanding part was covered by principal private property exemption.

> **It was recommended that care should be taken when calculating the benefit of an s 225B election.**

However, from 6 April 2023, the new capital gains tax rules at s 225BA state that if, in accordance with the deferred sale agreement or order, say, the respondent receives a sum in respect of a share of any profit made upon disposal by the applicant of the dwelling house (i.e. main residence), the receipt of that sum would be treated as a disposal falling within TCGA 1992 s 22 (capital sums derived from assets). That receipt is to be treated as a gain attributable to the respondent's initial disposal attracting principal private residence relief or, as the case may be in s 58 (1A)-(1C), on a 'no gain/no loss basis'.

So, it seems that the new Finance Bill 2022/23 provisions if enacted 'let no capital gains tax put asunder'.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# Some things change... CPD and PII Regulations


We set out the key changes to CIOT and ATT regulations and guidance relating to our Continuing Professional Development and Professional Indemnity Insurance Regulations.

**by Jane Mellor**

The last update to the Continuing Professional Development (CPD) regulations and guidance was in 2017 and represented a considerable change to our previous approach. The 'hours' requirement was removed and since then members have been required to perform such CPD as is appropriate to their duties. As more than five years have passed since the introduction of those regulations, it has been timely to review their operation and refresh the regulations and guidance.

The Professional Indemnity Insurance (PII) Regulations and guidance have been in place in their current form since 1 January 2013. Our exit from the EU meant that we have had to update the document to remove the out of date references.

We have also seen changes over this period in how our members operate. With far more individuals working as subcontractors or based overseas than before, it became clear that the regulations and guidance needed to include more in relation to these kinds of activities. Those working on the update were also conscious of the current 'hardening market' for our members in obtaining cover.

In addition to the above, far fewer of our members now retire in the traditional sense. This is not only reflected in the fact that an increasing number of members choose to do some consultancy work in the run up to full retirement; many also give something back to the community by providing their expertise on a pro bono basis. Of course, a number of members who are not retired are also committed to providing pro bono services.

Where individuals are holding themselves out as our members, the public will expect a high standard of work from them, even where it is provided without charge. It was therefore important to address the protection of the public, and of members, by making it clearer what we expect by way of CPD and PII cover in relation to those undertaking such voluntary work.

## CPD: what remains unchanged and what is new?

The overall approach to CPD required by members remains the same:

- The rules apply to those working in tax or who hold themselves out as tax professionals through the use of the designations.
- There are no minimum hours or 'structured' versus 'unstructured' requirements.
- Members are required to perform such CPD as is appropriate to their duties.
- Compliance is checked through the Annual Return and each year a number of members are asked to submit their records.

### Key Points

**What is the issue?**
Members are required to undertake CPD where they provide tax services or hold themselves out as a CIOT or ATT member, or an ADIT Affiliate, by use of the designations. Members in the business of providing tax services (referred to as 'members in practice') are required to have PII. Updated regulations and guidance apply to both CPD and PII requirements from 1 January 2023.

**What does it mean to me?**
Members should ensure they meet the Professional Standards requirements relevant to their situation. Requirements are still relevant to those who may have retired or provide pro bono work, act as subcontractors or are based outside the UK.

**What can I take away?**
This article covers the key changes made to both CPD and PII requirements.

The wording of the regulations has been updated to provide more clarity to members. In particular:

- The regulations apply to those who work providing tax services. This includes those providing complementary accounting and legal services (regulation 1.2.1).
- Those using the designations and undertaking pro bono work must undertake CPD. This includes those retired members using the

designations (regulation 2.4). It follows that if a member does pro bono work and does not undertake CPD, they must not hold themselves out as a member by using the designation after their name.
- Those doing pro bono work and not using designations should still consider whether CPD would be beneficial. If it is not undertaken, then they are required to be transparent about this with those to whom they provide services.

Subject to the above, retired members and honorary members are exempt.

It has also been timely to update the guidance provided to members to accompany the regulations. Much of the updated guidance reflects the results of the annual CPD checks undertaken on a selection of member records and addresses member queries arising out of the Annual Return questions.

Given that the hours requirement for CPD was removed over five years ago, references to this have now been completely removed from the guidance. We have also slimmed down the guidance and included further clarification for ATT members studying for their CIOT exams, and for members taking a career break.

## What help is available to members so they can meet their CPD requirements?

Members should ensure that they review the updated regulations and guidance which are available on the CIOT website (bit.ly/3TDPi0M) and the ATT website (bit.ly/3UVX3Ah).

In many cases, members will be employed by firms that will arrange the CPD required for the individual. Those who do not have CPD provided in this way may find it helpful to look at the resources listed on the CIOT website (bit.ly/3EbmEPa) and ATT website (bit.ly/3GlHKgj). These pages include links to materials which members may find of assistance in meeting their CPD requirements. They should not be taken as a recommendation of particular providers.

CPD record forms are also available and there are links from the main CPD webpages.

## PII: What remains unchanged and what is new?

The new regulations apply from 1 January 2023. Those with an annual policy with a renewal date before 1 January will need to ensure that they are aware of the updated regulations when they renew. We would not envisage this causing significant changes for most members as the overall approach remains unchanged and members in practice are still required to obtain PII. We continue to see this as an important part of protecting the clients of tax advisers and in protecting our members.

The main changes to the regulations and guidance are set out below:

### 1. Retired members and pro bono work

Pro bono work continues to be exempt from PII. However, in line with the changes to the CPD regulations and guidance, members have to consider whether it is beneficial to put PII in place. Where they do not do so, they must be transparent with those whom they are assisting. The definition of pro bono work was also looked at again and honoraria are no longer included in the definition.

Retired members are exempt from PII requirements (other than PII 'run off' cover) but where they undertake pro bono work they should follow the procedure outlined in the previous paragraph.

### 2. EU reference and excess limit update

A small amendment was required to the regulations to remove a reference to insurers being authorised in any EU state. The excess limit has also been brought in line with ICAEW requirements to assist those who are members of both ICAEW and CIOT/ATT. The excess limit is now £30,000 per principal (previously £20,000 per principal).

### 3. Subcontractors

When reviewing the regulations and guidance, we were aware of the increasing number of individuals who operate as subcontractors. Feedback from PII brokers indicated that we needed to tighten the PII regulations for subcontractors. Subcontractors are members in practice and all require PII under the regulations. They can claim an exemption but **only if they have written confirmation** from the contracting firm that:
- it has named the subcontractor on its own professional indemnity policy; and
- the insurer has waived its right to subrogation in relation to the subcontractor. This means they have agreed not to pursue the subcontractor if a claim is made against the firm in relation to that individual's work.

We will be contacting members to specifically follow up on these updated requirements where they indicate on their 2022 Annual Return that they were subcontractors for the year and PII was provided by the contracting firm.

### 4. Members based overseas

Overseas work has become more popular given the rise in remote working. On review of the regulations and guidance, we were aware that they were silent on territorial scope and the requirement on members based overseas. Amendments to the regulations now make clear that:
- The regulations apply to those based in the UK and those in any other countries providing services to clients based in the UK.
- Overseas firms which cannot obtain compliant cover must obtain the nearest equivalent.
- Overseas firms not servicing UK clients are encouraged to seek PII of an equivalent standard to that set out in the regulations.

Again, we will be following up overseas based members in practice to make them aware of these changes when reviewing the 2022 Annual Return answers.

## What help is available to members so they can meet their PII requirements?

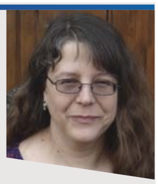
Members should ensure that they review the updated regulations and guidance which are available on the CIOT website (bit.ly/3O61zu3) and the ATT website (bit.ly/3UFWwmn).

Whilst the CIOT and ATT cannot recommend that members take out a particular PII scheme, both bodies have an arrangement with insurance providers that, by virtue of their membership, any quote provided to a member will be compliant with CIOT and ATT requirements. The relevant links are CIOT (bit.ly/3E86dTO) and ATT (bit.ly/3TFgZGP). Note that included with this information is detail about a low cost policy for those with fees of less than £5,000, including those undertaking pro bono work only.

## Conclusion

For most members, it will be 'business as usual' in relation to CPD and PII during the forthcoming year. However, some important changes have been introduced which are of particular relevance to the retired and those doing pro bono work. In relation to PII, members based overseas or acting as subcontractors will need to take particular care to ensure they meet the requirements of the updated regulations.

Any members with queries should contact the Professional Standards team at standards@tax.org.uk or standards@att.org.uk.

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# WELCOME

# December Technical newsdesk

It's not normal in tax for something announced one day to become out of date just a short while later. But we are not in normal times, and recent events have shown that this can indeed happen. And again, the perils of writing an introduction a fortnight prior to publication came back to bite me after I stated in last month's column: 'If you are quick off the mark reading *Tax Adviser*, you will currently be pondering the tax measures within the Chancellor's Medium-Term Fiscal Plan announced on 17 and 31 October.' Of course, the Medium-Term Fiscal Plan didn't take place on 31 October after all, but on 17 November, where it formed part of the Autumn Statement. More on that below and as further developments occur.

Tax is already complicated and, arguably, it would be boring if it didn't change from time to time. But the feedback we hear from businesses tends to follow the same theme; that stability and certainty is more important than any particular incentive or rate of relief. Boring can be good.

Frequent changes make it nigh on impossible to keep up to date – not just with the underlying rules, but the administrative processes, too.

Thinking about the daily updates I get from GOV.UK (four of them because one subscription doesn't seem to cover all potentially relevant sources), I wonder how anyone can read them all and get a day's work done.

This reminds me of the COVID support schemes, and the recent inquiry by the Public Accounts Committee on which we report below. In an 18 month period, there were around 50 substantive changes to one of the several guidance pages about the Coronavirus Job Retention Scheme (CJRS). This means that there were probably several hundred individual iterations of guidance over the life of the CJRS, so it's no surprise that there was a high rate of errors. But at least now we return to the traditional Budget cycle with the Autumn Statement.

