March 2022

TAXADVISER

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att

Chartered Institute of Taxation.

Company share buy-backs

Multiple completion contracts can play a vital role in purchase of own shares transactions, explains Peter Rayney

Residential property

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HELEN WHITEMAN
JANE ASHTON

Welcome
Face to face, online and hybrid activities for 2022

Thank you to everyone who has taken the time to share feedback on the new look *Tax Adviser*, which you saw for the first time last month.

We will again be celebrating International Women's Day (IWD) on 8 March, partnering with Women in Tax to host a free panel session on allyship. This year's IWD theme is #BreakTheBias and you will see us promoting this through our social media channels and on our websites. You can read more about allyship and our online event on page 48.

You will have started to receive communications from us about the resumption of in-person events, either from your local branch committee chair or from Head Office. We are pleased to be resuming face to face Admissions ceremonies for our newest of members (CIOT in April and ATT in June) so that we can celebrate your achievements in person and welcome you formally to our respective bodies.

You may recall that last Autumn, we undertook a branch by branch survey of members and students. The results of the survey (13% response rate) showed that nearly 20% of our audience were very keen to return to local venues and to re-engage with the tax community in a physical space. A further 45% however, cited caution in their response. There is therefore a clear indication from the survey that the continuation of online CPD is viable and preferable and that is why you will see a mixture of online and in-person events in your local branch programme and in our other events provision for 2022.

We have decided that some of our events will be offered face to face and online, i.e. hybrid. Please look out for a message about four pilot hybrid events in the network in 2022. The CTA Address will be held using a hybrid format this summer. We recognise that attendance in person delivers a different experience to attendance online, and our teams are focused on providing the best possible environment, regardless of how you choose to attend. Please look out for further information in the emails we send you from branches@ and events@, and our event and branches webpages are always kept up to date.

At the ATT, we are busy planning our upcoming technical events, including the annual conferences and our third webinar exclusively for ATT Fellows. Our popular Fellows' webinars are free events which provide a unique opportunity for all Fellows to enjoy the company of members of similar standing within the Association, and include a presentation and discussion groups led by the technical officers. Adverts with more information on both events, including how to sign up, can be found in this edition of *Tax Adviser.*

We understand that one of the key concerns for members continues to be HMRC service levels, and the challenges these pose for both agents and their clients. HMRC's latest performance statistics show quite a mixed picture, with on the one hand HMRC managing to answer 91% of calls to the Agent Dedicated Line in December 2021, but in the same month, only turning around 24% of all personal tax post with 15 working days.

This variation is very much in line with the feedback we have received from members over the last few months. Thanks to all of you who have taken the time to share your experiences with us – this has been incredibly helpful and we at ATT and CIOT, together with other professional bodies, have been raising members' concerns with HMRC on a regular basis. HMRC has now said that they 'expect to be delivering normal (pre-pandemic) performance across our core service lines by the start of the new financial year'. This is an ambitious target to get things back on track by April 2022, but one which we hope members will welcome.

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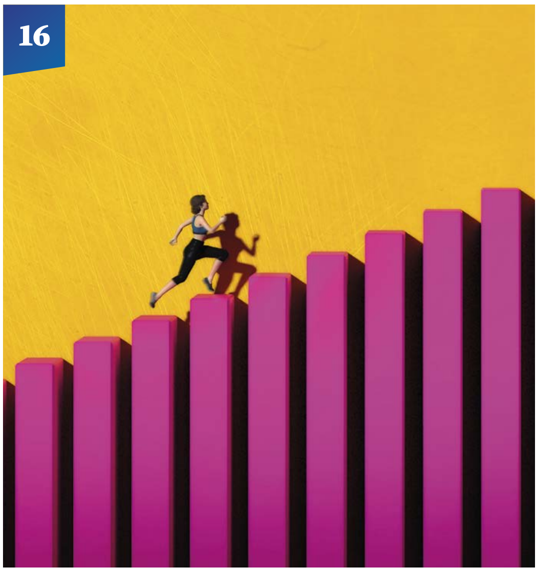

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PETER RAYNEY
PRESIDENT

Right back to where we started from

> The CIOT's 75th anniversary souvenir supplement to *Tax Adviser* (published in October 2005) is brimming with illuminating stories of CIOT and tax history.

Peter Rayney
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Chartered Institute of Taxation.

As the promise of Spring is just around the corner, let's hope for better days ahead on all fronts. I have just spent a useful morning doing a spot of spring cleaning. To my surprise, I came across my copy of the CIOT's 75th anniversary souvenir supplement to *Tax Adviser* (published in October 2005). The pages are brimming with illuminating stories of CIOT and tax history. I thought I would share some of these memories with you.

It all started in Leicester

The CIOT's origins can be traced back to late 1929 to a dinner held in Leicester, when Cecil Newport FCRA suggested the idea of an Institute of Taxation to Ronald Staples. Newport was a tax practitioner and a regular contributor to *Taxation* magazine and author of *Income Tax Law and Practice* (published in 1927). His dinner companion, Staples, had joined the 'Inland Revenue' (as it was known then) on 4 May 1916 – the same day the government had approved conscription (working for the Revenue was a reserved occupation, exempting staff from military service!). Staples had left the Revenue in October 1927 and started the weekly *Taxation* journal and *Taxation Practical Service*.

Our Institute was formally established on 5 December 1930 following a meeting between eight tax men at Hutchins & Plowman, Chartered Accountants, 11 Pancras Lane, London EC4.

In the beginning...

We started out with twelve Council members, many of whom were ex-Inspectors of Taxes. One of the most distinguished and prestigious was Roger N Carter FCA. He was joint author of *Murray and Carter's Guide to Income Tax Practice* (first published in 1895).

In August 1934, E Alwyn Knight became the Institute's first paid Secretary, engaged on a salary of £150 a year. Unemployment was rife at the time (over 2.3 million) so it is not surprising that the job advert in the Daily Telegraph attracted some 400 responses. Knight was called up in August 1940 to join HM Forces and was commissioned as a pilot officer in February 1943.

Examinations

The first examination team consisted of Cecil Newport, H A Silverman (a college principal from Leicester) and Dr A V Tranter, a Yorkshireman, who remained with the 'Revenue' until he retired in 1957.

The first exams were held in December 1932 and consisted of four papers: Income Tax Theory; Income Tax Practical; Death or Inheritance Duties (or Other Taxes); and Economic Theory. It was not necessary to pass the exams to join the Institute – this only became compulsory in January 1965!

Branching out

After the war, our only active branch was based in Manchester. Branches were then established in London in 1957 and Birmingham (now Birmingham and West Midlands) in 1959. It was not until ten years later that further branches were established in Southampton (now Hampshire), Bristol and Sheffield. We have grown to 40 branches.

The Owls, charitable status and the Royal Charter

The grant of our crest with supporting owls was awarded in July 1971. The legendary Ralph Ray, who will be known to many (longstanding) members, was instrumental in the Institute obtaining charitable status on 15 September 1981. One of our pivotal moments was obtaining the Royal Charter in 1994. In 1997, the Privy Council agreed that members could use the title 'Chartered Tax Adviser' and in 2002 the initials 'CTA'.

We should be truly proud of the wonderful heritage of our CIOT, which today boasts over 19,000 members and 5,000 students. Our exams are widely recognised as the most prestigious in the tax world and we are highly respected by the Treasury, HMRC and other important stakeholders. We have grown from twelve Council members to 25, 40% of whom are women. I am really delighted that Susan Ball follows me as your next President to steer our Institute and improve it even further.

Take care.

DAVID BRADSHAW
DEPUTY PRESIDENT

That Was The Week That Was!

> Looking back at my diary to see when I last attended a CIOT or ATT branch event reveals that it all happened in the same week – two years ago – in March 2020.

At last! I now have some actual face-to-face events in my diary, which I am seriously looking forward to. My North East branch issued its education programme for 2022 and it includes a mix of both 'virtual' and 'live' events with an afternoon in the presence of Mark Ward planned on 12 May. Before that I will take the train down to London for the first time in two years to attend our current President's Reception on 28 April – an event on its third rescheduling.

Looking back at my diary to see when I last attended a CIOT or ATT branch event reveals that it all happened in the same week, one year ago – no, two years ago – in March 2020. How can it be two years ago? That is the pandemic effect for you: think of a number and add a year to it.

Monday 2 March 2020
I travelled down by train from Hexham to Coventry to attend the Annual Branches Forum event held over two days at the Warwick University campus every spring. It is an event not to miss in my opinion because it is a gathering of branch officers from around the country sharing ideas and experiences, and an opportunity for Head Office staff to outline plans and developments for the year ahead.

Before joining the Forum, I had another event to attend at the same venue – the Joint Officers and Senior Staff Forum. We meet twice a year to discuss matters which are relevant to both the CIOT and ATT, and the event comprises the officers from both organisations joined by the Chief Executives and Directors.

Warwick University is a splendid place to host these events and the campus provides the perfect setting to contemplate academic matters – especially from the Scarman House Bar.

Tuesday 3 March 2020
The conference winds up around lunchtime and the delegates head off to various parts of the country. I had two meetings in London the next day and I decided to stay over in Birmingham that night – a decision heavily influenced by my procurement of a ticket to the Hawthorns where, by coincidence, West Bromwich Albion were hosting the 'mighty' Newcastle United in the Fifth Round of the FA Cup!

Wednesday 4 March 2020
And now down to London from Birmingham via Virgin West Coast and across town to Monck Street for a full day of finance, wearing my 'Treasurers hat', with the CIOT Finance and Operations Committee in the morning and the ATT Finance Steering Group which I chair in the afternoon. Both meetings were primarily to discuss the audit and the presentation of the annual accounts for approval by council later. Then back onto the Tube and across town to catch the 6pm East Coast mainline train back up to the North East.

Thursday 5 March 2020
I actually did some client work today, but the main event was the North East England Branch Annual Dinner at the Baltic Gallery on the historic Quayside. There were now significant rumblings about attending such events and one or two last minute cancellations, but enough members of the local tax community were able to support the event, which each year allows local tax practices to bring clients and staff to celebrate the profession. I am glad to say that both presidents Jeremy Coker and Glyn Fullelove were in attendance.

Friday 6 March 2020
We are not finished yet. There is one more event to attend – the Joint President's Luncheon held in the Signet Library in Parliament Square in Edinburgh. Back on the train again to attend this important showcase event to acknowledge the work done in Scotland to promote the profession. In the company of both presidents again!

And that was that: I flew off to Geneva for a bit of skiing – the pistes closed on my last day and I returned to Newcastle just in time for the shutters to come down. By 23 March, we were ordered to stay at home, assured that we could turn the tide on coronavirus in 12 weeks and told to leave the house just once a day for exercise – that was a proper lockdown, that was.

So how on earth, with a week like that, travelling the length and breadth of the country, attending events and standing amongst 5,000 inebriated fellow northeasterners, did I emerge unscathed? Perhaps I was the first to invent the concept of involuntary superspreader!

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A matter of design

What simplification means

As the question of how government designs and implements its tax policy remains as complex as ever, the Office of Tax Simplification begins a new review to consider what tax simplification means.

by Bill Dodwell

The Office of Tax Simplification has just announced a new review to consider what tax simplification means. The report has been commissioned by the Chancellor and the Financial Secretary to the Treasury (see bit.ly/3LZu3UT) following the publication of the Treasury's five year review into the effectiveness of the OTS. The FST wrote:

> 'The [five-year] review recommends that the OTS "undertake a project to articulate its approach to and interpretation of 'tax simplification', including clarifying its aims as an organisation, and the success measures for assessing its progress". The Chancellor and I would like you to commence this work as a formal OTS review, focusing on conclusions that can inform how the OTS, and government, should prioritise simplification efforts over the next five years. I look forward to agreeing the detail of the terms of reference in the coming weeks, and to hearing your plans for own-initiative work over the coming months.'

The scoping note (see bit.ly/3LVtg7k) sets out the broad areas to be covered in the review. Simplification is not a policy choice in itself but considering how to design and implement a policy in the simplest way could help taxpayers to understand the policy, as well as potentially make better business and family choices taking account of tax generally. Simpler tax design and implementation can also make compliance easier and potentially cheaper, both for taxpayers and HMRC.

The OTS would be keen to hear from anyone with perspectives on tax simplification. Please send an email to ots@ots.gov.uk with comments, or to request a meeting.

Complex policy choices

The output of the work should set out some broad principles for government to consider when designing tax policy, and for HMRC in implementing tax policy. There will be times where a policy cannot be implemented in a particularly simple way though, and policy choices are always for the government to weigh.

The high income child benefit charge (HICBC) is an example of a tax charge which is hard for HMRC to implement. No doubt Chancellor George Osborne was advised of this when the policy was devised – and the government of the day decided to go ahead partly because the policy raised over £1.5 billion annually and it decided that higher than average income households should no longer receive what had been a universal benefit. HMRC is now using data mining to advise individuals of a potential liability, but the recent OTS evaluation note on the HICBC gives examples of additional things that HMRC could do to make compliance easier.

Thresholds are an example of a policy which can bring simplicity – through removing some potential taxpayers from tax compliance – but which can also bring complexity as taxpayers get close to the threshold. The OTS work on the £85,000 VAT threshold highlights that over 1 million traders do not need to charge VAT and manage VAT compliance.

However, the OTS also heard from traders who found it hard to expand, as expansion would require that they charge VAT on their services, which would put them at a competitive disadvantage to those operating below the threshold. The data shows that there is a large number of traders operating just below the VAT threshold.

Tax cases highlight potential complexity. The basic principle that law is enacted by parliament and administered by the tax authority, with disputes decided by the independent judiciary, is fundamental. Yet too many tax cases – as we see in the area of employment/self-employment – make it obvious that we have complicated law where taxpayers and HMRC cannot easily reach a common understanding. There is surely a good case for making changes to this area.

Limited capacity

One important point for all of us to recognise is that there is limited capacity within government to make changes, even where it is broadly agreed that change would be sensible. Our tax policy making approach means that HMRC and HM Treasury would need to devise a specific policy change, potentially taking account of broader areas outside the remit of the OTS. They would then consult on the changes and draft legislation would also be consulted upon. It is thus important that the OTS highlights the relative importance of review recommendations, as not everything can be taken forward immediately.

It would also be helpful for this review to refresh OTS strategy for the next five years.

Finally, the review should consider metrics. Measuring taxpayer behaviour will take some time to show meaningful results, although looking at reduced HMRC contact and a reduction in the need for compliance interventions would be good signs of helpful simplification. It may be very hard to measure the nirvana of taxpayer understanding!

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Profile Bill is 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.

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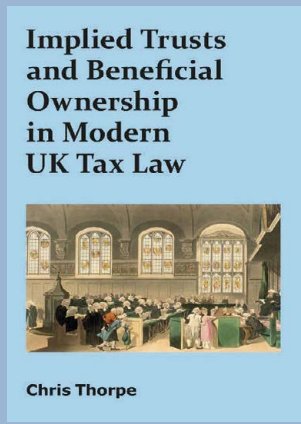
Implied Trusts and Beneficial Ownership in Modern UK Tax Law



Chris Thorpe's new book bridges that gap which lies between books on tax and those on trust law. How and why is beneficial ownership important in UK tax? How does HM Revenue & Customs and the law recognise the imposition of beneficial ownership for tax purposes via an implied trust and when will UK tax law impose beneficial ownership on a different taxpayer from the legal owner of an asset or income source? As well as tracing the story behind Britain's ancient tax laws and courts, relevant legislation, cases and HM Revenue & Customs' guidance are all reviewed to paint a picture of how equity and implied trusts fit within today's tax laws. With the introduction of the 4th and 5th Anti-Money Laundering Directives, it is more important than ever to identify where beneficial ownership lies.

128 pages	Paperback	ISBN 9781913507381	Price: £40.00
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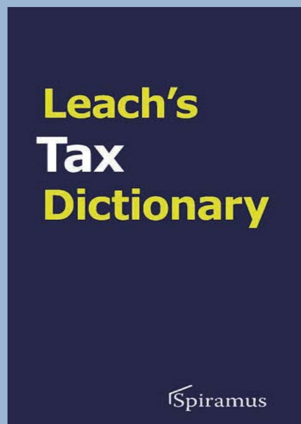
Leach's Tax Dictionary



A cornucopia of tax terms and data. It also explains all those abbreviations used in tax writing and reporting. It contains over 1,000 pages of definitions, abbreviations explained and useful data - tax rates and other information which may be of use to a tax accountant/lawyer.

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1046 pages	Paperback	ISBN 9781913507190	Price £85.00
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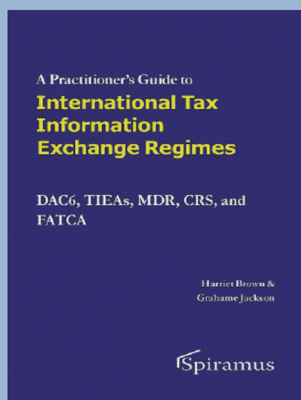
A Practitioner's Guide To International Tax Information Exchange Regimes - DAC6, TIEAs, MDR, CRS, and FATCA



The recent introduction of the Directive on Administrative Cooperation in the field of taxation 6 (DAC6) and mandatory disclosure regimes by many jurisdictions have led to a large number of professionals potentially being required to disclose information in relation to their clients' arrangements. The authors analyse the operation of the various automatic exchange of information regimes which have been introduced in the last five years including the OECD common reporting standards DAC6 and MDR.

420 pages	Paperback	ISBN 9781913507237	Price: £99.95
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Residential property investment
Seeking relief

by Michael Steed

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In the second part of a series on property matters for individuals, we review the capital tax issues for property investors.

This is the second of a two-part, back to basics, article on property matters for individuals. The first article looked at income tax issues and this second will concentrate on the capital tax aspects of investing in residential property (including for own occupation). All legislative references are to Taxation of Chargeable Gains Act 1992 unless otherwise stated.

The basic capital gains tax issues

Property investors will at some stage contemplate selling or gifting residential properties out of their portfolios.

Sales to a genuine third party are straightforward. The gain is the net sales price (after incidental costs of sale) less the base cost (after incidental costs of purchase) or the March 1982 value if greater (s 35). Capital improvement costs during the period of ownership are also allowed (s 38), but there is no indexation allowance on the gain and rollover relief into new residential property is not permitted unless the properties are both furnished holiday lets. Reporting such sales is covered below.

The capital gains tax annual exemption allowance (£12,300) is normally available to an individual to set against the gains.

Gifting and selling at an undervalue

In family scenarios, gifting properties (or sales at an undervalue) regularly come across our desks. The basic capital gains tax rule is that a gift will be ignored and market value will be substituted (s 17). The only time a gift is allowed to stand for capital gains tax is on a gift to a spouse or civil partner (so a no loss, no gain basis).

Sales at an undervalue for capital gains tax purposes are also displaced and market value inserted instead (s 17). The donor is liable for the capital gains tax, but this can pass to the donee if unpaid within 12 months (s 282).

Key Points

What is the issue?
Tax advisers will often be asked to look at capital tax issues for property investors and owners and they will need to be confident in their knowledge.

What does it mean to me?
This is a fascinating but practical area of tax, with lots of rules, that is constantly in demand from clients.

What can I take away?
Legislation is the key and a good grip on the law is essential to give good advice.

This leads us to broadly conclude that gifts of residential property for capital gains tax purposes carry unwanted capital gains tax liabilities that principally fall on the donor. This will need to be firmly placed in front of clients.

Principal residence relief

This is one of most widely used and admired capital gains tax reliefs in the UK tax canon. Its basic shape is well-known, in that it relieves gains on 'an only or main residence' (s 222). It actually covers two elements: house; and land, with the land comprising garden and grounds up to the 'permitted area' of 0.5 hectares (that's about an acre in old money).

As advisers we are commonly asked about cases where the land is more than 0.5 hectares. Section 222(3) provides that the permitted area can be exceeded where the area required for the reasonable enjoyment of the dwelling house (or of the part in question) as a residence, having regard to the size and character of the dwelling house, is larger than 0.5 of a hectare. In that situation, the larger area shall be the permitted area. This occasionally comes up in tribunal cases and a recent example is *Phillips v HMRC* [2020] UKFTT 381 (TC).

Another question commonly asked by clients is: 'How long do I have to be in a house for it to become my principal private residence?' There is no straightforward answer to this and we have to use case law and a measure of common sense to solve the question.

The case law essentially turns on 'the nature, quality, length and circumstances of the occupation' (*Goodwin v Curtis* [1998] STC 475). I want to pause here, because it is not just the length of occupation as you would intuitively expect. A recent case that explored this is *Stephen and Lisa Core v HMRC* [2020] UKFTT 440, where a family's occupation of a house was between six and eight weeks; the property was held to be a principal private residence as they could demonstrate that it had been their intention to reside longer, but circumstances changed.

A couple who are married or in a civil partnership and living together can only have one principal private residence between them. A couple is treated as living together unless they are separated. A couple who are married or in a civil partnership but just happen to live apart (perhaps seen in later-life relationships) can still only have one principal private residence at any given time (s 222(6)).

