November 2022

Chartered Institute of Taxation.

TAXADVISER

taxadvisermagazine.com

The great divides

We report from the 2022 party conferences, where it seems the greatest battles are taking place internally

Late VAT payments

A new penalty regime for those who persistently make late submissions

Moving to universal credit

An update on the complicated transition and how it can impact claimants

Life after retirement

The options for keeping up your membership of ATT and CIOT

HELEN WHITEMAN
JANE ASHTON

Welcome
Time to plan ahead

It's been hard to know whether we are coming or going this month, what with the numerous government announcements and changes surrounding the mini Budget, Growth Plan and medium-term fiscal plan. By the time you read this, we'll also have heard any fresh announcements on 31 October. We have seen many members and employers engage with the changes through social media, producing really helpful summaries for clients and the public alike. What is clear, is that individuals and organisations are finding it really difficult to plan ahead with any certainty.

As you might imagine, our teams have been called upon to speak to the press about the unfolding tax announcements and U-turns, and we've been publishing summaries, commentary and updates on the technical pages of our websites. You will also be receiving links to these in our Tuesday email newsletter. Remember that you can access this at any time online and on your portable devices at this link: www.lexisnexis.co.uk/ciot-att-newsletter. See the Briefings section from page 44 which shows you some of our coverage.

Please do look out for an email from us inviting you to renew your data preferences for receiving information from us. Our preference centre ensures you can choose the information you would like to receive, which is most relevant to you and your area of specialism.

We are really looking forward to the launch of our new Diploma in Tax Technology (DITT) qualification on 21 November. Dr Daniel Susskind is our keynote speaker. He is a Research Professor in Economics at King's College London and has authored books 'The future of the professions' and 'A world without work'. He will be joined by our DITT panellists who will introduce the qualification, explain the syllabus and advise how you can register to be one of the first to study and hold this new qualification. Everyone is welcome to attend the online launch, and more information is available at: bit.ly/3ge0oM9.

Our Branch volunteers and team have lined up an excellent programme of online and in-person events for you. Whilst we continue to harness the benefits and convenience of online participation, we've appreciated the positive feedback and atmosphere for in-person activities.

If you are feeling a little hesitant about this, please do speak to our friendly team who will be pleased to reassure you about the measures we have in place to ensure you feel safe and supported. Many local branches are celebrating anniversaries over the next few months.

If you haven't been to a branch meeting before, this is an excellent opportunity to meet fellow members in a social setting. Look out for the Saturday emails which include details of all the upcoming events.

The ATT are looking to recruit new Council members to replace those who are retiring at the next AGM having served their maximum 12 year term. If you would like the opportunity to contribute your skills and expertise, and play a fundamental role in the strategic development of the ATT, we would like to hear from you. Details of how to apply are at: bit.ly/3TdvwKt.

And finally, a huge WELL DONE to the KiliTax team of five who conquered Mount Kilimanjaro. They have raised £22,000 for the tax charities and are still hoping to reach their target of £34,000. You can find their page at justgiving.com/team/KiliTax2020 and a write up of their experiences on page 48.

Jane Ashton
Chief Executive, ATT
jashton@att.org.uk

Helen Whiteman
Chief Executive, CIOT
HWhiteman@CIOT.org.uk

CONTENTS

Journal of The Chartered Institute of Taxation and The Association of Taxation Technicians
30 Monck Street,
London SW1P 2AP.
tel: 020 7340 0550
The CIOT is a registered charity – No. 1037771;
The ATT is a registered charity – No. 803480

Editorial
Editor-in-chief Bill Dodwell
Publisher Jonathan Scriven
Editor Angela Partington
angela.partington@lexisnexis.co.uk
tel: 020 8401 1810

Advertising & Marketing
Advertising Sales Jimmy Jobson
advertisingsales@lexisnexis.co.uk
Commercial Marketing Director
Sanjeeta Patel

Production
Senior Designer Jack Witherden
Production Assistant Nigel Hope
Design & Technology Manager
Elliott Tompkins

UK print subscription rate 2022: £121.00 for 12 months
UK print subscription rate 2022: £214.00 for 24 months

For *Tax Adviser* magazine subscription queries contact 0330 161 1234. or email customerservice@lexisnexis.co.uk

For any queries regarding late deliveries/non-receipt please direct to Derek Waters, Magazine Distribution Administrator derek.waters@lexisnexis.co.uk

Reprints Any article or issue may be purchased. Details available from customerservice@lexisnexis.co.uk

Printed by William Gibbons & Sons Ltd. West Midlands

ISSN NO: 1472-4502

Regulars

22

32

ONLINE PICKS OF THE MONTH

SUSAN BALL
PRESIDENT

Change is the only constant in life

> Please take a moment to reflect upon one of the most important and unifying human principles.

Since my last President's page such a lot has happened in the world around us, not least in terms of here in the UK. They do say that change is the only constant in life, and we have certainly seen a lot of that recently!

Many of us have a love-hate relationship with change. I know I do. Certainly, when things are going badly, we can often take comfort in the fact that things are not going to stay the same. Things might get better or they might get worse – but they are going to be different. Conversely, of course, when things are going well, we want things to stay as they are forever. Unfortunately, life doesn't work that way. Whether we actively try to keep things as they are or not, change is invariably going to happen.

As you will know from my previous President's pages, I wrote to the two candidates in the run up to the Conservative leadership election, and more recently to the new Chancellor and tax minister, outlining our concerns on several matters: simplification, MTD and service levels at HMRC.

Correspondence aside, what a time, in both UK politics and tax, to be in the thick of it. And never more so than when I found myself, having never attended a political party conference, at both the Labour conference in Liverpool and the Conservatives' equivalent in Birmingham. I was there to chair events held jointly with the Institute for Fiscal Studies on tax and the cost of living crisis. A big thank you to all the panellists who made my job easy by the depth of their insights, even though things (from a tax perspective at least) were changing day by day. There is a short report on the debates in the Briefings section of this edition of *Tax Adviser.*

Since those debates took place we have seen some major changes to the package of tax cuts announced on 23 September – as well as to those in charge of our fiscal policy. Perhaps there will be more between my writing this and your reading it? In any case, while all this change and uncertainty can be exciting to watch, it is not great for the tax system or the wider economy. It is not just the bond markets which are looking to the government for certainty. Tax professionals and those we advise are praying for a period of stability too.

In addition, the end of September saw me host a reception for many of our amazing volunteers from across the Institute as a thank you to them all. The event was held at the National Gallery in London. I was delighted that so many could make it and that I was able to hand out, in person, certificates to Moira Kelly, Daniel Lyons, Elizabeth Anfield, Keith Bell, John Foulkes, Stephen Foulkes, Felicity Whitley and Chris Williams. This list includes two members – Keith Bell and Felicity Whitley – who I remember well from my days as chair of the Suffolk branch.

This group has between them a phenomenal number of years of service to the Institute, and we are extremely grateful for their time and efforts over the years. Glyn Fullelove was President when I became Vice President, and I was delighted to also hand him a scroll and badge in recognition of his service to the Institute. You can see more on this event in the Briefings section.

Looking to the future, over the coming months a number of our branches and associated institutes celebrate significant anniversaries. As part of this I was delighted to be involved in The Institute of Hong Kong's Golden Jubilee and that of the Sheffield branch recently.

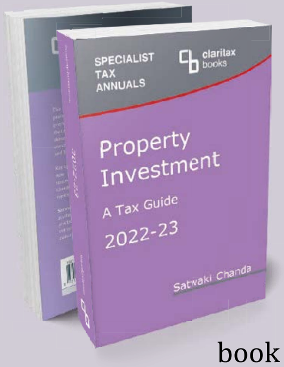
As I am sure you know, the Institute's mission is education – and we are focused on ensuring that we continue to offer relevant and valuable qualifications to as wide a population as possible. So I am particularly pleased that later this month I will be officially launching our new qualification: the Diploma in Tax Technology (DITT).

As a final thought for this month, 13 November is World Kindness Day. In considering this, please take a moment to reflect upon one of the most important and unifying human principles and something we have heard a lot about in recent years. Simply put, an act of kindness, no matter how small, can go a long way. And numerous studies have shown that being kind makes you happy – so for all of us it's a win win!

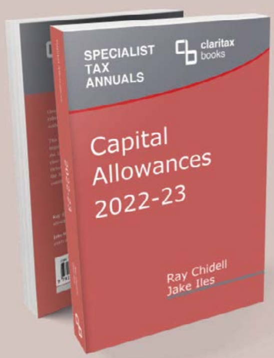
Susan Ball
President
president@ciot.org.uk

Chartered Institute of Taxation.

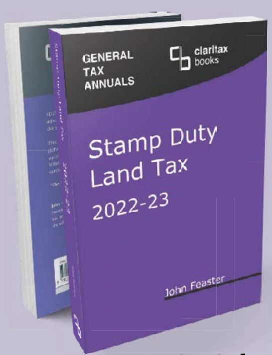
PROPERTY TAX TITLES



Property Investment leads the reader through the lifecycle of property ownership, from acquisition to eventual disposal. At each stage, the tax issues are clearly explained and illustrated, with worked examples throughout. The book will be invaluable for tax advisers with property-owning clients (and no doubt for many property owners themselves).



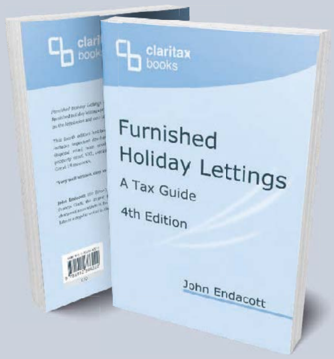
Capital Allowances is a practical, comprehensive guide to the UK system of capital allowances. It helps readers avoid costly errors, and maximise tax relief, thereby protecting the interests of all businesses and commercial property owners. It includes detailed and practical guidance on key topics re plant and machinery allowances: cars, fixtures in property, annual investment allowances, special rate expenditure, short-life assets, etc. Structures and building allowances are also covered in depth.



Stamp Duty Land Tax is a well-written, user-friendly guide to the complexities of SDLT, perfect for accountants, solicitors and others who need clear, practical guidance on the topic, with plenty of worked examples. Topics covered include basic principles, leasehold transactions, partnerships, trusts, reliefs, anti-avoidance legislation and recent tribunal decisions. Full reference is made throughout to relevant legislation, case law and guidance from HMRC.

Property Investment	**£115**
Capital Allowances	**£115**
Stamp Duty Land Tax	**£95**
Furnished Holiday Lettings	**£70**
Main Residence Relief	**£80**

Furnished Holiday Lettings brings together all the special tax rules that apply for furnished holiday properties. The text explains the criteria that must be met for the special legislation to apply, and gives full details of the tax benefits of gaining that status, from acquisition to disposal, and including the inheritance tax provisions as they apply to such properties.



Main Residence Relief is a detailed, clearly written guide to the familiar CGT relief, offering fresh commentary on a topic that contains numerous pitfalls for the unwary. With full reference to appropriate legislation and relevant case law, the principles are illustrated with real-life scenarios and planning points.

Same-day dispatch at
www.claritaxbooks.com
01244 342179

claritax books

SIMON GROOM
DEPUTY PRESIDENT

A little turbulence!

> Quite how the general public are expected to understand all of the changes is a mystery to me.

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

Hello, and welcome to the Deputy President's page for November. This month I've had first-hand experience of the problems of publishing and deadlines.

The original version of this article contained comments on the tax cuts in the (first) mini Budget – comments which would have been completely out of date by the time you read this in November. A fortunate twist of fate in terms of the timing of the reversal of the changes has meant that I'm getting the opportunity to have a second attempt at it.

Having said that, with things changing as quickly as they are, it could well be the case that most of this is out of date when you read it. The original version contained a comment, made in jest, that read 'the current incumbents of numbers 10 and 11 Downing Street (assuming they haven't changed by the time this goes to print)...' As I write now, one of them *has* changed and, according to recent headlines, it might not be long before the other one changes as well.

I think it was Harold Macmillan (a former Conservative occupier of numbers 10 and 11 Downing Street) who, in answer to the question of what he was most afraid of replied, 'Events, dear boy, events.' Given the changes we've had recently, that seems very relevant today.

But on a serious note, one of things that is essential for tax policy is the need for stability and some sort of certainty. ATT members are at the sharp end of helping clients to comply with their obligations and to plan for the future. That is becoming more and more difficult with all of the announcements of changes, and reversals and contradictory headlines. One can only hope that the end of the recent turmoil has heralded a return to a more stable policy agenda.

Having said that, spare a thought for the providers of payroll software, who will now be on their third iteration of national insurance calculations for this current tax year. Quite how the general public are expected to understand all of the changes, and when they apply from, is a mystery to me. Whatever happened to the debate on tax simplification?

But headlines aside, it was a pleasure for me to be present at a ceremony in September where we were able to recognise two people who have given an enormous amount of time and effort in service to the ATT over the years. Firstly, Michael Steed was presented with the Council Award. This is awarded to members who have made an exceptional contribution that supported the ATT's charitable objectives over one or more years.

Michael has been actively involved in the Association for many years. As well as being a Council member, he has made an exceptional contribution to the ATT Technical Steering Group and the ATT Conferences. Michael and I go back many years and he had the dubious honour of being a student in one of my classes when he was studying for his ATT examinations in 1992. Thankfully, he passed – and, as they say, the rest is history.

Secondly, Patricia Caputo was awarded a Council Certificate of Appreciation. The Certificate of Appreciation is awarded to people who have made a 'Direct contribution to the ATT'.

Patricia received the award in recognition of her commitment to the Mid Anglia Branch. For many years, she took on the lion's share of running the branch and was instrumental in promoting the ATT and making it the successful branch it is today. This involved putting in many hours of work and hosting the majority of the technical seminars that have been held during the years.

It is very pleasing to be able to recognise service such as this, so many congratulations to them both on their awards.

That's it for this month, but before I sign off I need to continue my theme of mentioning something on education in every article. Just a reminder therefore that our upcoming series of courses entitled 'Sharpen your Tax Skills' run in conjunction with the AAT will be held on 7, 9 and 25 November featuring Rebecca Benneyworth and the ATT Tax Technical team.

Party conference report
The greatest divides

We review the 2022 party conferences, where it seems that the bloodiest battles are those taking place internally.

by George Crozier

Honeymoon (noun): A holiday or trip taken by a newly married couple. Or any early harmonious period in a relationship, especially the first month.

Is Birmingham a good place for a honeymoon? It has culture, history, 35 miles of canals (that's more than Venice) and a fine (if tricky to navigate) convention centre with a stunning Symphony Hall. It is not – contrary to the words of one young Conservative on social media – a 'dump'. But for new Prime Minister Liz Truss and her government – in place for less than four weeks when they arrived in England's second city for their party conference in early October – it was, perhaps, not the loved-up long weekend they might have hoped for, and the noises that emerged were anything but harmonic.

The announcement nine days earlier of the biggest package of tax cuts from a UK government in half a century was designed to cheer supporters, lift national spirits and kickstart economic growth, but it didn't quite turn out like that, as markets panicked, the pound slumped and even public opinion gave the strategy of 'borrowing for tax cuts' a resounding thumbs down.

In these unpropitious circumstances, the PM and her then Chancellor sought valiantly – but mostly vainly – to persuade party, pundits and public – not to mention the bond and currency traders – that the government's fiscal plans added up and would in due course deliver a low tax, low regulation, high growth land of milk and honey.

But first to the 'anti-growth coalition' – or as they are known outside government circles, the opposition parties. The first conference of the season is usually the Liberal Democrats. After two years of meeting online the party was looking forward to gathering together again in Brighton to discuss topics such as whether to cut VAT for a year as a temporary stimulus, and what approach to take to a universal basic income. Sadly, the timing of the Queen's death and funeral meant the conference was cancelled and we will have to wait till next year for these deliberations.

Labour in Liverpool: tax cuts for the many not the few

This meant that Labour's gathering in Liverpool was the first of the season. Beginning just 48 hours after the mini-Budget, the party might easily have been nonplussed by the need to react so quickly to so much new fiscal policy – and to be fair there was some brief uncertainty about its stance on the income tax basic rate cut. However, they soon united around a position of support for tax cuts for 'ordinary people' and opposition to those for big business and the rich.

This meant backing the reversal of the national insurance increase, and repeal of the health and social care levy, as well as the bringing forward of the cut in the basic rate. Explaining Labour's support for these measures, party leader Sir Keir Starmer told the BBC he had long made the argument that we should reduce the tax burden on working people. At a CIOT/Institute of Fiscal Studies (IFS) fringe debate, James Murray, Shadow Financial Secretary, said that increasing national insurance had been misguided because it hit working people and businesses creating jobs.

> **It was not perhaps the loved-up long weekend that Prime Minister Liz Truss and her government might have hoped for.**

However, Labour strongly opposed the scrapping of the 45p additional rate of income tax and was explicit that it would reinstate it, spending the money raised on more NHS staff and free school breakfast clubs. The other mini-Budget tax 'cut' opposed by Labour was the decision to keep corporation tax at 19%. Party leaders were less clear, though, about whether a future Labour government would have reinstated the planned increase. Shadow Chancellor Rachel Reeves told delegates the rate of corporation tax was not a priority for businesses, suggesting they were keener on properly targeted investment allowances.

The cost of living crisis continues to be the dominant domestic political issue of this year. Labour drew contrasts with the Conservatives over both the amount of help they would provide and how it would be paid for. Speaking at the CIOT/IFS debate, which focused on this issue, James Murray said it was inexcusable for the government to not look at extending the windfall tax to pay for the energy price guarantee, as opposed to paying for it through borrowing.

Rachel Reeves told a fringe meeting organised by the Federation of Small Business that Labour will move forward on tax reform with three key pillars determining their approach: tax fairness, tax efficiency and shifting the burden of business tax. She lamented the UK's 'overcomplicated' tax system.

Labour do not support the cut to stamp duty land tax, believing it offers poor value for money. However, they are keen to 'abolish' business rates. They would be replaced with a 'fairer system' which would 'incentivise investment and level the playing field between high street businesses and global giants', with businesses getting revaluation discounts straight away.

> **Keir Starmer confirmed that Labour is looking at how different forms of income are taxed, but rejected suggestions of a wealth tax.**

Keir Starmer confirmed during the conference that Labour is looking at how different forms of income are taxed, but he rejected suggestions that he wanted to impose a wealth tax. He told a radio interviewer: 'I am looking at whether and how we tax all different forms of income. Some people obviously earn their income through a wage, other people earn it through stocks and shares and dividends, and we are looking at what is a fair way to tax all income wherever it comes from.'

Labour repeated its commitment to replace 'non-dom' taxpayer status with a shorter-term scheme for temporary residents. At a fringe event, James Murray said the current regime discourages growth because it puts non-doms off bringing their money to the UK. He also confirmed that Labour is continuing work on tax reliefs, focusing on whether they are fair, value for money and contribute to economic growth. Asked about abolishing the Office of Tax Simplification, Murray wondered somewhat incredulously whether the government thought its job was complete. Asked about reform of employment taxes, he used the now well-established formula that Labour want 'those with the broadest shoulders' to pay higher taxes, rather than ordinary working people.

Conservatives in Birmingham: growth message overshadowed by mini-Budget fallout

And so, four days later, to Birmingham, where the media agenda was dominated by the plan for tax cuts, and in particular the proposal to scrap the 45p rate. The policy was defended by senior ministers right up to the point when it was ditched, with the Prime Minister telling the BBC it was a simplification and Chief Secretary to the Treasury Chris Philp saying at a fringe meeting that when the top rate was cut from 50p to 45p it raised no less money.

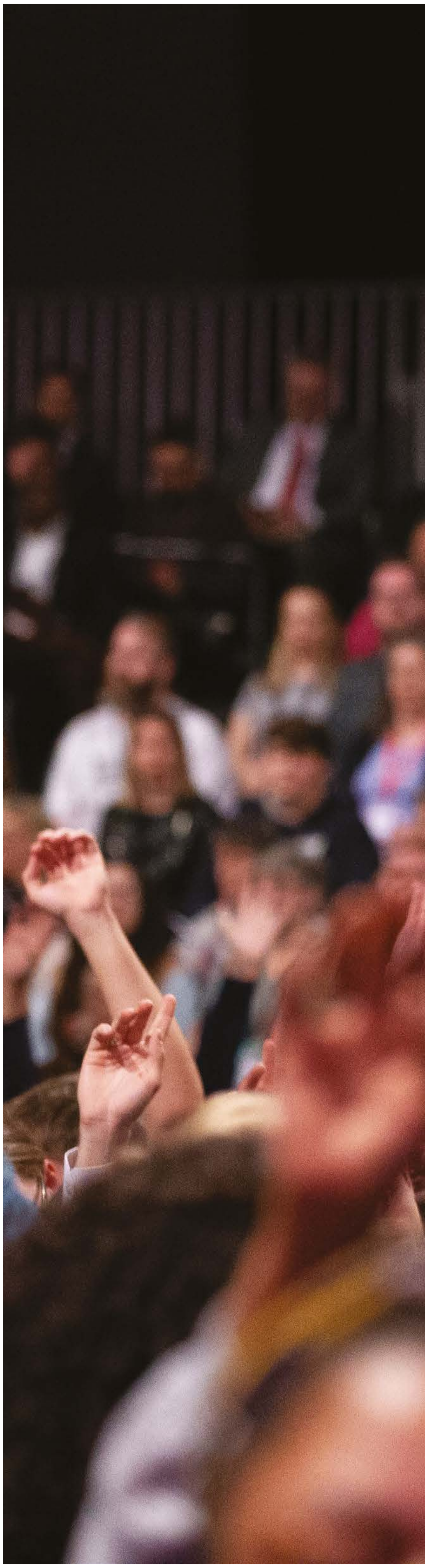
But opposition was growing, and widespread. Even some broadly supportive of the government's economic approach felt that the proposal was wrong at this time, even if it was desirable at some point. And so, at 7pm on day one of the conference, senior backbencher Graham Brady warned the Prime Minister that she did not have a majority for the measure. The PM summoned her Chancellor, Kwasi Kwarteng, for crisis talks, and the decision was taken. Announcing it the following morning, the Chancellor explained that the proposal had been 'drowning out a strong package' so it had to go. So, it turned out less than two weeks later, did he, along with most of the rest of the package.