Speaking of which, we weren't overly surprised at the announcements on the day. A further freezing of allowances, more windfall taxes, and a reduction in the additional rate threshold had been rumoured in advance, and the changes to R&D relief and SDLT were not unexpected. Some of these measures will bring more people within the scope of various taxes, causing more administrative burdens and costs for those affected, and more 'customers' for HMRC to deal with. Can we all cope?

Unfortunately, two hoped-for announcements were missing from the statement. First, a reversal of the decision to disband the Office of Tax Simplification (no u-turn is coming), and some relaxation of the scope or introduction of Making Tax Digital for income tax. Maybe we'll hear something on the latter soon."

## NEWSDESK ARTICLES



## Contact


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CORPORATE TAX OMB

## House of Lords inquiry on research and development draft Finance Bill measures

Representatives from CIOT and ATT gave evidence to a House of Lords committee on research and development tax reliefs in October. They argued that HMRC could use risk profiling more effectively to target claims likely to be ineligible, set out concerns around the proposed new advance notification measures for research and development claims and discussed how standards could be raised amongst those giving advice in relation to research and development.

Representatives from the CIOT and ATT gave evidence to the House of Lords Finance Bill Sub-Committee's inquiry into the draft Finance Bill 2022-23 (see tinyurl.com/5abrmvce). The Finance Bill Sub-Committee is appointed annually by the Economic Affairs Committee to consider the draft Finance Bill from a tax administration, clarification and simplification point of view. This year, the sub-committee has decided to focus on the reforms to research and development (R&D) tax relief in the draft Bill.

The inquiry will produce a report containing conclusions and recommendations. Based on previous inquiries, we anticipate that this will be published in December or January.

In the oral evidence session, discussion covered areas including how effective R&D relief is in encouraging R&D, whether changes are needed to it, whether it can be simplified and how abuse of the relief can be tackled.

It was agreed that too many claims were getting through which should not, and this is tainting the system. Lack of HMRC resource to check claims was cited as a factor. It was suggested that there needs to be a more effective process of triaging claims, building on HMRC's risk assessment processes, looking at both taxpayers and their advisers.

Both CIOT and ATT supported HMRC's efforts to tackle abuse. It was agreed that abuse of R&D relief puts a strain on relationships between tax advisers and their clients, particularly when they see others putting in R&D relief claims that are accepted while they are being advised not to.

However, it was generally considered that the Finance Bill proposals would not help to tackle abuse in any significant way. We said that some of the measures could assist from an information perspective if the additional information can be used effectively by HMRC.

The measure that will require advance notification of an R&D claim was considered to be the most damaging, as it would affect both genuine and non-genuine claimants equally. The representatives said that it will put another hurdle in the way which will impact on all claimants. It is likely to prevent genuine claimants from accessing the relief to which they are entitled, while not necessarily leading to a significant reduction in abuse. We said that it will not be enough to put off the minority of agents who use high pressure sales techniques – they are likely to change their approach to meet pre-notification deadlines. On the other hand, smaller and newer businesses who need support in the early days from R&D relief are the most likely to lose out. Neither the CIOT nor ATT support this measure.

In terms of other things that could help, representatives said that there was scope for better guidance from HMRC, particularly around what does and does not qualify for R&D. It was also suggested that there should be more integration of R&D claims in a company's tax account with HMRC. It was noted that currently the process is only 'digital' because it is submitted online; multiple forms will still need to be completed following the changes in the Finance Bill – if anything the changes are going to complicate the system.

The sub-committee also asked about awareness of R&D tax relief amongst small businesses. We said that this varied across the smaller companies. There is a lack of understanding of what is meant by R&D. It was suggested that HMRC could do more to raise awareness. If businesses understand more about what is and what is not R&D, it might make them less susceptible to unscrupulous agents.

We suggested there should be some way for regular tax advisers to report inappropriate promotional materials or dubious practices. This happens informally at present, but generally the agent/representative body that makes the report does not hear anything back from HMRC, which leads to a sense that little is being done.

A recording of the evidence session is available at tinyurl.com/2s4ja6x5 and the discussions are summarised in our blog at www.tax.org.uk/311022_rd_relief. The CIOT and ATT also provided written evidence to the sub-committee, which can be found at: www.tax.org.uk/ref1039 and www.att.org.uk/ref411.

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GENERAL FEATURE EMPLOYMENT TAX PERSONAL TAX

## Public Accounts Committee inquiry into the COVID-19 Employment Support Schemes

The CIOT provided written evidence to the Public Accounts Committee's inquiry into the COVID-19 Employment Support Schemes.

On 14 October, the Public Accounts Committee (PAC) opened an inquiry into the COVID-19 Employment Support Schemes; namely the Coronavirus Job Retention scheme (CJRS), and the Self-Employment Income Support Scheme (SEISS) (see tinyurl.com/bd8d9y9y).

The call for evidence broadly addressed three topics:

a) whether the schemes achieved their objectives to support incomes and the labour market and reached those previously excluded from the schemes;
b) how the government managed the delivery of the schemes through their later iterations, including attempts to improve the value for money of the schemes by making them more targeted while managing the risk of error and fraud; and
c) how HMRC have estimated the level of error and fraud and undertaken compliance work to detect error and fraud.

Our written evidence focused principally on the second question, though we did make some brief comments on the first and third questions.

We recognised that the CJRS and SEISS were introduced at short notice, in a time of crisis, and inevitably the government had to balance speed of delivery with the likelihood of fraud and error. We feel that HMT and HMRC should be commended for the speed with which they rolled out these schemes, and continued to prioritise their delivery during the pandemic.

Notwithstanding this, both schemes were complex, particularly the CJRS because it required the claimant to determine both eligibility and the amount to be claimed. SEISS increased in complexity as attempts were made to better target support.

Given the complexity of the CJRS, the speed of its introduction, and frequent changes to its rules, we are not surprised at the level of errors. It was particularly hard for smaller employers to obtain

EMPLOYMENT TAX INTERNATIONAL TAX

## Office of Tax Simplification: Review of hybrid and distance working

**The ATT, CIOT and LITRG have responded to the Office of Tax Simplification's call for evidence reviewing the trends and tax implications arising for hybrid and distance working.**

The ATT, CIOT and LITRG have responded to the Office of Tax Simplification's (OTS) review looking for evidence of the emerging trends and tax implications of hybrid and distance working (tinyurl.com/2s6jshex). Our responses also consider whether current tax and social security rules are flexible enough to cope, as new ways of working become business as usual.

In its response (www.litrg.org.uk/ref2692), LITRG reported that they have received an increasing number of queries from members of the public in respect of a wide range of cross-border working arrangements. In their evidence to the OTS, LITRG commented that there is a high level of confusion and uncertainty among unrepresented taxpayers in understanding the tax and related consequences of cross-border working. In particular, unrepresented taxpayers can find it difficult to determine their own residence position and understand the 'source' of income in a cross-border working situation. Also, social security is often overlooked and can be incorrectly assumed to follow the tax position.

LITRG added that they expect the complexity and lack of guidance in this area leads to non-compliance, or otherwise to decisions taken by employers based on a misunderstanding of the risks involved. They hoped that the OTS's review will prompt HMRC to fill this general guidance gap so that, should current trends continue, cross-border working generates less of a compliance 'headache' for all concerned.

The CIOT response (www.tax.org.uk/ref1010) follows up on a meeting with the OTS in September. Bearing out LITRG's evidence, the CIOT noted that member feedback also indicates that it is becoming increasingly common for employees to want to work more flexibly and to choose where they work from, which is leading both the employer and the employee to face several tax compliance issues. The CIOT highlighted three key areas:

- for employees temporarily working in a country other than where they normally work, how tax and social security in that country comes into play;
- for a UK resident employee working from home or hybrid-working, what expenses and benefits-in-kind are taxable or tax exempt; and
- for an overseas business with a UK-based employee, in what circumstances could the employee's presence in the UK cause a UK permanent establishment (PE) to be established.

In replying to these points, the CIOT's response discusses the current trend towards a more flexibly based workforce, and then raises a number of practical issues that members have reported in relation to working across international borders, travel and other expenses for hybrid and home-based employees, and PEs. The CIOT also included recommendations to address these issues, such as improving guidance and using technology to speed up HMRC decision making. Our suggestions are aimed at making it easier for employers to account for the correct taxes from the outset and allow HMRC to focus their resources on higher-risk areas.

The ATT also met with the OTS to discuss their review (though they did not submit a written response). At this meeting, many of the issues highlighted above by the CIOT and LITRG were discussed. In particular, the ATT noted that there continues to be confusion over the taxation of employee benefits and expenses in the context of hybrid and distance working. The difference in tax treatment between employer provided benefits and reimbursed benefits was also flagged as an area of complexity. The government should look to provide more guidance for employers and employees. Consideration could also be given to legislative changes, such as putting the (now expired) temporary relaxation for employers reimbursing employees for home office equipment purchases on a more permanent footing.

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reassurance from HMRC that they were claiming correctly, and we regret that the Treasury Directions given to HMRC provided no discretion for them to exercise their care and management powers, particularly for cases where employers were acting in good faith and in pursuance of the stated objectives of the CJRS.

We stated that more could have been done to limit the number of ineligible claims for SEISS, such as introducing more 'red flags' into the eligibility checker and the claims process itself. Agents were unable to make claims on behalf of their clients, and we believe this contributed to an increase in ineligible claims. HMRC should reflect on why it was not possible to promptly deliver agent functionality in this instance.

While welcoming the limited extensions to both schemes, we remain disappointed that the government did not do more to fill the gaps in support. Inevitably, the schemes had some hard edges and design flaws, but it appears that the government chose not to commit the necessary resources either to fill significant gaps, or to introduce more targeted support schemes which were safer from abuse. This resulted in some individuals receiving little or no support for up to 18 months.

Our full submission will be published on the technical submissions page of the CIOT website (www.tax.org.uk/submissions/1) once the PAC has itself published our evidence.