Another principal private residence angle that we are likely to encounter is where a client has more than one property used as a residence. The question is which of these will be that person's main residence? It is essential that we clearly lead our clients through the legislation and to help them frame their principal private residence decisions.

Essentially, the client is able to choose which of the residences is their main residence and can settle this by an election under s 222(5)(a) within two years of the purchase. If that person does not settle the matter by election, then HMRC is entitled to draw its own conclusion on the facts and that may well not go in the direction that the client would wish (see *Hussain v HMRC* [2022] UKFTT 13, as an example).

Note that there is some basic anti-avoidance legislation in the principal private residence legislation to stop non-residents (say, who are living and working abroad) to nominate their UK house as their principal private residence by election whilst they are out of the UK. To attain UK principal private residence status, the individual must have spent at least 90 midnights in the property and be tax resident in the UK (s 222B).

Lettings relief

The principal private residence subsidiary relief, lettings relief, underwent some radical surgery in April 2020, such that it is now a pale copy of the original (which gave additional deemed principal private residence relief on whole house lets). The long and the short of this is that it is now effectively a lodgers' relief, where the owner is in shared occupation with the lodgers – and is best viewed as the capital gains tax version of rent a room relief (s 223B).

Disposals of UK property by UK residents and non-residents

As part of the capital gains tax mechanics of disposal, taxpayers will need to be clear about the capital gains tax reporting and payment deadlines that are required in the legislation in respect of disposals of residential property. Non-UK resident individuals have been required to report disposals of UK residential property online to HMRC since April 2015 (extending to commercial property, land and disposals

GIFTING AND SELLING AT AN UNDERVALUE

Example 1: A straight gift

Florence gifts two of her buy to let residential properties: one to her daughter Hermione and one to her niece Arabella. The properties are both standing at a gain of £1 million. These are straight gifts and market value will be used in the capital gains tax computation (s 17).

Note that Florence and Hermione are connected persons within the meaning of s 286, so market value would have been used in any event under s 18. Florence and Arabella are not connected persons, but the gifts rule trumps anything else (s 17). Another important point to note here is that the gifts relief provisions in s 165 are not available for buy to lets, but they are in play for furnished holiday lets. We will look at a possible planning point to get around this problem below.

Example 2: A sale at an undervalue

Florence sells the property to Hermione for £1. This is a sale at an undervalue and as they are connected persons, market value will be used instead (s 17). A sale at an undervalue to Arabella is still caught by s 17, so market value is also used.

THE MODIFIED LETTINGS RELIEF FROM APRIL 2020

Ranjit and Ruby buy a house (their only residence) for £100,000 and sell it for £500,000. One quarter of the house was let out to two lodgers for the whole of their ownership.

The gain of £400,000 has to be apportioned:

- 75% (£300,000) is covered by the principal private residence.
- 25% (£100,000) is prima facie taxable. However, the modified lettings relief provides that it is only taxable to the extent that it exceeds the lower of: the exempt part of the gain (£300,000) and £40,000. So the gain on the let part (£100,000) is reduced by £40,000, and only £60,000 of the gain is taxable.

Note that had there only been one lodger, the gain of the let part would have been ignored (see SP 14/80).

of property rich companies since April 2019) within 30 days of completion (extended to 60 days from 27 October 2021).

UK residents were drawn into the net from April 2020, such that disposals which result in actual capital gains tax liabilities were reportable within 30 days of completion (also extended to 60 days on 27 October 2021). If there is no actual capital gains tax liability for a UK resident (say because of principal private residence relief or a gain within the capital gains tax annual exemption), then no 60 day report is required (Finance Act 2019 Sch 2).

For both non-residents and residents, the broad rule is that any tax due must be paid within the same period, but for non-residents this has only been true since April 2019.

The basic inheritance tax issues

Sales of properties to third parties will not create inheritance tax liabilities. Gifts most certainly will (unless it's a spousal/civil partnership gift, which is covered by the inheritance tax spousal exemption) (Inheritance Tax Act (IHTA) 1984 s 18).

A gift by an individual to another individual is a potentially exempt transfer under IHTA 1984 s 3A, so gifts by Florence to Hermione and Arabella (as in the example above) will not be taxed at that point. Indeed, they will escape inheritance tax altogether if Florence survives the required seven years in IHTA 1984 s 3A(4).

This important point reminds us that conversations with clients about making gifts earlier, rather than later, is a part of what we do as competent tax advisers. If the donor fails to survive seven years, then inheritance tax is prima facie payable (and is payable by the donees in the absence of any other provision), although there are tapering provisions for the tax due if the donor survives at least three years (IHTA 1984 s 7(4)).

Gifts and tax planning: the use of a discretionary trust

We noted above that gifts of buy to lets to, say, a family member will bring unwanted capital gains tax liabilities on the donor and that rollover relief is not available for such gifts (but it is available for furnished holiday lets).

A way around this is to consider putting the buy to let into a discretionary trust, keeping it in the trust for a while and then passing it to the intended beneficiary. The reason that this works (especially in properties that are within the donor's available nil rate band) is in s 260. The mechanism is that the gift into the trust is a disposal for capital gains tax purposes, but s 260 allows the donor to swap a capital gains tax liability for an immediate inheritance tax liability. (The transfer into the trust would be a chargeable lifetime transfer, so taxable to inheritance tax at 20% to the extent that the value of the gift exceeds the available nil rate band.) If the value of the gift into the trust is below the available nil rate band, then the inheritance tax charge is zero. If it's above, then some inheritance tax will be due.

When the buy to let is transferred to the intended beneficiary, s 260 is invoked again and no capital gains tax accrues to the trustees, but there is an inheritance tax charge – the standard exit charge. The value of this has to be taken into account in the exercise. This mechanism can be useful though, especially in lower value properties, and the end result is that the beneficiary takes on the base cost of the original donor. Legal advice on the trust would be needed.

Inheritance tax business property relief

Business property relief is a valuable relief. The key point here is that it is not normally available for residential properties, including furnished holiday lets (even though they often qualify for better tax reliefs).

HMRC will normally take the view that buy to lets and furnished holiday lets are investment properties and not business property within IHTA 1984 s 105(3). Case law generally supports this view (see *HMRC v Pawson* [2013] UKUT 50 (TCC)). Very occasionally, a furnished holiday let will qualify, but this is very much the exception rather than the rule (see *Graham v HMRC* [2018] UKFTT 306.

Conclusion

As ever in tax, as advisers, we need to be aware of the whole landscape. In residential property transactions, we need to be able to use and understand both the capital gains tax and the inheritance tax aspects of transactions.

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Brexit one year on
What lessons have we learned?

Key Points

What is the issue?
On 1 January 2022, UK government easements entered 'Stage 2' of its phased implementation of the customs elements related to the UK-EU Trade and Cooperation Agreement.

What does it mean for me?
The UK government has also set out a phased plan of new controls that cover a range of regulatory standards and checks for goods entering Great Britain from the EU.

What can I take away?
The post-Brexit indirect tax landscape continues to adjust and 2022 marks the end of previous easements which will affect businesses further.

On 1 January 2022, UK government easements entered Stage 2 of the phased implementation of the UK-EU Trade and Cooperation Agreement. Businesses are still in a constantly changing landscape.

by George Riddell, Andy Bradford and Penelope Isbecque

Since the entry into force of the UK-EU Trade and Cooperation Agreement just over a year ago, two issues have dominated discussions between the UK and EU: fishing licences and the Northern Ireland Protocol. While much of the fishing licences row has been resolved, substantive differences remain around the Northern Ireland Protocol. Trade negotiations with the EU are set to intensify through February. In a positive sign, there has been an easement agreed for the continued supply of medicine entering into Northern Ireland from Great Britain without any need for re-labelling and testing, which was set to expire in early 2021.

Away from the headlines, many businesses have been focused on adapting to the new reality of the rules of trade between the UK and EU. While many of the rules took immediate effect in January 2021, several other easements have ended at different times, resulting in a need for businesses to be aware of a constantly changing landscape.

On 1 January 2022, UK government easements entered 'Stage 2' of its phased implementation of the customs elements related to the UK-EU Trade and Cooperation Agreement. The UK government has also set out a phased plan of new controls that cover a range of regulatory standards and checks for goods entering Great Britain from the EU. The aim of this phased approach was to give businesses and organisations more time to plan.

Set out below are some of the ongoing and new indirect tax challenges businesses will face as the new rules come into force.

Customs and keeping goods moving

The Trade and Cooperation Agreement meant that no customs duties are due on goods moving between the UK and the EU, providing those goods 'originate' in the UK or the EU for the purposes of preferential origin. In this context, 'originate' means the goods must be wholly obtained in, or sufficiently worked and processed in the UK or the EU. In practice, this means that the goods are extracted from the land or the goods have been changed substantially, and there are product-specific rules of origin allocated against each customs tariff classification in the UK and EU tariffs.

These determine the level of transformation and processing required (the rule which needs to be met) to prove that the goods originate in the EU or UK and no customs duty applies. The challenge, however, is tracking the origin of goods, many of which arrive in the UK via complex supply chains.

Disruption was also eased on goods moving between the UK and the EU, as the UK took a phased approach to the implementation of various customs rules which would otherwise apply to goods arriving from a non-EU country. For instance, the UK government implemented an easement allowing some goods to be imported from the EU with a delayed declaration process, which meant the importer had a maximum of 175 days following the goods' arrival to present a full declaration (although full declarations were required for controlled goods).

This easement changed from 1 January 2022, with full customs declarations now also required for non-controlled goods. In a nod to the nuances arising from the post-Brexit status of the Northern Ireland Protocol, delayed import declarations continue to be available for non-controlled goods moving from the island of Ireland to Great Britain. This easement will remain in place at least until the UK concludes its negotiations with the EU on the Northern Ireland Protocol.

While the UK took a phased approach to the implementation of customs controls, the EU implemented full customs controls from 1 January 2021. Businesses had to submit customs declarations when moving goods from the UK to the EU and approximately £3 billion of UK exports to the EU faced customs duties. The cost was significant but just as important is the increased administration for businesses required to prepare and submit additional paperwork, particularly in the food sector.

Another issue was the application of complex origin rules. Some businesses have chosen to pay tariffs even where rules of origin are met, as understanding the rules and the paperwork requirements were considered too burdensome. According to the UK Trade Policy Observatory, tariffs are still being applied to 26% to 32% of UK exports to the EU that could have qualified for zero tariffs. Similar issues could be exacerbated when goods are moved from the EU to the UK from 1 January under the new requirements.

Moreover, 1 January 2022 saw the end of an easement on preferential origin evidential requirements under the Trade and Cooperation Agreement. From this point, all required suppliers' declarations must be held at the point of issue of Statements on Origin by exporters. This additional administrative burden affects businesses claiming UK/EU Free Trade Agreement preference under the Trade and Cooperation Agreement. Importing businesses will bear consequences if the exporters issuing them with Statements on Origin do not hold supplier declarations (if needed) to evidence that the required rule of origin has been met. Failure to do so could result in significant implications in the form of duty assessments for importers and the removal of the right to issue origin declarations for exporters.

Despite the UK and EU entering a new relationship from 1 January 2021, most of the disruption in relation to goods moving from the EU to the UK was anticipated from 1 January 2022. While the level of disruption in January 2022 from a customs standpoint has not matched that seen in the first month of 2021, more disruption is expected, particularly if full import declarations are required at point of entry for goods moving to Great Britain from the island of Ireland.

A final knock-on effect also applies to businesses seeking support and resources to deal with the new post-Brexit customs obligations. The number of trade and customs-related jobs advertised on LinkedIn in January 2022 was 50% higher than the monthly average for 2021. Where businesses are not seeking support internally, they are seeking support externally. The number of customs brokers listed on the HMRC website in January 2022 was 30% higher in January 2022 than in March 2021, according to EY data.

The post-Brexit VAT landscape

The end of the Brexit transition period marked a significant moment for VAT. Under the Trade and Cooperation Agreement, the UK could adopt its own VAT rules (with the exception of Northern Ireland) for the first time since becoming a member of the EU's VAT single market in 1993.

Northern Ireland, on the other hand, operates a 'dual' VAT regime in line with the Northern Ireland Protocol. In practice, this means that Northern Ireland continues to follow EU VAT rules for goods and UK VAT rules for services.

For EU-GB cross-border trade, particularly in goods, many of the post-Brexit VAT rules hadn't been seen in relation to these supply chains since the 1990s. In high level terms, this meant more paperwork and red tape to move goods across borders to the end destination. Businesses expected to lose access to a number of the EU's VAT easements and inherit more VAT reporting and compliance requirements and that has certainly played out. To help, certain facilitations were introduced by HMRC, such as postponed import VAT accounting, which improved cash flow on imports.

Many businesses opted for a 'good enough' trading approach immediately post-Brexit, allowing them to keep trading while meeting new VAT obligations. For instance, obtaining new Economic Operator Registration and Identification (EORI) numbers allowing the movement of goods into and out of Great Britain and the EU, and getting fiscal representatives in place in countries where new VAT registrations were required.

As time moved on, new themes began to emerge around supply chain optimisation whereby businesses looked to reduce additional post-Brexit costs incurred (often from a customs perspective); for example, by using EU hubs to distribute goods. From a services perspective, businesses had to grapple with VAT 'use and enjoyment' rules which had not applied to EU-UK and UK-EU supplies pre-Brexit. The unexpected impact here is often in relation to intercompany services such as marketing and advertising costs (depending on country specific use and enjoyment rules) which, post-Brexit, may be liable to tax in the originating country rather than dealt with by the recipient of the services.

Longer-term, it is possible that HMRC and the courts could start to move away from EU case law precedent that it sees as unfavourable. UK law makers may also look at changes to the UK's VAT system that would not be possible under EU principles. We have already seen this, for instance, with women's sanitary products and speculation about the potential to reduce the VAT rate on domestic energy bills. Changes are likely to be piecemeal, but the freedom is there to allow it to happen.

Conclusion

The post-Brexit indirect tax landscape continues to adjust and 2022 marks the end of previous easements which will affect businesses further. UK businesses are resilient though and, despite red tape and increased cost, continue to flourish – in part by focusing on the bigger picture.

Brexit and the Covid-19 pandemic have sped up the move to e-commerce business models as a result of changed consumer behaviour. Coupled with tax authorities becoming more digital year on year around the globe, with real-time reporting and e-invoicing just two examples of this, perhaps the key take-away message for all businesses post-Brexit is not only keeping up to date with new Brexit rules, but also on focusing on digital systems wherever possible. This will keep the focus on doing business despite the indirect tax issues.

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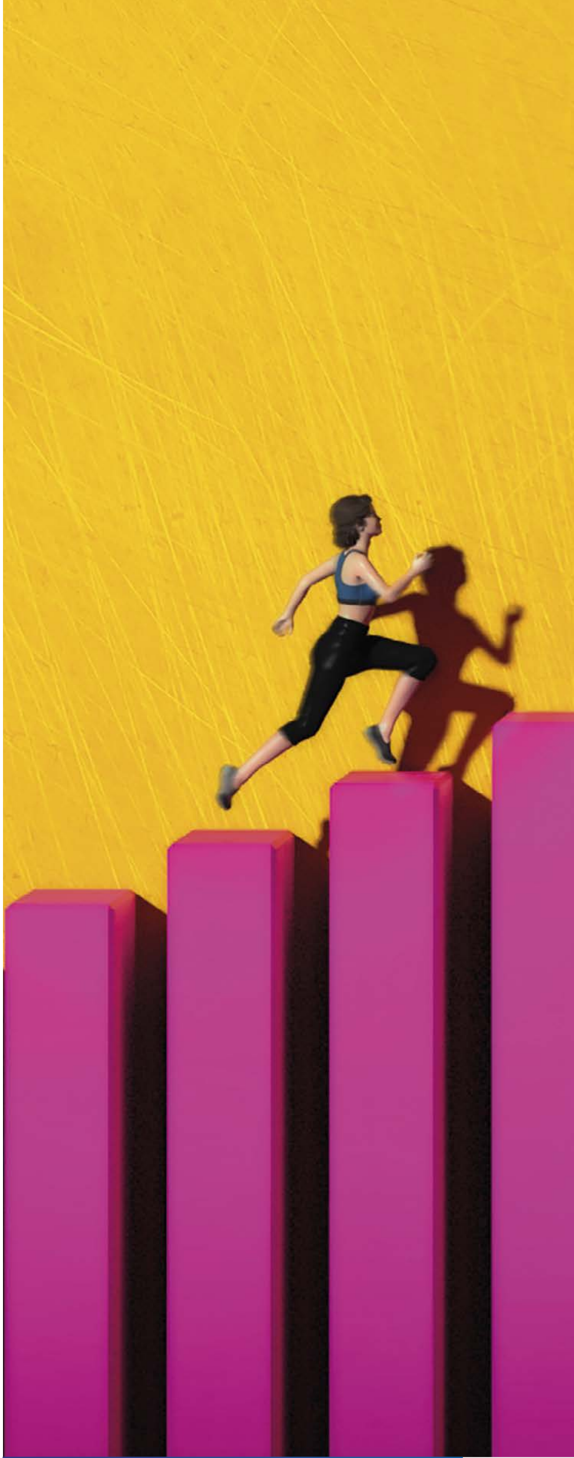
Company share buy-backs
Multiple completion contracts

by Peter Rayney

Purchase of own shares transactions are an important tool in succession planning. Although complex, multiple completion contracts can play a vital role in their financing, as we explore in the fictional case of Wimbledon Environmental Services Ltd.



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Key Points

What is the issue?
Financing a purchase of own shares transaction is not always easy. Company law demands that the purchase price for the shares bought back by the company is paid immediately.

What does it mean for me?
A multiple completion purchase agreement enables the exiting shareholder to enter into a contract to invariably sell all their shares back to the company, but with the legal completion of the share purchases taking place in tranches.

What can I take away?
There may be scope for adjusting the phasing of the own share purchase completions to ensure that the seller satisfies the 'connection' test immediately after the first tranche of shares are purchased.

Company share buy-backs are frequently used as an important tool in succession planning. Typically, the owner managers will sell all their shares back to the company under a purchase of own shares (POS) transaction, leaving the next generation and/or the senior management team in place as the new owners.

Financing a POS is not always easy. Company law demands that the purchase price for the shares bought back by the company is paid immediately (Companies Act 2006 s 691(2)). It is not therefore possible for a company to buy back its own shares for a deferred consideration. However, because of the (often) substantial sums involved for the POS consideration, the 'multiple completion' arrangement often comes to the rescue.

Multiple completion POS agreements

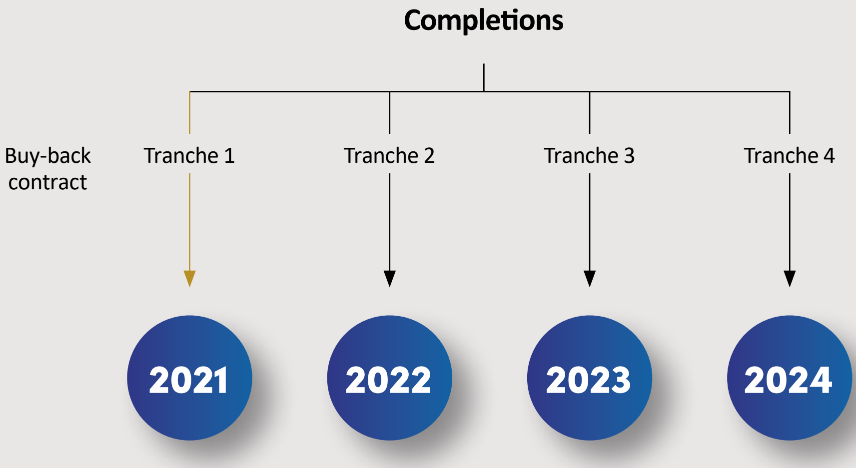
A multiple completion POS agreement enables the exiting shareholder to enter into a contract to invariably sell all their shares back to the company, but with the legal completion of the POS subsequently taking place in tranches. At each separate 'completion' date, the company would pay the relevant consideration, cancel the relevant tranche of shares being purchased and submit the SH03 form to the Registrar of Companies. The POS 0.5% stamp duty charge would only be payable on the tranche being brought.

It is accepted that the purchasing company only requires enough distributable profits to complete the relevant tranche of shares being purchased (i.e. it does not need to have all the distributable profits for all the relevant POS completions). The vast majority of corporate lawyers seem to accept that it is lawful to purchase shares under a multiple completion deal but there are some dissenters.

A multiple completion arrangement enables the company to finance the purchase price over a number of years out of its (surplus) trading cash flows. Provided the contract is properly structured and implemented, this mimics a 'deferred consideration' deal, whilst remaining compliant with company law.