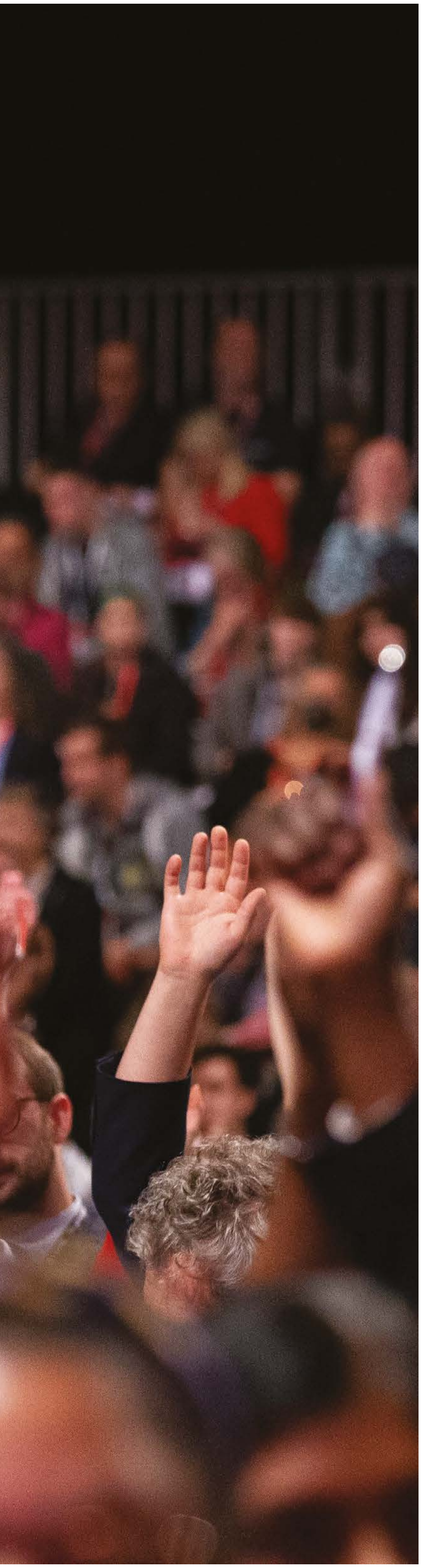
While ditching the 45p rate was widely supported at the conference, most of the other measures in The Growth Plan – including the tax measures – continued to receive favourable reactions. The spiking of the national insurance rise, axing of the planned levy to fund health and social care and bringing forward of the (now abandoned, of course) income tax basic rate cut all received rave reviews at the conference, as did the IR35 changes and keeping corporation tax at 19% (both also now dumped). What criticism there was was mostly over the manner of their introduction – too much, too fast, and with insufficient pitch rolling, was the general analysis.

Notwithstanding this, there was plenty of excitement at the conference over which other tax cuts might come along in due course. The context for this was set by a 'wholesale review of the tax system' the government is undertaking. According to The Growth Plan, the review will identify ways 'to make the tax system simpler, better for families and more pro-growth' and we will hear the results next year. Prior to the conference, newspaper reports suggested high marginal rates of tax for higher earners would be a central focus of this review, with the high income child benefit charge, the withdrawal of the income tax personal allowance over £100,000, and pensions lifetime and annual allowances all being looked at. The first two of these could go, according to the Sunday Telegraph.

Former Public Accounts Committee member Richard Holden MP was among those at the conference arguing that areas like these need addressing.

The reference to making the tax system 'better for families' probably relates to the review Liz Truss promised during the summer into the way families are taxed, 'to ensure people aren't





penalised for taking time out to care for children/elderly relatives'. Reports suggest the idea is to make more or all of the income tax personal allowance transferable between members of couples. This might be restricted to those with caring responsibilities.

Inheritance tax is another area of the tax system Liz Truss promised to review. Andrew Griffith, the new City Minister, made headlines during the conference by revealing he would like to see it abolished. Former Party Treasurer Lord Spencer expressed the same view. There is no doubt many other Conservatives feel the same.

Given developments since The Growth Plan was published, there has to be some doubt over whether the 'review of the tax system' will ever see the light of day or, if it does, whether its outcomes will at all resemble those intended by its progenitors.

One measure which does look likely to survive the new Chancellor's axe is the announcement that businesses with up to 500 employees will henceforth be defined as 'small businesses' for regulatory purposes and will thereby be exempt from some regulations and reporting requirements. It is not clear to what extent this change will affect eligibility for tax reliefs and incentives. Similarly, the plan for investment zones also looks set to survive. This *will* lead to lower taxes for businesses inside the zones. All local authorities are welcome to apply, ministers told the conference, but it is clear that most successful bids are likely to be large brownfield sites in less prosperous areas.

SNP in Aberdeen: Grassroots urge progressive approach

The final conference of the season was the SNP gathering in Aberdeen. This was considerably calmer than the Conservative event, but SNP leaders still had questions to answer on tax policy. In particular, the UK government's decision to cut the basic rate of income tax to 19% presented them with a dilemma. Would they respond? If not, a central tenet of Scottish government tax policy – that some Scots are better off because of Scotland's more progressive income tax regime – would no longer hold true.

The UK government's policy change on the basic rate takes the immediate pressure off the Scottish Government on this, but the ongoing pressure from the SNP grassroots to use the policy levers at their disposal to take a more progressive approach remains.

At the conference, this was visible in the motion passed by party members calling for the abolition of income tax for those earning less than the living wage.

Further developments

What a different a week makes. Within seven days of the end of conference season the Chancellor had been fired and his replacement had consigned most of the government's tax plans to the dustbin. Not only was the government's approach turned on its head, key conference season dilemmas for the opposition parties – how would they respond to income tax cuts? would they increase corporation tax? – were rendered defunct.

The Conservative leadership contest over the summer was fought largely on the ground of fiscal policy. It showed that the greatest divide in the party is no longer between 'leavers' and 'remainers', but between fiscal traditionalists and radicals – call them the 'rads' and the 'trads'. The trads argued that tax cuts had to wait until the economy was back on track and they could be afforded. The rads said that without tax cuts the economy would not get back on track. The trads suggested the rads were fiscally irresponsible and risked crashing the economy. The rads accused the trads of being part of the 'Treasury orthodoxy' that has put us on the brink of recession. The rads, in the form of Liz Truss, won the battle but, confronted by the big battalions of the bond markets, were forced to retreat and concede the war.

Recent weeks have perhaps been a lesson in the limits of tax policy in the modern age, learned the hard way. Where does it go from here? In all probability, whether or not there is a change of Prime Minister, we are moving into a period characterised by uncertainty, fractiousness and cobbled-together compromise. The art of the possible. Less grand planning à la Haussmann, more goose plucking à la Colbert.

On the opposition benches, hopeful Labour figures see these last weeks as the time when the mantle of economic trust may have shifted to their party. Opinion polls suggest they could be right. The Conservatives, meanwhile, face the challenge of convincing voters that, for all the bumps in the road, their plan remains the best route to growth and their opponents are obstacles to progress. Who will succeed? On this battleground the next election will likely be won and lost.

Name: George Crozier
Position: Head of External Relations
Company: CIOT/ATT
Email: gcrozier@tax.org.uk
Profile: George has managed the CIOT and ATT's political and media relations since September 2009. He blogs at www.tax.org.uk/media_centre/blog and tweets at @GeorgeTweetsTax

Late VAT returns
Points will lead to penalties

From 1 January 2023, late VAT returns will be subject to potential penalties, including repayment returns.

by Neil Warren

Key Points

What is the issue?
A new penalty system will be introduced for VAT periods beginning on or after 1 January 2023 that, according to HMRC, will penalise 'only the small minority who persistently miss their submission obligations rather than those who make occasional mistakes'.

What does it mean for me?
A VAT registered business will be issued with a penalty point for each return it submits after the due date. A £200 penalty will be issued when a business submitting quarterly returns reaches four points and a business submitting monthly returns reaches five points.

What can I take away?
Points and penalties will also apply to repayment and nil returns that are submitted late. This is a major change to existing procedures. It is important to inform businesses which have a lot of zero-rated sales about this outcome so they can be fully compliant with the new rules.

Older readers will remember the famous catchphrase of the late entertainer Bruce Forsyth with his game show quip that 'points make prizes.' As far as the new penalty regime for submitting late VAT returns is concerned – which takes effect for periods beginning on or after 1 January 2023 – it will be a case of 'points make penalties'.

I will explain the new system in this article, including the major change that repayment returns will also be subject to points and potential penalties. Please send an urgent email alert about this change to your clients who are farmers, exporters, grocers, bookshops, builders working on new homes… and many others.

Two systems

As explained in my previous *Tax Adviser* article 'Radical changes: late VAT payments' (October 2022), there will be two completely different penalty systems introduced on 1 January. One will deal with late returns and the other when tax has not been fully paid by the due date. Payment issues were considered in my previous article.

The new regime for late returns will be based on a points accumulation system: a business will get one point for each late return it submits and then a £200 penalty will be issued by HMRC when it reaches its points threshold. The threshold depends on the frequency that returns are submitted:

- monthly returns: threshold is five;
- quarterly returns: threshold is four; and
- annual returns: threshold is two.

The new system has been compared to a driver getting three points on their licence for each speeding offence they commit and being issued with a fine when they get to 12 points. The comparison is reasonable because there are plenty of lifelines with both systems, so to speak.

The generous thresholds mean that the earliest date for any late return penalty will be 7 July 2023. This will be issued to a business that submits late monthly returns from January to May 2023, reaching its threshold of five (the return for May 2023 having a submission date of 7 July).

Purpose of the new rules

To share a tale from my Customs and Excise days, I visited a sole trader in Northampton, who had not submitted any VAT returns for three years. The department had not chased him until then because he traded as a milkman; i.e. making zero-rated sales. He therefore submitted repayment returns each period. The department's policy in those days was to not chase outstanding returns that would result in a refund.

However, unbeknownst to us, he had changed his business activity from a milkman to a maintenance engineer

three years earlier, so those outstanding periods now owed a lot of VAT. He was no longer a repayment trader because his income was standard rated!

The moral of this tale is that HMRC expects – rightly – that all returns will be submitted on time, so that liabilities are properly declared and paid. This means that repayment returns will be subject to a penalty with the new regime.

Repayment returns

In practical terms, a return can only have three outcomes. It will produce:

- a net payment to HMRC – which is most returns;
- a net repayment, e.g. for a business with mainly or all zero-rated sales, such as those I listed above; or
- a nil return, perhaps because a business is temporarily not trading.

All returns will fall within the late filing penalty regime. The priority, I feel, is for advisers to inform all businesses that submit regular repayment returns about the new system so that they are aware of the changed goalposts from day one. It is a major change of direction in the legislation because it will be the first time in the lengthy history of our favourite tax that repayment returns will be subject to a potential penalty.

HMRC will carry out a publicity operation to highlight this issue to relevant repayment traders, such as farmers. I have not dealt with farmers for many years but a common habit was for them to submit four or five returns at the same time, usually when they needed some VAT refunds to buy a new piece of machinery.

Escaping the points regime

A business submitting quarterly returns will get a £200 penalty once it has accumulated four points; i.e. four returns after the due date. Each subsequent late return will incur a further penalty of £200. However, all points will be wiped off the system once they are two years old. This common-sense approach is intended to prevent historic points and occasional recent failures awkwardly combining to produce a financial penalty. It is possible to wipe the slate clean and return to zero points if two conditions are fulfilled:

- All returns for the previous 24 months must have been submitted by the business.
- The business must have submitted all returns on time for 12 months after reaching the relevant points threshold. However, the relevant period is 24 months for a business on annual returns and six months for monthly returns.

See ***Florist Flo: late VAT returns***.

BUILDER BOB: REASONABLE EXCUSE FOR LATE SUBMISSION

Bob is a builder who only works on new dwellings; i.e. his services and materials are zero-rated. He is a repayment trader for VAT purposes and submits monthly returns. He was late submitting them for five successive periods from March to July 2023 and HMRC issued a penalty of £200 for his fifth late submission.

However, the reason that Bob could not submit the July return on time was because he was in hospital during the first ten days of September when the return was due.

Bob will almost certainly be successful with a reasonable excuse appeal to HMRC for the July period. However, he still has four penalty points to his name for the other late returns, so must submit the next six returns on time to avoid a £200 penalty. If he does this, his points total will revert to zero.

Note: If Bob submitted quarterly returns, he would need to submit the following four returns on time to return to zero points.

FLORIST FLO: LATE VAT RETURNS

Florist Flo submits calendar quarter returns and submitted her 2023 quarterly returns late. She therefore incurred a £200 penalty for the December 2023 period when she reached the four points threshold.

She must submit all returns on time until December 2024 – the next four returns. Otherwise, each late return will incur a further £200 penalty.

If Flo has a clean slate until December 2024, and has also submitted all returns for the previous two-year period, she will return to zero points again.

Appeal procedures

The new system should produce a greatly reduced number of hearings in the First-tier Tax Tribunal about whether a business had a reasonable excuse for submitting a late return. This is because the new system will not produce massive penalties for a business that slips up with occasional misdemeanours, as is often the case with the current default surcharge system. And the threshold limits with the points system are generous. This will benefit both HMRC and taxpayers by reducing time-consuming internal appeals.

Appeals can still be made with the new system and the reasonable excuse provisions will still be relevant.

See ***Builder Bob: reasonable excuse for late submission***.

End of repayment supplement

I have saved the bad news until last; namely, the withdrawal of the repayment supplement regime where a business gets a 5% windfall for any repayment on a return that is delayed by HMRC for more than 30 days after its submission.

The repayment supplement system has been in force for many decades and is a useful piece of legislation to encourage HMRC to deal with queries it raises before repaying a return in a timely and efficient manner. It will end on 31 December 2022 and be replaced by the introduction of repayment interest. But here is the disappointing fact: interest will be calculated according to the Bank of England base rate minus 1%. If the rate falls below 1% – unlikely for quite a long time – a minimum rate of 0.5% will apply.

The new system should greatly reduce the number of hearings in the FTT.

Interest will be calculated from the day after the due date for the period in question or the date of submission – whichever is later – until the day that HMRC fully pays the repayment amount that is due.

I will not give any examples of how the numbers will work because we are talking about small amounts that will just about pay for a cup of coffee… but only a cheap one in a plastic cup!

Conclusion

To give HMRC the final word, the aim of the new system is to penalise 'only the small minority who persistently miss their submission obligations rather than those who make occasional mistakes'. The number of lifelines with the points system for late returns supports this objective.

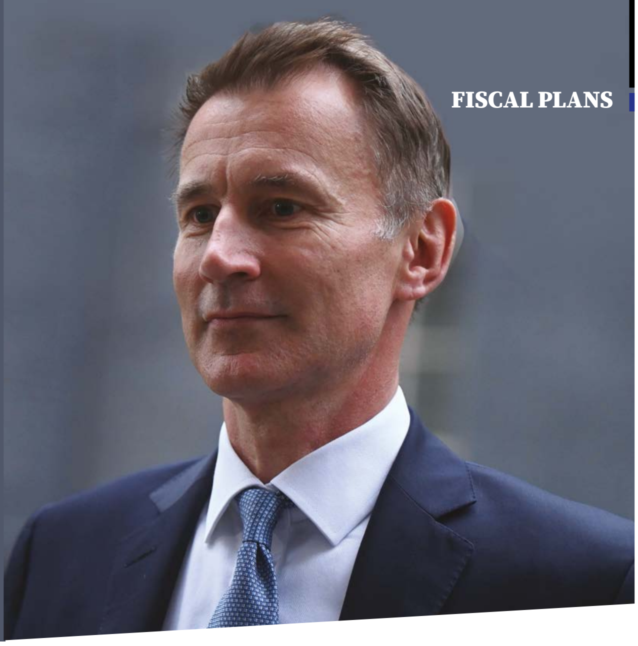
Some commentators have questioned whether a £200 fine is sufficient to encourage compliance. Based on the frantic activity that goes on in the profession in the last weeks of January to avoid £100 self-assessment fines, I suspect the answer will be 'yes' – and think of the way that we acted when shopping bags first became subject to a 5p tariff!

Overall, the new rules for late return filing penalties are clear and logical. The £200 fine should be sufficient to encourage compliance without causing financial ruin to a business that falls foul of the rules.

Name: Neil Warren
Position: Independent VAT consultant
Company: Warren Tax Services Ltd
Profile: Neil Warren is an independent VAT author and consultant, and is a past winner of the Taxation Awards Tax Writer of the Year. Neil worked at HMRC for 13 years until 1997.

Policy reversals
The latest economic plans

After the September fiscal event came the October announcements.



© NEIL HALL/EPA-EFE/Shutterstock

by Bill Dodwell

The new Chancellor, Jeremy Hunt, was appointed on 14 October and the first announcement came on the same day. The government will not be cutting the previously enacted rates of corporation tax. The rate of corporation tax will thus rise to 25% from 1 April 2023, with a 19% rate for companies (other than close investment companies) with profits below £50,000 and a taper for profits up to £250,000. The rate of diverted profits tax rises to 31% and the bank surcharge will be cut to 3%. Changing this decision raises about £18 billion annually.

After the Chancellor spent the weekend considering the next steps, he announced on Monday 17 October that the government would not be proceeding with the majority of the measures in the September Growth Plan.

The Chancellor began his statement:

> 'The central responsibility of any government is to do what is necessary for economic stability. Behind the decisions we take and the issues on which we vote are jobs families depend on, mortgages that have to be paid, savings for pensioners, and businesses investing for the future.
>
> 'We are a country that funds our promises and pays our debts. And when that is questioned, as it has been, this government will take the difficult decisions necessary to ensure there is trust and confidence in our national finances.'

Policy reversals

The result is that the government will not be proceeding with:

- The cut to dividend tax rates, saving around £1 billion a year. Dividend rates continue at 8.75% for basic rate taxpayers; 33.75% for higher rate taxpayers; and 39.35% for additional rate taxpayers.
- The reversal of the off-payroll working reforms introduced in 2017 and 2021, saving around £2 billion a year. This means that engagers will continue to be responsible for determining the status of freelancers, such that PAYE will be deducted from quasi-employees. Sir Edward Troup, former executive chair of HMRC, wrote in the *Financial Times*: 'In tax, if boundaries are not maintained, they will be abused, tax revenues will fall, and the wider legitimacy of the tax system eroded.' He argued that the off-payroll rules are needed to remain in place to support compliance (see on.ft.com/3CNjj7Y).
- The new VAT-free shopping scheme for non-UK visitors from 2024, saving a further £2 billion a year.
- The freeze to alcohol duty rates from 1 February 2023, saving around £600 million a year. The Chancellor will provide details on the future uprating shortly.
- The cut to the basic rate of income tax to 19% in April of 2023, saving nearly £6 billion annually. The Chancellor confirmed that the 20% basic rate will remain unaltered indefinitely, although he expressed the aspiration to cut the rate when economic circumstances permit.

The yield from this package is expected to be £20 billion next year, rising to £32 billion in 2026/27. The Office for Budget Responsibility will update the numbers with its economic forecast on 31 October.

In addition

Some elements of the Growth Plan remain in place. The increase in the nil rate of stamp duty land tax to £250,000 (and £425,000 for first time buyers) took effect on 23 September.

National Insurance rates will be cut from 6 November, when national insurance rates for employers and employees will be cut to 13.8% and 12%/2% respectively. Annual rates, mainly for directors, will be set at 12.73% and 2.73%. Class 1A (not paid monthly through RTI) and 1B will be set at 14.53% for the 2022/23 tax year.

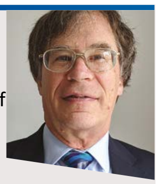
The main and additional rates of Class 4 will be set at 9.73% and 2.73% respectively for the 2022/23 tax year. These strange rates are, of course, because for self-employed individuals, national insurance rates are levied on an annual basis.

The Annual Investment Allowance will remain permanently at £1 million annually. Finally, increases in limits to the Seed Enterprise Investment Scheme and the Company Share Option Plan remain in place.

The Chancellor took the opportunity to announce the formation of a new Economic Advisory Council to provide the government with additional economic advice. Four members were initially announced, with more to be added. The Council will not have access to government data, and members will not be paid for their roles (see bit.ly/3CKTDcr).

In answering questions in the House of Commons, the Chancellor said that the government would be proceeding with investment zones but that he was aware of the potential for abuse and would take steps to avoid creating such opportunities. Further details of how such zones will operate have yet to be announced.

Finally, the Chancellor said that he would need to consider tax rises and spending cuts in the Medium Term Fiscal Plan, giving the assurance that 'every single one of those decisions ... whether reductions in spending or increases in tax, will prioritise the needs of the most vulnerable'.



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

Transition to universal credit
Will there be benefits?

It is no longer possible to claim tax credits. We provide an update on the complicated transition to universal credit.

Key Points

What's the issue?
It is no longer possible to make a brand new tax credits claim. Instead, those needing financial support must claim universal credit or pension credit (depending on their age).