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GENERAL FEATURE

## CIOT input to European Commission work on tackling the role of enablers

An update on CIOT input in relation to the European Commission call for evidence in tackling the role of enablers.

The European Commission launched a public consultation in the summer on the policy options being considered to 'improve the regulatory framework for tax intermediaries'. Their aim is to tackle the role of 'enablers' that facilitate tax evasion and tax planning in the European Union.

The Commission set out their view that tax evasion and aggressive tax planning continue to be a significant problem and the options currently being considered are:

- Option 1: requirement for all enablers to carry out dedicated due diligence procedures;
- Option 2: prohibition to facilitate tax evasion and aggressive tax planning combined with due diligence procedures and a requirement for enablers to register in the EU; and
- Option 3: code of conduct for all enablers.

Whilst the UK is no longer a member state, any legislation brought in looks likely to impact tax advisers providing advice to European entities or individuals.

CIOT is a member of CFE Tax Advisers Europe (CFE) and provided input on the response they submitted to the Commission (tinyurl.com/pm7dvy8t). In particular, the CFE:

- recommends further analysis of the nature and extent of the problem which the Commission are seeking to address before the introduction of any new legislation. The Commission's view appears to be based on data before changes arising as a result of the base erosion and profit shifting project and the European Union mandatory disclosure regime (DAC 6);
- expresses the view that any European Union proposals should not have a disproportionate impact on reputable tax advisers, for example through additional due diligence requirements; and
- draws attention to the CFE work on Professional Judgment in Tax Planning.

Given that the Commission's published evidence referenced the regulatory position in the UK, the CIOT also worked with ICAEW on a further joint response to the Commission (www.tax.org.uk/ref977) to provide some further feedback on UK experiences. This joint response:

- calls for the Commission to build a robust evidence base to establish the true extent of the problems and in particular makes the suggestion that member states should be encouraged to develop and publish detailed information on tax gaps in a consistent format;
- draws the attention of the Commission to work undertaken in the UK on developing tax planning principles as set out in Professional Conduct in Relation to Taxation (PCRT) (www.tax.org.uk/professional-conduct-in-relation-to-taxation-pcrt). The Commission were encouraged to review PCRT alongside the CFE work on Professional Judgment in Tax Planning;
- refers to UK legislation which seeks to prevent aggressive tax planning, including the promoters of tax avoidance legislation and the penalty regime for enablers of defeated tax avoidance; and
- echoes the response given by the CFE that additional burdens placed on advisers should be reasonable and proportionate and that any legislation should be targeted directly at those who engage in unprofessional behaviour.

We now await the response from the Commission and will keep members updated.

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GENERAL FEATURE

## Improving the data HMRC collect from customers: HMRC consultation

CIOT, ATT and LITRG have responded to a recent HMRC consultation which proposed several potential options for improving the range of data that HMRC collect, use and share across government.

In a consultation published by HMRC on improving the data HMRC collect (see tinyurl.com/46wba7w4), six areas were identified where HMRC believe their data could be improved, along with specific implementation options. These are:

- the business sector of the self-employed;
- the occupations of employees and the self-employed;
- the location of an employment or a business;
- the hours that employees work;
- dividends paid to shareholders in owner managed businesses; and
- the start and end dates of self-employment.

Noting that the COVID pandemic brought into sharp relief how little the government knows about its citizens and businesses, the consultation claims that improving the administrative data collected by HMRC and other departments can provide an accurate and up to date picture to help build a trusted, modern tax administration system and improve government policy and operational decision making.
The consultation sought views on the proposals before the government makes final decisions regarding which data to collect, from whom and from when.

### CIOT response

In its response, the CIOT said it was concerned that gathering this additional data will place significant extra administrative burdens on employers and businesses, for little or no direct benefit to them. However, we said that we are mindful that the government is hoping to use the data to target investment and support to grow the economy and deliver improved policy outcomes. The better targeting needs to be evidence based and if the underlying data does not exist, it must be collected somehow. We also recognised that there may be situations where the tax system is as sensible a way as any other of collecting this data; however, some of the data, for example employee occupation and location data, may be difficult to collate and provide to HMRC in a cost-efficient way.

There may be potential tax benefits in collecting some of the data; for example, in helping to target HMRC's compliance activity better. However, we questioned whether HMRC have the resources to handle the collection and processing of this amount of additional data and indeed whether this is a good use of HMRC's limited resources, as much of the data is intended for use by other government departments. Unless additional resources are going to be made available specifically to cope with the additional data, HMRC need to prioritise improving the delivery of their existing services and compliance activity before taking on further responsibilities. Even if additional resource will be made available, we suggested that it would be better used in bringing service standards back to an acceptable level.

We noted that additional powers will have to be granted by Parliament to HMRC before the data can be collected. The collection of this sort of data (for example, business sector, occupation and location) on a mandatory basis is currently outside the core functions of the Commissioners for HMRC, as contained in Commissioners for Revenue and Customs Act 2005 s 5, since it is not relevant to the collection and management of revenue or tax credits. Additionally, there will need to be legislative changes to Taxes Management

Act 1970 to cover data which has nothing to do with tax that will be collected via the self-assessment tax return. (For example, s 8 currently states that a person may be required by notice to deliver a return ‘for the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year’.) There would appear to be several other knock-on effects to the tax administration compliance framework that, we suggest, will need to be consulted on further if it is decided that any of these proposals are to be implemented and the requests for new data made mandatory.

We also had concerns about the penalties that taxpayers may face if the collection of this data is made compulsory. While HMRC say they will take a reasonable and proportionate approach to penalties, we think that there should be a separate penalty regime, which is not tax related, if taxpayers omit or provide incorrect data unrelated to their tax liability. If you fail to provide a business sector code, for example, that should not make the whole tax return incomplete.

### LITRG response

The LITRG response recognised that there can be benefits from HMRC gathering additional data that is relevant to taxpayers’ tax liabilities. However, we raised a few concerns in relation to the proposals in the consultation document.

We noted that HMRC could make more use of the data in its possession to improve the taxpayer experience, rather than focusing purely on minimising the tax gap. Use of data that results in HMRC assisting taxpayers to benefit from the reliefs, allowances and deductions they are entitled to will help to build trust in HMRC and the tax system. This in turn will help to improve compliance.

LITRG is concerned that HMRC do not currently make best use of the data they already gather. While we accept that there are sound arguments in some cases for gathering more data, in general we think the starting point should be to focus on making best use of the data it already collects.

In relation to most of the options put forward in the consultation document, the foremost argument for collecting the data is to assist the government in other areas of policy, rather than tax. We have requested clarification as to whether HMRC is the appropriate body to collect and use the various types of data included in the consultation.

Finally, the HMRC consultation proposed that it will be mandatory to provide the data and that penalties will apply where it is not provided. We raised a few questions, including whether HMRC have the appropriate resources or expertise to exercise judgement as to whether a piece of data is accurate or complete.

### ATT response

The ATT response made many of the same points as CIOT and LITRG. It also noted that the consultation concerned two very distinct types of data: data which (in the words of the consultation) could contribute to building a trusted, modern tax administration; and data which could contribute to improving government policy making. We noted

MANAGEMENT OF TAXES

## Offshore corporates owning UK property: HMRC letter campaign

**HMRC launched a letter campaign in November 2022 to tackle non-compliance linked to offshore corporates owning UK property.**

HMRC have reviewed data, including from the Land Registry, and have identified non-resident corporate owners of UK property that may not have met certain UK tax obligations. Depending on the circumstances, HMRC may issue one of two letters, the purpose of which is to prompt recipients to review their affairs and encourage those who need to rectify mistakes to make voluntary disclosures to HMRC.

The letters are accompanied by a Certificate of Tax Position and a Notice of Intention to Disclose. They explain that disclosures must be made by completing the certificate and notice and sending them to one of two dedicated email addresses, or by post to the address provided in the letters. The Worldwide Disclosure Facility via the Digital Disclosure Service must not be used.

While the letters are addressed to the corporates, both also recommend that the companies should ask connected UK resident individuals to ensure their personal tax affairs are up to date in respect of the related anti-avoidance provisions.

One letter will be issued to non-resident companies that own UK property and may need to disclose income received as a non-resident corporate landlord or a liability to the annual tax on enveloped dwellings. Under the transfer of assets abroad legislation, UK resident individuals who have any interest in the income or capital of a non-resident landlord, whether directly or indirectly, may be within the transfer of assets abroad income charge provisions at Income Tax Act (ITA) 2007 s 721 and s 727. A UK resident who has not personally transferred assets but benefits from a transfer made by somebody else (for example, occupation of property) may be within the transfer of assets abroad benefits charge at ITA 2007 s 731. The letter recommends that any such individuals should seek professional advice to ensure their affairs are up to date.

The other letter will be issued to non-resident companies that appear to have made a disposal of UK residential property between 6 April 2015 and 5 April 2019 without filing a non-resident capital gains tax (NRCGT) return. Between 6 April 2015 and 5 April 2019, disposals of UK residential property by non-resident companies were subject to NRCGT. Where the company purchased the property before April 2015 and the whole of any overall gain is not charged to NRCGT (or otherwise), then that part of any gain not charged may be attributable to the participators in the company under TCGA 1992 s 13 (these rules have since been relocated to TCGA 1992 s 3). Additionally, such corporates may also be liable to pay UK tax on rental profits, income tax under the transactions in land rules and/or annual tax on enveloped dwellings. Again, the letter suggests that any individual participators should seek professional advice to ensure their affairs are up to date.

The letters have not been copied to agents because HMRC have no way of knowing if the company has an agent, since they are non-filers.

The CIOT has published guidance to assist members should a client, or potential client, receive one of these letters from HMRC. This includes guidance on how to respond to HMRC’s letter, whether or not there is anything to disclose, and whether the client should sign and return the certificate in view of the serious consequences of making a false declaration.

The letters and guidance can be found on the CIOT website at: www.tax.org.uk/offshore-corporates-owning-uk-property-hmrc-campaign.

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that the two categories raised different considerations. We also noted that turning attention to the collection of additional data could adversely impact HMRC's existing data projects, such as the further development of the Single Digital Account.