By way of contrast, as the seller will normally prefer 'capital gains' treatment on the sale of their shares, the financing issue cannot normally be solved by arranging for the seller to loan back all or part of the purchase consideration. This will usually make the seller 'connected' under the

A TYPICAL STRUCTURE OF A MULTIPLE COMPLETION POS TRANSACTION



Corporation Tax Act 2010 ss 1042(1) and 1062(2)(b). This is because they will invariably have more than 30% of the combined share and *loan capital* of the company immediately after the POS. (Unless otherwise stated, all legislative references in this article are to Corporation Tax Act 2010.)

HMRC's existing approach to the connection test

HMRC has generally been comfortable with multiple completion contracts and granted POS clearances under s 1044 (and Income Tax Act 2007 s 701). Nevertheless, HMRC has stressed that it has always taken the view that the word 'possesses' in s 1062(2) refers to legal rather than beneficial ownership. This is emphasised in HMRC's Capital Gains Manual at CG58655. This effectively trumps the provision in s 1048(3), which indicates that the references in ss 1033 to 1047 refer to beneficial ownership.

> **The purchasing company only requires enough distributable profits to complete the relevant tranche of shares being purchased.**

HMRC told the CIOT that it appears to have overlooked the 'possession' of issued share capital limb of s 1062(2) when granting a number of recent POS clearance applications under s 1044. This is likely to have resulted in POS clearances being granted where the seller was still connected with the company by virtue of retaining legal ownership of more than 30% of the issued share capital immediately after the POS contract was executed. Wide-ranging experience suggests this was the case.

However, a particular difficulty that we often experienced was HMRC's view that it was not possible (under company law) to nullify the voting rights attached to the remaining shares. HMRC still held this opinion where there was a specific prohibition on voting in the POS contract. Consequently, where the selling shareholder, together with their associates (which notably excludes adult children for this purpose), still held more than 30% of the voting rights immediately after the POS contract was executed, HMRC would indicate that the seller was connected with the company under ss 1042 and 1062(c). Nevertheless, HMRC would be prepared to grant clearance

EXAMPLE: HMRC'S CURRENT APPLICATION OF THE 'CONNECTION TEST'

Wimbledon Environmental Services Ltd (WESL) has been trading since February 1973. It has always been owned by the three founder shareholders as follows:

	Number of £1 ordinary shares	% holding
Mr G U Bulgaria	40,000	44.44%
Ms M Cholet	20,000	22.22%
Mr C MacWomble	30,000	33.33%
Total	**90,000**	**100%**

The shareholders are not connected in any way.

Having just reached his 75th Birthday, Mr Bulgaria now wishes to retire from the business. Under WESL's shareholders' agreement, the two remaining shareholders have the option to buy all his shares.

The shareholders have agreed that it would be more tax efficient for the company to buy Mr Bulgaria's 40,000 £1 ordinary shares at an agreed fair value of £800,000 (£20 per share). However, to avoid any adverse impact on WESL's working capital requirements, the company would purchase the shares on a multiple completion basis. Under the draft contract, it is proposed that Mr Bulgaria's shares would be purchased in three separate tranches as follows:

Proposed completion dates	Number of shares	Purchase consideration
30 April 2022	15,000	£300,000
30 April 2023	10,000	£200,000
30 April 2024	15,000	£300,000

Under HMRC's current interpretation of the 'connection' test, Mr Bulgaria would legally possess 33.3% of WESL's issued share capital immediately after the POS contract is made (and the purchase of the first tranche is completed). This is demonstrated as follows:

- Mr Bulgaria's holding immediately after the first tranche POS: **25,000 shares** (i.e. 40,000 – 15,000)
- WESL total shares immediately after first tranche POS:
- **75,000 shares** (90,000 – 15,000)

$$\frac{25{,}000 \text{ shares}}{75{,}000 \text{ shares}} \times 100 = \mathbf{33.3\%}$$

Mr Bulgaria's possesses more than 30% of WESL's issued share capital and he is therefore connected with WESL under s 1062(2).

However, it may be possible to tweak WESL's POS agreement by increasing the amount of 'first tranche' shares purchased so that Mr Bulgaria has less than 30% of the issued share capital, voting rights, issued share capital and loan capital. Thus, for example, if Mr Bulgaria was to sell 20,000 shares on 'day one' back to WESL, he would satisfy the connection test, since he would then possess only 28.6% of the company's issued share capital, etc. as shown below:

- Mr Bulgaria's holding immediately after the first tranche POS: **20,000 shares** (i.e. 40,000 – 20,000)
- WESL total shares immediately after first tranche POS: **70,000 shares** (90,000 – 20,000)

$$\frac{20{,}000 \text{ shares}}{70{,}000 \text{ shares}} \times 100 = \mathbf{28.6\%}$$

provided that the remaining tranches of shares (awaiting purchase) were converted to non-voting shares. The seller was therefore able to enjoy the (usually) beneficial capital gains (i.e. no distribution) treatment. (All the other conditions in ss 1033 to 1048 would also need to be satisfied.)

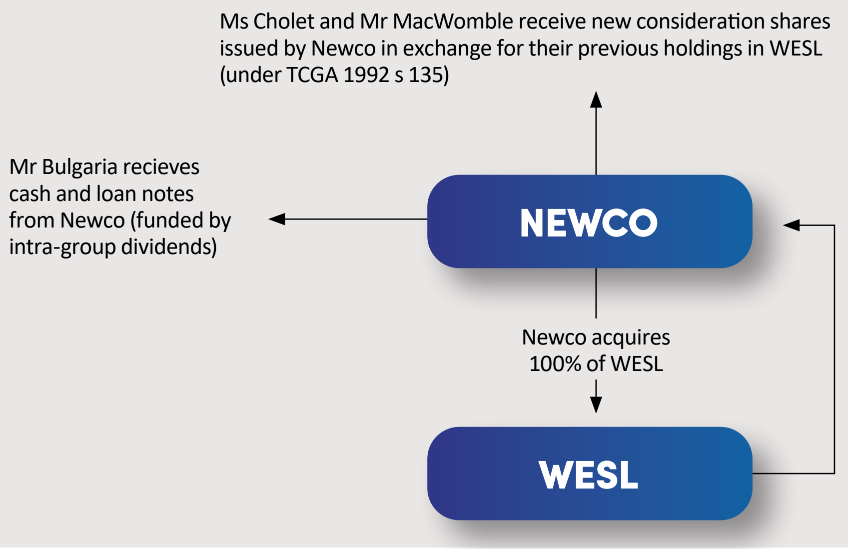
HMRC's current approach

In recent years, tax advisers generally approached multiple completion POS transactions with some confidence that they were effectively 'blessed' by HMRC.

However, I have received many calls from CIOT members and accountants indicating that HMRC is now refusing clearances in cases where the seller retains more than 30% of the company's issued ordinary share capital after the multiple completion contract is made. HMRC has recently confirmed to us that this does not represent a new interpretation of the word 'possesses' – simply that HMRC has not always correctly applied the strict law relating to the 'connection test'.

As already stated, HMRC has emphasised to us that 'possesses' refers to legal ownership (i.e. holding the shares remaining to be purchased), rather than beneficial ownership. Put simply, where the seller has legal ownership of more than 30% of the issued ordinary shares after the first POS has been completed, the transaction will not satisfy the strict requirements of s 1062(2).

NEWCO BUY-OUT ROUTE



In some cases, it may be possible to tweak the transaction to comply with this test, as shown in the example on the left.

HMRC has confirmed that it is now looking to rectify this recent oversight and will make sure that the wording of s 1062(2)(a) is properly taken into account when applying the connection test. For the avoidance of doubt, HMRC will not disturb clearances that have already been issued but will apply the above approach to any fresh POS clearance applications.

Notwithstanding HMRC's application of the '30% plus issued share capital' connection test, it is generally recommended that all steps are taken to deprive the seller of beneficial ownership (such as converting the relevant shares to non-voting shares) on day 1. This will provide certainty about the capital gains tax disposal date and, where appropriate, ensure that a valid business asset disposal relief claim can be made (see below).

Capital gains tax disposal date

The analysis of the capital gains tax disposal date for multiple-completion POS agreements has previously been the subject of some debate. The accepted view now is that the normal rule in Taxation of Chargeable Gains Act 1992 s 28 cannot apply. This is because s 28 requires an *acquisition* of shares; and Finance Act 2003 s 195 specifically deems that when a company executes a POS there is *no* acquisition of shares (even where the shares are placed in 'Treasury'). Nevertheless, under general capital gains tax principles, the disposal of all the shares occurs when beneficial ownership of the shares is lost. This will usually be when the POS contract is executed.

Thus, provided the relevant business asset disposal relief conditions are satisfied throughout the two years before the disposal date, the selling shareholder should be able to access the 10% capital gains tax rate (up to the £1 million lifetime gains limit). Of course, it will be appreciated that the seller must usually have held the shares for five years to bring the POS within the 'capital gains' regime (s 1035).

The way forward

It is unfortunate that HMRC's current application of the 'connection test' is likely to frustrate many legitimate multiple completion POS agreements, which seek to obtain capital gains treatment. There would, of course, be no problem in the rare cases where the exiting shareholder requires the 'default' distribution treatment.

In some cases, there may be scope for adjusting the phasing of the POS completions to ensure that the seller satisfies the 'connection' test immediately after the first tranche of shares are purchased.

However, if this is not possible, tax advisers will probably need to use a 'Newco buy-out' structure to acquire the outgoing shareholder's shares. This will typically involve using a new company ('Newco') as the acquisition vehicle to buy-out the shares of the departing shareholder – with cash and/or loan note consideration. The 'continuing' shareholders would 'swap' their shares under the share exchange rules in Taxation of Chargeable Gains Act 1992 s 135.

A typical Newco buy-out structure that might be implemented (as an alternative to the proposed POS) in the Wimbledon Environmental Services Ltd example is shown above.

This buy-out structure is not ideal, since it involves the creation of an additional company (Newco), increased stamp duty charge (reflecting the value of WESL) and so on. On the other hand, it is possible for Newco to issue loan notes for the deferred consideration. These loan notes could be secured by a charge over the business's assets, which is likely be attractive to the seller.

The CIOT acknowledges the problems for multiple completion POS agreements that are likely to be created by HMRC's recently confirmed approach on the 'connection' test. We shall continue to work with HMRC to see whether a solution can be found on this issue.

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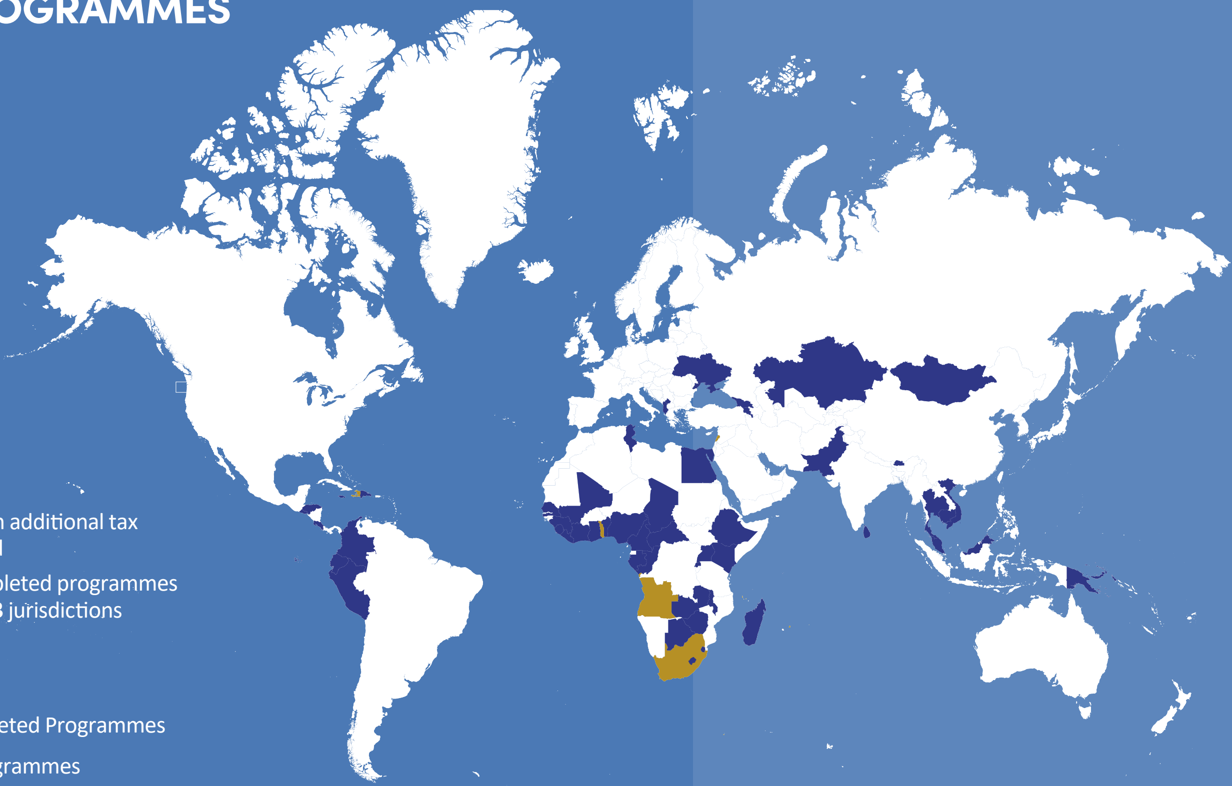
GEOGRAPHIC SPREAD OF TIWB PROGRAMMES



Over $1.6 billion in additional tax revenues collected

102 ongoing/completed programmes implemented in 53 jurisdictions around the world

Current/completed Programmes

Upcoming Programmes

Tax Inspectors Without Borders

A practical way to contribute

The TIWB initiative implements over 100 tax programmes across the world, offering practical hands-on assistance to support developing countries.

by Rusudan Kemularia

The Covid-19 pandemic continues to challenge policymakers and citizens, but it has not stopped Tax Inspectors Without Borders' experts from continuing their work to improve tax audits of multinational enterprises in developing countries worldwide. Tax Inspectors Without Borders – or TIWB for short – is a joint initiative of the Organisation for Economic Co-operation and Development (OECD) and the United Nations Development Programme (UNDP), designed to support developing countries in building tax audit capacity, and its success is evident with the recent launch of its 100th programme.

By using a practical 'learning by doing' approach, tax auditors from partner administrations work alongside officials in developing countries to share their knowledge and experience of auditing multinational enterprises by working with them on current audit cases. The narrow and precise emphasis on assisting audits in real-time distinguishes TIWB from the mainstream of existing international tax assistance. TIWB is helping to bridge the gap between theory and practice.

EXAMPLES OF TIWB'S WORK

Cambodia: Tax experts from HMRC commenced implementation of a TIWB programme with Cambodia's General Department of Taxation in 2020 in response to a request to receive assistance on multinational transfer pricing audits. Since the Cambodian transfer pricing legislation was introduced in 2017, the support from TIWB experts on transfer pricing audits is crucial to building local auditors' capacity within the tax administration.

Egypt: The Egyptian Tax Authority (ETA) launched a new TIWB programme in January 2020 to strengthen capacity to effectively exchange information with other global tax jurisdictions. This programme is implemented in co-operation with the UK and is partly funded by the EU. The focus is on helping ETA implement the international standard of exchange of information on request (EOIR) in practice and benefit from tax transparency and international co-operation to tackle tax evasion and other illicit financial flows.

Pakistan: HMRC has supported Pakistan's Federal Board of Revenue since 2014 via a capacity building programme aimed at helping the country to achieve its objectives on tax reform. TIWB experts have thus provided transfer pricing advice on anonymised casework. Realising the benefits of having tax audit experts support real audit cases, Pakistan amended its legislative provisions authorising foreign inspectors to participate in audit processes.

Thailand: The Revenue Department of Thailand launched its first TIWB programme in partnership with HMRC in November 2021. HMRC experts are providing assistance to local audit teams on cases in the oil and gas, digital economy and manufacturing sectors.

Uganda: A South African expert from the Roster of Experts, who was mentored by an HMRC official during an early TIWB programme in Uganda, later led a subsequent TIWB programme there from 2017 to 2019. The TIWB expert helped the Uganda Revenue Authority progress nine audit cases, guiding Ugandan officials through all audit stages from risk assessment and case selection to tax assessment and collection.

Practical audit assistance to develop tax audit skills and effective audit processes has been considered an area which could improve the quality and consistency of frontline tax administration. Host tax administrations define their priorities for assistance and the TIWB Secretariat matches an expert from a partner tax administration or the UNDP Roster of Experts. TIWB experts are not a substitution for local tax audit staff, nor do they carry out audit work where no local audit personnel would otherwise exist. Rather, the experts balance 'getting the job done' with the development of technical skills at the host administration.

TIWB is a unique form of technical assistance composed of short-term, periodic deployments of TIWB experts. Most programmes run for 18 to 24 months and consist of six to eight onsite visits of up to two weeks, interspersed with remote assistance based on confidentiality arrangements. TIWB experts can provide assistance on international tax audit issues related to transfer pricing, mutual agreement procedures, advance pricing agreements, pre-audit risk assessment and case selection, and audit investigatory techniques, among others.

> **Using a practical 'learning by doing' approach, tax auditors from partner administrations work alongside officials in developing countries.**

In spite of the Covid-19 crisis, TIWB programmes have continued to provide support to developing country tax administrations through remote assistance. TIWB now counts 53 completed and 49 current programmes, covering 53 jurisdictions globally. Africa continues to account for more than half of all TIWB programmes initiated in 2020/21. The initiative is actively targeting the Asia-Pacific, Eastern Europe and Latin America and the Caribbean regions to balance the geographical distribution of programmes and to ensure equal footing for all countries.

Owing to the success of the initiative, developing countries have expressed a desire for similar technical assistance in other areas of taxation. Consequently, the TIWB audit assistance model is now being applied to criminal tax investigations and the effective use of information exchanged automatically (AEOI) between governments, both of which help fight illicit financial flows.

To date, more than $1.6 billion has been collected in additional tax revenues through TIWB and TIWB-style assistance offered in collaboration with the African Tax Administration Forum (ATAF) and World Bank Group.

Partnerships for impactful collaboration

TIWB has not, at any point, been envisaged as a technical assistance provider itself.

The initiative relies on its allies, and in this regard, HMRC has been one of TIWB's greatest partner administrations from the early days of the initiative, providing assistance in nine programmes taking place across Cambodia, Egypt, Ethiopia, Lesotho, Malawi, Malaysia, Pakistan and Thailand. HMRC experts mainly provide assistance on tax audit programmes, but also on criminal tax investigation and AEOI pilot programmes in Pakistan and Malaysia, respectively. In addition to serving tax officials from HMRC, other tax experts from the UK have collaborated on TIWB programmes through participation in the UNDP Roster of Experts.

Overall, HMRC's support has helped tax administrations to improve auditors' skills and confidence in managing complex transfer pricing audit cases and further develop organisational structure. Broader benefits can also arise from improving the confidence in tax administrations, including:

- an increase in voluntary compliance and effective combat of non-compliance;
- greater certainty and consistency for business creating an improved investment climate;
- enhanced state-society relations, where taxation is one of the founding elements of that relationship, and by stimulating engagement with and confidence in the taxation process, a stronger link is established to a more effective and accountable state; and

- fostering international dialogue on tax matters between tax administrations in developed and developing countries.

UK experts have multiple ways of participating in the initiative's work. Currently, serving tax officials can get in touch with HMRC's International Relations Department, which can recommend suitable candidates to the TIWB Secretariat for possible upcoming programmes.

Selected officials continue to act as employees of HMRC, but also have responsibilities towards the host administration in terms of programme delivery and confidentiality, among others. Both the partner administration and host administration agree upon these responsibilities in the programme Terms of Reference before commencement.

Non-HMRC experts or retired tax officials interested in participating can express their desire to share their experiences via TIWB's online Expert 'Expression of Interest' (see bit.ly/3oCXPEE). Just like serving tax officials, the experts have specific responsibilities, defined in the programme Terms of Reference.

Looking ahead

In a challenging year, TIWB has persevered in delivering additional revenue and building audit skills that can improve the overall performance of developing country tax administrations in the longer term, making it an indispensable tool in the efforts to improve domestic resource mobilisation. With the collaboration of the many development partners, that provide funding and expert resources, TIWB continues to expand in scope and reach.

Moreover, TIWB has ambitious objectives for 2022 and beyond, with the ultimate aim of enhancing domestic resource mobilisation for developing countries and encouraging a more predictable investment climate for taxpayers.

Among other important tasks, the TIWB Secretariat plans to commence new audit programmes through a blended approach of onsite and remote assistance, and implement pilots for criminal tax investigation and effective use of AEOI programmes. It also plans to launch new mentoring programmes with a particular focus on women, with a view to expand the participation of female experts from developing countries.

Since its inception, the TIWB initiative has demonstrated impressive flexibility to meet developing countries' demand. Even as the world moves beyond the pandemic, the challenges will not subside, and 2021/22 has already presented additional pressures stressing taxation capacities of all countries. TIWB stands ready to assist developing country tax administrations meet these challenges in co-operation with experienced partner administrations and other international development partners.