What does it mean for me?
Tax advisers who have clients claiming tax credits need to be aware of the situations where a universal credit claim may be triggered and the plans to migrate tax credit claimants across to universal credit.

What can I take away?
A better understanding of the transition from tax credits to universal credit and how it will potentially impact clients.

by Victoria Todd

Universal credit is replacing six legacy benefits including working tax credit and child tax credit. It is administered by the Department for Work and Pensions (DWP). HMRC states that it is no longer possible to make a brand new claim for tax credits. Instead, people will need to claim universal credit or pension credit (depending on their age). The only exception to this is for certain people who are granted backdated refugee status.

Single claimants who have reached state pension age and couples where both partners have reached state pension age cannot claim universal credit but may be able to claim pension credit instead. Mixed age couples (where one partner has reached state pension age and the other has not) usually have to claim universal credit, unless the couple were claiming housing benefit under pension age rules on 14 May 2019 and certain conditions are met. In that case, they can choose whether to claim universal credit or pension credit.

Existing tax credit claimants

Those already claiming tax credits can continue to renew their claims, add new elements to existing claims and add working tax credit to a child tax credit claim and vice versa. These are not counted as brand new claims.

Existing tax credit claimants will be affected by universal credit if they:

- **Choose to claim universal credit:** Some people are better off getting universal credit than tax credits. It is possible to voluntarily claim universal credit. Claimants should seek advice from a welfare rights specialist before choosing to leave tax credits for universal credit, as there are many issues to consider aside from which benefit is better financially, as the universal credit rules are different to tax credits.
- **Have a change of circumstances:** If a tax credit claimant has a change of circumstances that ends their tax credit award, they will need to claim universal credit (or pension credit) for ongoing financial support. Similarly, if their circumstances change such that they need additional financial support, for example help with their rent, in most cases they will need to claim universal credit instead of housing benefit. When the universal credit claim is made, any tax credit award will end.
- **Fail to renew an existing tax credits claim:** If a tax credit claimant fails to renew their tax credit claim under the normal renewals process (or misses the 30-day grace period deadline and the good cause provisions do not apply), they will have to claim universal credit (or pension credit) to get continued financial support.
- **Are moved across to universal credit by the DWP or HMRC:** Over the next couple of years, the DWP will contact legacy benefit claimants asking them to claim universal credit. This is the

© Getty images/iStockphoto

UNIVERSAL CREDIT: A SUMMARY

Universal credit is fundamentally different to tax credits. Some of the main differences are:

- Universal credit is assessed and paid monthly, unlike the annual tax year assessment period for tax credits.
- There are no working hours thresholds in universal credit, as there are in working tax credit. Universal credit is for those both in and out of work.
- The income rules have some significant differences. Perhaps the main one is that universal credit is calculated on net income (after tax and NIC and qualifying pension contributions), whereas tax credits are based broadly on gross income (less qualifying pension contributions). In universal credit, unearned income reduces the amount of the award pound for pound. Some claimant groups have a work allowance so earnings below that do not affect their award. Beyond that, 55% of earned income over the work allowance reduces the award. Overall, the amount you get is based on your income and circumstances.
- Universal credit has conditionality rules. This means that, with some specific exceptions, claimants (including both members of a couple) will be expected to look for work until their earnings reach, in most cases, 35 hours at the national minimum wage.
- Universal credit has capital rules, meaning that it is not available to those with capital of £16,000 or more. Capital between £6,000 and £16,000 attracts a tariff income by adding £4.35 of monthly income for each £250 (or part thereof) in excess of £6,000. By comparison, tax credits do not take account of capital, but any return on the capital is treated as investment income (except for the first £300 of household income from savings and certain categories of other income, which is disregarded).

formal migration exercise and will involve the DWP sending claimants a migration notice. This will tell them to make a claim for universal credit by a certain deadline and notify them that their existing legacy benefits will terminate (either at the point they make the universal credit claim or after the deadline passes if they have not made a claim).

The government has said that, under the formal migration exercise, no one should be financially worse off at the point they move to universal credit from legacy benefits. This commitment is given effect through transitional protection. The main point to note here is that those who choose to make a claim for universal credit or who move to universal credit due to a change of circumstances will not get transitional protection.

Transitional protection includes a transitional element added to the universal credit award and a transitional capital disregard. This is only available to those who are moved across by the DWP or HMRC. The only exception to this is for those who have a severe disability premium in certain legacy benefits (not tax credits), who may qualify for a transitional severe disability premium element if they claim universal credit outside of the formal managed process.

Managed exercise

The DWP started testing the managed process in Great Britain in July 2019. It was suspended in March 2020 due to the pandemic. The work resumed in May 2022 and, at the time of writing, the DWP has been sending out notices to small numbers of claimants in different areas to test the processes.

Numbers are expected to gradually increase until migration is complete by the end of 2024. Regulations have also been laid in Northern Ireland for a mirror process to take place.

In summary, the legislative process for the managed exercise involves the DWP sending a letter ('migration notice') to a legacy benefit claimant asking them to make a claim for universal credit.

They have three months to do so, although this can be extended in certain circumstances.

If a universal credit claim is not made within the time specified in the letter, legacy benefits (including tax credits) will be terminated at the end of the period.

If a universal credit claim is made within the specified period, the DWP must determine whether the transitional capital disregard applies or a transitional element is to be included in a universal credit award before they make a decision on the claim.

EXAMPLE: TAX CREDITS IN-YEAR FINALISATION

This example demonstrates the calculation of self-employed profits.

Mason has a basis period covering 1 May 2021 to 30 April 2022.

He claims universal credit on 1 November 2022. His profit for that basis period was £10,000.

Mason's relevant trading income (his part year income from self-employment) will be:

£10,000/365 x 209 = **£5,726.02**

Transitional capital disregard

Normally, anyone with capital over £16,000 is not entitled to universal credit. There is no corresponding rule in tax credits and so it is entirely possible that tax credit claimants may have capital over £16,000.

Broadly, under the managed migration process, tax credit claimants are protected from the capital ceiling in universal credit for up to 12 assessment periods from the date of their universal credit claim. This only applies if the claimant had capital exceeding £16,000 on migration day (which is the day before the first day on which the claimant is entitled to universal credit in connection with that claim). The disregard means that any capital over £16,000 is ignored for up to 12 assessment periods both in determining whether the financial conditions for universal credit are met and in calculating the amount of the award. However, any capital between £6,000 and £16,000 is not disregarded and will still attract tariff income.

Transitional element

Broadly speaking, the DWP will compare the amount a person receives through their legacy benefits with the amount they would receive from universal credit using the same income and circumstances.

However, the way that transitional protection is calculated is complex. The exercise uses a 'total legacy amount' and an 'indicative universal credit amount' in the calculation of transitional protection. These amounts may or may not be the same as the claimant actually receives in legacy benefits and/or will receive in universal credit, although in some cases they could be similar.

> **For in-year finalisation of tax credits awards, there are special rules for calculating self-employed income.**

If the amount from the 'total legacy amount' is more than the 'indicative universal credit amount', the difference is calculated and added to the universal credit award. Importantly, the DWP will compare **all** legacy benefits that a person may be receiving, not just tax credits.

Any transitional element awarded is not permanent. It will be eroded when there are changes to the underlying universal credit award; for example, where additional elements are added or there are increases to elements. Certain changes of circumstances can also bring an end to the transitional element.

Finalising tax credit claims

If a universal credit claim is made in a tax year in which there is a tax credit award, then tax credits will be finalised using the 'in-year finalisation' process. Most tax credit claimants are familiar with the usual end of year finalisation process. After the end of the tax year, HMRC usually asks the person to declare their income for the year that has just finished (either as an estimate or actual figure) and then the final amount of the tax credit award can be calculated. For many self-employed claimants, an estimate will be provided by the 31 July renewal deadline. An actual figure will be given by the following 31 January, once the information is available from their tax return.

However, under the in-year finalisation process, HMRC will finalise tax credit awards during the year. Claiming universal credit will cause a tax credit award to terminate. This should be automatic, but it is still sensible for claimants to contact HMRC if their award does not end. As soon as this happens, HMRC will send out in-year finalisation forms to allow them to finalise the claim for the period from 6 April to the termination date.

However, because this is happening during the tax year, new rules were introduced to measure income for that part-year period. There is a two step process:

- Firstly, HMRC will find the part-tax year income (as defined in regulations). For most types of income, this will be the income actually received in the part tax year, but there are special rules for calculating self-employed income.
- The second step involves using that part-tax year income to calculate a notional current year income which is then compared to the previous year income, applying the relevant income disregards.

The outcome of this process is that tax credit claimants may end up with unexpected overpayments or underpayments of tax credits because it uses pro-rated part-year figures.

For the self-employed, the rules are complex. Most self-employed people are accustomed to using the figure from their tax return as their annual self-employed income for tax credits.

Under the in-year finalisation rules, the legislation says that the individual's self-employed income is the 'amount of the actual or estimated taxable profits attributable to that part tax year'.

These actual or estimated taxable profits are called the 'relevant trading income' and are calculated by reference to the basis period ending during the tax year in which the claimant made, or was treated as making, a claim for universal credit. The actual or estimated figure for the basis period is divided by the number of days in the basis period to get a daily figure, which is then multiplied by the number of days in the part tax year on which the trade was carried on. This figure will then feed into the calculations explained above.

However, not everyone will know their actual profit figure for the basis period at the point they move to universal credit. In such cases, the individual will need to estimate their income for that period. The legislation does not give any indication of how an estimate is to be calculated, nor does it say what happens if the estimate is wrong.

The TC603URD guidance notes (see bit.ly/3Ejek1h) state that a realistic and reasonable estimate should be provided. HMRC suggests that the claimant keeps a note to show how the estimate was made. The guidance notes explain the relevant steps for doing the calculations. Advisers not familiar with in-year finalisation

MORE ONLINE
tax adviser.co.uk

The cost of living crisis
Attempts to think creatively about how to support your staff can fail to deliver
bit.ly/3SaOy2s

The tax gap
The difference between what is paid and what is owed to HMRC
bit.ly/3VyL0u2

should ensure that they read the guidance, given the large difference as compared to the usual finalisation rules.

Unlike the normal end of year finalisation process, which allows claimants to provide an estimate and then confirm an actual figure by the following 31 January (the second specified date), this is not possible in the in-year finalisation process. The figure given initially is the figure that will be used to calculate the final award. It cannot be changed unless under enquiry powers or appeal.

Pensioners

As yet, it is not clear what will happen to those tax credit claimants who have reached state pension credit age and who cannot claim universal credit. We expect a similar process to move those claimants to pension credit, but it should be noted that the pension credit rules are very different to tax credits. There are no equivalent elements to working tax credit.

Self-employment and universal credit

Finally, the rules for the self-employed in universal credit are very different to tax credits. Advisers with clients claiming tax credits should ensure they are familiar with the universal credit rules and the key differences. For example, universal credit works on a cash basis and self-employed claimants must report their income and outgoings (as defined by universal credit legislation) after the end of each monthly assessment period.

In addition, universal credit has a ‘minimum income floor’. Where the minimum income floor applies, those who earn beneath it will have their actual income ignored. Instead, the minimum income floor figure (in many cases 35 hours at the national minimum wage, less notional tax and NI) will be used in the calculation of their universal credit claim.

Universal credit does not work particularly well for self-employed individuals who have fluctuating income and expenses through the year. LITRG’s website (see www.revenuebenefits.org.uk) has more detail on how universal credit works for the self-employed.

Although outside of the scope of this article, note that those with their own limited companies may be caught by ‘look-through’ provisions in universal credit, which means that they are effectively treated as self-employed and the company structure is ignored. This means the minimum income floor may apply to them as well.

Conclusion

The transition from tax credits to universal credit is complicated. Tax advisers with self-employed clients who claim tax credits are likely to be familiar with the tax credit rules, as they largely mirror the tax system. The move to universal credit means that advisers need to understand when a claim to universal credit may be triggered, how tax credits awards are finalised when someone moves to universal credit, and what happens when their clients will eventually be moved.

This is a constantly changing area and it is likely that there will be further adjustments as the DWP slowly increases numbers in the managed migration process.

Name Victoria Todd
Position Head of LITRG at CIOT
Company Low Incomes Tax Reform Group of the CIOT
Tel 07813 608292
Email vtodd@litrg.org.uk
Profile Victoria joined LITRG in 2005 and is a CTA Fellow and member of the ATT. She has a particular interest in tax credits, universal credit and tax/benefit interactions. She was appointed as Head of LITRG in 2018.

© Getty images/iStockphoto

Caught in a trap?

Disguised remuneration schemes

How tax advisers can provide assistance to clients who have been involved in disguised remuneration schemes.

by Mary Aiston

HMRC is planning its next phase of compliance activity in response to tax avoidance. We urge anyone who has used a tax avoidance scheme to contact us to discuss their circumstances and explore opportunities to settle.

Tax advisers play an important role in supporting clients who are involved in tax avoidance to make choices about their next steps, including settling their tax affairs and, where appropriate, exercising their right to appeal. Of equal importance is their role in helping their clients steer clear of tax avoidance schemes in the first place.

The focus of this article is individuals who have engaged in disguised remuneration schemes, many of whom will be subject to the loan charge.

Disguised remuneration schemes and the loan charge

As a brief overview, disguised remuneration schemes are currently the most common form of tax avoidance scheme, and involve workers being paid, in part or in full, via a 'loan' or similar allegedly non-taxable payment. Most tax avoidance schemes simply do not work, and those who use them may end up having to pay more than the tax they tried to avoid, including, in some cases, penalties.

In 2017, Parliament passed legislation requiring taxpayers who had used disguised remuneration schemes to declare the balances of their outstanding loans, as of 5 April 2019, as income on their 2018/19 tax returns and pay tax on it. This is the 'loan charge' and applies to individuals and employers who used

Key Points

What's the issue?
Advisers can guide and support their clients to exit tax avoidance schemes, including how to talk to HMRC about making tailored instalment arrangements to pay their liabilities over time.

What does it mean for me?
For clients who don't want to settle, it's important to make them aware that HMRC is now planning formal action to resolve disputes and they may wish to exercise their right to appeal where appropriate.

What can I take away?
Advisers can also help taxpayers steer clear of tax avoidance schemes in the first place by clarifying the risks and the consequences of using them.

disguised remuneration avoidance schemes between 9 December 2010 and 5 April 2019.

Clients involved in tax avoidance schemes

Tax advisers will encounter a range of clients who are, or have recently been, involved in tax avoidance. Some people who used disguised remuneration schemes will want to settle with HMRC, while others may not be willing to do so or feel unable to do so. It is important that your clients have a good understanding of their options, the support available for those who need extra help and the consequences for them of any action or inaction.

Those who wish to settle

Choosing to settle means that those who have used a disguised remuneration scheme gain certainty about their tax affairs. They will be able to end their engagement with tax avoidance and will not incur further interest on unpaid liabilities.

People who have used disguised remuneration schemes and want to settle with HMRC, regardless of whether or not the loan charge applies, can do this under the 'Disguised remuneration settlement terms 2020' (see bit.ly/3RCXjCo).

Advisers may also wish to share with their clients the page on how to settle, 'Disguised remuneration: settling your affairs', which clearly explains the process (available online at bit.ly/3ynqAKx).

While choosing to settle can provide greater peace of mind in the long term, clients may be concerned about how they will cope with payments and the impact on their finances in the short term. HMRC offers support and different payment options.

Taxpayers can ask to pay any settlement through instalment arrangements, where payments can be spread based on what they can afford. Individuals who earned less than £50,000 in 2017/18 will automatically be entitled to a five-year arrangement; and where they earned less than £30,000, up to seven years.

There is also the option of a Time to Pay arrangement, which can cover all outstanding amounts overdue, including any penalties and interest. Arrangements are tailored to an individual's personal circumstances, based on what they can afford to pay and are not subject to any maximum time or income limit.

Where an adviser is concerned about a client who may require additional support, we would ask that they reassure them and highlight HMRC's available support, including trained caseworkers or support specialists and, where a customer faces more serious and pressing issues, a named contact; for example, serious distress arising from a recent bereavement. If appropriate, HMRC refers customers to voluntary and community sector organisations for further advice and support.

Customers can phone HMRC to discuss their circumstances and options on 0300 0534 226.

Those who do not wish to settle

If a client states that they do not want to settle with HMRC, it is important to make them aware that if they have used a disguised remuneration avoidance scheme in the past, or they are using one now, they can expect HMRC to take action to establish and recover the tax due.

HMRC is now contacting individuals who filed a tax return for 2018/19 but did not tell us about their loan charge liabilities or who under-reported them. We are asking those customers to explain these omissions to us, and where appropriate, we will begin to issue closure notices, giving our assessment of the tax due and requesting payment.

Some individuals who need to pay the loan charge have not filed a tax return for 2018/19. We have been issuing 'notices to file' to these customers. For those who have not filed after receiving a notice, we are working to determine the tax due and issuing formal determinations to that effect. These determinations cannot be appealed but can be displaced by filing a tax return. It is important that individuals understand the need to file a tax return.

In some circumstances, where customers have not responded to HMRC contact, we may need to estimate liabilities like the loan charge, so it is best that they talk to us to get an accurate picture of what they owe. Where we have issued assessments and closure notices for customers (either individuals or employers), customers can either accept the closure notice or assessment as issued, settle by agreement or exercise their statutory rights to request a review and/or appeal.

Some individuals may have received loans via disguised remuneration avoidance schemes before 9 December 2010. These loans are not covered by the loan charge. Where we have open assessments or enquiries in respect of these loans, HMRC will continue to pursue the tax avoided using our statutory powers. We are contacting this group about these schemes now, and this compliance work will increase in the year ahead.

Helping clients to steer clear of tax avoidance schemes

We have noted what options clients who are in tax avoidance schemes already have. But advisers also play a key role in ensuring that they do not enter avoidance in the first place. This can be done in a variety of ways.

At its most basic level, this can simply be watching out for any clients who mention an opportunity to maximise earnings or reduce their tax. Discuss it with them to clarify what's really involved, and remind them that if it looks too good to be true, it almost certainly is.

HMRC is working hard to tackle both supply and demand in order to prevent people getting caught up in tax avoidance, and we are targeting promoters using all powers available to us. Legislation introduced in the Finance Acts 2021 and 2022 strengthens and accelerates our ability to tackle promoters and enablers of tax avoidance.

The effects of this can already be seen in the public naming of multiple promoters and tax avoidance schemes to help customers steer clear of these. The current list can be found at bit.ly/3fP5zCa. Advisers are encouraged to check this page regularly so they can advise their clients who could be engaging with one of these providers or using these schemes. However, if a tax avoidance scheme is not shown in this list, it does not mean that the scheme is approved by HMRC. HMRC does not approve tax avoidance schemes for use.

Further guidance

For anyone looking to review the basics, see 'Report and account for your disguised remuneration loan charge' (see bit.ly/2StLVu3), which summarises the situation to date and links to further guidance.

HMRC has also published a number of materials that advisers can share to help their clients spot whether they are at risk of being involved in tax avoidance and enable them to make informed choices if they want to leave an avoidance scheme. The 'Tax Avoidance – Don't get caught out' materials are available at taxavoidanceexplained.campaign.gov.uk. They include a guide to working through an umbrella company and a new interactive risk checker to help contractors check whether they are at risk of being involved in tax avoidance.

Name: Mary Aiston
Position: Director of Counter Avoidance
Employer: HMRC
Profile: Mary Aiston leads HMRC's Counter Avoidance directorate which brings together the department's policy work on marketed tax avoidance schemes and activity supporting taxpayers to settle their involvement in avoidance. Before that she did a range of policy and operational senior leadership roles in HMRC.

Employee accommodation
Converting disused buildings

© Getty images/iStockphoto

With a crisis in staff shortages threatening the farming industry, we consider the tax implications of converting disused farm buildings to residential accommodation.

Key Points

What is the issue?
When a farm or equine business is trying to survive and looking to recruit a member of staff from outside of the area, building more workers dwellings so as to provide assured accommodation can be vital.

What does it mean for me?
The business will need to meet certain criteria to prove that they have a genuine requirement for the dwelling with an appraisal comprised of two key tests: the functional test and the financial test.

What can I take away?
The application must demonstrate that the business can sustain the worker based on at least minimum wage. The applicant must also be prepared to embrace a complex tax position in the round when embarking on such an application.

by Julie Butler

There have been many headlines in the farming industry regarding the shortage of staff and the problems that creates. *Farmers Weekly* recently reported on the labour crisis in dairy farming, stating that one in 20 farmers were taking steps to cut the number of milkings and 6% to reduce herd size as a direct result of staff shortages. Dairy co-operative producer Arla Foods reported that: 'If nothing changes, 12% of dairy farmers said they will quit the sector in the next year.' The shortages throughout the farming industry are also experienced by the equine industry.

When a farm or equine business is trying to survive and looking to recruit a member of staff from outside of the area, the provision of accommodation will be of extra importance. The answer to help the problem can be building more workers dwellings so as to provide assured accommodation.

In June, there was an announcement in Blackpool by Boris Johnson of the lifting of restrictions on the conversion of disused farm buildings to residential accommodation. (As with so many issues, we wait to see if this will be pursued under the new administration.) Even so, building farm and equine worker accommodation does have delays, and some farms and equine businesses will have to put workers in rented local accommodation to cope.

Genuine requirement for staff accommodation

It is assumed that the owner of the farm or equine business already lives on site and requires an extra dwelling. In line with the National Planning Policy Framework, planning policies and decisions aim to avoid the development of isolated homes in the countryside except in certain circumstances. One of these exceptions is if 'there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside'.