ATT said that there needed to be a clearer articulation of the intended application of the additional data and its value within that context to determine whether the additional burden imposed on those required to provide the data was proportionate to that value.

In relation to the collection of data other than for the purposes of tax administration, we made the case for separate and early consultation on the legislative framework required to enable that collection. We noted in particular that this should consider the relevance and design of sanctions for non-compliance, the related safeguards and the GDPR implications. We added that this separate consultation on the framework should be brought forward before the wider data collection project was progressed.

The CIOT's full response can be found here: www.tax.org.uk/ref989.

LITRG's full response can be found here: www.litrg.org.uk/ref2690.

The ATT response can be found here: www.att.org.uk/ref404.

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EMPLOYMENT TAX

## Employment Taxes Forums

A brief overview of employment tax forum meetings attended by representatives of the CIOT, LITRG and ATT.

In this article, we summarise the main points from meetings of various groups that took place this autumn, which are attended by CIOT, LITRG and ATT volunteers. HMRC publish the minutes of meetings on GOV.UK.

### Employment and Payroll Group (EPG)

This group (tinyurl.com/mr24bnu6) is the main HMRC forum for employment tax related matters. The forum is attended by representatives of CIOT and ATT and meets quarterly. The main topics of discussion at the last meeting were the national minimum wage, scholarships, PAYE settlement agreements and the starter checklist.

### Share Scheme Forum

CIOT and ATT representatives attend this forum (tinyurl.com/5a5wwf3s). The main topics discussed at the last meeting were updates to HMRC's guidance, the *Vermilion* case, possible changes to next year's employment-related securities annual returns, and the SAYE bonus rate mechanism.

### Employment Status and Intermediaries Forum

This forum (tinyurl.com/mr3fjdef) is attended by the CIOT and met prior to September's announcements. HMRC provided an update on its work following the National Audit Office's and Public Accounts Committee's reports on the 2017 Off-Payroll Working reforms.

### Collection of Student Loans Consultation Group

CIOT, LITRG and ATT representatives participate in this group (tinyurl.com/3vcvkdrs). Topics discussed included a potential update to the P45 to include student loan deduction information, the updated starter checklist, and common employer issues with processing student loan deduction start and stop notices.

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PERSONAL TAX MANAGEMENT OF TAXES

## UK Property Reporting Service: update

**The latest updates on the UK Property Reporting Service.**

In October, ATT, CIOT and LITRG met with HMRC as part of our ongoing engagement on the UK Property Reporting Service. This service is the standalone, online portal for taxpayers and their agents to report certain disposals of UK land and property within 60 days of completion.

One of the big issues earlier this year was how to correct the position where a property return was not submitted, with reports that many taxpayers were still unaware of the rule changes. In September's edition (tinyurl.com/2p88cf2a), we set out HMRC's position that anyone in self-assessment who has reported and paid the required CGT via self-assessment but who has failed to file a property return should retrospectively file a paper return to satisfy that obligation. (Those outside self-assessment who have yet to file a property return can do so via the online service before considering if they need to be within self-assessment for that year.)

HMRC have now confirmed that the usual penalties will apply to such late returns. This is despite the fact that it was not possible to file a late property return after having already reported the disposal via self-assessment and prior to HMRC allowing such taxpayers to file on paper. However, taxpayers can appeal the penalties if they have a reasonable excuse. Work is ongoing within HMRC to identify taxpayers who should have filed a property return but did not. HMRC noted that individuals who have missed a property return in that period 'should not be complacent'.

Regarding paper returns, HMRC confirmed there is a backlog in processing these. As at mid-October, they were working through returns from May. We are hoping to receive a formal response shortly to our request that paper returns should be made more accessible, and that agents and taxpayers should be allowed to download these from GOV.UK. While we are hopeful of progress, HMRC are concerned that this might drive agents away from the online service. We hope that, given the processing delays with paper returns – and that it is easier to both amend returns and track payments using the online service – whenever clients can complete the digital handshake, agents will continue to use the online service rather than resorting to paper.

HMRC are continuing to update the manual pages within appendix 18 of their CGT manual. The latest updates add more detail on obtaining repayments, payment by instalment in case of disposal by way of gift, and include a clarification of how the various payment references work. Now that the manual is in place, we have asked HMRC to look at improving and expanding the guidance for the public on GOV.UK. In the meantime, ATT will keep updating their guide (www.att.org.uk/UKCGT) as and when we learn new things about the service.

October's meeting was the last of our regular meetings and from now on, meetings will be on an ad hoc basis as further issues arise. Please do keep sending queries to us at the emails below, or raising them directly with HMRC on the Agent Forum.

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INDIRECT TAX

## Joint VAT Consultative Committee: VAT rates review project

HMRC's Joint VAT Consultative Committee has formed a sub-group tasked with reviewing VAT rates for the reduced rate, zero-rate and exempt schedules to the VAT Act. The stakeholder group includes the CIOT and ATT.

In the Office of Tax Simplification (OTS) report 'Value added tax: routes to Simplification' *(*tinyurl.com/4w8pa5wt*)* published in 2017, recommendation 4 was: 'HM Treasury and HMRC should undertake a comprehensive review of the reduced rate, zero-rate and exemption schedules, working with the support of the OTS.'

In the OTS evaluation report in October 2019 (tinyurl.com/3xwhvhje) at paragraphs 1.33 and 1.34, it was noted that EU Member States may be given greater flexibility about using different rates of VAT and that the recommendation would progress once the terms of the UK exit were clearer. At that point, we did not know that the world was about to enter a global pandemic so that, combined with Brexit in the UK, the progress of many tax projects was impacted as focus was shifted to dealing with COVID issues.

The OTS recommendation was recorded on the issues log for the Joint VAT Consultative Committee (JVCC), and now that the focus on tax issues arising from the pandemic has subsided, the JVCC has formed a sub-group. The JVCC sub-group members can present HMRC with expertise and analysis on items in the reduced rate, zero-rate and exemption schedules.

The OTS recommendation covers many complicated areas of VAT, and the sub-group, which has been meeting regularly, has agreed to initially work on a very limited number of items within the relevant VAT schedules. The intention is that these topics will be considered further by smaller focus groups of niche VAT specialists. Once the sub-group agrees best practice going forward, the scope of work will be widened. More focus groups to consider more sectors and topics will be formed in due course. We will report further details on the project over 2023.

Jayne Simpson *jsimpson@ciot.org.uk*
Emma Rawson *erawson@att.org.uk*

INDIRECT TAX

## VAT: Modernising the partial exemption special method application process

Following HMRC's launch of a new online application process when requesting a partial exemption special method, representatives from the CIOT met with HMRC's Partial Exemption team to discuss how the new system works and what benefits it brings to partially exempt taxpayers.

HMRC have modernised the application process for a partial exemption special method (PESM), with the recent launch of an online application (tinyurl.com/ykztm69j) via a G-form. The online process digitalises the list of PESM requirements set out in Appendix 2 of VAT public notice 706: *Partial exemption* (tinyurl.com/yps3akj7), in the 'What you need to upload' page of the online application. It is worth noting all of the requirements on this page as you need to have the right upload ready for the particular area of the online application before progressing to the next question.

The HMRC email addresses formerly used for PESM applications (including the COVID PESM email address) have been decommissioned. As stated in the public notice, those who are digitally excluded may still use the written application route.

Once a PESM application is submitted, there are several HMRC teams that may become involved. Initially this will be the PESM caseworker, though they may seek input from several sources: the Customer Relationship Manager (large businesses), an industry sector VAT specialist or partial exemption specialist, or from VAT policy. As the various VAT specialists can be in different locations, the online application creates a single focal point for the PESM application, meaning that the input is recorded in a single place, the officers all have access to the input from other teams, and the timelines for actions are more visible. Whilst a written submission will go through a similar process, if the application has not included all the information requested in the online application or Annex A, this will slow the application down as HMRC will have to enter into correspondence to request that more information is provided.

The CIOT asked questions about how the online application may impact typical PESM experiences:

- **Agent involvement:** It was noted that if an agent completes the online application, the business is still responsible for making a fair and reasonable declaration. The signed declaration by the client can be uploaded via the G-form as part of the application process.
- **Impact to timelines:** There are experiences of PESM applications taking a long time to be approved, with some more extreme examples taking over two years. HMRC noted that receiving the online application via the G-form allows the application to be added to their database of method proposals, which greatly assists with the visibility of long running cases in the internal dashboard statistics and allows extra resources to be allocated.
- **PESM with exempt and non-business activities:** HMRC confirmed that the online application route can be used when a taxpayer wants a PESM for both exempt and non-business activities.
- **Adjusting a PESM:** Where a business changes (including changes to a group membership) and the method remains fair and reasonable, there is no need to request a new PESM. However, any changes which mean that the method is no longer fair and reasonable or where the client wants to use a different calculation will mean a new proposal is required.
- **Reasons for a PESM rejection:** The CIOT highlighted that it was crucial in communications to understand the reasons why a PESM application had been rejected, particularly for complex PESMs where it was rejected for only one or two areas of non-agreement. As the PESM can take of lot of time for the taxpayer and agent to prepare, understanding HMRC's precise reservations is important. HMRC said that they would always want to see correspondence clearly detailing the areas of concern and internal training supports that outcome.

If you have any feedback about the online application process for a PESM, do let us know at technical@ciot.org.uk with 'PESM online application' in the email title.

Jayne Simpson jsimpson@ciot.org.uk

GENERAL FEATURE

## Wales consults on a visitor levy

The CIOT would like your views on the Welsh government's proposals to introduce a discretionary visitor levy in Wales.

The Welsh government is consulting on the design of a visitor levy, a self-assessed tax for visitor accommodation providers in Wales based on overnight stays. It will be for the 22 local authorities in Wales to decide whether to introduce it in their area.

The aims of the visitor levy, as set out in the consultation, are to:

- ensure a more even share of costs to fund local services and infrastructure that benefit visitors between resident populations and visitors;
- provide local authorities with the ability to generate additional revenue that can be invested back into local services and infrastructure that can support tourism; and
- support the Welsh government's ambitions for sustainable tourism.