For more information about IWIB, see www.tiwb.org.

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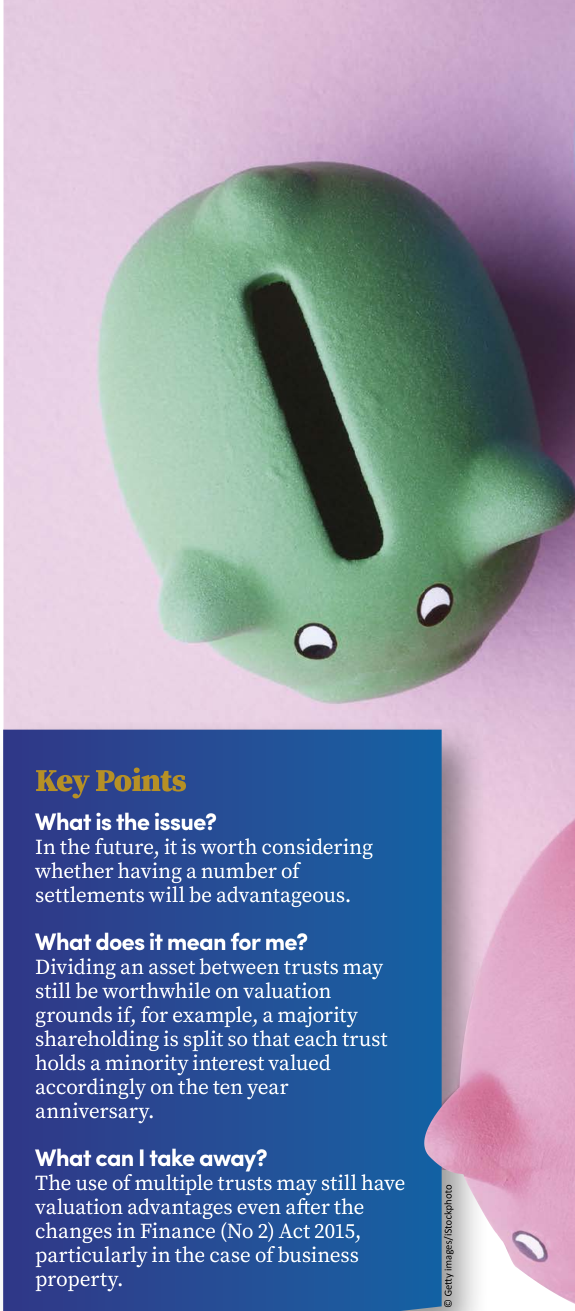
Multiple trusts
Is there a place for them?

by Emma Chamberlain

In the second of our articles on multiple trusts, we ask whether it will be worthwhile to establish a number of different trusts in the future.



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Key Points

What is the issue?
In the future, it is worth considering whether having a number of settlements will be advantageous.

What does it mean for me?
Dividing an asset between trusts may still be worthwhile on valuation grounds if, for example, a majority shareholding is split so that each trust holds a minority interest valued accordingly on the ten year anniversary.

What can I take away?
The use of multiple trusts may still have valuation advantages even after the changes in Finance (No 2) Act 2015, particularly in the case of business property.

In the January 2022 issue of *Tax Adviser*, we examined the changes that had been made to trusts from 18 November 2015 in Finance (No.2) Act 2015. Following those amendments, when calculating the rate of tax charged under the relevant property regime, the value of non-relevant property in the same or a related settlement is now excluded.

In the future, it is worth considering whether having a number of settlements will be advantageous.

Advantages of multiple trusts

There is no point in trying to circumvent same day additions and obtain multiple nil rate bands for multiple trusts. However, dividing an asset between trusts may still be worthwhile on valuation grounds. If, for example, a majority shareholding is split between, say, five trusts from the outset, each trust holds a minority interest valued accordingly on the ten year anniversary. The sum of the whole is likely to be greater than the individual parts.

There are no provisions to aggregate values where the same settlor has set up and funded different trusts from the outset. There is nothing similar to the related property valuation provisions in Inheritance Tax Act 1984 s 161. However, if say four identical trusts are used for one company shareholding purely to minimise values at a ten year anniversary, consider carefully whether a DOTAS report needs to be made.

There may well be other non-tax reasons to use multiple trusts; for example, if different branches of the same family have different long term objectives. Sometimes a settlor prefers to have separate trusts for each child and their respective families, despite the additional administrative costs and even if there are no obvious valuation advantages.

If the settled property is likely to increase substantially in value after it is settled, it is better to split the property among a number of different settlements from the start. This is because the property in each settlement will only be aggregated with historic values settled into the other trusts. Note that a decision has to be made from the outset if multiple trusts are desired. It is not possible to set up one trust and then sub-divide it into 10 separate trusts later, as s 81 will treat the property as remaining comprised in one trust for the purposes of the relevant property regime.

A further decision is whether to settle property into different settlements by transfers all made on the same day, so that aggregation is of property comprised in related settlements or in same-day additions. Alternatively, a series of transfers could be made on different days, so that the settlements comprising the property transferred later in the sequence have to be aggregated with the settlor's chargeable transfers made earlier in the sequence.

Same-day additions and property initially in a related settlement are included at their value when settled taken by themselves, but not taking into account any business or agricultural relief. Previous chargeable transfers of the settlor do take into account any business or agricultural relief, but absent such relief, the values of those transfers will add up to a 'loss to the transferor' value, which reflects the value of the asset being fragmented taken as a single asset. So generally it is preferable to use trusts set up on the same day for property investment companies, but successive trusts for companies qualifying for business property relief.

Normal expenditure out of income

Avoid related settlements where normal expenditure out of income exemption is in point. This exemption is available for gifts out of the income of the taxpayer, provided that such gifts are 'normal' (i.e. are part of a pattern of payments) and do not have the effect of reducing his standard of living (see Inheritance Tax Act 1984 s 21 and *Bennett v IRC* [1995] STC 54).

Excluded property

Where a settlor is not domiciled in the UK and is settling property situated outside the UK but the trust may in future hold UK situated property (e.g. a UK house), there may be long term advantages in having a number of different settlements,

particularly if the settlor has made no chargeable transfers in the preceding seven years. As long as the settled property remains excluded property, it does not make any difference whether it is comprised in one settlement or several. However, if any of the property becomes relevant property – for example, the trustees buy UK land – then if the settled property has been divided among a number of settlements, each settlement will have its own nil rate band in the event of a periodic or exit charge.

Replacement property

Settling property qualifying for business property relief into multiple trusts is sensible if there is any risk of the donor dying within seven years and the property being sold. The replacement provisions in ss 113A and 113B require the donee who sells business property to use the entire sale proceeds to buy replacement business property. If the shares are split between, say, two trusts, each trust can decide whether to invest their sale proceeds in new property to avoid a clawback of relief. It allows Trust 1 to invest in non-business assets without jeopardising relief on Trust 2, which reinvests the proceeds from their shares.

Disadvantages of multiple trusts

There are downsides in having multiple trusts. Apart from additional administrative costs, setting up a series of trusts will restrict the annual capital gains tax exemption and income tax standard rate band of the trusts. Later transfers of assets ***between*** separate settlements will be capital gains tax disposals and may have stamp duty land tax disadvantages (contrast transfers between sub-funds of a single settlement, which give rise to no capital gains tax or stamp duty land tax). Losses of one trust cannot be set against gains of another.

Conclusions

The use of multiple trusts may still have advantages even after the changes in Finance (No 2) Act 2015, particularly in the case of business property. The advantages for excluded property trusts is because of, rather than despite, Finance (No 2) Act 2015, given that non-relevant property comprised in related settlements is no longer included when calculating the rate. It is perhaps surprising that there are not provisions similar to those of related property between husband and wife that apply to trusts set up by the same settlor.

As for pre-2014 trusts, watch carefully any additions to such trusts by the settlor in case this jeopardises existing protected status.

A detailed survey of the technicalities of relevant property regime and the variety of different trusts can be found in the forthcoming 5th edition of *Chamberlain and Whitehouse on Trust Taxation*.

TAKING ADVANTAGE OF THE S 21 EXEMPTION

Charles has surplus income of £600,000 each year. He has made no chargeable transfers. To take advantage of the Inheritance Tax Act 1984 s 21 exemption, he settles £200,000 into each of three trusts which he establishes. Note that:

1. The entry charge does not arise because of the availability of the exemption.
2. Given that the conditions for the exemption are met, each trust will benefit from a full inheritance tax nil rate band.
3. The payments are not chargeable transfers but exempt from inheritance tax, and it is important to avoid the aggregation of same-day additions. Accordingly, the sums should be paid into the trusts on different days. It is unnecessary to use pilot trusts: the sums could be settled directly into three separate trusts, although to avoid the related settlement rules the trusts should be set up on different days. Each trust will have the benefit of a full unused nil rate band on the 10 year anniversary and on the occasion of any exit charges.

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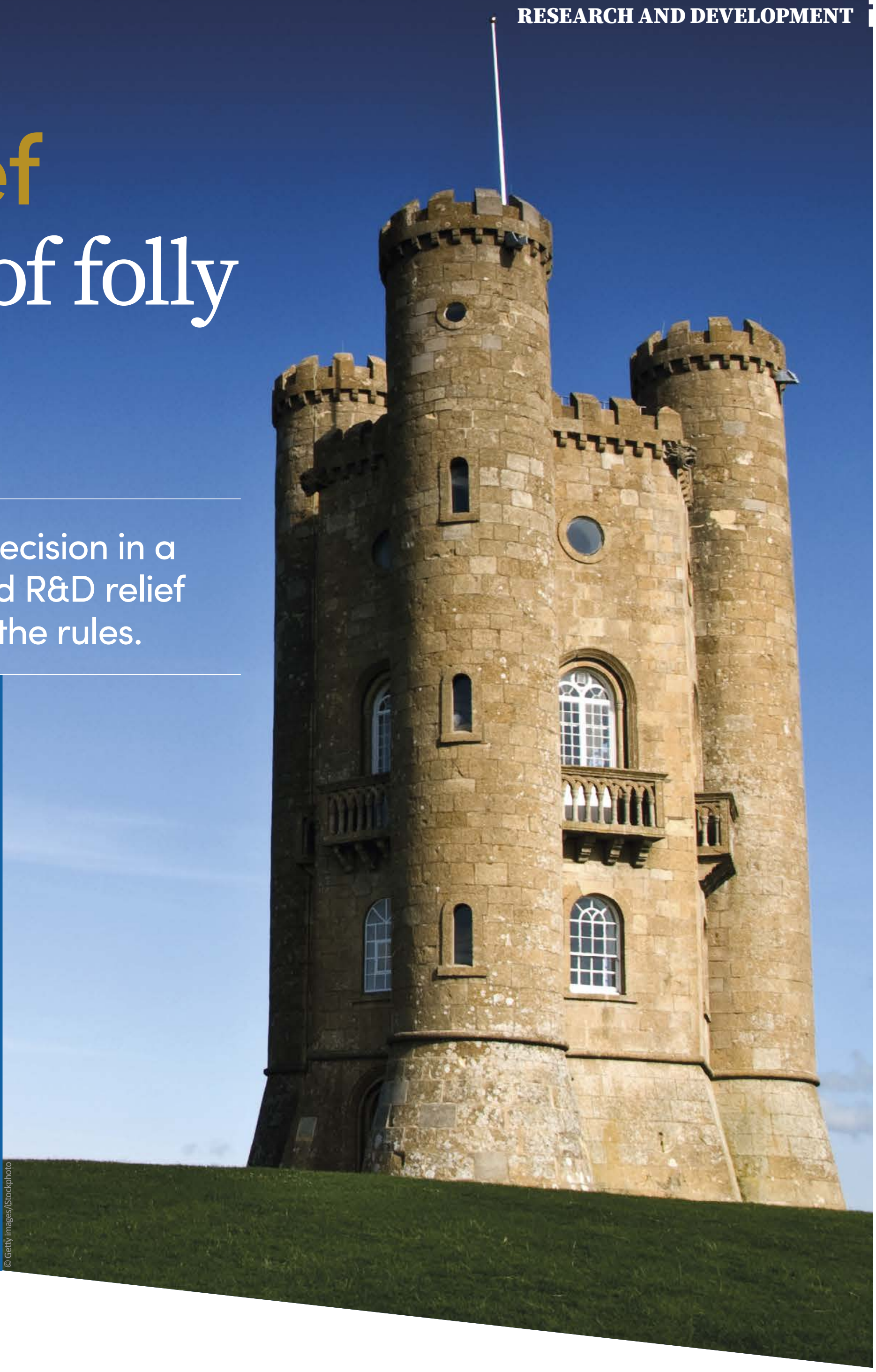
Profile Emma Chamberlain OBE is a barrister at Pump Court Tax Chambers and visiting professor of law at Oxford University and LSE. She is a member of the STEP technical committee, joint chair of the CIOT Private Client (International) Committee, a former council member and fellow of CIOT. She was a co-author of the December 2020 report on wealth taxes in the UK (see bit.ly/3fVYkVH). Readers can obtain more information on trust taxation and estate planning generally in the forthcoming 5th edition of Chamberlain and Whitehouse Trust Taxation and private client tax planning.

R&D relief
The price of folly

by Keith Gordon

The First-tier Tribunal's decision in a case looking at enhanced R&D relief shows the complexity of the rules.



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Key Points

What is the issue?
In *Quinn*, HMRC argued that fees paid by the clients amounted to meeting the costs of R&D, and therefore did not qualify for the additional R&D reliefs as the work fell within the exclusion of 'subsidised expenditure'.

What does it mean for me?
The knowledge obtained as a result of the R&D was found to be no value to the company's clients, who often have no knowledge of the technical solutions developed, and the taxpayer's appeal was therefore allowed.

What can I take away?
R&D work undertaken in the course of providing a service for a client, the costs of which are subsumed within the overall fee, will not necessarily be denied the enhanced relief given under the R&D rules.

Until a couple of years ago, relief for research and development expenditure was a subject that did not attract much attention in the professional press (except for the occasional reminder of its potential availability and generosity, where available). However, the past couple of years have seen discussions about a concern that many taxpayers were being encouraged to make dubious claims by rogue advisers and, in parallel, a more hardened approach by HMRC to claims (whether genuine or less so).

Over the past two decades, there have been different versions of the research and development rules, some depending on the size of the claimant company (the reliefs cannot be claimed by unincorporated businesses) and also depending on who carries out the actual research and/or development. However, a common theme is that the relief is not available in respect of what the legislation calls 'subsidised expenditure'. This is defined in the Corporation Tax Act 2009 s 1138(1) (broadly) as expenditure:

- that is subject to a notified state aid;
- in respect of which a grant or subsidy (other than a notified state aid) is obtained; or
- that is otherwise met directly or indirectly by a third party.

The precise scope of this exclusion is the subject of a recent First-tier Tribunal decision, *Quinn (London) Ltd v HMRC* [2021] UKFTT 437 (TC).

The facts of the case

The taxpayer company, Quinn, carries out construction and refurbishment works to a range of clients, for which it charges an agreed price. In the course of carrying out its work, Quinn undertakes some research and development.

This research and development relates to developing technological knowledge or capability so as to assist Quinn in the carrying out of its functions and which it can use in the course of future projects. Examples discussed by the tribunal include work on a 17th century mansion house and surrounding parkland structures, where Quinn developed a number of novel techniques for the refurbishment of heritage properties, including:

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Profile: Keith M Gordon MA (Oxon), FCA CTA (Fellow) is a barrister, chartered accountant and tax adviser and was the winner in the Chartered Tax Adviser of the Year category at the 2009 Tolley Taxation awards. He was also awarded Tax Writer of the Year at the 2013 awards, and Tolley's Outstanding Contribution to Taxation at the 2019 awards. From September 2021, he is offering a new series of monthly lectures on recent tax cases via Zoom with a Q&A session following. Email admin@keithtaxlectures.com for further information.

- providing safety features on a pond using innovative designs to recreate Victorian appearances but which nevertheless comply with modern health and safety requirements;
- devising a process to replace load-bearing timber floor joists with steel supports, without compromising or damaging the listed structure;
- devising methods to measure the strength and integrity of a 17th century stone cantilevered landing and staircase; and
- the adaptation of a micro-pile system to allow for installation of a lift shaft into the listed structure.

When pricing for the work, Quinn would consider the likely costs it would incur in delivering a particular project, including the probable research costs, and then agree a fixed price with the clients in advance of carrying out the works, although this price is often varied by agreement in the course of the project.

HMRC accepted that the expenses incurred qualified as an allowable business expense in the normal way. However, it considered that the expenditure did not qualify for the additional research and development reliefs on the basis that the work fell within the exclusion of 'subsidised expenditure'. HMRC's argument was that the fees paid by the respective clients amounted to meeting the costs of the research and development and therefore fell foul of the third limb of the statutory definition in s 1138(1).

The First-tier Tribunal's decision

The case came before Judge Harriet Morgan.

Both parties had presented a wealth of case law to the First-tier Tribunal, although none of the authorities was precisely on the point that the tribunal had to address. As far as the third limb of s 1138(1) was concerned, Judge Morgan considered that expenditure would be caught by this provision if:

1. the expenditure was not actually caught by the previous two limbs (state aids or grants, etc);
2. a person other than the taxpayer met the expenditure; and
3. that person met the expenditure either directly, such as by paying the relevant cost direct to the person charging it or, indirectly, such as by reimbursing the taxpayer for sums it has already paid.

The judge continued to note that HMRC's argument relied upon the fixed price paid by a client for a particular project amounting to the meeting of the costs incurred by Quinn in providing the service contracted for. On a natural reading of the test as viewed in the context of the legislative scheme, the judge concluded that the rules were not intended to cover such cases. This view was reinforced by the fact that the previous two limbs were focused on cases where the taxpayer had received some form of grant towards the costs of the research and development and the judge considered that this context framed the meaning of the words 'otherwise met'.

Judge Morgan noted on the facts of the case that the knowledge obtained by Quinn as a result of the research and development is of no value to the company's clients, who often have no knowledge of the technical solutions that Quinn have come up with (or tried to come up with) during the work on their site.

The taxpayer's appeal was therefore allowed.

Commentary

From my perspective, the First-tier Tribunal's decision makes complete good sense. As the judge herself noted: '[I]f HMRC's approach were to be adopted, the circumstances in which an SME could claim enhanced R&D relief would seem to be confined to those where it has no prospect of exploiting the R&D for commercial gain.'

The judge also criticised HMRC's reliance on the High Court case of *Gripple* [2010] EWHC 1609 (which incidentally was one where I had represented the taxpayer). HMRC had tried to suggest that, according to the High Court, relief was not available in relation to expenditure that can otherwise qualify as a business deduction.

However, as the judge made clear, by reference to the actual words found in the High Court judgment, all that was said by the High Court judge on that point was that, even if certain expenditure fails to qualify for relief under the generous rules for research and development, that does not necessarily prevent it from qualifying as a deduction in the usual way.

This is not the first time that HMRC will have put forward a plausible assertion as to the law, with reference to established authority, where on closer inspection that authority does not back up the assertion being put forward.

I have heard from a reliable source that HMRC does not wish to appeal against the decision but refuses to accept its correctness. This is somewhat surprising because, rather unusually, HMRC instructed a QC to represent it at the First-tier Tribunal, which suggests that it was taking this case as a lead case. Furthermore, there was evidence before the tribunal that there were between eight and ten other cases turning on the same point being handled by Quinn's specialist advisers.

However, if what I have heard is correct, HMRC is likely to continue to resist claims in similar circumstances on the basis that a First-tier Tribunal decision does not represent binding precedent. This approach, if true, is in my view rather disingenuous as the concept of binding precedent is strictly of little relevance. The First-tier Tribunal's decision is the best (and only) authority as to what the statutory words mean and HMRC should abide by it or, if it considers the decision to be wrong, it should take the case to the Upper Tribunal and beyond. Indeed, there is case law to show that it can do so without any adverse effect on the particular taxpayer. I hope that the representative bodies will take up this matter with HMRC because it is unreasonable for HMRC to ignore the First-tier Tribunal's decision simply because it does not like it.

What to do next

Although advisers should be aware of the risk of continued HMRC challenge in this regard, the First-tier Tribunal's decision should put it beyond doubt that one cannot generally treat elements of a fee paid by a client as a subsidy. As a result, research and development work undertaken in the course of providing a service for a client, the costs of which are subsumed within the overall fee, will not necessarily be denied the enhanced relief given under the R&D rules.

Secure your dream job
Be mentally prepared

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Many things have changed in the last few years, but some basic principles and some top tips will help you when it comes to preparing for a job interview – whether virtually or in person.

by Georgiana Head

> **Key Points**
>
> **What is the issue?**
> On average, in an interview you have less than an hour to impress a future employer so it's worth putting in some time beforehand to do some preparation.
>
> **What does it mean for me?**
> Before an interview, reread your CV. Look at it from an employer's point of view and how it matches to the job spec. Think about what you would ask if you were the interviewer.
>
> **What can I take away?**
> If you are nervous about attending an interview – be the best you can. Spend two minutes standing in a power pose. Better still, do it with a grin on your face, as this will make you feel happier and more confident.