However, the business will need to meet certain criteria to prove that they have a genuine requirement for the dwelling. This might seem an extra burden to a large number of rural businesses who are very short of staff. The same principles apply whether the accommodation is for an equestrian or an agricultural worker.

To prove that the business meets these criteria, a planning application would need to include an agricultural or equestrian appraisal, alongside the planning application forms and plans or drawings. The local authority may also require additional documentation as supporting evidence.

These requirements show the clear role of the tax adviser in the exercise of trying to recruit enough staff and build more accommodation. The tax considerations of building new staff accommodation are of significance to the overall cost of the business; for example, claiming the input VAT on construction and the potential benefit in kind for the staff when living in the new accommodation.

VAT and employee benefits

The construction has potential VAT and benefit in kind advantages and also tax traps. 'New build' is zero-rated for VAT purposes, which can have obvious advantages. On a new build, the contractor will agree to zero-rate the supply of labour and materials because it is a new residential property constructed from bare land.

The potential for a benefit in kind on all accommodation has to be submitted via a P11D form. Eligibility for exemption from paying any benefit in kind tax by the employee has to be reviewed in depth. The key conditions that need to be in place to achieve the tax-free benefits in kind for the farm and equine employees are dependent on proper and better performance of the employee's duties and also the customary provisions.

Traditionally, farm workers have qualified for tax-free job-related accommodation, but can this benefit still be enjoyed with the move to diversification? The conditions for job-related accommodation are where:

- it is necessary for the proper performance of an employee's duties that he should reside in the accommodation (Income Tax (Earnings and Pensions) Act (ITEPA) 2003 s 99(1)); and
- the accommodation is provided for the better performance of the duties of his employment and he is in one of the kinds of employment in the case of which it is customary for employers to provide living accommodation to employees (ITEPA 2003 s 99(2)).

Where cottages are occupied by farm workers working wholly for the business, who are carrying out farming activities and living there in a rent-free capacity, then the input VAT on expenses in relation to the farm worker's cottage can be claimed. If, however, the work carried out by the employee is connected to exempt activity supplies, then the input VAT should be apportioned or included in the partial exemption calculation as residual input VAT.

As part of tax planning considerations, if a cottage is to change use and be let out, the timing of this needs to be considered and maximum use should be made of the farm worker status within the strict rules that are associated with the advantage.

Agricultural or equestrian appraisal

The appraisal (that is needed for planning permission) is essentially a review of the business and is comprised of two key tests: the functional test and the financial test.

The functional test

The functional test assesses whether there is a genuine need to have an additional member of staff living on site (and therefore within sight and sound of the equine yard) on a full-time, year-round basis for animal welfare, security, etc. It is based on a system of standard man days (known as the SMD system). A person is expected to work at least 278 standard man days or 2,225 hours of labour a year.

To justify a further dwelling and assuming that one person is already fulfilling the above requirement, the business would need to be looking at a total number of days or hours at double this level to pass the functional test. Consideration would be given for holidays, sick days and time spent not working.

It is recommended that a professional produces the appraisal, even if the business itself does the rest of the work. There are industry standard figures for each sector. To undertake a quick check that the business must meet the required level, the detail would need acreage and a breakdown of number of animals. For equine, this would include full livery, part livery and activities such as breaking and training and so on. For farming, the information should be readily available from the internal recording, especially in, say, the dairy industry.

The financial test

The financial test is about assessing the viability of the business, making sure that it can continue to produce a sufficient profit to retain the new member of staff in the long term. This aspect of the test would be carried out with the help of an adviser, based on three years of accounts and forecasts for two years, for a permanent dwelling. (For new businesses, there are different requirements and they would be likely to be applying for a temporary dwelling in the first instance while the business establishes.)

The application must demonstrate that the business can sustain the worker based on at least minimum wage. Often £20,000 as a minimum profit is considered and then the funding for the proposed dwelling is considered separately. With the loss of subsidies and all the problems facing farming, this could be difficult.

Other considerations

It is key for the functional and financial tests to be considered in tandem, so make sure that there is good communication from the outset between the client, planning consultant and adviser to maximise the chances of success.

In terms of the type of residential dwelling, if there is a suitable barn for conversion this is an option. However, often all existing buildings are utilised by the business so a new build dwelling would be more appropriate.

Any dwelling would be subject to an occupancy restriction and the size would need to be appropriate. As mentioned, a new dwelling could qualify for the zero-rate VAT of a 'new build' and this should be given serious consideration to ensure there is compliance as best utilisation of VAT planning.

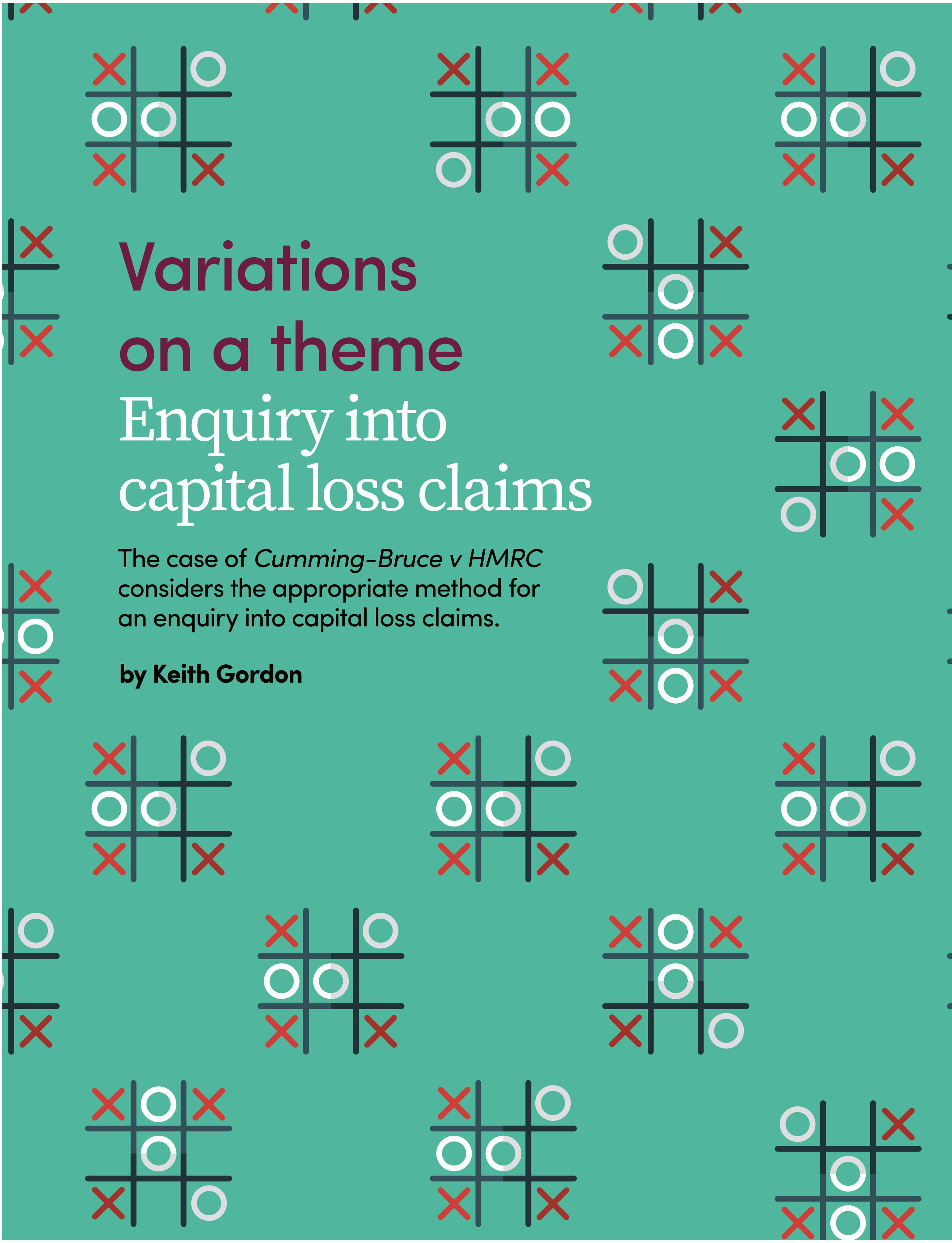
There are problems due to the fact that the tests in national parks are ever more demanding but again this was mentioned in the easing of restrictions.

Inheritance tax and capital gains tax on the worker's cottage

The farmer or equine worker's cottage should qualify for inheritance tax relief should the owner die, which is an attractive tax advantage. Likewise, should the owner sell, the business asset could qualify for rollover relief and business asset disposal relief, provided it meets all the conditions. As with all changes to the farm or equestrian establishment, the impact on inheritance tax and capital gains tax should be considered.

It might be considered that obtaining the planning permission will be time consuming and arduous. However, obtaining more buildings in the farm and equine business has financial and tax advantages, whilst potentially increasing the value of the farm. The main immediate 'benefit' of the extra farm workers accommodation, though, is the ability to attract farm workers from 'out of area', which is of most interest – together with being able to present a better package to potential employees.

Name Julie Butler FCA
Position Founding Director
Company Butler & Co Chartered Accountants
Tel 01962 735544
Email j.butler@butler-co.co.uk
Profile Julie Butler is a farm and equine tax specialist. Her articles are published in the national accountancy and tax press and she is the author of *Tax Planning for Farm and Land Diversification* (Bloomsbury Professional), *Equine Tax Planning* and *Stanley: Taxation of Farmers and Landowners* (LexisNexis).

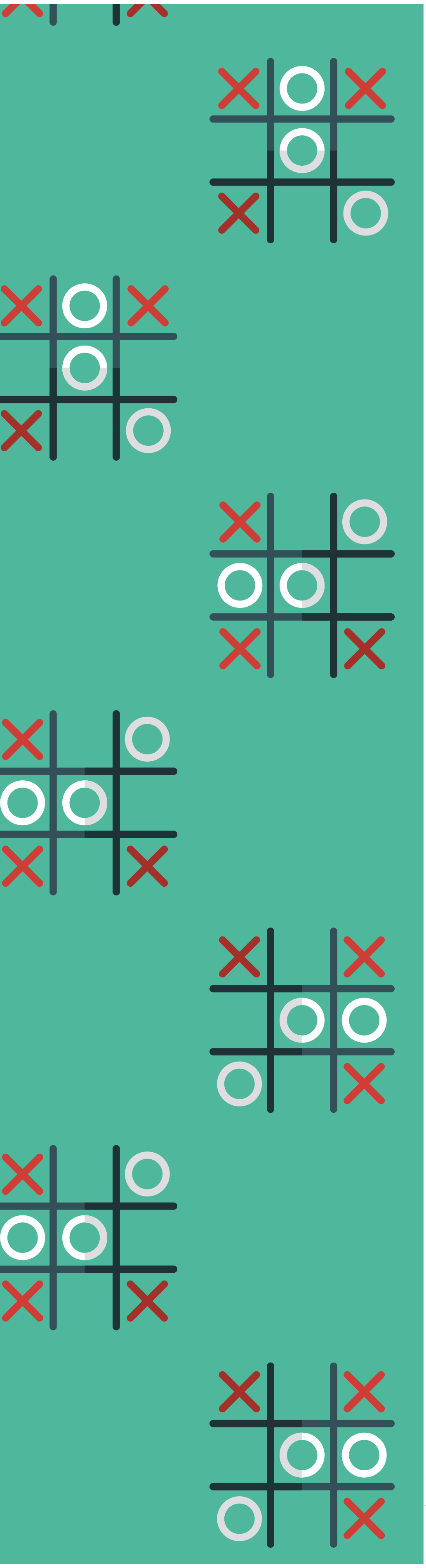


Variations on a theme

Enquiry into capital loss claims

The case of *Cumming-Bruce v HMRC* considers the appropriate method for an enquiry into capital loss claims.

by Keith Gordon



© Getty images/iStockphoto

Key Points

What is the issue?
The case of *Cumming-Bruce v HMRC* [2022] UKUT 233 relates to the method of enquiring into claims for capital losses which are incurred in one tax year and carried forward to a subsequent tax year.

What does it mean for me?
In cases where HMRC is challenging the existence of capital losses brought forward from earlier years, advisers should check the statutory basis of HMRC's challenge.

What can I take away?
If there has been no enquiry into the return in which the losses were first said to arise, there is a strong argument that HMRC may not attack the losses via an enquiry or discovery assessment in relation to the later year when the benefit of the losses is enjoyed.

Lying at the heart of the Self Assessment system is HMRC's power of enquiry. As a general rule, HMRC is given free rein to examine anything in a tax return (or that is supposed to be in a tax return) provided that they commence an enquiry within 12 months of the return being submitted. The more detailed rules are found in section 9A of the Taxes Management Act 1970.

If a matter is not picked up in the course of an enquiry, HMRC may instead address any perceived under-assessment by way of a discovery assessment. However, reflecting the fact that this is only a backstop power available to HMRC, its rights to make a discovery assessment are more restricted.

One might have thought that the scope of any potential enquiry was fairly straightforward. Indeed, as I have already noted, it can cover anything in a tax return (or that is supposed to be in a tax return). However, along came the case of *HMRC v Cotter* [2013] UKSC 69. In this case, a taxpayer had included in his tax return (in the specific box allocated for such claims) a claim for employment losses incurred in a subsequent tax year and carried back as per the trading loss rules. HMRC did not accept that the losses were correctly calculated and sought payment of the tax that would have been due on the return as if the loss claim had not been made. The taxpayer argued that as the loss claim had been made in the taxpayer's return, HMRC was obliged to give effect to the loss claim (in the absence of any valid enquiry into the return itself).

The Supreme Court disagreed with the taxpayer. It held instead that the loss claim was not in fact made on any part of the tax return (merely on a part of the tax return *form*). Accordingly, HMRC was not obliged (or even able) to challenge the loss claim via an enquiry into the return. Any challenge to the losses had to use the procedures for challenging claims made otherwise than on a tax return (Taxes Management Act 1970 Sch 1A).

An explanation for the distinction between 'the tax return' and 'the tax return form' is often given as distinguishing between those elements that do and those that do not feed into the calculation of the taxpayer's tax liability for the year. (Carried back losses are by statute treated as pertaining to the later year, even if the value of the relief is computed by reference to the income and tax rates of the earlier year.) As a result, it was held in *Cotter* that the losses did not feed into the tax calculation for the earlier year and, therefore, the claim was not a part of the earlier year's return.

The decision in the *Cotter* case gave rise to two further cases which reached the Supreme Court and a further one which ended in the Court of Appeal. Those cases all concern income tax and the carrying back of losses. However, the recent case of *Cumming-Bruce v HMRC* [2022] UKUT 233 represents a further variation on the theme, this time being the method of enquiring into claims for capital losses which are incurred in one tax year and carried forward to a subsequent tax year.

The facts of the case

The full background to this case can be summarised by the simple (but, probably to some, cryptic) phrase: '*Mansworth v Jelley* losses'. This phrase describes a pretty embarrassing saga which started almost exactly 20 years ago when the former Inland Revenue lost a case in the Court of Appeal concerning the computation of capital gains (or losses) following the exercise of employee share options. The case was particularly fact-sensitive (notably the fact that the employee was non-resident at certain key times).

However, the Revenue then issued a widely criticised statement seeking to generalise the outcome of the case and invited thousands of wealthy executives (i.e. not just those who had been non-resident on the key dates) to make capital loss claims in respect of their share options. Despite the widespread criticism of the Revenue's unjustified largesse, it was only in 2009 that HMRC then resiled from its earlier position and publicised its revised view that the capital loss claims that it had invited thousands of individuals to claim would no longer be accepted.

By this time, many repayments had been made by the former Inland Revenue.

However, particularly in relation to workers at banks and other City institutions, the Revenue had actually opened enquiries into the tax returns on which these capital losses had been claimed. These enquiries were then kept open for many years (officially because there were parallel enquiries into the individuals' employers). Following the official change of view, HMRC started to close down the enquiries and recompute the capital losses/gains in accordance with the correct view of the law.

Mr Cumming-Bruce's particular situation was typical. More precisely, he claimed capital losses on his 2001 and 2002 tax returns which were both the subject to enquiries under section 9A. As those losses exceeded his capital gains for the relevant years, the losses were carried forward and eventually set off against capital gains as realised in later years. In most of those later years, HMRC too had opened enquiries. However, in respect of one year, HMRC failed to open an enquiry and instead made a discovery assessment. In the end, however, nothing turned on that distinction.

Mr Cumming-Bruce argued that, according to the *Cotter* decision, the capital loss claims were outside the scope of the 2001 and 2002 enquiries. There were two reasons behind this argument.

First, as a matter of principle, he argued that capital loss claims are always made outside the tax return (and, merely on the tax return *form*).

Secondly, as the losses did not reduce the tax payable for the enquiry years (but only those later years in which sufficient gains were made), the ratio of the *Cotter* decision meant that his particular loss claims were in fact made outside the returns and therefore susceptible only to enquiries under Schedule 1A, rather than under section 9A.

The tribunal's decision

The case made its way to the Upper Tribunal where it came before Judges Thomas Scott and Anne Redston.

The Upper Tribunal rejected both aspects of the taxpayer's case.

In respect of the first argument, the tribunal noted that to be allowable capital losses, the taxpayer is first required to notify HMRC. Furthermore, the Taxation of Chargeable Gains Act 1992 s 16(2A) expressly provides that such a notification is to be treated as if it were a claim for relief, which is subject to the rules in the Taxes Management Act 1970 s 42. Section 42 provides that claims should generally be made on a tax return where possible and this then ensures that any enquiries into such claims are governed by the section 9A provisions, rather than those in Schedule 1A.

The Upper Tribunal similarly dismissed the taxpayer's second argument. Whilst it noted that the losses did not feed into the tax calculation for the years in which the losses were said to have arisen, the Upper Tribunal considered that 'feeding into the calculation' was not a necessary condition that defined the boundary between the tax return and the tax return *form*. Instead, it was, at best, a gloss based on the facts of the *Cotter* case.

Indeed, the Upper Tribunal cited examples as to how the taxpayer's argument could lead to some confusion. For example, in a case (best understood if one overlooks the annual exemption) where a taxpayer had two losses of £100 and one gain of £100, how can it be determined which of the two losses is within the tax return and which is merely on the tax return form: in other words, which is governed by section 9A and which by Schedule 1A?

Furthermore, suppose it transpired that the taxpayer had in fact made greater gains than declared on the return. This could lead to a loss newly feeding into the tax calculation of the year. It cannot be the case that an item on the tax return form is treated as within the scope of a section 9A enquiry only in the light of extraneous circumstances.

For these reasons the appeal was dismissed.

Commentary

It is my view that the Upper Tribunal has reached the obviously correct result in this case. Nevertheless, it is difficult not to have some sympathy with the taxpayer in the present case. He was positively invited by the Revenue to make a claim for capital losses and, I believe, his returns were subject to enquiry only because of a parallel investigation into his employer's affairs.

Arguably, he would have had a very good right to ask for those enquiries to be closed long before HMRC then changed its mind (again) about the scope of the *Mansworth v Jelley* decision. Furthermore, it was still a few more years before HMRC actually took steps to reverse the loss claims. Any unfairness would have been exacerbated had the taxpayer actually crystallised capital gains in the Revenue-induced belief that they would be relieved by the brought forward losses.

On the other hand, the losses were always illusory. I can remember some of the consternation nearly 20 years ago that executives were being given a windfall tax break because of what was thought by most to have been an obvious case of Revenue error.

That said, I take the view that the concepts of fairness should apply equally to all, and they should not be whittled down simply on the basis that one party is considered to be less deserving (i.e. wealthier) than another.

Although it is hard to know what is lurking beyond the visible horizon, I suspect that the *Cumming-Bruce* case brings to a close the 20 year saga of *Mansworth v Jelley* losses.

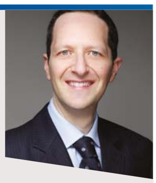
On a separate point altogether, I was particularly interested in the case because it seems to reinforce an argument I have advanced in other cases. Although the Upper Tribunal's discussion was focused on the appropriate procedural steps that should be taken if HMRC wishes to challenge capital losses when they are incurred, it must be remembered that the tax impact of the decision was felt only in the later years when those losses were set against capital gains. The case has seemingly proceeded on the basis that the losses were not validly calculated.

The question that might then be asked is why HMRC did not challenge them in respect of the later years. The answer is that the statute appears to take the view that losses from earlier years are automatically deductible (whether or not originally claimed correctly) unless the losses are expressly challenged at the time that they are first claimed and carried forward.

HMRC's approach to this case suggests that it too agrees with that interpretation, although I am not aware that it has formally conceded the point. Nevertheless, the Upper Tribunal's decision would seem to reinforce that argument.

What to do next

In cases where HMRC is challenging the existence of capital losses brought forward from earlier years, advisers should check the statutory basis of HMRC's challenge. If there has been no enquiry into the return in which the losses were first said to arise, there is a strong argument that HMRC may not attack the losses via an enquiry or discovery assessment in relation to the later year when the benefit of the losses is enjoyed.



Name: Keith Gordon
Position: Barrister, chartered accountant and tax adviser
Company: Temple Tax Chambers
Tel: 020 7353 7884
Email: clerks@templetax.com
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.

MTD getting you down?

We’re up for a chat

Book your Making Tax Digital consultation today
freeagent.com/mtd-chat

Scan me to learn more

FreeAgent
Accounting software

Trustpilot Rated ‘**Excellent**’

© Getty images/iStockphoto

Life after retirement

Your tax qualifications

If you are nearing retirement age and leaving full time employment, there are a range of options for keeping up your hard earned membership to ATT or CIOT.

by Georgiana Head

We are living in an ageing population and an ageing workforce, and each year a significant number of people in all areas of the economy are heading towards retirement. Changes to the pension age have, of course, had a substantial effect on retirement ages in recent decades, though any long term impacts of furlough and Covid are still being analysed. What is certain is that all people reaching this point in their lives will be starting to contemplate the transition to life after employment, and wondering what comes next.