The consultation considers the detailed design of the levy including;

- the scope (overnight visitors or day visitors?);
- whether to implement the levy via a national framework or with full local discretion, or a combination of the two;
- when to collect the levy, for example, at point of arrival or departure, or when booking?;
- which accommodation providers to exclude;
- the use of the proposed statutory licensing scheme for visitor accommodation, or other mechanisms to provide a comprehensive list for local authorities of the visitor accommodation in their area;
- frequency and nature of returns by accommodation providers; and
- enforcement and compliance.

The consultation is at tinyurl.com/3n4u34zn and closes on 13 December 2022. The CIOT's Welsh Technical Committee will respond and would welcome your views. Please email Kate Willis at kwillis@ciot.org.uk with your views on the consultation, or any aspect of it.

Kate Willis kwillis@ciot.org.uk

| CIOT | Date sent |
|---|---|
| Treasury Committee inquiry into Tax Reliefs<br>www.tax.org.uk/ref987 | 20/09/2022 |
| Improving the data HMRC collect from its customers<br>www.tax.org.uk/ref989 | 11/10/2022 |
| Tax evasion and aggressive tax planning in the EU: tackling the role of enablers<br>www.tax.org.uk/ref977 | 11/10/2022 |
| Public Accounts Committee inquiry into HMRC Annual Report and Accounts<br>www.tax.org.uk/ref1012 | 24/10/2022 |
| Review of hybrid and distance working<br>www.tax.org.uk/ref1010 | 04/11/2022 |
| House of Lords Finance Bill Sub-Committee inquiry into R&D tax relief<br>www.tax.org.uk/ref1039 | 8/11/2022 |
| **ATT** | |
| Treasury Committee inquiry into Tax Reliefs<br>www.att.org.uk/ref403 | 19/09/2022 |
| Improving the data HMRC collect from its customers<br>www.att.org.uk/ref404 | 10/10/2022 |
| House of Lords Finance Bill Sub-Committee inquiry into R&D tax relief<br>www.att.org.uk.ref411 | 8/11/2022 |
| **LITRG** | |
| Improving the data HMRC collect<br>www.litrg.org.uk/ref2690 | 07/10/2022 |
| Welsh government consultation on A Fairer Council Tax<br>www.litrg.org.uk/ref2691 | 12/10/2022 |
| Office of Tax Simplification Call for Evidence: Review of hybrid and distance working<br>www.litrg.org.uk/ref2692 | 17/10/2022 |
| Treasury Committee: Cryptoasset industry: Call for Evidence<br>www.litrg.org.uk/ref2695 | 27/10/2022 |
| Treasury Committee inquiry: Tax Reliefs<br>www.litrg.org.uk/ref2696 | 03/11/2022 |

# News from CIOT and ATT

## Peers hear from experts on R&D relief

Representatives from ATT, CIOT and other professional bodies gave evidence to a House of Lords committee on research and development tax reliefs on Monday 31 October. The committee, chaired by chartered tax adviser Lord Leigh of Hurley, is looking into the R&D reforms in draft Finance Bill 2022-23. They are expected to produce a report in December.

David O'Keeffe, an R&D specialist and member of CIOT's Corporate Taxes Committee, told the peers that the compliance process for R&D relief is ineffective. Too many claims are getting through that shouldn't, which is tainting the system, he said.

He suggested that some kind of triage system, building on HMRC's risk assessment process and looking at both taxpayers and their advisers, could be effective in identifying incorrect claims while not holding up genuine ones. But he warned against a 'draconian clampdown' which would defeat the purpose of the relief.

Responding to Lord Turnbull, a former Treasury Permanent Secretary, who had pointed out that the amount being paid out in R&D credits had more than trebled in seven years, O'Keeffe suggested that revised ONS methodology could be a factor, in addition to claims being allowed through that shouldn't be.

Technical Officer Emma Rawson gave evidence for ATT. She told the committee that ATT has serious concerns about the proposal to require pre-notification of R&D claims. It won't be enough to put off the minority of agents who use high pressure sales techniques – they are likely to change their approach to meet pre-notification deadlines, she thought. On the other hand, smaller and newer businesses are the most likely to lose out.

Rawson suggested there should be some way for regular tax advisers to report where they see inappropriate promotional materials or become aware of dubious practices. Additionally, she explained that the current situation puts professional body members in a difficult position. They abide by PCRT. There are agents out there who don't. Clients may have engaged an R&D specialist who prepares an inappropriate claim, then asks their regular agent to put in a tax return. This puts the member in an awkward position.

Witnesses at the Lords hearing, including David O'Keeffe (front right) and Emma Rawson (back right)

**You can read a liveblog of the evidence session at tax.org.uk/311022_rd_relief**

## Political update

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

CIOT President Susan Ball has written to the new Chancellor encouraging him to reconsider his predecessor's decision to abolish the Office of Tax Simplification. Susan has also written to the new tax minister Victoria Atkins, welcoming her to her post and inviting her to meet with the Institute to discuss issues of concern, including HMRC service levels.

It has been a busy time on the parliamentary committees front, as articles elsewhere in this section indicate. Both ATT and CIOT have provided written and oral evidence to the House of Lords inquiry into draft Finance Bill 2022-23 (see report above). CIOT has been cited in questioning of HMRC officials by the Public Accounts Committee and in a report from a Scottish Parliament committee (see opposite).

Head of External Relations George Crozier has contributed an article on tax simplification to a pamphlet published by the All-Party Parliamentary Group on Anti-Corruption and Responsible Tax, on 'What is Fair and Responsible Tax?'. George also took part in a roundtable organised by the group in October on 'Tax in the age of crises'. CIOT Director of Public Policy John Cullinane took part in a separate roundtable organised by the group on tackling aggressive tax avoidance.

LITRG has written to financial services minister Andrew Griffith suggesting improvements to the government's proposals to make 'top-up payments' to low-income pension savers who currently miss out on government retirement savings incentives.

# CIOT tells MPs of concerns over HMRC service levels

HMRC's performance standards need to be improved, CIOT has told MPs on the House of Commons Public Accounts Committee (PAC).

In a submission to the committee ahead of its hearing with HMRC bosses on 20 October, CIOT said it continued to be concerned about the difficulties that both advisers and taxpayers face getting timely responses and action from HMRC. The Institute added: 'We are concerned that staff numbers within HMRC are being cut in anticipation of securing savings from digitalisation when these savings have not yet been realised.'


SNP MP Peter Grant


Conservative MP Olivia Blake

During the hearing, SNP MP Peter Grant challenged the HMRC officials over the decline in HMRC customer service levels, and asked when 'efficiency savings' become cuts in customer service levels.

In the submission, CIOT also told the MPs that:

- Proposed changes to R&D tax credits will prevent some genuine claimants from accessing the relief.
- Complexity and frequent changes to the Coronavirus Job Retention Scheme were the cause of many taxpayer errors in relation to the scheme.
- The government should take a more systematic approach to the evaluation of tax reliefs.
- There is an apparent lack of consistency in decision-making following time to pay arrangement requests.

The Institute's comments on R&D credits were picked up by Conservative MP Olivia Blake, who put them to the officials. Responding, HMRC chief executive Jim Harra acknowledged that policing error and fraud risks while making sure that legitimate claimants can access them 'is a balancing act'.

The short inquiry is expected to lead to a report in December or January.

# MSPs note CIOT concern in report

A new report from the Scottish Parliament's Finance and Constitution Committee draws attention to the CIOT's suggestion that an annual Finance Bill for the Scottish Parliament be explored. The committee published its pre-budget inquiry report on 3 November, ahead of the planned Scottish budget on 15 December.

Amid concerns around the prospect of further income tax divergence that could have resulted from September's UK mini-budget, the report notes comments by CIOT that there is a lack of evidence thus far of sustained behavioural change as a result of existing differentials. However, it acknowledges concerns that the potential still remains for tax differentials to deter investment.

The committee also acknowledges comments made by CIOT and the David Hume Institute around the prospects for the reform of council tax, which the Scottish government has already acknowledged is unlikely in the current parliament.

## In the news

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

'We urge HMRC to keep this issue as a priority and review all repayment agents' practices, not just in relation to assignments, but other areas of consumer protection. Where agents fall short, HMRC should use all existing powers open to them to take immediate action to protect taxpayers.'

*Victoria Todd, Head of LITRG, quoted in the Daily Mail after HMRC's announcement it will refund people who lost money to one refund company, 4 Oct*

'What is needed is a more strategic review of the taxation of labour to address the factors which make this so contentious. The aim should be to minimise the differences between being taxed as an employee, as self-employed and contracting via a company, or at least making the distinctions clearer.'

*John Cullinane, CIOT Director of Public Policy, quoted in The Times on changes to off-payroll working, 17 Oct. ATT's Emma Rawson was quoted in the Financial Times, 21 Oct, on the same topic.*

'The government is limited on tax changes by the Conservative manifesto. The government may just create new taxes to get around it or even a possible freeze on thresholds.'

*Emma Rawson, ATT Technical Officer, BBC News Channel, 1 Nov. Additionally Emma's colleague, Helen Thornley, appeared as a guest on Radio 4's Money Box, 19 Oct.*

'We are contacted by people saying they have received three or four letters from different reclaim agents and they want to ask for our opinion. Sometimes they are a complete non-starter. These agents are often just firing off letters on the off chance.'

*Marc Selby, Chair of CIOT Property Taxes Committee, quoted in the Daily Telegraph on a surge in falsely claimed SDLT relief, 23 Oct*

'Susan Ball, President of the Chartered Institute of Taxation, has written to Kwarteng's successor Jeremy Hunt, arguing that keeping the OTS as an independent organisation would help prevent the risk of in-house tax simplification efforts retreating to "group-think".'

*Financial Times, 2 Nov*

## Charities

# Christmas campaign

Valerie Boggs, CEO of TaxAid and Tax Help for Older People on how you can support people in poverty and debt to cope with the cost-of-living crisis.