There has been a paradigm shift in the way that interviews take place in the tax market following the pandemic in 2020. Whereas once we met in offices, shook hands on arrival and sat across from each other in a meeting room, now virtually all interaction is online. So how can you prepare for an online interview? And what happens if they ask you to come into the office for a second round?

Technology

First of all make sure that the technology works. Try out your Microsoft Teams, Google Hangout or Zoom link with a friend. Make sure that you can take the call somewhere quiet which has a professional background – so try not to sit on your bed; a table or desk will look far more professional. Double check that there is nothing in camera shot that you might be embarrassed about, such as a stupid book title, piles of laundry, etc.

On the day of the call make sure you log on with plenty of time to spare.

What to wear

You may not be in an office but this is still an interview so think business-like. You don't need a full suit but a shirt and tie or business-like top are definitely the way to go. Don't dress casually – it will come across to the interviewers as if you haven't made an effort and don't take their time seriously. Don't make the mistake of wearing tracksuit bottoms with a nice top. If the doorbell rings or you have to stand up, you will look ridiculous!

Preparation

On average, in an interview you have less than an hour to impress a future employer so it's worth putting in some time beforehand to do some preparation. After all, as a tax professional you wouldn't do a pitch to your clients or to the board without a considerable amount of preparation.

No matter how good your CV, experience and qualifications, I recommend the following steps.

Research the organisation

Research the organisation thoroughly. An obvious starting point is their website. Ensure that you have read their press release section and are aware of any recent transactions. See whether they have an entry on Wikipedia or Glassdoor.

If the organisation is a company, try to get hold of their most recent accounts from either their own website or Companies House. If it's a law firm, look them up on www.icclaw.co.uk to find out what they specialise in. Also look at their rating in www.chambersandpartners.co.uk.

Look to see if there are any relevant tax articles written by the interviewers (try googling their name and company name). Talk to any of your friends who work for the firm. Remember to subtly mention some of this research in the interview.

Research the role

Another obvious point, that is frequently forgotten, is to ensure that you are aware of exactly what role you are being interviewed for. You shouldn't make assumptions, always ask for a job spec (if there is one) and get your recruitment consultant to brief you on the position.

It's sensible to then try to match your own experience to the job spec, work out where you might be light on experience and think about how you would answer questions on any part of the spec. Think about things you have already done which match the spec and which you could bring up in the interview.

The interview itself...

Before an interview, reread your CV. Look at it from an employer's point of view and how it matches to the job spec. Think about what you would ask if you were the interviewer. Make sure you know who is interviewing you. Are they a partner? Are they in HR? Think of questions that you want to ask them.

Don't ask about salary or benefits in the meeting though – an employer does not want to think that your only motivation for moving is monetary. You should only discuss the financial package if asked directly by the interviewer. Many interviewers find talking about money embarrassing and they also may not be the person who has the authority to agree a salary package. It is best to let your recruitment consultant do the negotiating on this – it is after all what they are trained for.

Finally, practice makes perfect, so prepare for a range of interview questions - hypothetical questions, those that test your competency, and those designed to 'get to know you'.

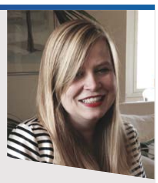
Common interview mistakes

- **Being too negative:** Be positive. Don't focus on the negative elements of your current role. No matter how unhappy you may be at your current company, be careful not to criticise as it can make you appear bitter. Focus on the reasons why you want the new position and why you think you can do the job, rather than the reasons why you want to leave your current role. Remember, this is your chance to sell yourself. Be honest, but don't emphasise anything detrimental to your application.
- **Humble bragging:** In 2015, Harvard University researchers discovered that candidates who tried to dissemble and make a 'strength out of a weakness' during interview questioning came across as dishonest, whereas an honest assessment of weaknesses came across well (see bit.ly/36j3UzO). So honesty really is the best policy.
- **Not showing enough enthusiasm!:** There is nothing more frustrating than hearing an interviewer say, 'The candidate can do the role, but I didn't really think they wanted the job.' Not showing enough enthusiasm for the role is a sure fire way of failing an interview. Make sure you ask questions, and that you showcase the research that you have done.
- **Don't leave early!:** Another common fault is not leaving enough time for the call and having to leave it early for a work call.

Returning to an office environment

Now that some firms are returning to the office, I'm beginning to find that some second round interviews are returning to a face to face basis. However, the rules of face to face interactions have changed so be mindful:

- Leave extra time to sign into an office.
- Wear a mask on arrival and follow the interviewers lead about whether or not to shake hands on arrival.
- Watch their body language to ensure you pick up cues on whether they are socially distancing.
- If there is hand sanitiser in reception, use it.
- Check whether you need to do a lateral flow test before going on to their site.



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BE MENTALLY PREPARED: THE POWER POSE

In an interview, adrenaline can help you to answer questions and think on your feet, but too much adrenaline and stress hormones like cortisol can actively damage your ability to come across as calm and rationale.

Anyone who has seen me talk at training events will know that I swear by social psychologist Amy Cuddy's theory that power poses help you to feel more confident. Find the time to watch her 2012 Ted Talk 'Your body language may shape who you are' (see binged.it/3LqytUk).

Amy studies dominance behaviours. Primates and humans both use fundamental poses to show dominance. When Usain Bolt wins a race, he instinctively throws his arms in the air in a 'pride pose'. Even congenitally blind children will do this when they win a race – it is hardwired into our system.

Amy started trying to work out how to help female students at top American Universities. Where male and female undergraduates had started a degree with the same grade point average, in their final year the female undergraduates were falling behind the males. The key difference in the final year was the amount of marks awarded for class participation. Amy found that many of the girls sat back and didn't have confidence to speak up in class, while the boys spoke up more often.

She discovered that dominant individuals in the class would unconsciously use a range of power poses and experimented to see what happens when you strike a pose like the 'pride pose'. Amy discovered that after two minutes, this actually affects your body chemistry by increasing testosterone and lowering cortisol (the stress hormone) to make you feel more in control and confident.

So if you are nervous about attending a meeting or interview – be the best you can. Before you go into an event, spend two minutes in the toilet in a power pose (the pride pose is to me the easiest). Better still, do it with a grin on your face as this will also release endorphins and make you feel happier and more confident.

Charity trustees

A guide to charity taxation

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The way in which a charity is structured, such as the use of a wholly owned subsidiary company, can have a significant impact on the amount of tax paid, as can the correct use of charity VAT relief.

by Chris Gillman

Being trustee of a charity can be quite an appealing prospect and is something that tax and accounting practitioners are often asked to take on as they reach the more senior end of their careers.

But it is not something to be undertaken lightly. Indeed, any of us who have been reading our industry publications will have been hard-pushed to miss the various tales of charity misadventure lately, which have been varied in nature but more often than not related to governance and sometimes tax.

Governance

In the charitable sphere, the word 'trustee' has a rather broader meaning than we might be used to in the private client world, being used to describe those charged with governing a charity, whether it is set up as a trust, a corporate entity or a charitable incorporated organisation. The structure chosen for the charity will naturally vary but for a charity that is looking to actively trade, rather than passively gift, incorporation is usually the chosen route.

Charities tend to be structured as a company limited by guarantee rather than by shares, and in this case you would be a director of the company and a trustee of the charity. This structuring may provide greater protection for the trustees than using a trust, and also makes it easier for the charity to continue unchanged where there is a change in trustees.

Whatever the structure, however, as a trustee you cannot normally be paid for your work in this role. Your role is as a volunteer and akin to a non-executive director: not usually involved in the day to day running of the charity but involved with policy making, setting strategy to achieve its objects and safeguarding the charity's assets. Fundamentally, the rule is that you cannot be paid for acting as a

Key Points

What is the issue?
In the charitable sphere, the word 'trustee' has a rather broader meaning than in the private client world, being used to describe those charged with governing a charity, whether it is set up as a trust, a corporate entity or a charitable incorporated organisation.

What does it mean for me?
Primary purpose trading is the area most likely to cause a charity to slip up and become subject to corporation tax.

What can I take away?
Charity taxation is a far from straightforward matter, but with the appropriate advice, a charity's affairs can be structured in such a way to maximise the advantages available to them.

trustee, nor can you be a paid employee of the charity.

In certain circumstances, however – and only if the charity's constitutional document allows it or if the Charity Commission or courts approve it – a trustee can be compensated for providing certain skills to the charity, such as building work or accountancy and bookkeeping services.

There are certain legal requirements around such payments, which must be:

- in line with the charity's best interests;
- reasonable;
- by written agreement with the exact amounts specified; and
- in the minority – that is, only a minority of the charity's trustees may receive such payments.

Expenses reasonably incurred by trustees to carry out their duties can be reimbursed.

EXAMPLE: IMPACT OF WHOLLY OWNED SUBSIDIARY COMPANY

Charity only

Total profit	£750,000
Less exempt profit	£550,000
Taxable profit	£200,000
Tax @19%	£38,000

Charity with subsidiary

Exempt profit	£550,000		Profit in subsidiary	£200,000
Donation from subsidiary	£200,000	⟵	Donation	(£200,000)
Total exempt profit	£750,000		Taxable profit	Nil
Tax @19%	Nil			

Corporation tax

As a default, a charity is subject to corporation tax, just like any other corporate entity. Tax relief then comes in the form of exemptions built into the legislation, the key ones of which are:

- donations;
- primary purpose training;
- incidental income, such as rent; and
- small trading exemption.

Primary purpose trading is the area most likely to cause a charity to slip up and become subject to corporation tax, because at the margins it can be quite a grey area. Primary purpose trading is trading in furtherance of a charity's stated goals, whereas other ancillary income may be subject to corporation tax in the usual way. The best way to demonstrate this is by using an example.

Museums are generally set up as charities. This allows the entrance fees that they charge to not be subject to corporation tax as they are clearly charged with the express intent of providing education, which will be one of the charity's primary goals. Selling reference books in the gift shop is a slightly greyer area, but should also be acceptable as ancillary to the primary purpose, as again it is in furtherance of the guest's education.

However, what if the gift shop is also selling mugs, T-shirts and pencils, themed to the museum? The income here cannot be said to be in furtherance of the charity's goals and, as such, would not fall within this exemption and would potentially be subject to corporation tax.

It is possible to mitigate this potential tax exposure. This is achieved by incorporating a wholly owned subsidiary company to the charity, which can be used for any trading that is at risk of not falling into the exemptions. This helps to mitigate the risk of the charity itself becoming subject to tax, while nicely ringfencing any non-exempt trading.

> **Primary purpose trading is the area most likely to cause a charity to slip up and become subject to corporation tax.**

While the subsidiary itself will be subject to tax, it can then donate its profits to the parent company. These donated profits will be subject to tax relief (which HMRC refers to as 'gift aid for companies') against its taxable profits. This in turn can be used to reduce the subsidiary's taxable profits to nil, notwithstanding the possibility of a mismatch between taxable and accounting profits.

As noted above, this income received at charity level is not subject to tax because it is a donation.

While there is no additional relief at charity level for these gift aid donations, they provide 100% relief against taxable profit in the subsidiary, thereby ensuring that charity tax reliefs apply.

There is a further benefit of structuring this way. Usually, when a company makes a donation that it wishes to be subject to gift relief, it must be made during the year in which the relief is

CHARITY VAT RELIEF

Reduced rate (5%)
Fuel and power for:
- residential accommodation;
- charitable non-business activity; and
- small scale use

Mobility aids for the elderly

Zero rate
Several items, subject to conditions, including but not limited to:
- advertising;
- donation collection materials;
- aids for disabled people;
- ambulances;
- rescue equipment;
- certain construction services; and
- medical equipment

claimed. However, where the company in question is a wholly owned subsidiary of a charity, there is an additional nine months to make the donation and still be able to offset the donation in the prior year. This allows time for the taxable profits to be accurately calculated and an appropriate donation and claim to be made accordingly.

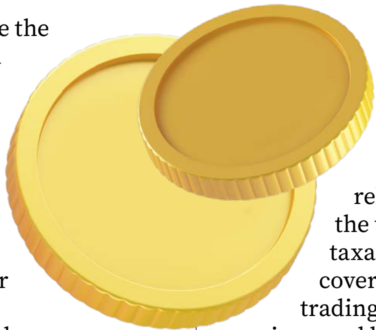
It should be noted that this only applies to donations made freely. A donation made under covenant must be claimed in the year covered by the covenant (i.e. in the year in which the donation is made) and care should therefore be taken in this respect.

For smaller charities, there is also a small trading exemption aimed at avoiding the need for the complexities of corporation tax compliance or indeed incorporating a subsidiary where income levels are low but some of the income would otherwise be taxable. Where a small charity has incidental income not subject to any exemptions, as long as it falls within the limits (currently £8,000 or less than 20% of total income capped at £80,000), it is automatically exempt.

This is beneficial where, for example, a charity might look to raise some additional funds through selling Christmas cards.

Distributable reserves

Donations by a trading subsidiary to its charity parent are distributions and may only be made from distributable reserves. The ICAEW issued a guidance note in 2016 (see bit.ly/3Bop4rG), which explained the position and helped charities and practitioners in cases where donations might have been paid in excess of reserves. It is worth noting that an excess donation does not qualify for gift aid relief and a repayment to the trading subsidiary is not taxable. A more recent note covers the position where a trading subsidiary might have incurred losses during the Covid pandemic (see bit.ly/3HVrLnj).



> **For smaller charities, there is also a small trading exemption aimed at avoiding the need for the complexities of corporation tax compliance.**

VAT

It is always tempting when writing an article such as this to simply say 'speak to a VAT expert' and move on. Certainly, it is true that VAT is a complex tax – even more so where charities are concerned – and some expert guidance will go a long way towards getting matters correct and saving money in the long run.

However, given that it is estimated by the Charity Tax Group that VAT now costs the not-for-profit sector in excess of £1.8 billion per year, an awareness of the fundamentals can be crucial to identifying where expert advice needs to be sought.

Charities cannot charge VAT on non-business activities (e.g. provision of donations and grants), nor on exempt goods and services (e.g. provision of welfare services, education, membership services and administration to cultural events to name a few), and cannot usually recover the associated input VAT, leading to this VAT cost. Like any other business, charities must register and apply VAT to their sales if their VAT-able turnover is above £85,000.

Charities are entitled to certain reliefs on costs in some areas, as set out in the box on the left. These need to be claimed, however (usually by issuing a certificate); and the cost of understanding whether they apply, and the subsequent claim, can at times be disproportionate to the benefit of doing so.

Donations themselves are not subject to VAT, as long as they are genuine donations, because there is no reciprocal supply of goods or services. However, sometimes receipts of substantial donations can have certain conditions attached, or benefits to the 'donor', and the charity must then give careful consideration as to the nature of the arrangement. If the donation is seen as a supply, then VAT could apply to the whole value of the donation, even if treated differently for other tax purposes.

Charities are not exempt from Making Tax Digital if they are VAT registered. From 1 April 2022, all VAT registered businesses, including charities, must be signed up and maintain digital records in respect of a number of matters, including transactions made by volunteers in respect of charity fundraising.

Final thoughts

Charity taxation is a far from straightforward matter, but with the appropriate advice, a charity's affairs can be structured in such a way to maximise the advantages available to them. Should you require advice, speak to a charity expert who can guide you accordingly.

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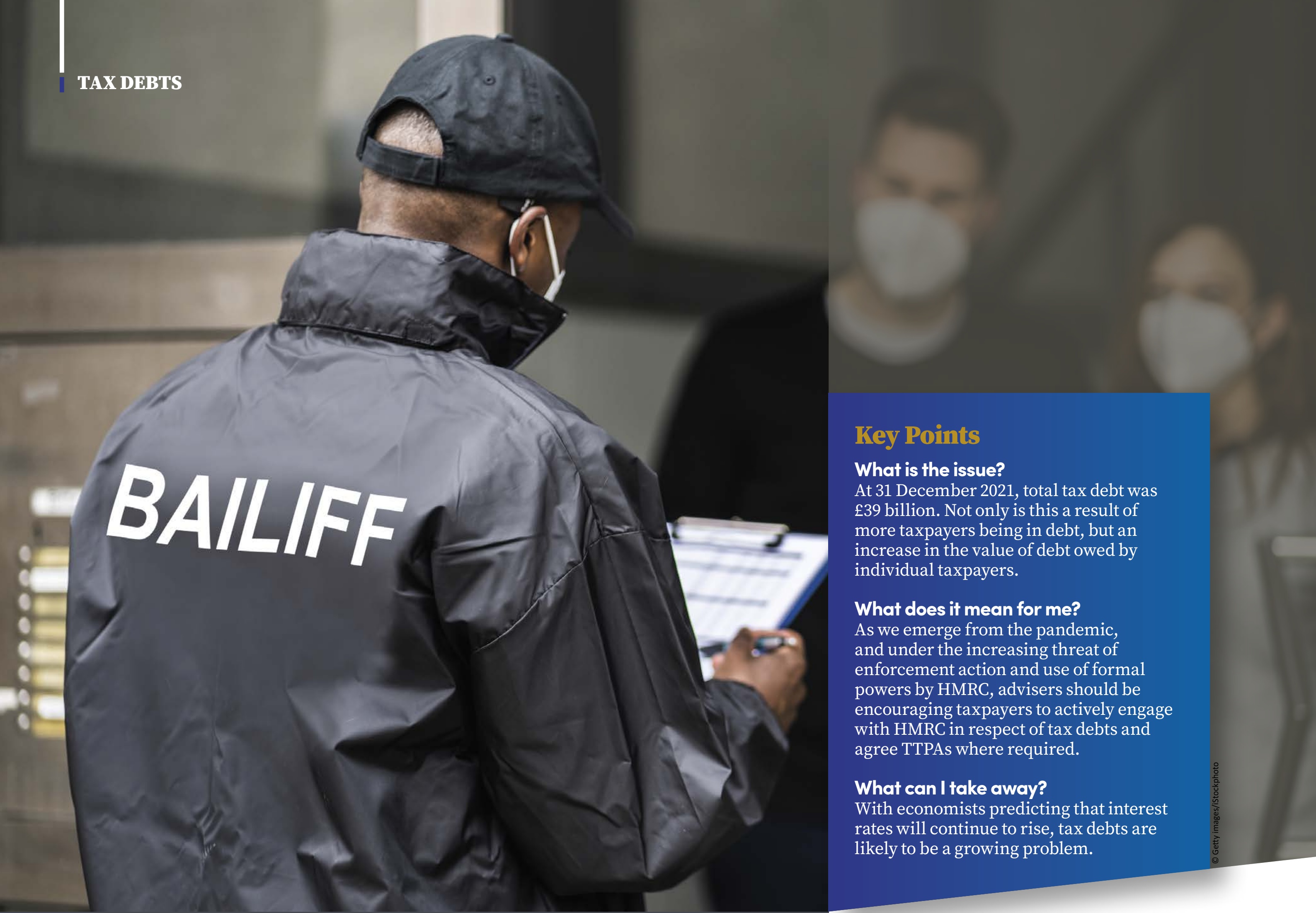

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Avoiding enforcement action

Time to pay

With total tax debt of £39 billion, government measures to soften the pain during the pandemic are coming to an end. Here are some practical tips for taxpayers who need more time to pay.

by Jennifer Jones and Craig Aspinall

Key Points

What is the issue?
At 31 December 2021, total tax debt was £39 billion. Not only is this a result of more taxpayers being in debt, but an increase in the value of debt owed by individual taxpayers.

What does it mean for me?
As we emerge from the pandemic, and under the increasing threat of enforcement action and use of formal powers by HMRC, advisers should be encouraging taxpayers to actively engage with HMRC in respect of tax debts and agree TTPAs where required.

What can I take away?
With economists predicting that interest rates will continue to rise, tax debts are likely to be a growing problem.

Over the past two years, and in response to the extraordinary challenges faced by many taxpayers as a result of the Covid-19 pandemic, the UK government has provided extra resources to assist those struggling to pay their tax liabilities due to financial distress. However, as the UK comes out of the pandemic and the economy continues to reopen, HMRC will prioritise the collection of unpaid taxes.

This is unsurprising given the value of tax debt that accumulated over the pandemic. At 31 December 2021, total tax debt was £39 billion. Not only is this a result of more taxpayers being in debt, but an increase in the value of debt owed by individual taxpayers. Older debts alone, which are often more difficult to collect, increased in value from £2.5 billion in 2019/20 to £4.4 billion in 2020/21. (Note that tax debt is the difference between agreed tax liabilities and the amounts actually paid to HMRC. It does not include tax lost through tax fraud, avoidance or other errors.)

HMRC gave evidence to the Public Accounts Committee on 17 January 2022 about tax debt (see bit.ly/3Bv1M3o)

What additional support did HMRC provided during the pandemic?