In 2021, 1.54 million people aged 50 to 64 worked in the finance sector (compared to 2.06 million aged 35 to 40). While not all will choose to retire early or at state pension age, significant numbers of CIOT and ATT members will be making decisions about what life holds for them after retirement, how they can continue to make use of their tax skills (if they choose to do so), and what form their relationship with their professional bodies will take as they enter the next stage in life.

Georgiana Head takes a look at some of the key trends, and the membership options open at CIOT and ATT. And we speak to some members about their personal experiences of life following tax employment.

As I was drafting this article, I found that my uncle, a former RAF engineer, had greeted the news of his terminal diagnosis in a very practical sanguine way: he cancelled all his magazine subscriptions from his hospital bed. His subscriptions reflected a life in the air force and his range of practical hobbies. It made me think of the different ways in which people face key moments in their life. Retirement is one of these key moments.

Some people dream of retirement throughout their working years, plotting trips and adventures to fulfil when no longer tied to work. Others dread the thought of giving up work and fear it as a portent of ageing. They put off planning for retirement as long as possible and worry about missing work colleagues.

Some practitioners use their retirement to volunteer and give back to their community, harnessing the skills they acquired in their working life in a different way. Some are obliged to keep working in some capacity after their statutory retirement age to help to top up their pension.

If you are nearing retirement age and leaving full time employment, there are a range of options for keeping up your membership of ATT or CIOT.

Retirement trends

The UK workforce is an ageing one, according to the September 2021 Report 'Economic labour market status of individuals aged 50 and over, trends over time' (see bit.ly/3g2Yb64).

Since the 1990s, the trend has been for the age of retirement in the UK to steadily rise, fitting with the increased age that the state pension is now available to both men and women. This trend was bucked last year with the average age of exit from the labour market falling slightly for both males and females over the year. In 2020, the average age of exit for men was 65.3 years, decreasing by 0.2 percentage points in 2021. Similarly, the 2020 average age of exit for women was 64.3, and decreased slightly by 0.3 percentage points in 2021.

Being sick, injured or disabled continues to be the main reason why people aged between 50 and 64 years are economically inactive in the labour market (equating to 36.9%, or 1.3 million people), although the number of people in this age group stating retirement as a reason for not seeking work is close behind (35.1% or 1.2 million).

Covid has clearly had an impact on these figures, as workers have had time to think during lockdowns about what else they want out of life. This has led to people moving house, changing jobs and career direction. Over a third of those furloughed were over 50, and I think that taxpayers in this age group have been disproportionately impacted by Covid.

LYNNE ROWLAND: I'VE STILL GOT SOMETHING TO GIVE

Lynne Rowland is a former private client tax partner at Kingston Smith with over 25 years of tax experience. She retired a year ago.

I wanted to retire at a time of my choosing and in what I called in an elegant way – to pass my client relationships over and effectively plan myself out of a job. Additionally, I wanted to make sure that the people in my team were given the opportunity to step up and take over.

The day after I retired, I got on a plane to the Middle East and came to join my husband who is working in Qatar. I spend a couple of months here at a time, and then go back home.

I didn't really have any plans. Whether that's right or wrong I don't know, but I was talking to someone in recruitment, who said: 'Lynne, you shouldn't commit to doing anything for at least six months because you don't know what retirement means for you.' And he was absolutely right. It is such a huge change of pace.

I don't know what I want to do next year or the year after that but I do think I've still got something to give. I feel that I've got over 30 years of knowledge. But don't let the fact that you don't know what you're going to do in retirement stop you from going ahead with it. If you've got the time and the headspace you will work out what you want to do.

I've taken on a trusteeship of a local charity back at home. It's a charity that uses horses in therapy for children who have been through traumas and are having a difficult time in school. We work with children on a one to one basis, and it opens them up to taking and accepting input from others. It's intense, expensive and there's constant fundraising. I'm not a charities expert and I've never been a trustee before apart from being a corporate trustee for my previous firm. It's been a challenge, and a really good thing to be involved with.

I also do my family's tax work. I refuse to buy commercial software so have to do my husband's tax return on paper. It's been quite an eye opener dealing with HMRC when you haven't got the agents phone line. I sent his paper return in at the beginning of May but he didn't get his tax refund until the end of August – and that was me constantly phoning up and nagging. How do people without tax experience cope?

I've had more involvement with CIOT and ATT since retirement than before. I thought it was necessary to pay the retired rates of subscription because I didn't have specific plans and wanted to keep my options open – so I've joined some of the online CPD, and I'm doing the ATT half day training. I need to make sure that I know what's going on – even if I'm just helping my own family. I don't intend to set my own business up but I still feel that I can add some value.

The life of retired people has changed fundamentally. We have a holiday to India planned in early 2024. I exercise every day and have time to enjoy the simple things like spending time with my family, using WhatsApp or Skype when I'm away. I read so many books now that have nothing to do with tax! You have to learn how to relax.

Options open to you

If you are nearing retirement age and leaving full time employment, there are a range of options for keeping up your hard earned membership of ATT or CIOT.

ATT has a subscription for those retired members who still want to keep up their tax knowledge. This allows retired members to keep receiving literature, including *Tax Adviser*, the Annotated Finance Act, Whillans Tax Tables and the Tolley Tax Guide – not to mention the much prized ATT tax tables mouse mat. At £125, for 2022, it is actually very cost effective as the cost of buying all these titles as an individual would be much more than £125. If you are planning to keep up your tax knowledge, and perhaps do some volunteering for Tax Help for Older People or Tax Aid, then this is the right subscription for you.

If you want to keep up membership but don't feel you need the literature, you can now pay a one-off fee of £200, effectively a post retirement 'life membership' rate. To be eligible for this retired rate, you need to be over state retirement age and have retired. Another option if you don't want to pay the £200 one-off fee is to pay a yearly subscription of £20 which comes without literature.

The ATT has also bought in a new low income rate of £135 for those members (working or retired) on low incomes. The definition of low income for this rate is as follows: 'The reduced subscription rate is available to members whose "net income" (as defined by s 23, Income Tax Act 2007 in Step 20) for the last tax year which finished before the start of the calendar year for which the ATT subscription is payable did not exceed the annualised equivalent of the National Living Wage for the year which ended on the previous 31 March. The annualised equivalent of the National Living Wage is calculated for this purpose by multiplying the hourly rate for the year by 37.5 and then multiplying that result by 52.'

For the subscription year 2023, the annualised equivalent National Living Wage would be £17,374.50.

The ATT welcome a close connection with their members in retirement and indeed their mantra is: 'You can take the member out of the profession but you can't take the profession out of the member!'

The CIOT have a similar policy with retired members being able to access three types of membership subscription:

- Retired with no literature: £20
- Retired with literature: £80
- CIOT Life Associate: a one-off fee of £139.

For those retired CIOT members who would like to benefit from the literature available to ATT members as set out above, they should consider joint membership with ATT and the ATT's retired with Literature rate. For more information see www.att.org.uk/members/become-joint-member-att

Life after retirement

I recently talked to John Whiting CBE, former CIOT President and former tax partner (among other things!). He still chairs the GAAR advisory panel, remains involved with Revenue Scotland and is a director of ATT and CIOT's Taxation Disciplinary Board. For him, a retired member subscription is not really yet an option – 'though it's getting close'. His wife Sue is no longer a chartered tax adviser. However, John explained that as she actively volunteers in tax 'a life membership subscription makes sense – she will never want to give up her hard-earned and much prized tax qualification!'

Members of the CIOT and ATT who are retired continue to maintain their CPD to support their pro bono activities; for example, advising their families and friends who want to know about changes in inheritance and other later life care impacts. Others still continue to volunteer at their local branch or other charities.

One final point: if you provide paid tax advice to clients in retirement, you will still need anti-money laundering supervision. There is no de minimis limit (see www.att.org.uk/anti-money-laundering-aml-supervision-faq). If you are taking any paid tax work in retirement then you can't go on a retired rate but both ATT and CIOT have low income reduced rates that may be applicable to you.

LARRY DARBY: YOU CAN'T BELIEVE HOW REWARDING IT IS

Larry Darby is a past council member of both the CIOT and the ATT. He retired as a tax partner from PwC in December of 2009, and now spends part of his time working with LITRG.

I retired on 31 December 2009, nearly 13 years ago! I'd worked in tax for all my life really. I started working in tax in 1974 with four years in the Inland Revenue before going to work for a big multinational company in their trust and later corporate tax group. In 1989, I joined what was then Price Waterhouse, where I made partner and worked with them (later PwC) until I retired.

I started getting involved with the activities of the Institute in the late 1980s before the formation of the ATT. My boss at the time was very involved with (and later became president of) what was then the Institute of Taxation. He encouraged me to start lecturing at student conferences and attending branch meetings. I later also got involved in setting exams for what was then the Intermediate examinations of the Institute.

In 1995, I had been vice president of ATT for a year and was due to become president that summer when the firm made me the offer of partnership. This meant I wasn't able to take up ATT presidency but I continued to be involved on committees. At various times, I have chaired the joint CIOT and ATT Professional Standards Committee and Taxation Practitioner editorial board, and I was involved with the Member Steering Group and the Business Development Steering Group.

When I retired, I had lunch with one of my colleagues from the CIOT, John Andrews, who founded the Low Incomes Tax Reform Group (LITRG) in 1988. I joined LITRG as a volunteer specialising in pensions taxation early in 2010. I later became a volunteer for Tax Help for Older People for seven or eight years when I was living on the Isle of Wight – and where there was a shortage of volunteers. I've continued to be involved with the LITRG ever since. I'm no longer a volunteer with Tax Help for Older People but people still come to me if they have queries relating to pensions from time to time.

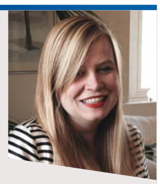
We've done a number of things at LITRG, helping to change the legislation as it applies to pensions for low income wage earners. The latest is what we call the Net Pay Anomaly. Simply stated, if you are below the income tax threshold and you pay into a net pay arrangement pension scheme, you get no tax relief. But if you pay into a relief at source pension scheme you do. It's taken about four years working with industry and related bodies to persuade the government to change the law to rectify that – but the law is now drafted and due to come into effect in 2024.

Since late 2000, I have been a member of the Worshipful Company of Tax Advisers. I like to keep up to date, so I read *Tax Adviser* and keep a watch eye on the weekly emails. There's always something that sparks an interest.

Outside the world of tax, I love photography and am a keen gardener (albeit under my wife's expert guidance!). We used to have a three acre plot on the Isle of Wight where we kept chickens and a pair of alpacas. Our current garden is much smaller but still keeps us pretty busy. My wife and I travel a lot during the winter months.

Lots of people ask me what advice I'd give to those coming up to retirement. My advice is to get your head around what you want to do early – at least three or four years before you retire. And if you want to continue in something related to tax, the voluntary organisations and CIOT and ATT committees are an excellent place to start.

A former partner of mine who retired was recently interested in the work of Tax Help for Older People. We talked about my experience of being a volunteer and within three months, he was a volunteer himself. When I saw him last year, he said he can't believe how rewarding it is. 'When you win a large contract at work, you feel reasonably pleased, but if you can save a pensioner £200 you feel like superhuman.' But if you are going to do that, you need a source to keep you reasonably up to date in the areas you need to be involved in. If you move to retired membership from the CIOT or ATT, make sure one of them is a retired with literature option because it's so valuable.



Name Georgiana Head
Position Director
Company Georgiana Head Recruitment
Tel 0113 426 6672
Email georgiana@ghrtax.com
Profile Georgiana Head is a Director at Georgiana Head Recruitment specialising in recruiting tax professionals. She trained in tax and is an ATT Council Member. In her spare time she is a school governor.

Select your preferences to get relevant communications

The CIOT and ATT prides itself on holding, managing and using student and member data with integrity.

We want to ensure we are sending the most relevant communications, and in October all students and members are requested to select their communication preferences.

Please update your preferences when prompted to do this when we email you this month.

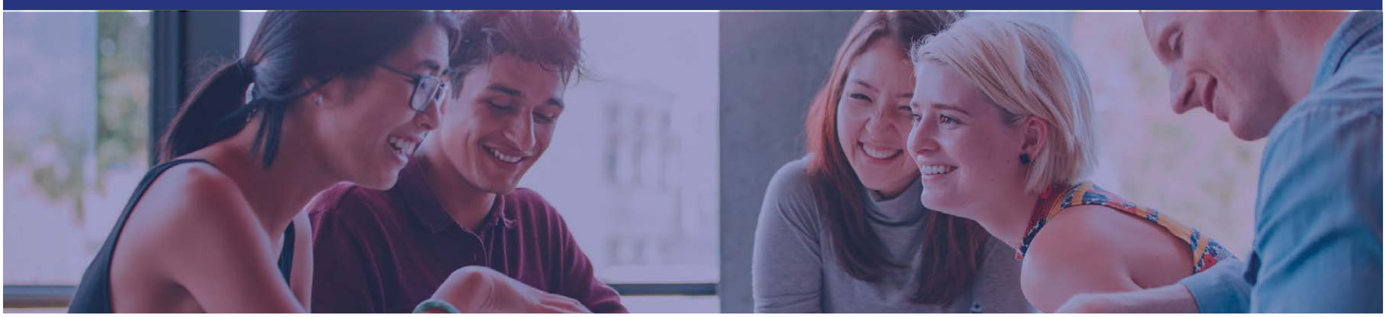
Inspire others & raise your profile
Share your story

CIOT & ATT want to hear from you!

Contact us to share your career pathway and background, and get featured in:

- Tax Adviser magazine
- CIOT and ATT websites
- Future career literature

For more information contact Jo Herman:
jherman@ciot.org.uk



© Getty images/iStockphoto

Transfer pricing: section 147

The arm's length principle

This article considers the operation of TIOPA 2010 s 147 in UK transfer pricing enquiries and questions the validity of the common use of the interquartile range and transfer pricing adjustments made 'within the range'.

by Joel Cooper and Paula Ruffell

Key Points

What is the issue?
Section 147 of TIOPA 2010 essentially requires that a taxpayer's profits and losses are calculated for tax purposes based on the arm's length principle and requires substituting the 'arm's length provision' for the actual provision if certain criteria are met.

What does it mean for me?
As HMRC must ensure that the basic pre-condition has been satisfied in order to make a transfer pricing determination, this means that HMRC must be satisfied that the taxpayer's self-assessment differs from an arm's length provision.

What can I take away?
As controversies arise and as transfer pricing enquires continue to get more complicated, there is a clear need to go back to basics and ensure that transfer pricing discussions are grounded in the underlying legislation.

Transfer pricing enquiries and disputes in the United Kingdom often involve extensive information requests, protracted correspondence on the OECD transfer pricing guidelines and debates concerning the economics of transactions and 'technical transfer pricing positions'.

The link back to the legal powers of HMRC to assess under the Taxation (International and Other Provisions) Act (TIOPA) 2010 s 147 is, however, often inadvertently given limited, or no, consideration.

This article considers the operation of TIOPA 2010 s 147 and in this context explores practices seen in UK transfer pricing enquiries, such as the use of the interquartile range and transfer pricing adjustments made 'within the range'.

We also consider the burden of proof in transfer pricing disputes and how this is affected by the specific requirements of s 147.

The basic transfer pricing rule

Section 147 of TIOPA 2010 essentially requires that a taxpayer's profits and losses are calculated for tax purposes based on the arm's length principle and requires substituting the 'arm's length provision' for the actual provision if certain criteria are met. The criteria are:

- the 'basic pre-condition' is satisfied (TIOPA 2010 s 147(2)(a)); and
- the actual provision confers on the taxpayer a potential advantage in relation to UK taxation (TIOPA 2010 s 147(2)(b) and (4)(b)).

Section 164 of TIOPA 2010 requires that s 147 is to be read consistently with the OECD transfer pricing guidelines. As the UK operates a self-assessment tax system, taxpayers must at the outset ensure compliance with s 147, which is the operative section relied upon by HMRC when seeking to make a 'transfer pricing determination'.

The basic pre-condition

Sections 147(2)(a) and 147(4)(a) state that for the arm's length provision to replace the actual provision under s 147(3) or s 147(5) the 'basic pre-condition' must be met, which is defined through four criteria:

- There is an actual provision made or imposed between two affected persons by means of a transaction or series of transactions (s 147(1)(a)).
- The 'participation condition' is met (s 147(1)(b)).
- The actual provision is not related to oil transactions, which have their own rules (s 147(1)(c)).
- There is a difference between the actual provision and the arm's length provision (i.e. that which would have been made as between independent enterprises) (s 147(1)(d).

Transfer pricing determination

HMRC may make an amendment to a taxpayer's tax assessment to give effect to conclusions contained in a closure notice under the Finance Act 1998 Sch 18 s 34.

Where this amendment is made under the UK's transfer pricing legislation, it must be accompanied by a 'transfer pricing determination' which has received the Commissioners' sanction under TIOPA 2010 s 208, without which a closure notice would not be valid.

Section 208(2) defines a 'transfer pricing determination' as being 'a determination of an amount to be brought into account for tax purposes in respect of any assumption made under section 147(3) or (5)', thus meaning that HMRC must show the basic pre-condition is satisfied.

For the basic precondition to be satisfied, the taxpayer's self-assessment must differ from the arm's length provision.

This is an important and often overlooked consideration, that may appear to be of limited consequence at first glance. However, in practice, where the arm's length provision is almost always determined by reference to a 'range', it is very significant in that it appears to restrict HMRC from making 'adjustments within the range', as discussed below.

The arm's length range

In transfer pricing practice, there is typically not a single arm's length price, but rather a range of arm's length results. This is recognised in the OECD Transfer Pricing Guidelines. Chapter III para 3.55 provides that 'because transfer pricing is not an exact science, there will also be many occasions when the application of the most appropriate method or methods produces a range of figures, all of which are relatively equally reliable' (see bit.ly/3ekVEUs). HMRC acknowledges this in its guidance in its International Manual INTM485120, which notes that: 'Usually a transfer pricing model will produce a range of possible results.'

The arm's length range concept is important, as stated in OECD Transfer Pricing Guidelines Chapter III para 3.60:

> 'If the relevant condition of the controlled transaction (e.g. price or margin) is within the arm's length range, no adjustment should be made.'

HMRC confirms this in INTM485120:

> 'If the results of the tested party fall within an acceptable range of arm's length prices, then no adjustment should be made. If the results of the tested party fall outside an acceptable range, teams will need to agree how to revise the tax computation so that the arm's length price replaces the actual transfer price.'

Notwithstanding the importance of the arm's length range concept, the 'arm's length range' is not defined in TIOPA 2010, nor is there any prescriptive requirement as to how the arm's length range is to be constructed. There is nothing in the UK legislation concerning the use of statistical measures, such as the interquartile range. This is in contrast to the United States, for example, where their regulations contain specific rules concerning the use of the interquartile range.

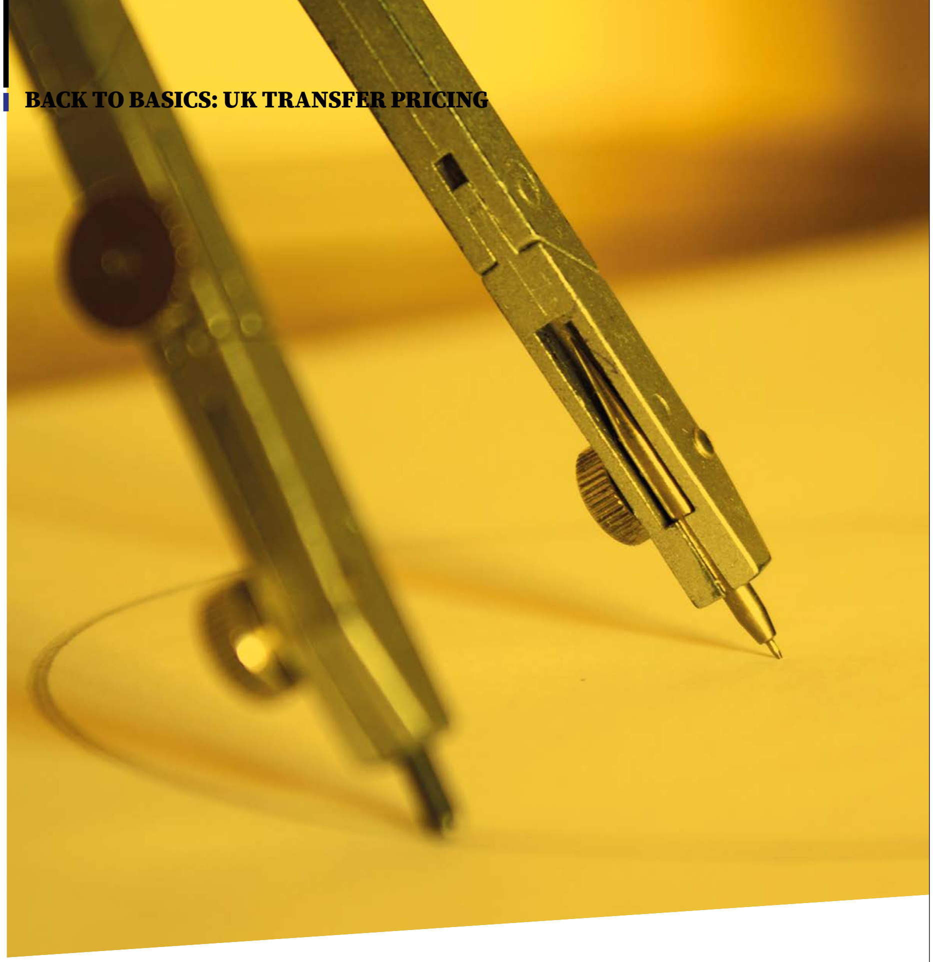
Despite the lack of any requirement to apply the interquartile range, it is our experience that practitioners in the UK, including HMRC, routinely apply the interquartile range. In our view, this practice does not accord with the legislation and the OECD Transfer Pricing Guidelines. This view is confirmed by HMRC in INTM485120:

> 'There is nothing in either TIOPA 2010 Part 4 or the OECD Transfer Pricing Guidelines that say that an interquartile range must be used, although paragraph 3.57 of the Guidelines states that the use of an interquartile range may enhance the reliability of a range in which non-quantifiable comparability defects remain as a result of the limitations in available information on the comparables used.
>
> 'A potential problem with using the interquartile range is the discarding of more accurate comparables which fall within the full range but outside the inter-quartile range. This problem arises when some of the companies in the reported list are less reliable comparables than others. It is therefore important to carry out as robust a comparability analysis as is reasonably possible in arriving at the arm's length range from which the inter-quartile range is derived.
>
> 'If case teams are satisfied that the comparables are all highly reliable, then there is no need to restrict themselves to using an interquartile range. The task is to find the accurate comparables.'