TaxAid and Tax Help for Older People provide free tax advice for people on low incomes who need professional advice but can't afford to pay for it. The people we help have nowhere else to turn, and demand for our support is increasing. No other charities can or do provide the help we do – thanks to our amazing volunteers from the tax profession who give their time and expertise free of charge.

Tax debt brings enormous stress and anxiety and is often another burden on top of low income, disability, bereavement, frailty or poor mental health. Calls to our helplines have increased significantly this year as the cost-of-living crisis pushes more people into poverty and debt.

We have helped more than 20,000 people across the UK this year, ensuring they understand their liabilities and that they pay the right amount of tax. Our beneficiaries often find that as well as their tax problem being resolved, their tax debt is remitted or refunded. For those living in poverty, this can make a life-changing difference.

Margaret (not her real name) called Tax Help for Older People as she was unable to verify her identity for her online tax return. She spent hours going round in circles, but as she did not have a passport or a credit card, she was unable to prove her identity. She contacted HMRC by phone, by letter and via web chat and was told she couldn't be verified. She found this very distressing – she is 63 and has worked since she was 16, and to be unable to verify her identity made her feel invisible.

Our adviser submitted an appeal, advised her on filling in a new tax return and was successful at overturning her late fees. Margaret wrote to her adviser: 'I am so over the moon. I am crying happy tears. You've turned everything upside down and made it alright again. I don't know how I can ever thank you enough.'

Many more people like Margaret will need help and support with their tax over the next few months. Please help us to support them with the independent expert advice they need by donating to the charities' joint campaign at: cafdonate.cafonline.org/18211. Thank you.

## Technical

# Spotlight on the CIOT's Indirect Taxes Committee

The Indirect Taxes Committee (ITX) focuses on VAT, customs duty and import/export process, excise duty, insurance premium tax, and environmental taxes/levies and it meets quarterly for half day meetings. The committee is chaired by Gabby Donald, the vice-chair is Nick March, and the CIOT technical officer is Jayne Simpson. Our committee volunteers are from a wide range of backgrounds, including practice, legal, industry, HMRC and public sector, as well as from other representative bodies, which brings significant indirect tax experience to the group.

ITX is represented on several HMRC indirect tax forums including:

- Joint VAT Consultive Committee (VAT);
- Land and Property Liaison Group (VAT);
- Insurance Liaison Group (VAT/IPT);
- Finance Liaison Group (VAT);
- Split Payments Working Group (VAT);
- Joint Customs Consultative Committee (customs duty/import export processes);
- Joint Customs Consultative Committee Guidance Sub-group (customs duty/import export processes); and
- Joint Alcohol and Tobacco Consultative Group (excise).

We regularly engage with the Joint VAT Consultative Committee outside of the quarterly meetings, raising issues of VAT policy, for example on postponed VAT accounting, and highlighting member feedback, which for this period has been largely focused on service issues.

ITX volunteers have also been engaged with HMRC on specific issues such as VAT service levels, the VAT aspects for uncertain tax treatment rules, the new penalty reform system, Making Tax Digital for VAT, the new online VAT registration system, VAT and electric cars, employee expenses, the online application system for partial exemption special methods, and the plastic packaging tax.

Outside of HMRC engagement, we are represented on the indirect tax committee of the CFE Tax Advisers Europe and also attend other representative bodies' VAT and indirect tax committees, such as the ATT, Charity Tax Group and the Institute of Chartered Accountants of England and Wales.

Recent submissions include our response to the proposed online sales tax (tinyurl.com/4n44hbuc), to which we voiced our opposition. Gabby debated our position as a panel member in the joint event with the Institute of Fiscal Studies (tinyurl.com/4t9tayw6). We also submitted comments on the online sales tax to the Treasury Committee inquiry for the Autumn Budget and Spending Review 2021, along with comments on the alcohol reform review. We contributed to other indirect tax consultations in 2021/22, including the independent customs regime, treatment of the aggregates levy in construction works, and simplifying the land exemption for VAT. We raised significant concerns with the VAT and value shifting proposals, and the project has now been placed on hold.

Every year, ITX runs a VAT conference, an all-day training event with leading experts in their field discussing current and upcoming VAT topics. After two years of hosting the conference online due to the pandemic, we returned to an in-person event in London. Topics included VAT and cryptocurrency, HMRC's new penalty system, topical VAT cases, VAT and property, international trade, and considerations for VAT groups with overseas branches. The event was chaired by Gabby, and it was great to meet with CIOT members and VAT specialists on the day.

*Jayne Simpson*
*jsimpson@ciot.org.uk*

Qualifications

# CIOT introduces the new Diploma in Tax Technology

## Diploma in Tax Technology modules

**Introduction**
The first four modules are designed to kick start and refresh candidates with the current tax landscape:

**MODULE 1** Understanding tax technology and its impact: an overview

**MODULE 2**
Types of tax technology

**MODULE 3**
Data ethics, governance & data security

**MODULE 4**
Emerging technologies

**Skills for the tax technologist**
The second group of modules underpins the programme where you choose either module 7 or 8.

**MODULE 5**
Introduction to project and product management

**MODULE 6**
Managing and handling tax data

**Choose either module 7 or 8:**

**MODULE 7**
Deep Dive into tax technology management

**MODULE 8**
Essential technology tools for data handling

**Skills for the tax practice department**
The third and final set of modules are designed to reflect the application of what has been learnt in the earlier modules, and enhance existing professional tax knowledge:

**MODULE 9**
Understanding the shift to digital tax administration

**MODULE 10**
HMRC's ten-year strategy

**MODULE 11**
Opportunities for delivering a more holistic, proactive service

The new distance learning programme is designed to give candidates a solid grounding in the use or administration of tax technology.

The future of tax is digital. The tax landscape is changing and advances in tax technology are increasing efficiencies. Tax advisers can work faster, more accurately and respond better to regulatory and reporting changes. It's critical that tax professionals keep up with the rapid pace of change and this is why we are delighted to launch our first ever digitally focused qualification.

The Diploma in Tax Technology (DITT) launched via webinar on 21 November, with a debate about the tax tech environment, proving to be a popular subject, attracting nearly 1,500 attendees. Aimed at existing tax professionals, systems specialists aligned to tax, those working in the tax software and tax tech industry, and tax professionals returning to work after a career break, as well as those looking to join the tax tech profession, the syllabus for the DITT is set at educational Level 4. It is available online and on demand.

Tolley Academy has been chosen as the course host by CIOT to deliver this distance learning course and facilitate the assessments. There are eleven modules with two routes which can be followed, depending on whether the candidate wishes to get a solid grounding in the use of technology or in the administration of technology. The modules are a mix of webinars, reading material and questions to practice.

The syllabus has been designed as a broad-based instructional programme to give candidates a wide foundation in this area. Assessments are inbuilt to the programme, and it is necessary to pass them in order. Technology is a fast-moving discipline, and the modules will be reviewed and updated annually to ensure the qualification remains highly relevant.

### Skills and recognition in tax technology

The Diploma, as shown in the diagram, consists of three layers of learning:

- Modules 1 to 4 are designed to kickstart and/or refresh candidates with the current tax landscape.
- Modules 5 to 8 underpin the programme, where you choose either Route 1 (Deep dive into technology management) or Route 2 (Essential technology tools for data handling).
- Modules 9 to 11 are made up of the Making Tax Digital (MTD) modules, the syllabus for which is designed to reflect the application of what has been learnt in the earlier modules, and existing professional tax knowledge.

### Learning outcomes

Learning outcomes have been developed for each module.

The overall learning outcome that candidates can expect to gain following the course is to be able to converse confidently about tax technology with experts, and to be able to work within tax technology project teams (although not, at this level, to lead such a project). Candidates will also know how to research and assimilate relevant data.

Gaining the Diploma will help to ensure that tax professionals are better equipped to provide relevant tax practice and governance updates for their clients, and will open the door to a tax digital future.

The DITT provides learning and certification for tax professionals facing the challenge of digitalisation in taxation.

**To find out more about the DITT programme, learning and details on how to register visit: www.tax.org.uk/ditt**

Membership

# Membership Requirement: Your 2022 Annual Return

An Annual Return must be completed by all CIOT and ATT members and ADIT Affiliates each year (excluding students or those who are fully retired). All members and affiliates should receive an email reminder to complete the return and pay any subscriptions due. If an email is not received, members must still ensure they fulfil this important membership requirement.

### Why do we require an Annual Return?

CIOT and ATT members and ADIT Affiliates are required to meet high professional standards as these are essential in retaining our reputation for excellence in tax, and maintaining trust in the tax profession by the public, HMRC and others. The Annual Return is one of the tools we use to ensure that standards are being followed as we ask you to confirm that you are meeting a number of membership and legal requirements.

### Here are our 'Top 10 Tips' to help you to complete this year's form:

1. The form can be accessed at https://pilot-portal.tax.org.uk and it works best accessed through the following browsers:

   - Microsoft Edge v86 or higher
   - Google Chrome v86 or higher

   Some members have previously experienced problems using Firefox and Internet Explorer so these browsers are best avoided where possible.
2. The deadline for submission of the return is **31 January 2023**.
3. Remember that you are answering questions about compliance during the year to 31 December 2022. For your information, there will be some minor updates to the continuing professional development (CPD) and professional indemnity insurance (PII) regulations and guidance applying from 2023, but for this annual return you should answer based on the requirements in 2022.
4. Members are asked whether they work in tax. Make sure you answer this correctly so that the form generates the correct questions which need to be answered. You are working in tax if you provide tax compliance or tax advisory services in private practice, the public sector, commerce, industry, not for profit sector or in any other form.
5. If you undertake more than one activity – for example, you are in employment and also run your own business – please remember to select all the appropriate options so that you answer the required questions relating to each role.
6. If you are working in tax and have your own business, you will be asked to confirm your anti-money laundering (AML) supervisor. If your supervisor is not on the drop-down list please answer 'No' to the question: 'Does your practice/firm/partnership have an anti-money laundering supervisor?' and give an explanation in the box provided.