In addition to the more 'light touch' approach involved in time to pay arrangements (TTPAs), which HMRC Debt Management have been able to agree with taxpayers for many years now, the following measures were introduced by the government during the pandemic in relation to tax debts:

Deferral of VAT

Businesses were able to defer VAT payments due between 20 March 2020 and 30 June 2020, initially to 31 March 2021. This deferral was extended to 31 March 2022, allowing taxpayers to spread the payment of their VAT liabilities over this period. This instalment period is shortly coming to an end and is unlikely to be extended.

Further time to pay leeway for hospitality and leisure businesses

On 21 December 2021, as part of the support for businesses affected by the omicron variant, the chancellor asked HMRC to offer businesses in the hospitality and leisure sectors in particular the option of a short delay and payment in instalments on a case by case basis (see bit.ly/3uZvMTO).

Deferral of income tax surcharge

On 6 January 2022, HMRC announced that the 5% surcharge for any 31 January 2022 Self Assessment liabilities paid late will not be levied, provided full payment is made (or a TTPA put in place) by 1 April 2022 (effectively a 28 day deferral). Interest remains chargeable from 1 February 2022 onwards.

Self-serve facility for TTPAs

Self Assessment taxpayers were permitted to set up a TTPA online, provided the debt is less than £30,000, they apply within 60 days of the payment deadline and they intend to settle the debt over a period of 12 months.
In December 2021, HMRC confirmed that 123,000 individuals used the online service to spread the cost of their Self Assessment bills for the 2019/20 tax year, worth £460 million. More than 20,000 taxpayers used the service to spread £46 million of payments for the 2020/21 tax year at that date.

Suspension of enforcement action

HMRC suspended the use of its debt collection activities and enforcement powers, such as taking control of goods, court action and bankruptcy/insolvency, to collect tax debts until the end of September 2021.

So, what will HMRC do next?

HMRC's policy paper published on 30 June 2021, 'Collecting tax debts as we emerge from coronavirus (Covid-19)', outlined its intention with regards to collecting debts that had built up during the first 12 months of the pandemic. The message was simple: 'If you can pay your taxes than you should do so – but if you're struggling, we want to work with you and agree a plan based on your financial position.'

HMRC demonstrated its ongoing support for taxpayers through the continued agreement of TTPAs on more favourable terms, such as allowing payment over a longer period of time (not writing off of taxes due) than what would have been agreed pre-pandemic. However, the policy paper also noted that from September 2021, HMRC would recommence debt enforcement action against taxpayers who are unwilling to discuss their debts or simply ignored HMRC's attempts to contact them.

> **As a precursor to enforcement procedings, Field Force agents are starting to visit premises of businesses that have tax debts.**

Such action or use of debt collection powers may include:

- taking control of goods;
- tax collection through coding notices;
- direct recovery of debts from a taxpayers' bank and building society accounts;
- joint and several liability notices making directors and LLP members jointly and severally liable for tax debts in situations involving tax avoidance, evasion or pheonixism;
- notice of requirement to give security for tax debts; and
- bankruptcy/insolvency in the most serious situations.

See my article 'Tax debt collection' (*Tax Adviser*, August 2020), which examines HMRC's collection process and some of its powers in more detail.

Whilst we are yet to see HMRC return to the use of its full powers to collect tax debts, we have seen a shift in its approach to recovering the vast amount of taxes owed.

It does appear from our experience that as a precursor to enforcement proceedings, Field Force agents are starting to visit premises of business that have tax debts owing as a result of the pandemic.

HMRC gave evidence on tax debt to the House of Commons Public Accounts Committee in January, when officials confirmed that 110,000 field visits were carried out in the previous 12 months. HMRC announced that in the first instance, these visits focused on making sure that taxpayers were aware of their debt and the support available to them, as well as asking about their financial situation and ability to pay. This is seemingly in line with the policy announced by HMRC in June 2021.

Ultimately, it is only a matter of time before HMRC uses its formal powers with an eventual move towards increased use of bankruptcy or insolvency proceedings as a final sanction to truly distinguish those who cannot pay versus who choose not to do so.

As well as a gradual return to use of its existing debt collection powers, HMRC is focused on improving the collection of tax debt in the long term. Two recently published discussion documents, 'Preventing and collecting international tax debt' and 'Call for Evidence – Modernising tax debt collection from non-paying businesses' demonstrate HMRC's intention to evolve its approach to tax debt collection, and perhaps even powers, to keep pace with the evolving nature of the economy and business practices.

Therefore, as we emerge from the pandemic, and under the increasing threat of enforcement action and use of formal powers by HMRC, advisers should be encouraging taxpayers to actively engage with HMRC in respect of tax debts and agree TTPAs where required.

Time to Pay Arrangements: practical tips

Owing to the various tax deferrals offered by HMRC during the pandemic and the pause on collection proceedings during that time, some taxpayers will have built up potentially significant tax debts that they are unable to settle immediately.

Unlike assessments of tax, HMRC is not bound by time limits in relation to the collection of tax debt and it must therefore be proactively managed.

For those taxpayers who believe they will be able to pay what is owed over a period of time, they can seek HMRC's agreement to a TTPA. Obtaining a TTPA gives the taxpayer certainty over this aspect of their cashflow and also puts a hold on further enforcement action by HMRC, provided the terms of the TTPA are adhered to. The imposition of late payment penalties can also be avoided where a TTPA application is submitted

before the trigger date for such penalties and a TTPA is subsequently agreed.

Taxpayers should therefore be actively considering how they can afford to settle any debts owing to HMRC which have been deferred during the pandemic. Actively approaching HMRC to discuss the payment of tax debts over an agreed payment plan can often lead to more beneficial TTPAs being granted compared to taxpayers who simply try to avoid the situation in the hope that it goes away.

Where using the self-serve facility for Self Assessment taxpayers referred to above is not possible, it is necessary to contact HMRC directly to discuss the tax debts owing with a view to agreeing a TTPA. With HMRC reverting back to its pre-pandemic criteria when considering a TTPA request, taxpayers should be prepared to discuss:

1. the financial hardship and impact of Covid-19 on their finances;
2. the actions taken to pay the tax due. This may include, for example, details of other funding options explored and how other costs have been reduced. HMRC wants reassurance that borrowing and overdraft facilities are maximised.

   For corporate debts in particular, HMRC expects the owners and other stakeholders to contribute financially to support the business. If necessary, the shareholders may also be expected to inject some of their personal wealth into the company;
3. what assets can be realised to settle the tax due;
4. any tax refunds due to the taxpayer (for example, VAT reclaims or research and development claim repayments) that can be offset against the tax debts due;
5. their repayment proposal to settle what is owed to HMRC, including their rationale for the quantum of regular instalments and period covered by any TTPA. HMRC may expect a significant upfront payment and will not ordinarily agree to 'payment holidays';
6. why they consider their proposed repayment schedule is affordable; and
7. other financial information that can be submitted to HMRC in support of the proposal, if requested. For individuals, this may include an average monthly income/expenditure summary and for corporates, a cash flow forecast.

> **Taxpayers should be actively considering how they can afford to settle any deferred debts owing to HMRC.**

HMRC will also seek reassurance that the taxpayer intends and is able to settle all future tax liabilities as and when they arise. It is crucial that taxpayers put forward their 'best offer' to HMRC to avoid a straight rejection and escalation of the tax debt along the enforcement process. Whilst HMRC will not always agree a TTPA, perhaps due to the requested TTPA period being too lengthy or the 'down payment' being deemed insufficient, a proactive approach to dealing with tax debts is a must.

Should HMRC consider more radical solutions, such as partially writing off tax due or making it easier to deal with multiple tax debts, remains an open question. We remain concerned about the use of third party debt collection agencies and support for vulnerable or low-income taxpayers who may not have access to professional tax advice.

Advisers also need to remind taxpayers that forward interest is charged by HMRC on any underpaid tax and this accrues daily, with interest rates linked to the Bank of England interest rates. With economists predicting that interest rates will continue to rise, tax debts are likely to be a growing problem.

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WELCOME

March Technical newsdesk

I have been Head of the CIOT's Technical Team for over six years, now. Doesn't time fly? Like many people working in charitable organisations, I was attracted by the opportunity to use my talents and experience to 'put something back'. I recognise I am not changing the world, but taxes must be paid to fund public services, and if I can help to make that system better and more efficient, then I can be pleased with my achievements.

If you have read the CIOT's technical submissions, you will know that we emphasise our charitable status and our objectives for the tax system. One of our key aims is to achieve a more efficient and less complex tax system for all affected by it.

The CIOT's Low Incomes Tax Reform Group (LITRG) works to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of people on low incomes, providing 'a voice for the unrepresented'.

The ATT is also a charity and has similar charitable objectives to the CIOT. Its technical work seeks to ensure that the UK tax system is workable and as fair as possible.

So how would I reflect on the last six years? I think the first thing I would say is that it is difficult to identify, and maintain, the characteristics of a 'critical friend' – the relationship we seek with HMRC (and other policymakers). We want to have a trusted, collaborative relationship, so they are comfortable in sharing ideas and information with us (sometimes in confidence) as part of a policy development or new initiative. But this means we must be mindful that any criticism of them is reasonable and evidenced, not simply 'letting off steam'. Why would an organisation want to engage with someone one day, if they are then unreasonably critical of them on the next?

Maintaining this balance, and ensuring we are 'in the room' for the discussions, means we can be influential and make a difference. Some recent successes, all of which have (to some extent) been influenced by us, include:

- deferral of basis period reform by a year;
- deferral of Making Tax Digital for Income Tax by a year (again);
- removal of the third trigger from the uncertain tax treatment notification requirement;
- waiving of penalties for Self-Assessment returns filed online in February;
- HMRC having a rethink about the VAT and value shifting changes;
- resolution of the inequality affecting workers in net pay arrangement pensions schemes;
- LITRG's labour market reporting prompting the call for evidence on the umbrella company market; and
- the development and launch by HMRC of their performance dashboard.

Perhaps none of these is, in themselves, revolutionary, but all of them deliver against our charitable objectives outlined above. This is a flavour of what has been achieved, selected from a much longer list, comprising things in the public domain and those which are not. Of course, whether our recommendations are adopted is ultimately out of our control, but we work hard to base our suggestions on evidence and the technical expertise of our volunteers and wider membership. Save to say that in 2021 the CIOT, ATT and LITRG had record levels of engagement with policymakers, which we seek to outline in the 'news from' CIOT and ATT in the Tuesday email newsletter.

I cannot end this month's introduction without reference to HMRC's service levels, which for many currently present the greatest challenge. We continue to have regular discussions with HMRC about their performance, and they are acutely aware of the areas that are behind and the problems this creates. We are pleased that HMRC have launched their performance dashboard, which predicts that the vast majority of performance will be back on track by the end of this month. We will soon be reaching out to volunteers and the wider membership for ideas to streamline processes and reduce time and 'red tape', so please keep an eye out for that.

PERSONAL TAXES MANAGEMENT OF TAXES

UK Property Reporting Service guidance goes live

HMRC has added a new appendix to its capital gains tax manuals covering the UK Property Reporting Service.

The UK Property Reporting service was launched on 6 April 2020 as the route for residents and non-residents to report and pay tax on qualifying disposals of UK property. Until recently, the only user guidance has been that on the GOV.UK pages accompanying the service, so we are pleased to report that HMRC has now published more detailed guidance in appendix 18 of its capital gains tax manual (tinyurl.com/ycknsfnp).

-Released in two tranches – parts 1 and 2 arrived in December 2021, followed by part 3 in January 2022 – the new guidance gives an overview of who needs to use the service, more detailed instructions on how to file online, and some details of the interaction between the UK Property Reporting Service and 2020/21 Self-Assessment returns.

This guidance was developed by HMRC with input from the ATT and CIOT. While HMRC has taken several of our points on board, there will still be areas where improvements are needed in future iterations and we would be pleased to received feedback from members either to atttechnical@att.org.uk or technical@ciot.org.uk or direct to either of us below.

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INDIRECT TAX

VAT: early termination fees, compensation payments and dilapidations

HMRC has published Revenue and Custom Brief 2 (2022), notifying that with effect from 1 April 2022 its policy on early termination fees and similar payments is changing. All businesses must adopt the revised treatment no later than 1 April 2022.

Background

In our March 2021 edition (www.taxadvisermagazine.com/RCB12/20), we set out changes in VAT treatment for compensatory arrangements following the publication of Revenue & Customs Brief 12/20: *VAT early termination fees and compensation payments* on 1 September 2020 (tinyurl.com/499z9zk5). In this brief, HMRC took the position that most early termination, cancellation fees, compensation and damages would be taxable if the underlying supply was also taxable. The brief also stated that, if affected, the requirement to account for VAT had retrospective effect.

Following stakeholder feedback – including from the CIOT and ATT – HMRC revised RCB 12/20 on 25 January 2021, announcing that the changed position on the VAT liability in relation to early termination, cancellation fees, compensation and damages would only apply from a future date to be announced. Following this revision, the CIOT, ATT and other stakeholders continued to engage with HMRC on the VAT liability and the scope of the intended changes. Over summer 2021, stakeholder feedback was sought on draft guidance.

What's happened now?

Revenue and Custom Brief 2 (2022) (tinyurl.com/2p9253nu) confirms that fees charged when customers terminate a contract early will be regarded as further consideration for the contracted supply. Taxpayers must adopt this revised policy by no later than 1 April 2022. However, the new guidance, which can now be found in the VAT manual (see paragraph references below), also limits the scope of RCB 2/22 so dilapidation payments continue to be normally outside the scope of VAT (see also paragraph 10.12 in VAT Notice 742 (tinyurl.com/2m3nrh39)).

New pages in VAT manual

HMRC's VAT supply and consideration manual is updated with the following pages:

- VATSC05910: *When are compensation payments consideration for a supply?* tinyurl.com/2p9f6zy7
- This guidance includes a general overview and confirmation that dilapidations are normally outside the scope of VAT.
- VATSC05920: *Early termination of contracts* tinyurl.com/2p8w6t4x
- Following CJEU decisions in MEO (Case C-295/17) and Vodafone Portugal (Case C-43/19), the VAT position for early termination fees is that it is treated as further consideration for the contracted supply where the payments are linked to that supply.
- VATSC05930: *Liquidated damages* tinyurl.com/yypcvtmw

This includes examples of where liquidated damages may be taxable or outside the scope of VAT.

Continued engagement

The CIOT has received member queries and feedback about the new guidance and will continue to engage with HMRC. If you have feedback, please contact technical@ciot.org.uk.

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MANAGEMENT OF TAXES

Penalties update

The government announces postponement to introduction of penalty reform for VAT, but this postponement does not affect the introduction of the new penalty regime for Income Tax Self-Assessment.

The government announced on 13 January 2022 that the start date of the new penalties regime for VAT registered taxpayers is postponed by nine months to 1 January 2023. This is to allow more time for testing the IT systems needed so that the changes can be introduced as effectively as possible. The new penalty regime had been due to come into effect for VAT on 1 April 2022. The existing rules will continue in the meantime.

We have posted a table prepared by HMRC on our website that shows the first affected accounting period for penalty reform for VAT under a range of representative filing frequencies, and the corresponding dates on which the earliest possible late submission penalty, late payment penalty and interest could be applied (see www.tax.org.uk/penalty-reform-for-vat).

The VAT penalty postponement does not affect the introduction of the new penalty regime for Income Tax Self-Assessment (ITSA) which is still due to start in April 2024 for Making Tax Digital (MTD) taxpayers, and April 2025 for all other taxpayers in ITSA.

CIOT, ATT and LITRG continue to engage with HMRC regarding penalty reform and the practical implications of the delay, including the impact on those voluntary VAT registered businesses that will be brought within MTD for the first time from April this year. In this regard, HMRC have confirmed that the default surcharge will continue as normal throughout 2022, without any specific easement or 'soft landing' for new MTD businesses. This is because the default surcharge already includes rules which do not punish historically compliant customers with a taxable turnover of £150,000 – these customers will not receive a surcharge for their first two defaults – and those who have already joined MTD voluntarily have not faced difficulties in meeting their obligations.

Once the new regime is in place from 1 January 2023, HMRC will take a light-touch approach to the initial 2% late payment penalty for taxpayers in the first year of operation under both VAT and ITSA. In the first year, where a taxpayer is doing their best to comply, HMRC will not assess the first penalty at 2% after 15 days, allowing taxpayers 30 days to approach HMRC before HMRC charges a penalty.

The full ministerial statement from the Financial Secretary to the Treasury confirming the postponement is at: tinyurl.com/2p88huxn.

HMRC guidance has been updated and is available at: tinyurl.com/2p9es7fp and tinyurl.com/2n3u7sfs.

CIOT/ATT penalties checklist

We have recently updated the checklist of penalties applying to tax avoidance and offshore tax evasion and non-compliance which can be found on the CIOT and ATT websites (see tinyurl.com/3z925b3t and tinyurl.com/2p9hytsn). The checklist also includes the penalty provisions in relation to overclaimed coronavirus support payments with links to CIOT and ATT guidance. Members may find this checklist useful in ensuring they have considered the penalty implications in relation to both their practice and their clients and therefore meet the professional standards required from them.

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INDIRECT TAX

Making Tax Digital for VAT: sign up windows for the voluntarily VAT registered

Taxpayers who are voluntarily registered for VAT are required to follow the Making Tax Digital for VAT rules from the first day of the VAT return period that starts on or after 1 April 2022.

Making Tax Digital (MTD) for VAT became mandatory from 1 April 2019, though only for taxpayers that were obliged to be registered for VAT due to breaching the VAT registration threshold of £85,000. For taxpayers that were voluntarily registered, they still had the choice to sign up for MTD or to continue to use the Government Gateway for submitting VAT returns, and the choice of keeping their VAT records in paper or digital formats. To date, over 30% of the voluntarily registered population have opted in to MTD for VAT.

Actions for the voluntarily VAT registered

From 1 April 2022 onwards, anyone who is voluntarily registered (unless they have applied for exemption) must comply with the MTD for VAT requirements, which include:

- keeping VAT records in a digital format;
- where several accounting packages are used, they must be digitally linked; and
- VAT returns must be submitted using MTD compatible software.

Further guidance can be found in VAT Notice 700/22 (tinyurl.com/2fjauxfn).

When to sign up for MTD

We have prepared a sign-up illustration for voluntarily registered taxpayers and this can be found on the CIOT's website: www.tax.org.uk/mtd_sign_up.

The above dates are based on some assumptions and provisos, further details of which can be found on the sign-up illustration.

WHEN TO SIGN UP FOR MTD

Stagger one VAT period: 1 April to 30 June 2022
Stagger one taxpayers must keep digital records from 1 April 2022. If there are several accounting software packages used, they must be digitally linked from this date too. The sign-up windows for registering for MTD are:

- If no direct debit is held, the sign-up window is between 8 May and 4 August 2022.
- If a direct debit is active, sign up between 13 May and 31 July 2022.

Stagger two VAT period: 1 May to 31 July 2022
Stagger two taxpayers must keep digital records from 1 May 2022 with digital links if applicable. The sign-up windows for registering for MTD are:

- If no direct debit is held, the sign-up window is between 8 June and 4 September 2022.
- If a direct debit is active, sign up between 13 June and 31 August 2022.

Stagger three VAT period: 1 June to 31 August 2022
Stagger three taxpayers must keep digital records from 1 June 2022 with digital links if applicable. The sign-up windows for registering for MTD are:

- If no direct debit is held, the sign-up window is between 8 July and 4 October 2022.
- If a direct debit is active, sign up between 13 July and 30 September 2022.

Monthly return VAT period: 1 to 30 April 2022
Taxpayers on monthly VAT returns must keep digital records from 1 April 2022 with digital links if applicable. The sign-up windows for registering for MTD are:

- If no direct debit is held, the sign-up window is between 8 May and 4 June 2022.
- If a direct debit is active, sign up between 13 May and 31 May 2022.

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MANAGEMENT OF TAXES

Mandatory disclosure rules consultation: CIOT response

The CIOT has responded to HMRC's consultation document on mandatory disclosure rules, which are intended to implement the OECD's 'Model Mandatory Disclosure Rules for Common Reporting Standard Avoidance Arrangements and Opaque Offshore Structures' in the UK.

At Budget 2021, the government announced that it would implement the OECD's 'Model Mandatory Disclosure Rules for Common Reporting Standard Avoidance Arrangements and Opaque Offshore Structures'. A consultation document (tinyurl.com/3hhxab4b) was published in November 2021 and sought views on the design of draft regulations that, once enacted, will implement the OECD's model rules (see tinyurl.com/yckmvkkk). These regulations will replace similar EU rules (known as 'DAC6') which were implemented in the UK before the UK left the EU and which were subsequently modified at the end of the transition period in January 2021 to align more closely with the OECD model rules.