This position has also been recognised by international courts, where OECD principles have been applied to determine the arm's length range. Importantly, the courts look to the full range of results rather than the interquartile range, as is shown in the following examples:

- In *Sweden v Absolut Company AB* (Supreme Administrative Court, Case no 1913-18) in June 2019, the Swedish Supreme Administrative Court ruled on transfer pricing benchmarking analyses and found that the full range of results in the benchmark study could be applied, rather than the interquartile range, to support an arm's length result.
- In *Chile v Avery Dennison Chile S.A.* (Case no RUT 96.721.090-0) in March 2021, the Chilean Tax Court found that the remuneration of the distribution and marketing activities performed by the taxpayer had been determined to be at arm's length by application of a 'full range' analysis. The tribunal commented that the application of the interquartile range was not mandatory.
- On 13 July 2021, in *Blackstone/GSO Debt Funds Europe S.à.r.l.* (Case No. 43264), the Administrative Tribunal of Luxembourg noted that the use of the interquartile range is not mandatory under the OECD Transfer Pricing Guidelines para 3.62 and decided that the effective yield on the profit participating loan, being within the full range of benchmark interest rates, should be accepted by the tax administration.

In our view, when applying section 147, the default position when it comes to the construction of the arm's length range should be the 'full range'.



Limiting the range by way of statistical measures, such as the interquartile range, should be the exception, rather than the rule.

Adjustments within the arm's length range

Despite the commentary from the OECD Transfer Pricing Guidelines and HMRC's International Tax Manual guidance, we have experienced situations in the UK whereby transfer pricing adjustments have been proposed, and even made, within an arm's length range. We would argue that such adjustments are contrary to s 147, since the basic pre-condition requires that the actual provision differs from the arm's length provision.

> **The basic precondition point is ripe for consideration before the tribunals and courts.**

For example, a taxpayer has demonstrated that its purchase of goods from a related party is arm's length by applying the transactional net margin method and demonstrating that the operating margin of 2% is within the arm's length range of operating margins achieved by comparable distributors of (for example) 1% to 5%. In this case, a transfer pricing determination should only be made if HMRC believes, for example, that one or more of the comparable distributors are in fact not comparable so as to change the arm's length range (e.g. from 2.5% to 5%) and render the 2% outside of that revised range. If this is not the case, it would seem that the basic pre-condition is not satisfied and thus a transfer pricing determination cannot be made.

Consistent with the OECD Transfer Pricing Guidelines and indeed HMRC's guidance in INTM, it seems to us that s 147 does not allow for transfer pricing adjustments that are 'within the range'. This highlights the importance of the definition and construction of the range as discussed above.

Burden of proof

Another interesting issue that arises from an analysis of the basic pre-condition in s 147 is how the burden of proof operates.

Under the UK's self-assessment regime, taxpayers are required to show that on the balance of probabilities the original provision was arm's length. However, in order for HMRC to challenge this, it must inter alia determine that the taxpayer's provision was *not* arm's length (i.e. that the pre-condition was satisfied) and issue a sanction notice to that effect.

In our experience, HMRC rarely clearly sets out its analysis and position with respect to the application of s 147 and, in particular, with respect to the basic pre-condition. However, we consider that HMRC ought to be willing to share its thinking, as in order to assess a taxpayer, HMRC must have concluded that the taxpayer's approach is not arm's length in accordance with s 147 and must have reached that decision on a principled basis.

Conclusion

These issues have not been explored fully before the tax tribunals. We consider that the manner in which some transfer pricing enquiries have progressed in some instances means that the basic precondition point is one that is ripe for challenge before the tribunals and the courts, particularly where HMRC is proposing adjustments within the arm's length range, and/or is narrowing the range by application of the interquartile range without a supportable basis.

Notwithstanding the large body of transfer pricing practice and theory internationally, the importance and legal significance of the OECD Transfer Pricing Guidelines in the UK still needs to be critically explored. In our view, as controversies arise and as transfer pricing enquires continue to get more complicated, there is a clear need to go back to basics and ensure that transfer pricing discussions are grounded in the underlying legislation.

Name: Joel Cooper
Position: Global International Tax and Transaction Services Controversy Leader
Employer: EY
Tel: 0207 7951 5832
Email: joel.cooper@uk.ey.com
Profile: Joel Cooper is an EY Partner and the EY Global International Tax and Transaction Services Controversy Leader. He advises clients from a range of industries on preparing for and managing cross-border tax controversy. He has extensive experience in assisting clients with advance pricing agreements, mutual agreement procedures, settlement strategy and preparation for litigation.

Name: Paula Ruffell
Position: Senior Manager
Employer: EY
Tel: 0207 760 8283
Email: paula.ruffell@uk.ey.com
Profile: Paula Ruffell is a Solicitor and Senior Manager in EY's Tax Controversy and Risk Management team. An ex-HMRC Solicitor, she specialises in resolving HMRC and cross border tax controversy and advising clients on best practice risk management procedures to prevent disputes arising.

Upcoming 2022 Annual Return Submissions

From mid-November* your portal account will be open for submission of the 2022 Annual Return and payment of your 2023 subscription. Don't get caught out. Stay compliant.

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

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

You can submit your return by logging on to the Members Portal **https://pilot-portal.tax.org.uk** then navigate to **Secure area/Members Area/Compliance/Annual Return** where the 2022 form is located.

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

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

*Email and social media notifications will be sent for opening submission dates.

WELCOME

November Technical newsdesk

If you are quick off the mark reading *Tax Adviser*, you will currently be pondering the tax measures within the Chancellor's Medium-Term Fiscal Plan announced on 17 and 31 October. The dust did not have time to settle on the 23 September Growth Plan before we had a new Chancellor and the reversal of much of the original plan. While not being a 'traditional' fiscal event, there were some surprise tax announcements in the Growth Plan and our thoughts on the key aspects of the Chancellor's statement are summarised below.

As professional bodies, perhaps the greatest shock was the decision to abolish the Office of Tax Simplification, and set a mandate to HM Treasury and HMRC to focus on simplifying the tax code.

'Do not leave tax simplification up to HMRC and the Treasury,' said the ATT (www.att.org.uk/tax_simplification), with the CIOT considering that: 'If you are serious about simplification, abolishing the one body with responsibility for it is a very strange first step' (www.tax.org.uk/ots_abolition_disappointing).

Another surprise abolition is the 2017 and 2021 off-payroll rules which are repealed from April 2023. CIOT stated: 'It does not solve the problem of IR35 but places the burden of compliance back on small independent contractors and freelancers' (www.tax.org.uk/ir35_scrapping_reforms). The ATT warned that the measure 'risks widespread non-compliance and the loss of tax revenues' (www.att.org.uk/old_ir35_rules) and LITRG warned that the changes 'could result in more agency workers finding themselves working through single person limited companies' (www.litrg.org.uk/ref2684).

While the decision to abolish the UK additional rate of income tax has since been reversed, CIOT noted that the proposed changes to UK income tax could lead to further points of divergence between the Scottish and UK income tax regimes (www.tax.org.uk/income_tax_changes).

While we tend not to comment on rates and allowances, we queried whether the increases to the SDLT thresholds would benefit sellers more than buyers (www.tax.org.uk/sdlt_changes). Historical research demonstrated that similar measures led to increases in house prices.

Both CIOT and ATT welcomed the setting of a new permanent level for the AIA. 'The overwhelming feedback that we receive is that stability and certainty is more important to businesses than any particular rate of relief,' said the CIOT (www.tax.org.uk/new_level_aia), with the ATT also noting the 'significant change in direction' on capital investment incentives (www.att.org.uk/capital_allowances_changes).

The reversal of the national insurance increase, and the repeal of the health and social care levy, was trailed a day early. The ATT called for a 'broader review, not more tinkering', pointing to the government's response to the employment status review (www.att.org.uk/NI_needs_review). LITRG stressed the need to consider the benefits impacts of the tax and NIC changes (www.litrg.org.uk/ref2683). While the announcement reverses what would have been further differentials between different income types, the CIOT stated that: 'It remains the case that employer NICs will continue to be an incentive for businesses to contract with people as self-employed rather than employing them (www.tax.org.uk/ni_reversal).

Let's hope we are less spooked by the Chancellor's Medium-Term Fiscal Plan, even though it took place on Halloween.

NEWSDESK ARTICLES

Contact

To contact the technical team about these pages, please email: Sacha Dalton, Technical Newsdesk editor sdalton@ciot.org.uk

GENERAL FEATURE

Treasury Committee: inquiry into tax reliefs

The CIOT, ATT and LITRG have each provided written evidence to the House of Commons Treasury Committee's inquiry into tax reliefs.

On 22 July, the House of Commons Treasury Committee launched an inquiry into tax reliefs (tinyurl.com/4pzpmv2k), asking a wide range of questions around broad themes such as value for money, behavioural impacts and international comparisons, as well as proposals for the addition or removal of particular reliefs.

CIOT comments

We urged the Committee to recognise the important distinction between structural and non-structural reliefs, because they serve different purposes. A structural relief should be evaluated in the light of the overall tax system and its operation, whereas a non-structural relief should be evaluated in the light of its particular objectives. Some reliefs exist in large part for administrative purposes, for example the property and trading allowances, and we suggested there may be merit in recognising reliefs which exist purely for administrative convenience either as a separate category of relief, or specifically recognising this additional characteristic when evaluating them.

We recognised that the main purpose of the tax system is to collect the money that pays for the UK's public services and other government spending. In our view, its design should demonstrate the characteristics of simplicity, clarity and certainty. Tax reliefs represent something of a departure from these principles because they can introduce complexity in the forms of the scope of the relief, boundary issues and their practical application. These can be particularly acute for non-structural reliefs, which are designed to encourage certain behaviours.

With this in mind, we suggested that tax reliefs, particularly non-structural tax reliefs, should be 'SMART'. In this sense, they should display the following characteristics:

- Specific: Be clear as to their scope and purpose, specify who is intended to benefit from the relief, and meet a defined objective.
- Measurable: It should be possible to estimate the cost of a tax relief to an adequate level of accuracy.
- Achievable: Be readily accessible to those who they are intended to benefit, straightforward to claim and administer, and without unintended consequences.
- Reviewed: Reliefs should be subject to a systematic process of regular, scheduled reviews to ensure that they are achieving their objectives at an appropriate cost, with the results of those reviews published on a timely basis.
- Timeframe: They should be predictable over time and not subject to frequent tinkering.

We also questioned whether some tax reliefs should be considered a 'relief' at all. Taking capital allowances as an example, any acceleration of a tax deduction might constitute a relief from tax, but should the allowance representing commercial depreciation be considered a relief?

ATT comments

The ATT submission focused on two specific aspects of the existing system of tax reliefs: the importance of keeping financial levels of reliefs under review; and the problems that self-employed individuals currently encounter in securing tax relief for training costs.

We noted that whilst the financial level of certain thresholds and reliefs are regularly reviewed and adjusted by the government, there are by contrast others which have not been reviewed or uprated for several years, or in some instances since they were first introduced. We highlighted several examples (including inheritance tax gift reliefs and approved mileage rates for business travel) and recommended that the financial level of all reliefs and thresholds should be reviewed on a regular basis to ensure that they remain relevant given inflation and other economic conditions.

On training costs, we noted that currently self-employed individuals can only receive relief for training which maintains or updates existing skills, but not to develop new skills or retrain in another field. We would like to see existing tax reliefs for the self-employed extended to cover the costs of work-related upskilling and retraining. This could benefit both individuals and the wider economy, through encouraging the establishment of new profitable businesses, and could also help to address existing shortages in certain parts of the labour market.

LITRG comments

The LITRG response focused on some general principles relating to tax reliefs and practical challenges for unrepresented taxpayers.

We noted that for unrepresented taxpayers, where a tax relief is not automatic, there are several prerequisites for enabling taxpayers to make a successful claim. The first is awareness of the relief. In general, much more needs to be done to raise awareness among taxpayers of various reliefs. We provided the example of the marriage allowance. It is currently thought that while over two million couples benefit from the allowance, just as many eligible couples could have failed to make a claim. Other prerequisites, many of which also need more work, include providing good guidance such that a taxpayer can work out if they are eligible, ensuring that processes for claiming reliefs are straightforward, and ensuring that taxpayers understand how to apply for the relief.

An additional point we made is that the creation of tax reliefs to incentivise different behaviours can place unrepresented taxpayers at a disadvantage. Those with a tax adviser may receive information about such reliefs from their adviser and therefore be able to benefit. Unrepresented taxpayers are less likely to hear about these reliefs and may miss out on them.

We highlighted the fact that the inconsistent use of terminology in relation to tax reliefs can lead to confusion and hinders understanding. For example, the terms relief and allowance are used inconsistently and for reliefs that operate in different manners.

We also reiterated a call from our December 2020 paper, 'A better deal for the low income taxpayer', for fixed amount reliefs to be reviewed (and uprated where appropriate) on an annual basis, by default.

At the time of writing, the Treasury Committee has not published our written evidence, which means that we cannot yet publish it on our websites. But they will soon be available on the submissions pages of each of our websites at: www.tax.org.uk/submissions/1, www.att.org.uk/technical/submissions www.litrg.org.uk/latest-news/ submissions).

Richard Wild rwild@ciot.org.uk
Emma Rawson erawson@att.org.uk
Joanne Walker jwalker@litrg.org.uk

GENERAL FEATURE PERSONAL TAX
MANAGEMENT OF TAXES

Treasury Committee: call for evidence – the cryptoasset industry

LITRG submitted a response to the Treasury Committee's call for evidence on the cryptoasset industry.

LITRG's submission to the Treasury Committee's call for evidence into the cryptoasset industry draws on HMRC's recently commissioned research (see tinyurl.com/2e347y4a), highlighting three key points.

First, research shows that most cryptoasset owners have relatively small holdings and are more likely to be lower-income and unrepresented taxpayers. This taxpayer profile is therefore more typical of a cryptoasset owner, with low income taxpayers perhaps being tempted to invest in cryptoassets because of the lure of high returns and the relative ease with which it is possible to invest through online platforms and apps. In particular, HMRC's research shows that the vast majority (85%) of cryptoasset owners either pay no income tax at all or pay it only at the basic rate, and nearly a quarter (23%) of cryptoasset owners earn less than the personal allowance.

Second, there is a general lack of understanding about potential tax liabilities and impacts on means-tested benefits from cryptoasset activities, especially among lower-income and unrepresented groups. For example, the majority (59%) of cryptoasset owners said that they knew 'little or nothing' about capital gains tax (CGT). An even greater proportion (81%) are not aware of the fact that buying goods or services using cryptoassets is a disposal for CGT purposes, potentially triggering a CGT liability. This misunderstanding, when combined with the relative complexity of calculating taxable gains from cryptoasset transactions, could easily result in inadvertent tax non-compliance.

The impact on means-tested benefits was not part of HMRC's research. It appears to be largely unconsidered in government policy on cryptoassets, especially for universal credit claimants. For example, such claimants need to determine whether the value of their cryptoasset holdings is considered as capital for universal credit purposes. Capital between £6,000 and £16,000 is deemed to provide a 'tariff income' of £4.35 per month for each £250 (or part thereof). There are several reasons why this may cause some difficulties, including:

- determining whether the holdings are 'business assets' (which would be disregarded)
- determining whether a disposal of beneficial interest has occurred in a lending or staking transaction;
- determining whether anti-avoidance rules on deprivation of capital apply; and
- coping with fluctuating asset values within an assessment period.

Finally, the submission points out that tax liabilities could be triggered from any amounts of cryptoasset gains and income, if the relevant tax allowances are already used against other sources. This might happen, for example, if the CGT annual exempt amount has already been used where the taxpayer has sold a property in the year which did not attract full main residence relief. Alternatively, where a person's main source of income is from self-employment, the trading allowance is likely to be unavailable on a second source of income from cryptoasset activities. Means-tested benefits, such as universal credit, can also be affected by fluctuations in cryptoasset capital and income from cryptoasset activities without any de minimis. (There is no equivalent of the trading allowance for universal credit purposes.)

The submission concludes by suggesting that cryptoasset policy in tax and means-tested benefits should be designed in such a way to minimise the risk of inadvertent non-compliance. It also points out that record keeping requirements should be reasonable. Part of the solution may be legislative reform (for example, treating cryptoassets as a separate asset class rather than shoehorning them into existing legislation), but effective guidance and efforts to raise awareness are also important.

The full LITRG submission will be uploaded shortly at: www.litrg.org.uk/latest-news/submissions.

Tom Henderson *thenderson@litrg.org.uk*

PERSONAL TAX LARGE CORPORATE

The UK's approach to sovereign immunity from direct taxes

The CIOT responds to aspects of the government's recent consultation on the UK's policy on sovereign immunity from direct tax.

Sovereign immunity refers to the principle that foreign governments and heads of state have exemption from liability to UK direct taxes. This immunity extends not only to monarchs and heads of state but also to state investment funds, such as sovereign wealth funds and state pension funds. The main proposals are to:

- put sovereign immunity on a statutory basis replacing the current position that depends on case law and practice;
- narrow the exemption to UK source interest income only; and
- make the narrower statutory exemption available to a defined class of persons.

The sovereign immunity exemption would therefore no longer apply to trading income, income and gains from UK real estate, and dividends from real estate investment trusts (REITS), though tax on such activities would be subject to relief under double tax treaties. The consultation indicates that the government expects the greatest Exchequer impact to relate to the removal of immunity from UK property income and gains.

In our response, we are generally supportive of the government's proposal to put the principle of, and conditions for, sovereign immunity on a comprehensive statutory footing. We note that the statutory definition will need to encompass both direct and indirect holdings by sovereign investors and will benefit from further consultation.

We welcomed the recognition that the status of sovereign immune investors in the operation of specific tax regimes such as REITs, the substantial shareholding exemption and the new qualifying asset holding company regime will need to be considered carefully. Any changes should be considered in the context of the policy intent for each regime, the rationale for the treatment of sovereign immune investors, and potential unintended consequences where loss of sovereign investor exempt status affects the tax status for other investors. Consideration should also be given to the need for certainty and stability, particularly in the light of the scale of recent changes to the UK tax treatment of non-UK residents in relation to UK real estate, so investors can plan ahead with confidence.

For inheritance tax, it is proposed that sovereign immunity will be restricted to state property that remains state property when it passes to a successor. We note that the definition of 'state property' will need to be considered in the context of succession laws of other jurisdictions to ensure it meets the policy objective. The interaction with double tax treaties where another jurisdiction has exclusive taxing rights for inheritance tax under a treaty may require consideration. Where property is held in trust the calculation of the 10-year charge for periods (quarters) will also require clarification.

The full CIOT response is available here: www.tax.org.uk/ref975

Kate Willis *kwillis@ciot.org.uk*

GENERAL FEATURE PERSONAL TAX

Repayment agents and raising standards in tax advice

LITRG, the CIOT and ATT have submitted responses to HMRC's consultation on 'Raising standards in tax advice: protecting customers claiming tax repayments'.

The consultation was presented as part of the government's agenda to raise standards in the tax advice market. It sought views on targeted action to address consumer protection issues including:

- restricting the use of deeds of assignment where contracts legally transfer the right to a repayment from a taxpayer to an agent;
- ensuring that taxpayers see the information they need to make an informed decision about the use of repayment agents; and
- registration requirements for repayment agents.

LITRG welcomed the consultation, having spent much of this year dealing with queries from taxpayers who had used one particular tax refund company to apply for a working from home refund, only to find out that an assignment – purportedly with their signature on it – had been submitted to HMRC, meaning that unconnected refunds were also sent to the tax refund company.

LITRG noted some of the bold language in the consultation, as well as the serious proposal to prohibit deeds of assignment, and wondered how far this was influenced by experience with that tax refund company. LITRG said that it understood the strength of feeling, given the damage done to taxpayers and trust in the tax system. However, it felt that the whole situation could have been avoided by HMRC simply checking whether the company's processes created legally valid assignments. (HMRC have now published a statement on GOV.UK (tinyurl.com/yyd6yxrn) about cases involving that tax refund company and what action they will be taking.)