   AML supervision is not provided as part of your membership subscription and requires separate registration. Members **are not meeting their legal requirements** if they are in business providing tax services and are not registered for AML supervision.

   Further information about registration is available on the websites of CIOT at www.tax.org.uk/amlsreg and ATT at www.att.org.uk/amlsreg.
7. The return asks members providing tax services by way of their own business to confirm they have PII in place and there is a new question in the 2022 form asking which insurer is

Technical

# The Journal of Tax Administration

The Journal of Tax Administration (JOTA) was launched in January 2015 by CIOT and the University of Exeter, inspired by the establishment of the Tax Administration Research Centre (TARC) and funded by the Economic and Social Research Council (ESRC).

The vision for the Journal was to become an independent academic periodical, drawing together a range of academic disciplines and research, and making them relevant to the practice and problems of tax administration and related policy throughout the world. To date, we have published 13 issues and the next one is coming out in a few weeks. CIOT will feature strongly in the upcoming issue, with an article, a book review and a commentary directly linked to the CIOT staff or affiliates.

The founding editorial team was comprised of Professor Lynne Oats, Dr Miguel Fonseca and me, Professor Nigar Hashimzade. After Lynne and Miguel stepped down, I continued as the Managing Editor and was recently joined by Dr Stephen Daly. Ms Justine Davis is our Editorial Assistant.

Thanks to the generosity of CIOT, JOTA provides full open access online to its content, and has not charged contributors any submission fees since its inception. This makes JOTA particularly attractive to both authors and readers in developing countries. Not surprisingly, the paper 'Improving tax administration in developing countries' by Richard Bird (April 2015) is the second most cited paper published in JOTA (with 21 citations) and also the second most downloaded paper (with 5,123 downloads so far). At the same time, the geography of our authors goes beyond the developing world and to date spans 35 countries across the globe.

We publish regular and special issues twice a year (with Covid-19 years being an exception), and to date we have published special issues on Shadow Economy, Taxpayer Rights, Cooperative Compliance and The Tax Profession in the Spotlight. The latest special issue on Taxation of Crypto Assets is under preparation.

JOTA publishes academic articles, reviews of books and periodic literature, and commentaries of tax administration practitioners. All academic articles are subject to double-blind peer review to ensure the high-quality standards of our publications. Our external visibility is constantly growing. Over the last providing the cover. It may be helpful to have these details to hand before starting to complete the form.

8. There is further useful guidance on how to complete the Annual Return questions on the websites of CIOT at www.tax.org.uk/arguide and ATT at www.att.org.uk/arguide. This is a particularly useful reference point for those who are unsure how to answer the PII or CPD questions as a table is included setting out the requirements and what you need to tell us (depending on your circumstances).
9. The form generates a summary of all the answers provided for you to review and edit (if necessary) before final submission. We recommend checking this summary, as experience has shown that it can sometimes be easy to hit a wrong button and give an erroneous non-compliant answer!
10. If you need any other assistance with completion of the Annual Return, how to answer particular questions or if you have concerns that you have not met all your membership requirements, please contact membership@tax.org.uk or membership@att.org.uk.

It is important to contact us if you need any help or are having any difficulties so we can work with you to ensure compliance. Ignoring reminders and failing to meet this membership requirement will result in referral to the Taxation Disciplinary Board.

five years, our webpage has received around 15,500 views per year. During the same period the number of full issue downloads grew from 476 to 3,512, and individual article downloads increased from 7,939 to 19,560. According to the Web of Science, the global citation database, our publications have been cited 216 times to date, with an average of 27 citations per year. JOTA has also organised several mini-conferences attended by academic researchers and tax administrators: The Changing Shape of Tax Avoidance; Trends in Tax Exceptionalism and Tax Litigation; and The Tax Profession in the Spotlight (which led to a special issue). These events have been interrupted by the Covid-19 pandemic, but we hope to resume them in the future.

*Nigar Hashimzade*
*Managing Editor,*
*Journal of Tax Administration*
*http://jota.website*

A MEMBERS VIEW

# Henry Smith-Langridge

Founder, SHE Tax Advisers

This month we are excited to shine the spotlight on Henry Smith-Langridge, and ask him how he came to work in the world of tax.

### How did you find out about a career in tax?

I found out about a career in tax by pure chance. When I was 18 years old, I had just finished Sixth Form College and was undecided about what I wanted to do with my life. I saw a job opening for a local boutique tax firm and decided to immediately apply. I had no backup plan and no job prospects, so thought I would take a gap-year to figure things out before making any serious career decisions. Eventually, a gap-year became two and then three, and so on. Before I knew it, I was studying for my ATT exams to become a qualified Tax Technician. I decided that actually a lot of my analytical thinking and skills aligned themselves well with a career in tax, so I decided to stay!

### Why is the ATT qualification important?

For me, the ATT qualification is an excellent, well-rounded qualification to give tax technicians a high level of tax understanding on a wide range of tax topics that, as professionals, we are bound to come across at some point or another. Therefore, it is essential for anybody looking to develop their tax knowledge to embark on the ATT qualification.

### How would you describe yourself in three words?

Caring, emphatic, ambitious.

### Who has influenced you in your career?

My two greatest influencers on my career are my soon-to-be wife, Shriya, and my first boss and mentor, Simon.

### What advice would you give to someone starting their career?

My greatest advice to any professionals starting out is to give it time. All good things take time to develop or achieve, and a career in tax is no different. In my first job in tax, I started by scanning documents and making cups of tea for the directors of the firm. These types of tasks are not what dreams are made of, but it was a necessary learning experience for me that I have taken with me for the rest of my life.

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

Tax, in some shape or another, has been around for over 5,000 years: so it is safe to say it's not going anywhere anytime soon. My predictions for the future are that tax compliance will become increasingly automated and a tax adviser's role will increasingly become more advisory based – which is a great thing.

Tax advice, particularly with individuals, requires a lot of relationship building and big-picture thinking, which (for now) seems quite difficult to automate. Automating tax compliance will certainly do away with the 'robotic' parts of our jobs and make our jobs more human.

### What advice would you give to your future self?

Everything happens for a reason, even if that reason is not obvious at the time. Give it enough time and the reasons may become obvious.

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

I absolutely love cats. My partner and I have an adorable Siamese cat that we adopted from our Animal Rescue, where we volunteer. We fell in love with her when we were rehabilitating her.

**Contact**

If you would like to take part in A Member's View, please contact Jo Herman at: jherman@ciot.org.uk

## Webinars

# Kickstarting the ATT and CIOT Employer Webinar Series


On 31 October, ATT and CIOT jointly launched their first virtual employer webinar in a series of three to help employers of ATT and CTA trainees through their recruitment to retention journey. The aim of this webinar series is to share best practice and insights in the recruitment, support, development and retention of tax trainees.

The first webinar, 'Attract and recruit the best talent in tax', was supported by Jenny Catlin, Head of Professional Education, and Amelia Chapman, Early Careers Recruitment Manager from Deloitte UK, who


## Event

# ATT/CIOT Sheffield Branch 50th Anniversary Dinner

On 27 October 2022, the Sheffield Branch was in full swing celebrating 50 years of voluntary local service with a black-tie dinner at Tankersley Manor Hotel hosted by the new branch chairman Paul Benton.

The event was exceptionally well attended with specific thanks going to Susan Ball and David Bradshaw, Presidents of the CIOT and ATT; Lord Mayor of Sheffield Sioned-Mair Richards; Helen Whiteman and Jane Ashton, CEOs of the CIOT and ATT; David Wright, representing Mattioli Woods Plc who were the primary sponsor for the evening; past Chairman of the branch Peter Wingfield; and to Chris Brydone, Zoe Roberts and Kieron Batham-Tomkinson.

Guests were entertained throughout the evening with magic tricks from local magician Nigel Francis, who kept everybody enthralled with perfectly executed illusions leaving many bamboozled looks around the room! The venue was a fabulous setting for a party and the food fantastic; the chef should be particularly congratulated for the exceptional Yorkshire puddings!

Lord Mayor Sioned-Mair Richards delivered a wonderful story of the charitable work she undertakes under the umbrella of the Lord Mayor's Charity, providing access to books and reading stories to disadvantaged children directly at her Chambers each week (even allowing them to try candidly shared their recruitment strategies, career pathways and selection process.

We were joined by Barry Jefferd, Tax Partner of George Hay Chartered Accountants, who identified challenges in recruitment from a small firm's perspective. He highlighted how to be agile and proactive in recruitment, given the challenges presented by the economic climate.

Recruitment specialist Georgiana Head also joined us to offer expert advice on how to recruit more effectively. She explained how to improve response rates when advertising on job boards and finished with her valuable insights on salary expectations in the current market.

If you are an employer supporting tax trainees and missed our first webinar you can view it at: bit.ly/3TSry9E.

Our next employer webinar will be 'Supporting the learning journey of tax trainees' and will take place on 6 December. The webinar will feature advice and guidance from our tuition providers. Our Education team will also provide valuable advice to help support ATT and CTA trainees.

**Reserve your place at the next employer webinar: www.tax.org.uk/employer-webinar**

on the gowns and civic regalia), providing support for those who have suffered domestic abuse, and raising funds to improve the Palliative Care Unit at the Northern General Hospital which carries personal significance for her.

Donations were generously raised for her charity on the night, and they might just get a gift aid bonus on top after frantic googling of gift aid wording which was missing from the donation envelopes!

Amit Kotadiya was the lucky winner of the venue-sponsored raffle prize of a bed and breakfast spa stay at the hotel. Amit's wife was particularly delighted with the prize. Have a great time Amit and Aiysha!

Overall, the night was thoroughly enjoyed by all in attendance until the early hours of the morning. We Yorkshire folk know how to party, even on a school night!

Anyone wishing to get in contact with the branch for photographs from the evening or wishing to get involved with the branch should email: Sheffield@tax.org.uk.