In our response to the consultation, we say that we support the aims of the mandatory disclosure rules (MDR) regime but that we do not support the long look back period that is proposed by the government for disclosure of Common

Reporting Standard (CRS) avoidance arrangements. From the feedback we have received from our members, there is clearly a widespread desire to comply fully with the rules to ensure that disclosures, when required, are correct, complete and on time. However, there is also a high level of concern that the rules proposing disclosure of CRS avoidance arrangements going back to 29 October 2014 will introduce a disproportionate administrative burden on business in relation to the perceived benefits to HMRC.

There will be significant practical challenges in complying with this seven to eight year look back requirement. Businesses are not required to retain records beyond a six-year period (although some may well do). Even if records have been maintained, during such a long period, it is likely that many businesses will have undergone significant change, through group restructures, turnover of staff at all levels, and IT/systems changes.

The limitations and mitigations suggested in the consultation document are helpful but in our view are not sufficient to alleviate the burdens. Client files are likely to be kept separately for confidentiality reasons and there will be no central 'database' of information to connect across clients. It will still be necessary to review **all** files to ascertain which ones might be in scope and then to identify whether the mitigations and thresholds apply. Thus the mitigations may reduce the number of reportable arrangements but the time needed for the review work will not be significantly diminished by the mitigations proposed.

It is our view that the only way to mitigate the burdens it will cause is to bring forward the date, perhaps to 25 June 2018, which was the approach taken in the DAC6 rules when they were implemented by the UK government. Promoters will have already undertaken the exercise of looking back in order to identify CRS avoidance arrangements arising since 25 June 2018 within scope of DAC6.

We note that the impact of MDR and the look back period is also wider than just the practical difficulties. Businesses operate more than ever in a highly regulated and public arena where risk management is a priority and the financial and reputational consequences of inadvertent non-compliance with the law are severe. We also point out that the challenges the MDR rules present cannot be underestimated during a time when businesses are also dealing with a multitude of other changes to both the UK and international tax systems.

Our full response can be found at www.tax.org.uk/ref892.

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LARGE CORPORATE

Notification of uncertain tax treatment: CIOT comments

The requirement for large businesses to notify HMRC about uncertain tax treatments will begin in respect of returns due to be filed on or after 1 April 2022. The CIOT continues to work with HMRC in relation to the practical implementation of the new compliance burden.

HMRC published an initial draft of the technical guidance on this measure in August 2021. This sought to explain how HMRC will interpret and apply the uncertain tax treatment legislation and to help businesses comply with the new legislative requirements. Following feedback on this initial draft, HMRC published a second version (tinyurl.com/yckukxxw) of the guidance in January 2022 for consultation. The CIOT also submitted its comments on the second version of the guidance. HMRC has said that they intend to publish the final version of the uncertain tax treatment technical guidance by 28 February 2022.

In addition to this, CIOT representatives joined a roundtable stakeholder meeting with HMRC in February to discuss the notification process. The discussions focussed on the proposed data points in the g-form. It was useful to discuss the proposed g-form with HMRC to highlight potential practical difficulties and ensure, so far as possible, that the notification process is clear and straightforward.

Finally, we draw your attention to the government's response to the to the House of Lords Economic Affairs Finance Bill Sub-Committee Report on 'Basis period reform and uncertain tax treatments' (tinyurl.com/yxbjycwb). The response notes that HMRC have already taken forward several actions on uncertain tax treatment as a result of the Sub-Committee's report, such as committing to monitoring the regime and not legislating a third trigger without consultation. We are also pleased to see recognition that it is incumbent on HMRC to ensure appropriate support is provided for all businesses affected by this measure. The government says that HMRC intends to give webinars on how HMRC proposes to interpret and apply the legislation, in addition to the technical guidance referred to above.

The government also recognises the need to ensure these businesses are not disadvantaged due to not having a customer compliance manager (CCM). HMRC will provide support for the 300 to 400 businesses that will be affected by uncertain tax treatment that do not have a CCM through HMRC's Mid-sized Business Customer Support Team. The government believes that this should provide an equivalent level of service and support as those that do have a CCM, as both CCMs and members of the Customer Support Team have the same access to HMRC tax specialists. We continue to encourage HMRC to ensure that the Customer Support Team is sufficiently resourced to ensure that this is the case.

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LARGE CORPORATE OMB

R&D Tax Relief Report: CIOT and ATT responses

The CIOT and ATT have submitted comments on the Treasury's R&D Tax Relief Report, which sets out several proposed changes to the R&D relief regimes.

In November 2021, HM Treasury published a report on R&D tax reliefs (tinyurl.com/2brcv9hz). This contained further details of changes to the small and medium enterprise (SME) and R&D expenditure credit (RDEC) schemes announced at the Autumn Budget.

The report covers several policy decisions under the following main themes:

- data and cloud computing costs;
- refocusing the reliefs towards innovation in the UK;
- abuse and compliance; and
- addressing anomalies and unforeseen consequences in the R&D tax relief legislation.

All of the changes proposed are scheduled to come into effect in April 2023, with draft legislation published this summer for consultation and the final version legislated in Finance Bill 2022-23. Although not formally a consultation, the report invited written comments.

CIOT comments

The CIOT welcomed the confirmation that the government will legislate to expand qualifying expenditure for both R&D reliefs to include data and cloud computing costs. Our response also said that we understand the policy aims of seeking to ensure that the R&D activities that are supported by the UK's tax relief

schemes are conducted in the UK.
We agreed that the proposed measures to refocus the reliefs towards innovation in the UK will mean that the broader benefits that arise for society because of R&D activity are more focused and encouraged within the UK. However, we said that some further clarity is required around how the rules will work, and we suggested that some de minimis exceptions should be included.

The CIOT welcomed efforts to target the error and fraud across both R&D tax relief schemes. However, we said that some of the measures proposed in relation to tackling abuse and boundary pushing are not clear in terms of the overall policy aims of tackling error and fraud, nor are we convinced that they are necessary and/or will be effective.

In particular, we said that the CIOT does not support the proposed measure that companies will need to inform HMRC, in advance, that they plan to make a claim. This measure is poorly targeted because, although it will prevent some dubious claims, it will also mean that many genuine claims will also fall out of time. There will be significant collateral damage from the measure and taxpayers that already have tax advisers will be at an advantage to those that do not. The proposal will exacerbate an unfairness that can arise between taxpayer companies that undertake R&D activities, based on whether or not they have an awareness of the tax relief rules at the appropriate time. We said that it is difficult to see how making it harder to claim R&D tax relief will help to deliver the government's overall policy of encouraging R&D, and delivering the overall additionality benefits of the schemes.

With regard to the other measures proposed in the report to tackle abuse and fraud, we said that we agree that it is reasonable to require all claims to the R&D reliefs to be made digitally. Also, we support the change that will require claims to include more detail in the future (but would welcome further consultation as to what detail will be required). Conversely, it is difficult to see what HMRC is gaining from the proposal that each claim for R&D tax relief will need to be endorsed by a named senior officer.

The CIOT's full response can be read here: www.tax.org.uk/ref897

ATT comments

The ATT comments focus on those proposals that seek to target abuse and improve compliance.

The ATT shares the government's concern over abuse of the R&D relief schemes and strongly supports efforts to crack down on such abuse and improve compliance. However, we are concerned that the proposed requirement for companies to notify HMRC in advance that they plan to make a claim may affect the ability of companies undertaking genuine R&D (in particular, smaller and newer companies) to access the relief to which they are entitled.

The ATT response sets out more detail on these concerns, and recommends that the government reconsider the need for advance notification of intention to claim R&D reliefs. If the proposal were to proceed, in order to limit the impact on genuine claimants, ATT strongly urged that companies not be required to notify their intention to claim any earlier than before the end of the accounting period in question, and that notification should be relatively simple without requiring details of expected spend, project aims, etc.

The ATT's full response can be read here: www.att.org.uk/ref391.

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EMPLOYMENT TAXES

Employment Taxes Forums

A brief overview of forum meetings attended by representatives of the CIOT, LITRG and ATT, including the Employment and Payroll Group, the Construction Forum, the Share Schemes Forum, the Collection of Student Loans Group, and the Rewards and Employment Engagement Forum.

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

Employment and Payroll Group (EPG)

This group 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 Coronavirus Job Retention Scheme, the PAYE online for agents 'liabilities and payments viewer', HMRC research on compensation payments, and deductions from earnings orders for child maintenance deductions. Discussions on the Coronavirus Job Retention Scheme focused on HMRC's recent guidance on offsetting employee claims for under- and over-payments, and HMRC were considering further representations from representative bodies on this issue.

Construction Forum

The forum is attended by CIOT and ATT representatives. Discussions at the last meeting included updates from HMRC on recent measures aimed at 'tackling CIS abuse' and the VAT reverse charge, as well as further discussions with representatives on Category A payments and Group CIS compliance.

Share Schemes Forum

This is a new forum that has been formed following representations by the CIOT. It is attended by CIOT and ATT representatives. The forum met for the first time in December 2021 to agree its terms of reference and discuss various Covid-19 share scheme easements, discretion clauses within share scheme contracts, and the valuation of listed shares.

IR35 Forum

This forum is attended by the CIOT. Recently there have been further discussions with HMRC on tax offsets following status recategorisation (for example, where the worker and their personal service company has already paid dividend tax and corporation tax on payments received but the work is subsequently recategorised as within the IR35 rules and the end client finds itself liable for PAYE and NICs). An HMRC announcement on the process they will adopt in such cases is expected soon.

Collection of Student Loans Consultation Group (CSL)

CIOT, LITRG and ATT representatives all participate in this group. Topics discussed included the Scottish student loans threshold introduced on 6 April 2021 and updates to the Self-Assessment processes to collect these loans via 2022 returns.

Reward and Employment Engagement Forum (REEF)

This group is an independent external stakeholder forum with a special interest in payroll matters to which HMRC is regularly invited. ATT, CIOT and LITRG representatives attend. It meets periodically and, at the last meeting, there were guest attendees from HMRC's National Minimum Wage guidance review team and the Nest Insight Unit's team that is piloting employee auto-saving and self-employed saving arrangements.

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GENERAL FEATURE

Regulatory powers to change the Welsh Tax Acts

The Welsh Parliament's (the Senedd) Finance Committee held an inquiry into new powers under the Welsh Tax Acts (Power to Modify) Bill to change Welsh devolved taxes through secondary legislation. The CIOT and LITRG have provided joint written and oral evidence to the committee.

The Welsh Tax Acts (Power to Modify) Bill provides Welsh ministers with a power to make changes by regulations to the three Welsh Tax Acts (the Tax Collection and Management (Wales) Act 2016, the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 and the Landfill Disposals Tax (Wales) Act 2017) in four defined circumstances:

- ensuring that landfill disposals tax or land transaction tax is not imposed where to do so would be incompatible with any international obligations;
- protecting against tax avoidance in relation to landfill disposals tax or land transaction tax;
- responding to a change to a predecessor tax that may affect the amounts paid under the block grant funding mechanism from Westminster; and
- responding to a decision of a court or tribunal that affects the Welsh Tax Acts.

The regulation making powers are not intended to be used to achieve routine policy changes. However, the powers can be used to introduce changes under the four purposes retrospectively. Alongside the Bill, the Welsh government published a draft policy statement setting out how the retrospective power might be exercised and the safeguards put in place.

Examples of situations where the Welsh Ministers may consider making regulations with retrospective effect include:

- where a change is made by the UK government that has immediate effect;
- where avoidance needs to be halted; and
- where a court decision means the legislation may not be interpreted as intended by the Senedd when it was enacted.

In responding to the committee, our starting point is that tax law should be set out in primary legislation. Secondary legislation should ideally be used only for administrative matters. This is to ensure proper scrutiny of legislation that results in the imposition of some kind of burden (compliance or financial) on taxpayers.

However, we recognise the challenges in introducing primary legislation to implement tax changes via an annual Welsh Finance Bill, as currently the volume of legislative change required is insufficient to justify an annual Finance Bill process in Wales. The case for an annual Welsh Finance Bill will strengthen if devolved taxes provide an increased share of revenues to fund wider policy areas dealt with by the Senedd.

There is a good case for a mechanism to enable amendments to be made in the manner set out in the Bill on the basis that the powers provide a reasonable balance between the competing needs of speed, scrutiny and responsiveness at this point in the development of Welsh devolved taxes. We suggested a legislative sunset clause is considered to ensure they remain appropriate.

There is a clear case for retrospection to correct an obvious anomaly that is harming taxpayers or to correct deficiencies that emerge. We observed that retrospection has also been used at Westminster to reconfirm previously established interpretations of the law that a whole marketplace or section of the population shared, but which the courts had unexpectedly found to be erroneous.

The draft policy statement states that a change taking effect from a date earlier than the date of making is intended to be used in exceptional circumstances only. We agree that retrospective legislation that imposes or increases a tax charge on income earned, gains realised or transactions concluded at a time before the legislation was announced should be used with extreme care and justified in detail. A key point from our perspective is that the Welsh government recognises and gives due weight to taxpayers' legitimate expectations in this context.

The joint CIOT and LITRG evidence is at: www.tax.org.uk/ref905.

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PERSONAL TAX

Pre-6 April 2016 state pension lump sums

The Low Incomes Tax Reform Group highlights a common query on the tax position of pre-6 April 2016 state pension lump sums.

Those reaching state pension age can defer claiming their state pension. Under the new state pension rules, such deferrals cannot lead to the individual claiming a lump sum. Instead, when the pension is claimed, it will be paid at a higher rate than would have been the case – the 'reward' for the deferral being the accrual of an additional amount of regular pension income.

Under the 'old' state pension rules, those reaching state pension age before 6 April 2016 were also able to defer claiming their state pension. However, when they eventually claim the pension, they can choose to take either a lump sum or a higher regular income.

If such pensioners opt for a lump sum – which can now amount to tens of thousands of pounds – this has a specific tax treatment, set out in Finance (No 2) Act 2005 ss 7-10. This was previously discussed in *Tax Adviser*, December 2017 (www.taxadvisermagazine.com/171201_lump_sums).

LITRG has recently received several queries relating to the treatment of gift aid donations and pension contributions to relief at source schemes when determining the tax rate applicable to the lump sums. Tax relief for these kinds of payment is given by extending the basic and higher rate tax bands by virtue of Income Tax Act 2007 s 10(6). But are they taken into account when determining the tax rate on state pension lump sums? When read together, the interaction of the F(2)A 2005 and ITA 2007 provisions is perhaps less than clear.

F(2)A 2005 s 7 sets out that it is 'Step 3' income from the income tax calculation (ITA 2007 s 23) that must be used in determining the tax rate applicable to state pension lump sums. Step 3 income is not adjusted for gift aid donations or contributions to relief at source pension schemes.

F(2)A 2005 s 7(5)(c)-(e) then says that the rate of tax applicable to the state pension lump sum is determined by comparing the Step 3 income figure to the various tax rate limits for the year of assessment – that is, the basic, higher or additional rate.

This raises the question of which limits to consider – whether before or after adjusting for gift aid donations and contributions to relief at source pension schemes. ITA 2007 s 10(6) sets out that the basic and higher rate limits can be extended in respect of gift aid donations and pension contributions made under relief at source. There does not appear to be an explicit confirmation in the F(2)A 2005 provisions that it is the extended limits that are taken into account, although it is presumed that was the intention of the legislation.

This interpretation appears to be supported by the following wording in the Employment Income Manual at EIM74651 (tinyurl.com/mr3zhyry), which confirms use of the individual's 'marginal rate':

> 'any state pension lump sum is taxed at the highest rate of tax that applies on the individual's total income. This highest rate is the one that applies after the set-off of all reliefs and allowances that are deducted in "arriving at" and "from" total income. This rate of tax is commonly referred to as the individual's "marginal rate".
>
> 'This approach was confirmed during the committee stage of the Finance Bill debate.'

This would therefore lead to the conclusion that income is calculated as set out at Step 3 – that is, income after deducting reliefs set out at ITA 2007 s 24 and allowances, such as the personal allowance. This is then compared with the tax rate limits that apply **to the individual** for that year; i.e. as extended in respect of gift aid donations and contributions to relief at source pension schemes.

As discussed in our July 2019 article (www.taxadvisermagazine.com/190730_sp_lump_sums), people are prone to misunderstanding the taxation of pre-6 April 2016 state pension lumps. Prior to the pandemic, LITRG had urged HMRC to improve GOV.UK guidance, but little progress was made other than to include a single line on the state pension deferral page (tinyurl.com/45s7c4b9) stating in over-simplified terms:

> 'You'll be taxed at your current rate on your lump sum payment. If you're a basic rate taxpayer your lump sum will be taxed at 20%.'

Problems in this area are likely to affect dwindling numbers as fewer pre-6 April 2016 state pensioners continue to defer. However, the tax consequences of a mistake are significant. LITRG would be pleased to hear of any examples of problem cases members have encountered. Contact ksizer@litrg.org.uk.

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Recent submissions

CIOT		Date sent
Finance (No.2) Bill 2021 briefings	www.tax.org.uk/finance-no-2-bill-2021-briefings	Nov 2021
Clause 28 Finance Bill: Diverted profits tax: closure notices	www.tax.org.uk/ref912	10/01/2022
Corporate Re-domiciliation	www.tax.org.uk/ref870	13/01/2022
Welsh Tax Acts (Power to Modify) Bill	www.tax.org.uk/ref905	21/01/2022
Review of double taxation agreements (DTAs) 2022/23	www.tax.org.uk/ref911	25/01/2022
R&D Tax Reliefs Report	www.tax.org.uk/ref897	04/02/2022
Mandatory Disclosure Rules	www.tax.org.uk/ref892	07/02/2022
ATT		
R&D Tax Reliefs Report	www.att.org.uk/ref391	08/02/2022
LITRG		
Discovery assessments: Finance Bill briefing	www.litrg.org.uk/ref2599	10/01/2022

News from CIOT and ATT

Better Budgets: five years on

In January 2017, CIOT, the Institute for Government and the Institute for Fiscal Studies published our joint report: 'Better Budgets: Making Tax Policy Better'.

The three institutes had worked on the report for nine months, interviewing around 50 stakeholders from across the tax system, issuing two separate calls for evidence and holding three roundtable meetings in London and Edinburgh with tax and policy specialists.

> **The institutes argued that the volume of tax changes made it difficult for government to consult effectively, early and widely enough.**

The central conclusion was that to reduce taxpayer confusion, cut down costly errors and avoid embarrassing U-turns, the government must change the way it makes tax and budget decisions.

The institutes argued that the volume of tax changes made it difficult for government to consult effectively, early and widely enough, and suggested holding just one principal fiscal event per year to get off the treadmill of constant change and reduce the strain on the government's tax policy resources (as well as those of bodies seeking to respond, such as CIOT).

This was issued as an interim recommendation, following the appointment of a new chancellor, Philip Hammond, and was taken up by him in his first Budget (with a nod to the call for it in Better Budgets in the explanatory notes). It has mostly been kept to over the last five years. Since Better Budgets came out, the average length of Finance Act legislation per year has more than halved – from more than 600 to fewer than 300 pages a year.

There has been progress on some of Better Budgets' other recommendations too. The report stressed the importance of ensuring that consultations happen at an earlier stage of policy development, before key decisions have been made. In December 2017, the government committed to do this, and it is happening to an extent, with an increase in the number of calls for evidence, though there are still far too many occasions when this does not happen.

There have been mixed results on enhancing Parliament's ability to scrutinise tax proposals. Bi-annual meetings between representatives from the three institutes and the Treasury/HMRC have contributed to improvements in the quality of some documentation – and the return of the Tax Consultation Tracker – but as yet there are no Finance Bill oral evidence sessions or increased expert support for Parliament on tax.

Better Budgets also said that more work was needed 'to develop deeper tax expertise in the Treasury'. This received

a positive reception and HMT has since started offering full sponsorship for its staff to gain CTA and ATT qualifications.

Other areas have not seen so much progress – the setting out of clear guiding principles and priorities for tax policy, and routine post-implementation review of tax measures to see they are meeting objectives, for example. CIOT and the other institutes continue to make the case for these and other Better Budgets recommendations whenever the chance arises.

Read the report at: www.instituteforgovernment.org.uk/our-work/policy-making/better-tax-policy

Political update: January 2022

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

- CIOT comments on the residential property developer tax, insurance premium tax, climate change and tax policy, uncertain tax treatment and tax simplification were raised by Labour shadow ministers during the Finance Bill public bill committee.
- Points from LITRG's briefing on discovery assessments and the high income child benefit charge were raised by Labour and SNP spokespeople during the Finance Bill debate.
- CIOT, together with ICAS, met up with the new Scottish Shadow Finance Secretary Liz Smith MSP (Conservative) to discuss Scottish tax policy and administration.

Political engagement: 2021

- In 2021, CIOT (including LITRG) and ATT met or engaged with 68 different politicians at Westminster, the Scottish Parliament and Welsh Assembly – 24 Conservatives, 23 Labour, 12 SNP, five Lib Dems and four others.
- We were quoted or otherwise mentioned on 68 occasions in parliamentary debates and 74 times in parliamentary reports during the year.
- Seven of our representatives appeared before parliamentary committees as expert witnesses.