HMRC do not currently do enough to alert taxpayers to potential repayment claims. Even if they begin to do more, some taxpayers will not wish to interact directly with HMRC, or will be unable to navigate the HMRC processes for obtaining a refund. LITRG therefore reiterated that some tax refund companies will be meeting a genuine need in the market and operate according to appropriate standards. Assignments can be used legitimately by these tax refund companies because of issues with the bare nomination process. LITRG pointed out that a complete prohibition of assignments (without a reliable alternative way to guarantee that fees can be collected) would severely restrict the ability of good tax refund companies to offer a commercially viable service. LITRG wanted more work to be carried out to assess the impact on taxpayers of any such changes to the tax refund company landscape.

The CIOT laid down some interesting statistics about the take up of tax relief. These highlighted that the need for more people to claim what they are entitled to or the tax system to deal better with these reliefs upfront (through PAYE by making some claims automatic, for example). Until then, repayment agents potentially enable people to get at least some of their entitlement. Making large numbers of sometimes very low value reclaims means that it is not cost effective for traditional agents to act in this space.

In its response, the ATT said it was disinclined to support the complete prohibition of assignments, suggesting that a prescribed format for assignments could address some of the issues raised. It also put forward an alternative 'twin-track' process which could be at least as effective as a legally prescribed format at meeting the objectives, and which would include HMRC considering the exercise of its statutory discretion. Under the 1925 Law of Property Act, any debtor – HMRC in this context – who has received notice that an assignment is disputed may opt to pay the amount into a court of law, for that court to hold pending resolution of the dispute, rather than paying it to the assignee.

On the consumer protection aspect, the CIOT and ATT reminded HMRC of the wider debate around raising standards in the tax advice market, saying that if all repayment agents providing taxation services were supervised as professional body members, they would be required to meet the fundamental principles set out in Professional Conduct in Relation to Taxation and Professional Rules and Practice Guidelines (or equivalent codes).

All three bodies set out several things which HMRC could do to make taxpayers aware that they may be eligible for reliefs and that they could claim directly from HMRC. We also said that we looked forward to the promised publication of HMRC's wider consultation on 'options to improve the wider regulatory framework that supports standards in tax advice in consultation with stakeholders and in a way that fulfils the three criteria of clarity, transparency and enforcement'.

The full LITRG response can be found here: www.litrg.org.uk/ref2679

The full CIOT response can be found here: www.tax.org.uk/ref993

The full ATT response can be found here: www.att.org.uk/ref401

Meredith McCammond *mmccammond@litrg.org.uk*
Jane Mellor *jmellor@ciot.org.uk*
Will Silsby *wsilsby@att.org.uk*

OMB LARGE CORPORATE
MANAGEMENT OF TAXES

Joining up business rates data and HMRC tax data

The CIOT has responded to HMRC's Digitalising Business Rates consultation, which looks at how to join up local authorities' business rates data with HMRC-held tax information, and the benefits of doing so.

HMRC are consulting on how to join up business rates data (held by the 309 billing authorities in England) with centrally held HMRC tax data to better target business rates policy and compliance, and to allow businesses to see their business rates bills in one place online. Billing authorities will remain responsible for the administration of business rates.

Our main concern with the proposals is that they will increase administrative and cost burdens on businesses by requiring them to provide more information to government but with minimal benefits for the businesses themselves. Many small businesses will be fully relieved from business rates and therefore derive no benefit from online bills. Large businesses and businesses using a rating agent will be fully aware of their rates bills already.

One of the objectives is to enable the government to better target financial support to businesses, particularly in response to an economic shock such as the recent Covid pandemic. It is unclear how the data matching will enable this to be achieved, at least in the short or medium term. Liability for business rates arises on a daily basis (based on occupation). The data held by HMRC does not necessarily reflect the current position (because it is based on the corporation tax return submitted 12 months after the end of an accounting period).

While HMRC are pressing ahead with Making Tax Digital for income tax, the timetable for Making Tax Digital for corporation tax is more delayed. It is therefore unclear when HMRC will obtain company financial results on a sufficiently timely basis to make fulfilment of the aim of targeting financial support feasible. The differences in the tax basis for business rates and income tax/corporation tax would also appear to make this unworkable, unless business rates were to be replaced by a turnover/profit-related tax.

While historically business rates were regarded as a property cost, they are now increasingly perceived as a tax, albeit one charged by reference to rental value rather than profit. There is therefore a good case, and one we support, for making the business rates system more integrated with and aligned to the wider UK tax regime. However, the proposals as they stand simply overlay data matching on to the existing non-aligned systems but without structural or legislative reform or centralisation to underpin the alignment.

We recognise that the limited data matching proposals may be a stepping stone to wider reform and alignment, but we think there is significant uncertainty over how much value digitalising business rates will add, at least in the short term, without wider structural reform.

The full CIOT response is available here: www.tax.org.uk/ref988

Kate Willis *kwillis@ciot.org.uk*

MANAGEMENT OF TAXES

Increasing the use of mediation in the civil justice system

The CIOT has responded to a recent consultation published by the Ministry of Justice looking at increasing the use of mediation in the civil justice system. The focus of our response is the alternative dispute resolution process, which can be used to resolve a tax disagreement with HMRC. In our response, we consider the benefits of increasing the use of mediation in tax disputes and making it more widely available.

The consultation is aimed at all those with an interest in the resolution of civil disputes in England and Wales. Whilst its focus is on defended small claims disputes in the first instance, there is a vision to embed mediation as an integral step in the court process more widely across the civil justice system.

In our response, we consider the number of appeals that are notified to the tax tribunals each year and the number of appeals ongoing at 31 March 2022, which are significant. It appears it will take the tribunal service many years to work through them. The latest statistics published in HMRC's Annual Report indicate that there were 15,613 appeals notified to the tax tribunal in the year 2021/22 and 36,500 appeals ongoing at 31 March 2022 (of which 16,000 were stood over). The number of appeals, the length of time it is taking to resolve them and the costs (preparatory and during the hearing) for both HMRC and taxpayers all feed into the cost of running HM Courts and Tribunal Service (which also administers the tax tribunals).

We also note the low number of applications made each year for alternative dispute resolution (ADR) compared to the much higher number of appeals to the tax tribunal. The numbers of rejections to ADR are increasing too. In 2021/22, there were 1,047 applications in total, with 283 cases rejected by HMRC's governance panel and 298 rejected as out of scope. We consider how the number of applications for ADR might be increased. In our view, the use of mediation to resolve tax disputes can be very successful and its increased use could be effective at reducing the number of disputes reaching the tax tribunal, relieving the pressures on the Tribunal Service.

Our recommendation would be for HMRC to set up a focus group of relevant stakeholders to discuss what more could be done to encourage the use of mediation in tax dispute management, including:

- raising awareness of the process and greater publicity of the benefits of mediation;
- expanding the categories of cases in scope for ADR;
- increasing the transparency of HMRC's process for accepting (and rejecting) cases into ADR; and
- considering if its use should be made mandatory, with consequences for those who fail to engage with it without good reason.

We note that some cases involving HMRC do end up at the County Court, rather than at the tax tribunal. These are primarily cases involving smaller tax debts and cases where HMRC are applying to court to lodge a national insurance contributions debt. There are some cases here which might benefit from mediation; for example, where there is a complex dispute and the tax debt relates to that (and is under appeal).

We also provide a response to the questions posed in the consultation document on the subjects of accreditation and regulation of mediators, noting that there are CIOT members who are accredited mediators, and that tax mediation is different from standard mediation as the mediator needs to comprehend HMRC's Litigation and Settlement Strategy. We would not wish to see too much regulation of the civil mediation sector as applied to tax disputes, as it could limit the number of tax professionals who seek accreditation.

The CIOT's full response, which includes statistics on tribunal appeals and ADR applications from HMRC's Annual Reports, is at: www.tax.org.uk/ref1027.

Margaret Curran *mcurran@ciot.org.uk*

PERSONAL TAX EMPLOYMENT TAXES

Draft FB 2023: low earners anomaly and pensions relief relating to net pay arrangements

The CIOT and LITRG have commented on draft legislation to address the 'low earners anomaly' for pensions relief relating to net pay arrangements.

The government has proposed a scheme of 'top-up payments' to be made to those earning around or below the personal allowance who do not receive tax relief on pension contributions to net pay arrangement schemes (as compared to non-taxpayers contributing to relief at source arrangements who do get tax relief). The draft legislation published for comment prior to inclusion in the Finance Bill (tinyurl.com/y63frj8f) appears to be broadly reasonable, but the proposal to treat the top-up payments as if they are employed earnings for income tax purposes does give rise to various concerns.

For example, where net pay pension savers have total income above their personal allowances, but receive a top-up payment based upon HMRC's calculation under the draft legislation using employed earnings alone, it appears that these people may be better off than their relief at source contributing counterparts. We were also concerned that deeming the payment as UK employment income raises issues with certainty. (An individual should be able to determine their taxable income when the tax year ends.) It could also give rise to potential international issues where an individual is entitled to an international enhancement to their lifetime allowance for pension contributions. Hence, we think it would be more appropriate to treat the top-up payment as either a tax nothing or a tax refund (the latter being the way LITRG originally proposed that such a scheme should operate).

Both responses also raised concerns about the practicalities of making the payments. The legislation states that HMRC must 'so far as reasonably practicable' make the necessary payments to affected individuals. While it is welcome that the onus of making the payments is largely placed on HMRC rather than individuals having to claim, our concern is that this phrase is perhaps open to interpretation. Pension savers could be left without redress if, for example, they are not easily contactable or perhaps mistakenly ignore HMRC communications due to a suspicion that they are a scam. We therefore recommended that an ability to claim the relief is built into the legislation, together with an explicit right of appeal if HMRC fail to make a payment where the individual believes one to be due.

Finally, this issue has been known about for a long time and LITRG is disappointed that there is no proposed redress for either individuals' historic financial loss or further losses between now and introduction of top-up payments from April 2024. The legislation could therefore provide for further backdating to help redress this, which would (with a larger initial payment being on offer) help to encourage take-up by those affected.

The full LITRG submission is available at : www.litrg.org.uk/ref2680 and the full CIOT submission at: www.tax.org.uk/ref992

Kelly Sizer ksizer@litrg.org.uk

PERSONAL TAX

Draft FB 2023: capital gains tax and separating married couples

The CIOT has responded to the draft legislation that proposes changes which will extend the 'no gain/no loss' capital gains tax window beyond the tax year of separation for married couples.

When assets are transferred between married couples (or those in a civil partnership) who are living together as such, the capital gains tax (CGT) treatment is that the 'no gain/no loss' rule applies; that is to say it is essentially a tax neutral event with the recipient inheriting the other spouse's base cost. However, besides their being married, the other criterion is that 'in any year of assessment' the donor is 'living with his spouse or civil partner' (per TCGA 1992 s 58). This means that the no gain/no loss treatment will only last up to the 5 April in the tax year of any separation (which is deemed to happen per a court order, a formal Deed of Separation or when the separation is likely to be permanent). After this tax year and until they are legally divorced, the couple are merely 'connected persons', meaning that any asset transferred between them will be assessed to CGT at its market value. Given how long it can take for separations and divorces to be settled, with marital assets (especially land and buildings) being divided up between them, it is likely that some couples will face the possibility of (dry) CGT charges to worry about in addition to the distress of the separation itself.

In their second CGT report published in May 2021, the Office of Tax Simplification recommended that the no gain/no loss window should be extended for a further two years beyond that of separation. However, the draft Finance Bill 2023 goes further and extends it to three years, but only for assets transferred after 6 April 2023.

The CIOT welcomed the proposed change, though questioned why it only applies to those transfers which take place in 2023/24 onwards. Whilst many couples will benefit from the extension of the no gain/no loss window, many would have already transferred assets prior to this. Others will have to refrain from doing so until April 2023, which may not be practical. It was suggested that this start date for qualifying transfers could be backdated to April 2022, or potentially even further, upon election. Clarification was also sought regarding situations where assets are transferred into bare trust for the recipient spouse, and whether the transfer of the value of assets, rather than assets themselves, would qualify under the change.

The full CIOT response is available here: www.tax.org.uk/ref999

Chris Thorpe cthorpe@ciot.org.uk

PERSONAL TAX GENERAL FEATURE

Wales consults on a fairer council tax

The CIOT and LITRG responded jointly to a wide-ranging consultation on reforming council tax in Wales, including a revaluation in April 2023.

The Welsh government are consulting on substantial reforms to council tax in Wales. Council tax bands in Wales are based on property values as at April 2003, 19 years ago. The consultation proposes a council tax revaluation of all 1.5 million properties in Wales and more frequent valuations in the future. It considers adding more bands to the top and bottom ends of the scale; potential improvements to the framework of discounts, disregarded persons, exemptions and premiums; and improvements to the Council Tax Reduction Scheme which provides support to low income households.

We welcome the certainty provided by the roadmap for the timetable for reform and the issue of the phase 2 consultation in Summer 2023 prior to implementation. A good communications strategy will be required to ensure that taxpayers are aware of the changes, and particularly of council tax reductions.

We agree that a tax system that does not reflect current property values and treats (or appears to treat) taxpayers unequally risks being undermined. In the longer term, this could place Wales's tax revenues at risk if people are less willing to pay taxes they consider unfair, and hamper wider policy initiatives.

We also agree that, in conjunction with revaluation, adding more bands covering the entire property value scale and re-evaluating the bands to align them more closely to property values would help make the system more progressive, although its effectiveness will depend upon the distribution of housing wealth in Wales. There is a trade-off in adding more bands to enhance progressivity and the further administrative complexity this entails.

Revaluation and reform will focus public attention on council tax, while transitional measures to ease the effect of transition and phasing in reform will help to gain public support and acceptance. The approach to transition needs to take account of the complexity of taxpayers' lives in low income or low wealth households to achieve equity in the system and maintain public support. Again effective communication will be key.

We think there is a case for considering the merits and disadvantages of a targeted council tax deferral scheme for owner-occupiers to address hardship for those who are property rich, income poor where other measures do not provide enough relief.

Council tax tends to be unpopular, in part because it is a 'dry' tax charge. The consultation also recognises there is little awareness of what council tax pays for and how ratepayers benefit, leading to inevitable adverse consequences for how it is perceived. It is important to raise awareness that council tax only meets a portion of the relevant spending (and make it clear where the rest of the funding comes from).

In terms of potential improvements to the framework of discounts, disregarded persons, exemptions and premiums, the existing system is very complex. This makes it difficult for people to understand and therefore to access relevant support. It also makes it difficult to write guidance and for staff to administer. The consultation presents a good opportunity to consider the whole council tax system so that people who are entitled to pay lower council tax do not have to subsequently claim support.

The full joint CIOT and LITRG submission is at: www.tax.org.uk/ref978

Kate Willis kwillis@ciot.org.uk
Claire Thackaberry cthackaberry@litrg.org.uk

GENERAL FEATURE

Scottish government block grant adjustments

The CIOT and LITRG submitted a joint response to the call for evidence on Scottish government block grant adjustments for tax and welfare devolution.

The Fiscal Framework agreement between the UK and Scottish governments determines how the Scottish government is funded and also underpins the powers set out in the Scotland Act 2016. The original agreement was published in February 2016. It states that there should be a review of the framework after a parliament's worth of experience; this is to be preceded by an independent report presented to both the UK and Scottish governments. These are taking place in 2022.

The UK and Scottish governments commissioned the independent report in June 2022. It will evaluate the block grant adjustment funding arrangements for tax and welfare devolution against the principles agreed by the Smith Commission. This call for evidence (tinyurl.com/c2yaxyhy) was published at the end of July, with the aim of gathering views to inform the independent report.

It is anticipated that the subsequent fiscal framework review will have a wider scope than the independent report, and that there will be the opportunity for stakeholders to provide their views.

The joint response to the call for evidence focused on the issue of improving understanding of block grant adjustments among stakeholders. We note that there are several different stakeholders with varying degrees of interest in block grant adjustments. These different groups require different levels of understanding. As a result, we suggested that the strategy for improving understanding should be adjusted to suit each group of stakeholders.

From a LITRG point of view, the general public has a more limited awareness and understanding of block grant adjustments but we think that improving this is of less importance than improving their understanding of the wider picture of devolved taxes in Scotland.

The CIOT noted that professional bodies and their members would probably benefit from understanding how the block grant adjustments work, as this will inform their discussions with government officials.

LITRG set out more detail of the kinds of information it is important for ordinary taxpayers to know, including the interactions between Scottish income tax and reserved aspects of income tax. We explained that there are positive messages that the Scottish government can share, which could help to improve understanding of Scottish income tax; for example, the fact that Scottish intermediate rate taxpayers can claim additional tax relief on their relief at source pension contributions.

The CIOT's polls over the past few years demonstrate that there continues to be low awareness among Scottish taxpayers about the role of the Scottish Parliament in their income tax liabilities. Given that devolved taxes now account for a significant amount of the money that the Scottish Parliament spends, it is important for accountability and transparency that taxpayers understand the division of tax powers.

We suggested that in terms of the general public, it would be better for the UK and Scottish governments to focus their attention on improving understanding about the nature and extent of devolved taxes, rather than block grant adjustments. We provided ideas about how they could do this and how they could use key events in the tax calendar as a starting point.

The full CIOT response is available here: www.tax.org.uk/ref1018

Joanne Walker jwalker@litrg.org.uk

CIOT		Date sent
Capital Gains Tax: transfers of assets between spouses and civil partners in the process of separating	www.tax.org.uk/ref999	08/09/2022
Sovereign immunity from direct taxation: consultation on policy design	www.tax.org.uk/ref975	12/09/2022
New transfer pricing documentation requirements for UK businesses	www.tax.org.uk/ref997	13/09/2022
Raising standards in tax advice: protecting customers claiming tax repayments	www.tax.org.uk/ref993	14/09/2022
Low earners anomaly: pensions relief relating to net pay arrangements	www.tax.org.uk/ref992	14/09/2022
Scottish government block grant adjustments for tax and welfare devolution	www.tax.org.uk/ref1018	14/09/2022
Scotland's Public Finances in 2023/24 – the impact of the cost of living and public service reform	www.tax.org.uk/ref984	28/09/2022
Digitalising Business Rates: connecting business rates and tax data	www.tax.org.uk/ref988	30/09/2022
A Fairer Council Tax	www.tax.org.uk/ref978	30/09/2022
Increasing the use of mediation in the civil justice system	www.tax.org.uk/ref1027	04/10/2022
ATT		
Raising standards in tax advice: protecting customers claiming tax repayments	www.att.org.uk/ref401	08/09/2022
LITRG		
BEIS Labour Market Inquiry	www.litrg.org.uk/ref2677	08/09/2022
Draft legislation Finance Bill 2022/23: pensions relief relating to net pay arrangements	www.litrg.org.uk/ref2677	12/09/2022
High Volume Repayment Agents	www.litrg.org.uk/ref2679	14/09/2022
Scottish government block grant adjustments for tax and welfare devolution	www.litrg.org.uk/ref2681	20/09/2022

Branch events

What's happening where you are this November?

att

Chartered Institute of Taxation.

LONDON & HOME COUNTIES

What is the source of interest paid to a foreign lender – in the UK (bad news) or abroad (good news)? And is it yearly interest in the first place?
Wednesday 16 November | 6.45 - 8.15 PM
Harrow Masonic Centre, Northwick Circle, HA3 0EL
Visit https://cvent.me/Y14zzb to book your place.

The Construction Industry Scheme (CIS) - a refresher
Thursday 24 November | 6.45 - 8.15 PM
Harrow Masonic Centre, Northwick Circle, HA3 0EL
Visit https://cvent.me/7PaM9l to book your place.

ENGLAND - NORTH

Finance Bill Update
29 November | 1.30 - 4.30 PM
AMP Technology Centre, Advanced Manufacturing Park, Rotherham, S60 5WG
Visit https://cvent.me/mElqxZ to book your place.

IRELAND

Northern Ireland Branch Annual Dinner
Friday 11 November 2022 | 7.00 - 11 PM
Ten Square Hotel, 10 Donegall Square S, Belfast, BT1 5JD
Visit https://cvent.me/g3RG28 to book your place.

Case Law Update
Wednesday 7 December | 5.15 - 7.15 PM
Chartered Accountants Ireland, 32-38 Linenhall Street, Belfast, BT2 8BG
Visit https://cvent.me/xGqn0m to book your place.

ENGLAND - SOUTH & SOUTH WEST

The ScaleUp Blueprint: how to scale up your business with confidence!
Wednesday 23 November | 2.00 - 5.15 PM
Crowne Plaza Reading East, Wharfedale Road, RG41 5TS
Visit https://cvent.me/lEEQgZ to book your place.

You can also view and connect with your local branch online www.tax.org.uk/local-branches

Interested in developing CPD?

Would you like to join the new Online Branch?

Council have approved the establishment of an Online Branch.

The Branch will support the provision of online CPD in line with our charitable purpose – we want good quality CPD which is accessible, affordable and inclusive!

Your role in the organising group for the Online Branch will be to:

1. Filter the suggested topics, we have received from our members, students and the public and offer their opinion on the programme proposed
2. Research speakers as potential content providers
3. Provide relevant titles for webinars and ideas for programmes of events aimed at students, retirees, sole-practitioners, ADITs and more.

We love working with volunteers at CIOT/ATT! Get involved by emailing: branches@tax.org.uk.

News from CIOT and ATT

Party conference debates: tax cuts and the cost of living

The Chartered Institute of Taxation and Institute for Fiscal Studies returned to the Labour and Conservative party conferences this autumn, hosting panel events on tax and the cost of living crisis.