## Administration
# Subscription fees 2023

| **The Chartered Institute of Taxation (CIOT)** | |
|---|---|
| CIOT Associate | £406 |
| CIOT Overseas Associate | £375 |
| CIOT Joint Associate | £406 |
| CIOT Joint Overseas Associate | £375 |
| CIOT Joint Reduced Associate | £80 |
| CIOT Associate Reduced Rate | £80 |
| CIOT Retired Associate with literature | £80 |
| CIOT Retired Associate without literature | £20 |
| | |
| CIOT Fellow | £423 |
| CIOT Overseas Fellow | £387 |
| CIOT Joint Fellow | £423 |
| CIOT Joint Overseas Fellow | £387 |
| CIOT Joint Reduced Associate | £80 |
| CIOT Fellow Reduced Rate | £80 |
| CIOT Retired Fellow with literature | £80 |
| CIOT Retired Fellow without literature | £20 |
| CIOT Retired Life Associate (no literature) | £139 |

| **Advanced Diploma in International Taxation (ADIT)** | |
|---|---|
| ADIT Affiliate | £188 |
| ADIT Affiliate Joint Rate | £94 |

| **The Association of Taxation Technicians (ATT)** | |
|---|---|
| ATT Member | £225 |
| ATT Joint Member | £135 |
| ATT Member Reduced Subscription Not Working | £75 |
| ATT Member Low Income Subscription | £135 |
| ATT Retired Member with literature | £135 |
| ATT Retired Member without literature | £20 |
| | |
| ATT Fellow | £245 |
| ATT Joint Fellow | £145 |
| ATT Retired Life Member / Fellow | £200 |

Chartered Institute of Taxation.

# Opportunity to be an examiner for the CIOT

We are looking to strengthen our examining teams for the 2024 exam session and future years. If appointed, work on the 2024 papers will start in March 2023. You will be required to attend a training session on the morning of Thursday 9 March 2023 with all examiners and also an Examiner's day with the other members of your team on your paper which will take place on a day to be agreed with your team. We are seeking specialists in the following areas who would like to join us:

- Indirect Taxation
- Taxation of Owner-Managed Businesses
- Taxation of Individuals
- Human Capital Taxes
- Inheritance Tax, Trust and Estates
- Corporation Tax

Applications are invited from those with at least three years' post qualification experience who can offer the skills required to help to maintain and enhance the standard of our examinations. The key requirements for the role are:

- The ability to keep to the tight timetable for the preparation and review of the exam questions and for the marking of scripts
- Strong technical skills
- Good written communications skills
- The ability to work as a member of a team

You would be part of a team responsible for drafting, reviewing and marking one of the Advanced Technical examination papers and for ensuring that the examinations are of the highest possible quality. The time commitment varies from paper to paper, but most examiners continue to work full-time and carry out CIOT work at weekends and in the evenings. Typically, an examiner in an Advanced Technical team will be part of a team of four and will write and review half of a paper once a year and will mark questions they have set.

The 2023 syllabus and recent exam papers can be found here.

Past exam papers: **www.tax.org.uk/pastpapers**

2023 syllabus: **www.tax.org.uk/prospectus-and-syllabus**

Remuneration is commensurate with the strong skill set demanded for examiners.

If you are interested then please email Jude Maidment a copy of your CV in the first instance: jmaidment@ciot.org.uk. This will be passed to the Chief Examiner. If you would like to discuss the examiner role then please contact Jude on 020 7340 0577.

GEORGIANA HEAD
*Taxation Recruitment*

MERRY CHRISTMAS


GEORGIANA HEAD

Director

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georgiana@ghrtax.com


## In-house Assistant Manager Bradford £50,000 to £55,000 + benefits

In-house tax team seeks a qualified corporate tax professional. In this role, you will deal with all round corporate tax compliance and reporting work and assist tax directors with advisory work. Your role will include: preparation of monthly and quarterly reporting under US GAAP; preparation of the annual UK tax computations, including liaising with the relevant teams in Finance and the wider business to obtain information; preparation of tax disclosures for UK statutory accounts under FRS101; involvement with transfer pricing reporting; and the opportunity to get involved in VAT and employment tax work. Would consider a full or part qualified tax professional. Free parking and hybrid working available. **Call Georgiana Ref: 3282**

## Group Tax Manager Hull or remote with travel £excellent

Large international group is expanding its tax team and looking for an experienced corporate tax professional who can help run compliance and reporting. In this role, you will business partner with overseas entities and tax advisers to ensure compliance deadlines are met. You will be a focal point for corporate tax compliance on a global basis. There is also the opportunity to deal with project work such as R&D tax and assisting the head of tax with transaction work. Would consider someone remote working who could travel to Hull once a week. Would also consider a part time hire for a more experienced candidate. **Call Georgiana Ref: 3295**

## Group Tax Manager or Accountant Sheffield or remote working To £56,000 + bonus + benefits

This is a great opportunity for an in-house tax specialist to work mainly remotely. This business can also support a 4 day week. The role is tax accounting biased, being a key business partner for the international businesses in the group and working alongside a tax compliance specialist to give cover on tax returns. Ideally, you will be qualified – ACA, CTA, ACCA or equivalent. You will be able to help run SAO and put controls and processes in place for improved reporting and forecasting. Friendly team that travel around once a month or less to Sheffield. **Call Georgiana Ref: 3316**

## Corporate Tax Private Business Leeds or Manchester £50,000 to £80,000 + benefits

Our client is a large accountancy firm. They seek a manager or Associate Director to join their team in the North of England. Ideally, you will be a corporate tax professional who really enjoys dealing with privately owned businesses. In this role, your clients will range from family businesses to private equity backed. You'll work closely with colleagues in personal tax to advise the owners as well as the business. Perhaps you currently work for a larger independent firm or a Top 20, and are looking for promotion prospects and a great salary and benefits package? Hybrid and part time working available. **Call Georgiana Ref: 3305**

## Tax Manager Congleton £excellent

Independent accountancy firm in Congleton (or East Cheshire) seeks a tax manager to oversee a tax compliance and planning function. This is an opportunity to develop and grow the tax department within the practice. You will supervise a small team and train them accordingly. The firm is looking for someone to establish and build long term relationships with clients including owner-managers and their businesses and high net worth individuals.You will offer practical solutions using your solid all round tax knowledge. **Call Georgiana Ref: 3300**

## Corporate Tax Manager Huddersfield £excellent

Our client is a long standing independent accountancy firm based in Huddersfield. This tax team seeks a corporate tax or mixed tax manager. This role could be full time or part time. Working with a good quality OMB client base, you will advise on all areas from compliance to structuring. As you build in confidence, you will become a trusted advisor to your clients. This role is office based but can be worked on a hybrid basis. Ideally, you will have a relevant professional qualification (ATT, CTA, ACA, ICAS, ACCA) but those qualified by experience will also be considered. **Call Georgiana Ref: 3292**

www.georgianaheadrecruitment.com

MEDICAL
ACCOUNTS - TAX - NHS PENSION
Chartered Accountant - Chartered Tax Adviser

## VE Medical
## Tax Senior – Medical Specialist – Wilmslow or remote working
## £28,000 to £42,000 dependent on experience and qualifications

**This is an exciting opportunity to be part of a small but rapidly growing independent firm which specialises in dealing with medical professionals. This is a modern, forward-thinking practice which can offer a great work life balance including remote working, flexible working (including term time hours).**

Working directly with the principal you will have the opportunity to learn new skills. You'll get the chance to train new graduates and there is scope for promotion.

Your role will include:

- Managing a portfolio of GP's and locum doctors. Helping them navigate their tax affairs.
- Helping them plan and save for their tax liabilities;
- Advising on permitted expense deductions to optimise tax relief;
- Establishing and optimising their NHS Pension tiered rate;
- Preparation and submission of tax returns;
- Obtaining tax refunds on professional fees, subscriptions, certain exam costs and other allowable expenses for current and earlier years;
- National Insurance Contributions review and refund claims;
- Checking Tax Coding notices to minimise any unexpected tax at the end of the year;
- Annual Allowance pension tax calculations, Scheme Pays Election forms and ongoing review;
- Tax and accounting advice on property rentals and other non-medical source income and capital gains.
- Capital Gains Tax Reports for residential property disposals.
- Dealing with HMRC.
- Helping supervise graduate recruits.

Our client will consider a full or part time worker and can offer great flexibility. The ideal candidate will have a personal tax background with experience of dealing with small businesses and sole-traders. Any experience of medical practitioners would be an advantage but full training will be provided. ATT or similar tax or accounting qualification or qualified by experience.

**Call Georgiana Head on 07957 842 402**

WE'RE HERE TO BE YOUR MATCHMAKER

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

AVTR RECRUITMENT
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# Do you work in, or have you ever thought of working in Financial Services?

There are so many different industries within tax, so why would you choose to work in the Financial Services sector?

- Room for career progression in this area is at a peak.
- Salaries and benefits are competitive.
- There is excellent capacity for support and training.
- International clients create interesting work.
- FS knowledge is exponentially becoming more desirable. Gain the experience now, and boost your appeal.

## Why are we telling you this?

Due to the current success of this industry, we find ourselves working on more Financial Services Tax roles than ever before.

If you are an FS tax professional, or are considering finding out more about this sector, we would love to hear from you.

Interested in finding your next opportunity?
**Get in touch.**

| Email | Phone | Website | Social |
| --- | --- | --- | --- |
| av@andrewvinell.com | +44 (0)20 3926 7603 | www.andrewvinell.com | @avtrrecruitment |

SCAN ME

AVTR
RECRUITMENT
TAX · TECH · LEGAL

# MERRY Christmas

We are delighted to say that we have now been in operation for four successful years, and wish to extend our thanks to everyone in our company, all of our candidates, and all of our clients.

**We hope that you all enjoy the festive season.**

Crisis

This year we are donating to a charity we have continued to support across the years. Crisis is a wonderful organisation which works with homeless people year-round.

## Merry Christmas from all of us at AVTR!

Interested in finding your next opportunity?

**Get in touch.**


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