Basis periods: government commits to explore further easements

The government has accepted recommendations from a House of Lords sub-committee that it should reassess the compliance costs of basis period reform and consider further mitigations to the additional tax liabilities that the reform will generate.

The sub-committee had drawn heavily on evidence provided to it by ATT, CIOT and LITRG. In its response, the government states that it is 'planning to explore the issue of provisional figures with stakeholders and will consider whether and how to introduce further easements... After this, the government will reassess the administrative costs and savings to businesses of basis period reform under the options being considered.'

In addition to accepting two of the sub-committee's recommendations, the government has partly accepted a further six, including promising to inform businesses of overlap figures HMRC hold where they have them, and looking into the feasibility of reconstructing overlap figures where records are not held. This positive move was largely in response to evidence provided to the committee by LITRG and CIOT.

On a number of recommendations, the government is talking to stakeholders and considering the way forward, including LITRG's proposal that HMRC should 'proactively identify ... unincorporated businesses with accounting period ends other than 31 March or 5 April to encourage them to consider the impact of basis period change as soon as possible'.

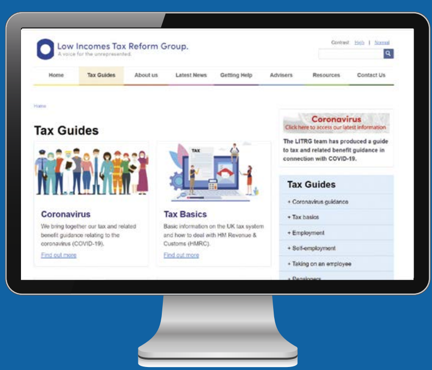
However, the government rejected recommendations that: MTD for Income Tax should be further deferred for some taxpayers; all consultations involving a significant reform of the tax system should begin at Stage 1; and there should be an independent report on HMRC customer service levels and capacity.

A fuller report can be found at: www.tax.org.uk/basis-periods-government-commits-to-explore-further-easements

RECORD VIEWERS FOR LITRG WEBPAGES

Visitors to the websites of CIOT's Low Incomes Tax Reform Group (LITRG) hit another new high in 2021, with more than 6 million visitors viewing 9.8 million pages of tax guidance. Although primarily aimed at those unable to pay for tax advice, the materials are regularly used by CIOT and ATT members and other professionals. LITRG's website became an important source of information for those searching for guidance on the various support schemes set up by government during the coronavirus pandemic, with over a million views of these pages during 2021.

Last year, the House of Commons Library highlighted LITRG's website to MPs as a useful source of tax guidance in its 'Key Documents: Taxation' publication.



A series of improvements have been made to the website to improve its accessibility. They include moving the content of two niche sites – Tax Guide for Students and Disability Tax Guide – to the main website.

www.revenuebenefits.org.uk, a site for advisers covering tax credits, child benefit and the transition to universal credit, funded by HMRC but run by LITRG, remains separate.

In the news

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

'Today's announcement shows HMRC have listened and acted on the concerns of our tax adviser members who report increased pressures on their workloads and significant staff absences because of the impact of the Covid pandemic.'

CIOT Tax Policy Director John Cullinane, quoted in The Independent, 6 January 2022. CIOT's response to the waiving of late filing penalties for a month was quoted on more than 60 news websites across the UK, partly due to appearing in a syndicated article produced by the Press Association.

'Recently LITRG has seen an increasing number of people who have signed a deed or letter assigning all their tax refunds to the company – which then deducts its fee even though it has not done any work to claim the money. In some cases, the taxpayer is not aware they signed a deed.'

Joanne Walker, LITRG Technical Officer, quoted in The Guardian, 15 January 2022. LITRG also discussed unscrupulous tax refund companies on BBC TV's 'Rip Off Britain' programme on 4 February.

'Emma Rawson, technical officer at the Association of Taxation Technicians, said there was also a lack of awareness about the new system. Many self-employed people she had spoken to had not heard about the change and were "quite horrified to learn they'd have to buy software in a couple of years [to do their taxes]".'

Financial Times, 24 January 2022, highlighting fears of ATT and others about preparations for the extension of Making Tax Digital.

'Tax rises are always challenging but the difficulty this time is that the government has opted to raise NICs, which you start paying at a lower threshold than income tax.'

Helen Thornley, ATT Technical Officer, BBC Radio Berkshire, 31 January 2022. Helen has also appeared on BBC Radio Cumbria and BBC Radio West Midlands in the past month discussing the NICs increase and other tax changes.

Event

International Women's Day

Women in Tax and CIOT and ATT New Tax Professionals Committees present their Male Allies webinar on International Women's Day, at 12pm on 8 March, reports Tasneem Kadiri #BreaktheBias #HeforShe

Working towards a more equal world has never been so important. This is an overall society issue. In order to achieve true gender parity we need all of our society to be on this journey. How do we help to get male allies on board in the tax profession to help achieve gender parity?

I strongly believe that the only way to get to true gender parity in the tax profession is for more men to stand up as 'male allies'. We already know that there are so many obstacles in the way of women overall with how society brings up and views boys and girls differently.

I will be hosting the Male Allies event with Toyin Oyeneyin, Chair of the ATT New Tax Professionals Committee. We will be exploring the concept of 'Allyship' with a panel of UN male allies in the tax profession:

- **Simon Gallow** is an Advocate and HeForShe Lead for UN Women UK. He has also been Development Director and a Policy Analyst in the UN Women Economic Empowerment Division in New York, and Strategist for the Equality and Human Rights Commission (EHRC). He brings a wealth of knowledge to the cause.
- **Jeremy Coker** is a past ATT President and Council member of the ATT. At Oury Clark, Jeremy deals with all aspects of tax relating to private clients, high net worth individuals, owner managed businesses and small and medium sized enterprises.
- **Lee Holloway** is a Corporate Tax Partner at Grant Thornton with around 19 years' tax experience. Lee's particular expertise is in the retail and consumer business sector, having worked in-house for nearly a decade leading the tax functions at Next plc and Halfords plc and also working as a tax Director at Molson Coors, a US listed global brewer.

Join us at 12pm on 8 March for this thought provoking event to look at breaking the bias in the tax profession around male allies. This event is aimed at all those working in the tax profession.

It's free to attend this event but please feel free to make a donation to UN Women UK. This is the only global organisation working to make gender equality a reality in every way, from grassroots programmes with the most vulnerable women and girls, to changing attitudes, and helping governments design gender-equal policy. The gender equality movement starts with you. For more details, visit www.unwomenuk.org/campaigns/safe-spaces-now


Tasneem Kadiri

Tasneem Kadiri is Chair of Women in Tax, part of the ATT and CIOT EDI Committee, and the UK and Ireland Tax Director at L'Oréal, where she is responsible for both direct and indirect taxes.

Register your attendance at: www.tax.org.uk/male-allies-wit-22

ADIT Network Webinar

What do the OECD Pillars mean for Ireland?

We are pleased to announce that the next webinar, led by Jefferson VanderWolk and Robert O'Hare of Squire Patton Boggs, is set to take place at 2pm on Thursday 10 March. The webinar will explore the OECD's October 2021 statement on a two-pillar solution to the tax challenges arising from the digitalisation of the economy, and the specific implications for multinational firms, tax advisers and revenue agents in Ireland.

Both the reallocation of taxing rights and profits under Pillar One, and the arrival of a global minimum corporate tax rate under Pillar Two, are high on the agenda for corporate tax professionals across industry and government.

Jefferson and Robert will discuss the latest developments during the webinar, including:

- the implementation plan for the October 2021 agreement;
- the draft model rules on nexus and source of revenues;
- expectations for the multilateral convention;
- GloBE Model Rules, Commentary and draft Detailed Implementation Framework; and
- the draft EU Directive on Pillar Two.

Jefferson and Robert will also look at the likely next steps and the outlook for 2022.

Registration is free and open to everyone, so book your place today at www.tax.org.uk/adit/webinars. The event will particularly benefit our growing ADIT community in Ireland, led by ADIT Champion Colm Mooney.

For more information about the Irish ADIT community visit: www.tax.org.uk/adit/champions/ireland.

Look out for future ADIT Network Webinars, organised with the help of our ADIT Champions, featuring insights from thought leaders on topics of interest across the ADIT communities.

Exams

Record number of students sit ADIT exams in 2021

The CIOT is delighted that more students than ever sat ADIT (Advanced Diploma in International Taxation) exams in the past 12 months.

A total of 1,126 students sat exams in 2021. This includes the latest cohort of successful students, graduates and award winners who sat during the December 2021 exam session. All exams in December 2021 were delivered remotely and taken online, with students sitting exams in 62 countries.

629 students sat a total of 685 exams in December 2021, with 361 students passing at least one exam. A total of 95 students have joined the growing ranks of ADIT graduates by successfully completing their third ADIT module, including 14 who achieved a distinction grade for excellence in their exams.

The ADIT qualification has been successfully completed by 1,550 tax practitioners from 86 countries, with nearly 300 recognised as CIOT Affiliates.

CIOT President Peter Rayney said: ‘We are really delighted with our efforts to make ADIT more accessible. We are seeing the huge benefits of online exams (with the option to sit the exams from home), online tuition, and the increase in tuition providers. All this has enabled students to both deepen and widen their tax knowledge, and helps ambitious people in their career progression.

‘I offer my wholehearted congratulations to students around the world who have once again demonstrated the breadth and depth of emerging talent within the international tax profession by successfully passing their ADIT exams. This includes our newest group of award winners and nearly 100 new graduates who have completed the qualification in the latest December 2021 exam session.

‘The ADIT qualification enables tax practitioners worldwide to develop and demonstrate their technical expertise and skills, for their own career benefit and the benefit of their employers, clients and the global tax community. Students who have reached the standards required to pass their ADIT exams should feel tremendously proud.'

Award winners and successful students from the December 2021 ADIT exams can be found at www.tax.org.uk/adit/december-2021-pass-lists.

A MEMBER'S VIEW

Marcus Rasberry

ATT Member, PwC

How did you come to work in tax?
I started my career in tax in 2018 with PwC, and I’ve been here ever since! Having had the opportunity to undertake work experience in tax at PwC during Sixth Form, I realised tax was right for me. I loved the problem solving elements, both when working in a team and working with a variety of sources to come to an answer which isn’t always as it first seems.

Why is the ATT qualification important?
I started my career in tax straight from school, so the ATT has been vital in building up my UK tax knowledge and understanding the fundamental principles of taxation.

Whilst my role is focused on providing tax advice to clients, having an in-depth understanding of the compliance and computational aspects of tax has been crucial in both the compliance work I have been involved in, and having a wider understanding of the impacts of transactions and advice being implemented by our clients.

The ATT qualification has given me confidence in my day job, and has also prepared me for the CTA qualification which I’ve just completed.

How would you describe yourself in three words?
Inquisitive, focused and communicative.

Who has influenced you in your career?
My biggest influence as to how I approach issues are the partners I work with. They have an incredible ability to cut through the vastly complex details we work with, and break these down into clear commercial issues which our clients can understand.

What are the highlights of your career?
I’ve enjoyed working with a wide range of businesses, from smaller owner-managed businesses to listed businesses and household names. I’ve worked on a range of transactions, which often involve complex problems and the opportunity to work across countries, so I’ve had the chance to learn a significant amount about overseas tax systems and the interaction with the UK and other tax environments.

What advice would you give to people starting off in their career?
Never be afraid to ask questions – no question is a stupid question! It’s so important as tax technicians to be inquisitive, so it’s never too early to ask questions of your colleagues and peers.

> **Never be afraid to ask questions – no question is a stupid question!**

What are your predictions for tax advisers and the tax industry in the future?
I believe tax advisers will become even more important in the future with the role we have to play in the transformation of economies – particularly given the significant recent developments in the OECD BEPS plan. Technology will continue to form an even more fundamental part of our roles, regardless of the types of clients we work with.

What advice would you give your future self?
Don’t be afraid to take new opportunities!

Tell me something about yourself that others may be surprised to know.
I am absolutely terrified of heights. Clearly I need to get out more, given that this is my ‘surprising’ fact!

Marcus is part of PwC’s Deals Tax team, which sits within a wide network of PwC specialists.

Contact

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

DISCIPLINARY REPORTS

Mr Imran Ashraf

At its hearing on 20 January 2022, the Appeal Tribunal of the Taxation Disciplinary Board considered an appeal by the TDB following a decision of the TDB's Disciplinary Tribunal on 14 September 2021.

The Appeal Tribunal determined that Mr Imran Ashraf of London SW18, a student member of the CIOT, had colluded with another student in a CIOT examination on 12 November 2020. Consequently, Mr Ashraf was in breach of:

a. Rules 2.1 and 2.2.1 of the Professional Rules and Practice Guidelines 2018 in that he had acted dishonestly and in breach of the fundamental principle of integrity; and
b. Rules 2.1 and 2.6.2 and/or 2.6.3 in that he did an act which discredits the profession in breach of the fundamental principle of professional behaviour.

The Appeal Tribunal recommended that Mr Ashraf be removed from the student register of CIOT and pay costs in the sum of £2,000.

Mr Hafiz Tayyab

At its hearing on 20 January 2022, the Appeal Tribunal of the Taxation Disciplinary Board considered an appeal by the TDB following a decision of the TDB's Disciplinary Tribunal on 14 September 2021.

The Appeal Tribunal determined that Mr Hafiz Tayyab of London E12, a student member of the CIOT, had colluded with another student in a CIOT examination on 12 November 2020. Consequently, Mr Tayyab was in breach of:

a. Rules 2.1 and 2.2.1 of the Professional Rules and Practice Guidelines 2018 in that he had acted dishonestly and in breach of the fundamental principle of integrity; and
b. Rules 2.1 and 2.6.2 and/or 2.6.3 in that he did an act which discredits the profession in breach of the fundamental principle of professional behaviour.

The Appeal Tribunal recommended that Mr Tayyab be removed from the student register of CIOT and pay costs in the sum of £2,000.

A copy of the decision of the Appeal Tribunal can be found on the TDB's website www.tax-board.org.uk.

Helping vulnerable people cope with Making Tax Digital

As a tax professional, you will be aware that Making Tax Digital (MTD) will be the biggest change to the personal tax system since Self Assessment was introduced in the 1990s. At the moment, MTD has focused on VAT submissions. Over the coming months and years, it will include income tax and corporation tax. Many of you are already advising businesses registered for VAT and will have seen the many benefits that MTD can bring. Less paperwork, efficient bookkeeping and timely information can transform businesses if they have access to high quality, paid advice.

> **Making Tax Digital will be the biggest change to the personal tax system since Self Assessment.**

The same benefits will apply to individuals who can rely on a qualified and skilled agent to support them. The vulnerable people we support cannot afford that paid advice and are often digitally excluded. TaxAid and Tax Help for Older People already support digitally excluded people with the help of the tax professions.

HMRC has decided against producing free MTD compliant software for low-income taxpayers, as it currently does for Self Assessment. MTD will rely on third-party software companies to produce free software. Choosing this software will be beyond the capabilities of many people struggling with language and literacy challenges or mental health difficulties.

Good digital records are mandatory for MTD compliance but many vulnerable taxpayers struggle with record keeping or rely solely on paper. The tax professions have been preparing for MTD for some time, while the wider population has yet to be aware of these huge changes to Self Assessment. TaxAid and Tax Help are working now to find ways to support digitally excluded people before April 2024.

The tax charities are already working in partnership with HMRC to understand the barriers to MTD compliance. Direct research with community and advice charities has already provided insight into necessary considerations as MTD is developed for Self Assessment. Over the coming months, the charities will be asking vulnerable people across the country what they need to support their engagement with MTD. Pilot projects will directly reflect the voice of digitally excluded taxpayers ready to meet the digital tax challenges of 2024/25.

You will hear from the charities as they learn how to meet the digital needs of marginalised taxpayers. They hope to rely on your support as they address this compelling challenge.

Valerie Boggs, CEO of TaxAid and Tax Help for Older People

> **Many vulnerable taxpayers struggle with record keeping or rely solely on paper.**

To learn more please contact Alice Devitt on alice@taxaid.org.uk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You would:

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- Manage the agenda of the joint Professional Standards Committee
- Manage the relationship with the independent Taxation Disciplinary Board
- Manage the relationship with OPBAS on AML matters

You will:

- Be an experienced and capable manager
- Be CIOT/ATT or legally qualified and/or have practical experience of working in the tax profession
- Have strong people and communication skills
- Have a good understanding of the relevant AML legislation and the CIOT/ATT's rules and guidance

To find out more about the job and see the full job description go to: www.tax.org.uk/head-of-professional-standards or email Renata Sandra-Toth at RSandra-Toth@ciot.org.uk

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Tax Assistant or Tax Senior
Sheffield – £21,000 to £25,000

This is a great role for a junior personal tax person who is looking for study support and the chance to progress. You will have a client portfolio from day one – mainly comprised of company directors and HNW individuals. You will deal with the compliance for your clients and assist more senior staff with advisory work such as advice on IHT and CGT. Ideally you will already have a couple of years of tax experience, but this firm will also consider someone from a more general practice background looking to specialise in tax. This firm offers flexible working and hybrid working. **Call Georgiana Ref GH3205**

Tax Senior or Junior Manager
Sheffield – £28,000 to £42,000

This role would suit a candidate who is confident that they can manage a complex portfolio of HNW individuals and company directors. Someone who has the experience to do the first draft of a letter on a piece of advisory work such as IHT advice and who is happy to supervise and review the work of more junior staff. You may be ATT, CTA or ACA qualified or ex HMRC and qualified by experience. The key to this position is being an all-round trusted advisor to your clients. There is plenty of opportunity to progress in this practice. Salary is dependent on experience and qualifications. **Call Georgiana Ref: GH3206**

Corporate Tax Assistant Manager / Manager
Leeds – to £50,000

This advisory role at a large independent firm has a corporate tax bias, although you will also get involved in broader OMB issues. Working alongside the Head of Tax, you will manage projects such as succession planning, R&D, sales and acquisitions, capital allowances planning and share valuations. You should be ACA/CTA qualified, although part qualified candidates will be considered. You must have a minimum of 4 years' corporate tax experience and must be organised and a good communicator. **Call Georgiana Ref: 3204**

Personal Tax Manager
Yorks – to £50,000 + benefits

This is a key role in a rapidly growing independent firm. It would suit an experienced personal tax specialist who is able to run a complex portfolio and manage more junior staff. Ideally you will be an organised individual who actively enjoys being a trusted advisor to clients and managing all their tax compliance needs, someone who enjoys improving systems and training others. There is scope to do some advisory work – but the focus of this role is managing a team of more junior staff and the personal tax compliance work from several offices. Scope to progress to director. **Call Georgiana Ref GH3207**

Advisory focused role
Manchester – £excellent

Our client is an award-winning independent accountancy practice with a strong tax offering, well renowned within Manchester for specialisms and excellent service. They offer general accountancy services, tax advisory, audit & assurance, transaction services and forensic accounting. Rapid growth to date has resulted in several roles with the tax advisory team. They seek capable tax advisers familiar with both advisory work and tax compliance. Applicants from corporate tax, personal tax or mixed tax backgrounds are being considered. Ideally you will be CTA qualified (ACA, ICAS or former Inspectors of Taxes also considered). Great prospects, hiring at all levels. **Call Georgiana Ref: GH3203**

Alison Tait is leaving Georgiana Head Recruitment Ltd for pastures new. Like many people Alison has had time to think about her life and career during lockdowns and decided that she wants a change of direction. She is leaving the firm to move into an examinations role in a secondary school. Alison was instrumental in the set up and development of Georgiana Head Recruitment Ltd. We want to pass on our thanks for 15 years of hard work and dedication, and we are sure that like us all her clients and candidates will wish her the very best for this next step in her career journey.

SW Accountants & Advisors, Australia Corporate Tax Staff – ACA or ICAS qualified

Has Covid interrupted your plan to work overseas? Are you looking for a chance to travel and work abroad? Our client is looking for chartered accountants with a UK or Australian tax background and you can be based in either Melbourne or Sydney! These roles come with visa sponsorship, help towards relocation if required and plenty of opportunity for personal and professional development.

SW is an Australian owned accounting and advisory firm with an 85+ year history with a values-led culture that understands relationships make all the difference in delivering great outcomes. The firm operates as a national firm across Brisbane, Melbourne, Perth and Sydney and delivers global solutions as a member of the SW International Network and Praxity Network Alliance.

Their client base ranges from dynamic family owned businesses to global multinationals. Your role will include a mix of compliance and advisory work and you will also have the chance to work in specialised areas. The firm is renowned for supporting client contact from day one and you will be mentored by a partner. The National Head of Tax also made the move from the UK to working in Australia so completely understands the benefits!

As well as UK candidates, the firm will welcome Australian nationals looking to return to Australia. You will need to be a qualified accountant (ICAS or ACA) to enable a smooth path through the visa process, if you are also CTA or ADIT qualified this will be seen as an advantage. In depth training on Australian tax will be given to enable you to make the transition from UK to Australian tax advisor.

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

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