This year's events were chaired by CIOT President Susan Ball and followed the publication of new Chancellor Kwasi Kwarteng's September 'mini-budget', which firmly committed the Conservatives' fiscal firepower towards cutting taxes to grow the economy.

At the Labour conference in Liverpool, Ball was joined by the Economics Editor of the Financial Times Chris Giles, IFS Director Paul Johnson, and James Murray MP, the Shadow Financial Secretary to the Treasury.

Murray accused the government of risking taxpayers' money and 'gambling' with the public finances after 12 years of low growth, low investment and low productivity. He said it was 'inexcusable' for the government to refuse to put in place a more ambitious windfall tax on energy companies.

Johnson said that an incoming Labour government may inherit a tricky economic climate, in contrast to the relatively stable situation it inherited in 1997. He suggested this could make it challenging for the party to 'square the circle' of increased public service investment with commitments to retain the present government's cuts to National Insurance and the basic rate of income tax.

Giles worried that the government's decision to renounce Treasury orthodoxy was a risky strategy, noting 'horrible things happen' to governments that eschew evidence and experience.

He said government needed to think more about the role of incentives in the tax system and argued that the decision to cut taxes and roll-back IR35 reforms posed challenges to productivity and compliance.

A late change to the conference agenda meant that our event at the Conservative conference in Birmingham was transformed into a live streaming of Kwasi Kwarteng's speech, followed by expert reaction.

Joining Ball and Giles on the panel were Stuart Adam of the IFS and John Myers of the YIMBY Alliance, a group set up to improve the quality and affordability of UK housing.

Giles said the Chancellor had delivered some 'very nice words' but questioned the suggestion that Britain's rising tax burden had been the harbinger of sluggish economic growth. A commitment to achieve sustainable economic growth was welcome but had to be backed with evidence of how it would work in practice.

Myers said that the government could face up to the challenge of improving Britain's productivity if it worked intelligently to solve the puzzle. Commitments to fiscal sustainability could be developed alongside plans to reform wider policy challenges, including childcare, education, energy and planning.

Adam welcomed the government's focus on economic growth but cautioned against making assumptions about future growth, which may have worried the markets in the aftermath of September's fiscal event.

As ever, audience questions were a key part of both events.

At Labour, Murray said the government's emphasis on taxation of work over assets was 'misguided'. He argued for a review and potential abolition of business rates, saying it seems wrong that businesses pay them no matter if they are making a profit or not.

At the Conservatives, the decision to scrap the Office of Tax Simplification was felt by Adam to be incompatible with the simplification agenda, while for Giles it had become an overlooked quango. All three panellists acknowledged that the withdrawal of the personal allowance for those earning more than £100,000 per year had created a complicated and opaque point in the income tax system.

You can read our full reports on the party conferences at:
tinyurl.com/LabTax22
tinyurl.com/ConTax22

Conservative debate panel: Chris Giles, Stuart Adam, Susan Ball, John Myers

Labour debate panel: James Murray, Susan Ball, Chris Giles, Paul Johnson

Disappointment at OTS abolition

CIOT and ATT have both expressed disappointment at the Chancellor's announcement that the Office of Tax Simplification is to be abolished.

The government announced in the September mini-Budget that: 'Instead of having a separate arm's length body oversee simplification, the government will embed tax simplification into the institutions of government. It will therefore abolish the Office of Tax Simplification and set a mandate to the Treasury and HMRC to focus on simplifying the tax code.'

John Barnett, chair of the CIOT's Technical Policy and Oversight Committee, called the decision 'hugely disappointing'. He said the OTS had done superb work since it was set up 12 years ago. 'That the OTS's most ambitious suggestions have been ignored – or, at worst, that Chancellors have used the OTS as a parking lot for the too-difficult-to-implement – is down to the decisions of ministers rather than the OTS.'

Barnett queried what 'setting a mandate to the Treasury and HMRC to focus on simplifying the tax code' will mean in practice. 'If it means ministers and senior officials placing a higher priority on simplicity in the tax system that is very welcome. However, we find it hard to see how abolishing the OTS, the independent body with a mission to review the tax system and recommend simplifications, will make that more likely.'

Senga Prior, Chair of ATT's Technical Steering Group, said the axing of the OTS was a shock. She noted that the OTS currently draws effectively on the skills and expertise of those working in tax outside HMRC and the Treasury when making its recommendations for simplification. 'We are concerned that these views will be heard less and even potentially sidelined when the OTS is disbanded,' she added. 'The OTS was accessible and easy for professional bodies and other stakeholders to liaise with because of its many focus groups and keenness for views of those working in tax outside of government.'

LITRG: Tax refund debacle should never happen again

Following pressure from the CIOT's Low Incomes Tax Reform Group (LITRG) to investigate the end-to-end process used by Tax Credits Ltd, a tax refund company, to sign people up to its services, HMRC has announced it will now take steps to resolve the situation for affected taxpayers. LITRG welcomed this announcement but said there is more that HMRC can do to tackle bad practice by certain companies.

Victoria Todd, Head of LITRG, said: 'For more than a year, LITRG has raised concerns with HMRC regarding Tax Credits Ltd (TCL), after a series of complaints to us from taxpayers. We have also raised issues relating to other refund companies and their practices. LITRG has maintained all along that a document with an electronic signature attached, which a taxpayer has not seen, understood or approved, should not be accepted by HMRC as a valid assignment.'

Todd said she was pleased that HMRC will now take steps to put right this wrong. 'We very much hope that lessons have been learned, in terms of how HMRC responds, should a similar situation ever arise again.'

In the news

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

John Barnett, of CIOT, said HMRC's move to arrange 'pre-tax filing' conversation calls with taxpayers and their advisers is a subtle undermining of the relationship between the adviser and the client.

Financial Times, 7 Sept 2022.

Homebuyers face paying more tax to buy a property in Scotland than England after the Chancellor doubled the threshold at which stamp duty kicks in south of the border, the CIOT highlighted.

Daily Telegraph, 23 Sept 2023

'Research by the Chartered Institute of Taxation shows that if the SNP does not cut taxes, someone on a £40,000 salary would pay an extra £395 a year in income tax in Scotland compared with the rest of the UK.'

Scottish Daily Mail, 24 Sept 2022. There was extensive media coverage of CIOT on the impact of the mini-Budget for Scotland.

Joanne Walker of LITRG said she was not surprised that the number of people complaining to HMRC about companies claiming tax repayments on their behalf has more than tripled in two years.'

BBC News Online, 29 Sept 2022

ATT technical officer, Emma Rawson, looks at what contractors and their advisors need to consider following the Chancellor's unexpected IR35 announcement.

Accountancy Age, 7 Oct 2022

Political update

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

The CIOT/ATT External Relations Team attended Labour and Conservative party conferences in September and October and met with a range of politicians and advisers. Head of External Relations George Crozier asked Chief Secretary to the Treasury Chris Philp about the progress of the capital allowances review and the consultation on an online sales tax but the minister gave nothing away.

CIOT has submitted written evidence to MPs considering the Levelling up and Regeneration Bill, in relation to Part 9 of the Bill which contains a proposal for a register of the beneficial owners of UK land. This expresses regret that only a broad framework of enabling powers for this measure is being passed in primary legislation, and that there is a lack of detail and definition within the legislation.

CIOT Vice-President Charlotte Barbour gave evidence to the Scottish Parliament's Finance and Public Administration Committee in September. The session – part of an inquiry into Scotland's public finances in 2023-24 – saw MSPs asking about the implications of further income tax divergence, council tax reform and CIOT's support for improved parliamentary scrutiny of tax changes.

Event

ATT President's Luncheon

Michael Steed and David Bradshaw

On Thursday 22 September 2022, ATT President David Bradshaw, welcomed many distinguished guests to the ATT President's Luncheon. These included key figures from HMRC and senior representatives from other professional bodies, as well as leading individuals from the tax profession. The annual luncheon was held at the Clothworkers' Hall, in the City of London.

Patricia Caputo and David Bradshaw

Larry Darby and David Bradshaw

During the lunch, the ATT Council presented a Council Award to former President Michael Steed, in recognition of his exceptional contribution to the Association. Michael has been actively involved in the Association for many years. As well as being a Council member, he has made an exceptional contribution to the ATT Technical Steering Group and the ATT Conferences.

Two Certificates of Appreciation were also awarded to people who have made a 'Direct contribution to the ATT'.

The first was awarded to Patricia Caputo in recognition of her commitment to the Mid Anglia Branch. For many years, Patricia was instrumental in promoting the ATT and took on the lion's share of running the branch, making it the success it is today. This involved putting in many hours of work and hosting the majority of the technical seminars that have been held there during the years.

Larry Darby was awarded the second certificate in recognition of his invaluable support to the Association, serving on ATT Council, Steering Groups and as our representative on the Taxation Disciplinary Board.

Charities

Giving support where it counts

Valerie Boggs, CEO of TaxAid and Tax Help for Older People on the help these charities can provide to the community.

The cost of living crisis is a constant in the headlines currently but, for some, poverty is not a new reality – it is already a way of life. In some communities, juggling multiple employments, working extra hours and taking cash in hand jobs has been the only way to survive for many years.

Around a third of working-age adults who are in families where there is only part-time work are living in poverty, as are almost a quarter of people working in the administrative and support service sector (see the Joseph Rowntree Foundation's report 'UK Poverty 2022' at bit.ly/3eiSaSt).

TaxAid and Tax Help for Older People reach into these communities to provide the help they need to report the myriad of different and changing sources of income. We also offer help when getting things wrong in the past has resulted in tax debt.

Of the total 14.5 million people living in poverty, around 2.1 million or around 14% are pensioners. Many organisations work to support pensioners, one of which is the Volunteer Visiting Scheme of the BBC pension scheme. Two volunteers from Tax Help for Older People recently attended the Volunteer Visiting Scheme conference to raise awareness of the assistance available on our helpline and the in-person support provided by our volunteers.

One of the most common tax issues faced by this age group can follow upon the loss of a spouse, as the subsequent changes to income can create PAYE code problems. The delegates were delighted to learn about the difference our help could make. Cheryl Miles, the BBC Volunteer Visiting Coordinator, said that the delegates will be sharing this information with the BBC pensioners they visit in their local communities.

Earlier in the year, staff from TaxAid worked with Toynbee Hall (a charity that works to address the causes and impacts of poverty in the East End of London) to provide lunchtime tax advice sessions at two sites of Sir Robert McAlpine Ltd. The workers were able to get help with tax queries while they were on their break. For most, English wasn't their first language and they were unfamiliar with the UK tax system so TaxAid's support was very welcome.

The workers who attended these sessions really benefited from being face to face, particularly those who were able to log into their personal tax account. It is clear that a common problem for non-UK nationals is understanding the tax terminology in their personal tax account, creating unintentional problems. The feedback from Laura Regan, the Social Value Manager at Sir Robert McAlpine Ltd, was great. 'I just wanted to say a huge thank you for coming to these sites over the past couple of weeks – it has been greatly appreciated. We regularly have people speaking to us about financial issues, so it was great to have you here!'

TaxAid and Tax Help for Older People are committed to providing help to those in poverty who cannot otherwise get the support they need. We continue to reach out into local communities to ensure that help can be accessed by all who need it. With your support, we can reach more people.

See taxaid.org.uk *and* taxvol.org.uk *for further details.*

Event

President's Reception: Institute recognises exceptional contribution of volunteers

Susan Ball welcomed volunteers and staff to the National Gallery and thanked them for their work over the past three years

Those attending the reception had the opportunity to take part in tours of the East Galleries, including such celebrated paintings as Van Gogh's Sunflowers and Seurat's Bathers, Asnieres (pictured)

CIOT President Susan Ball thanked the Institute's volunteers and staff for their hard work over the past three years, during her President's Reception, held at London's National Gallery in September.

'Thank you to all of you who are volunteers for the Institute, contributing so much of your time – sitting on our governing committees, running our branches, contributing to our technical work,' she said. 'The Institute is run by its members. You are the embodiment of that. Thank you for all that you do.'

Susan presented a number of Certificates of Merit to long-serving Institute volunteers (see below). She also used her remarks at the event to praise the work of the tax advice charities and those who fundraise for them, especially highlighting the group led by Tina Riches (who was present) who had just completed a sponsored climb up Mount Kilimanjaro for the charities (see page 48).

Institute President Susan Ball presented six Certificates of Merit at the reception. CIOT grants these in recognition of exceptional service to the Institute.

They were awarded to:

- **Keith Bell** (standing, left), for service to Essex branch, Membership and Branches Committee and CIOT Council
- **Stephen Foulkes** (standing, second from left), for service to East Midlands branch, Finance and Operations Committee, Joint Branches Sub-Committee and Audit Committee
- **John Foulkes** (standing, third from left), for service as statistician for CTA and ADIT examinations
- **Chris Williams** (standing, fourth from left), for service to the Institute's technical committees and sub-committees
- **Elizabeth Anfield** (seated, centre), for service to Thames Valley Branch
- **Felicity Whitley** (seated, right), for service to East Anglia Branch

Susan also presented a Past President's medal and scroll to **Glyn Fullelove** (standing, right), who led the Institute as President from May 2019 to November 2020.

And she presented Past Council Member Certificates to two long-serving members of the Institute's Council who have stood down over the past year:

- **Moira Kelly** (seated, left), who served on Council from 2013 until February 2022. She was also the inaugural chair of the Institute's Scottish Technical Committee
- **Daniel Lyons** (standing, second from right), who served on Council from 2011 until May 2022, serving, among other things, as chair of the Education and Examinations Committees

Susan told the gathering: 'As those citations show, the work of the Institute's volunteers is great, varied and essential. We are grateful to each and every one of you.'

Fundraising

Tales from Tanzania

Tina Riches tells the tale of the KiliTaxTeam's sponsored climb to the summit of Kilimanjaro.

This is going to be difficult – to sum up in such a short account how our incredible fundraising ascent of Mount Kilimanjaro went.

After two years of Covid delays, by early 2022 we really thought that our trip in aid of the tax charities was finally about to happen. Then most of us seemed to suffer some sort of blow – between us we had a broken arm, a broken elbow and damaged muscles, as well as some of us catching Covid two weeks before departure.

But such tribulations merely tested our resolve! Eventually, five of us joined our larger group of 16 trekkers at Heathrow Airport, along with our doctor Hannah (who kept a beady eye on us all through the trip) and team leader Will from Action Challenge. Just before our Qatar Airways flight safely arrived at Kilimanjaro International Airport, the mountain peak temptingly pierced the clouds.

> **At the time of writing, we have raised just short of an amazing £22,000 and donations are still coming in.**

The next day, the adventure began in earnest at the Lemosho Gate, where we entered the National Park and met the incredible support team of local guides, chefs and porters. Our route then took us through the rain forest – a great way to start the walk with black and white colobus monkeys serenading us.

As each day progressed and we climbed higher, most of us succumbed to altitude sickness. Meanwhile, the route became increasingly difficult, including climbing the Barranco Wall, which felt like a sheer cliff with no looking down and plenty of cliff hugging!

The last two days of ascent were the toughest, with little time to recuperate while walking through the night with headtorches to the summit, arriving at sunrise before the intense sun started to melt the frozen shale we'd walked over. Given that the temperature was close to minus 20 degrees centigrade, with a bitterly cold wind, hallucinations of a warm café were par for the course! So we did not stay long to reflect on our achievement.

The descent from almost 6,000 metres took a day and a half – down to an incredible welcome with singing and dancing from our amazing support team, without whom most of us would never have made the top.

Early in the trip, our plucky tax team was renamed as the KiliTaxTeam by another mirthful participant and from that moment the wider team gelled. We even picked up some sponsorship on the way – having a captive audience is a great way to explain the work of TaxAid and TaxHelp for Older People!

Thank you to everyone who has sponsored us already. At the time of writing, we have raised just short of an amazing £22,000, and donations are still coming in. You can sponsor the team or one of the trekkers at: www.justgiving.com/team/KiliTax2020

Conference

Joint International Tax Conference

Ana Cecilia Rojí Gómez and María Alejandra Frías Arce bring you a round up of the annual Joint International Tax Conference.

This annual International Tax Conference presented by King's College London, the Chartered Institute of Taxation, ADIT and the International Fiscal Association took place online on 14 and 15 July. Professor Jonathan Schwarz, Barrister at Temple Tax Chambers and Director of the International Tax Law LLM at King's, and Clive Gawthorpe, Chair of the CIOT European Branch, welcomed attendees from many countries.

Opening keynote speech

Manuel de los Santos, Head of the OECD Transfer Pricing Unit, gave the opening keynote speech. He noted that the arm's length principle and Pillar 1 will co-exist for some time.

Manuel discussed the three main elements that differentiate the recently published 2022 Transfer Pricing Guidelines from previous editions: when and how the transaction profit split method should be used instead of other methods; the new chapter 10 on financial transactions; and hard-to-value intangibles. He also announced that the OECD would soon undertake a study of taxation and global mobility as one of the key emerging issues.

Technical sessions

The conference featured a series of panel sessions:

- Current issues in transfer pricing: led by Renata Ardous, Head of Global Transfer Pricing at Chanel;
- Recent international tax cases: led by Jonathan Schwarz;
- Pillar I and II: what about the rest of us?: led by Chair Jennie Rimmer, Group Head of Tax at Canopius; and
- Taxation and digital nomads, post-pandemic: led by Jennifer Bravin, Head of Employment Taxes at BT plc.

Each of the panel sessions featured contributions from business and academic thought leaders from firms and countries around the world, offering a range of different perspectives and insights.

You can find a detailed round-up of the panel sessions in the full article, available on our website at www.tax.org.uk/adit/blog.

Closing keynote speech

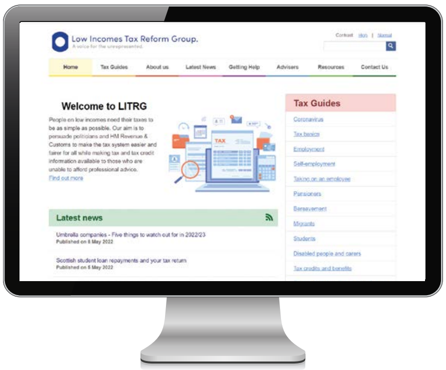
Liselott Kana, Co-Chair of the UN Tax Committee, gave the concluding keynote speech, with highlights of the UN's work on the new UN Model with additions to the Commentary, especially where it diverged from the OECD Model.

Liselotte explained that the new article 12B was designed to address the concerns of developing countries relating to the digital economy. The UN Tax Committee was looking at a multilateral instrument to give rapid effect to the new article 12B. Pillar 1 would not bring benefits to some developing countries that saw digital services taxes as their solution. It was important to have treaties that reflected their concerns to avoid a growth in treaty overrides, as part of maintaining the international rules-based order.

Ana Cecilia Rojí Gómez

María Alejandra Frías Arce

Each of the panel sessions featured contributions from business and academic thought leaders from around the world.



Ana Cecilia Rojí Gómez is a tax lawyer who has international tax experience via her three years working for a top Mexican law firm. She is currently undertaking the LLM in International Tax Law at King's College London. Ana also has renewable energy credentials, having established her own start-up in this area which she ran between 2017 and 2019, having met her co-founders in Silicon Valley while on a US State Department scholarship.

María Alejandra Frías Arce is a lawyer from the University of Piura in Peru and an International Tax Law LLM student at King's College London. Her practice focuses on advising individuals and companies, analysing the tax aspects applicable to their business operations and investments, and tax planning in corporate reorganisations and acquisitions.

Find out more about the events for this year's Joint International Tax Conference at: www.tax.org.uk/adit/blog

TECHNICAL

Spotlight on the joint CIOT and ATT Tax Adviser Committee

Do you read *Tax Adviser* magazine? Well, if you are reading this, of course you do. Do you like what is in the magazine? Our recent surveys indicate high levels of satisfaction with the magazine, with the tax technical content considered by most respondents as having the greatest importance. You can find the full survey results at bit.ly/3RUI5so.

Do you read our weekly technical email, which is circulated on a Tuesday afternoon from either CIOT or ATT, headed '[your name], here is the latest news from [CIOT/ATT]'? You may have noticed that we changed the format of the email late last year, in response to feedback from the previous survey.

We are currently working on another survey to gather further feedback on *Tax Adviser* and the weekly technical email, and we will promote the survey when it is launched because we really want to hear your views. But would you like to have a greater influence on the content of these products? If so, read on.

You will have seen from our previous 'spotlights' that the CIOT and ATT carries out much of its work through its committees. Our joint CIOT and ATT Tax Adviser Committee oversees the *Tax Adviser* magazine (and its online equivalent) and the weekly technical email. The committee's remit covers all aspects of the technical content of these products, seeking to ensure they meet the needs of today's tax adviser by:

- reflecting the broad interests of CIOT and ATT members;
- providing a variety of content across the different tax regimes;
- containing an appropriate level of non-tax technical content (e.g. professional skills type articles);
- addressing topical issues; and
- providing valuable CPD.

It does this by supporting the Editor Angela Partington and Editor-in-chief Bill Dodwell in relation to the magazine's content, providing, facilitating and reviewing feedback on previous content, and acting on the feedback received. The committee also looks ahead to future content, seeking to ensure that it will adequately cover upcoming developments and fiscal events.

The committee meets three or four times a year, mainly virtually, and is currently chaired by former ATT President Yvette Nunn.

We would love to hear from you if you would like to get involved with the committee's work. If so, please contact us at technical@ciot.org.uk or atttechnical@att.org.uk.

Richard Wild
rwild@ciot.org.uk

Profile

Andrada Gorita, ADIT Champion in Romania

We are delighted to introduce Andrada Goriță, our ADIT Champion in Romania.

Since joining the programme in 2020 and achieving the ADIT qualification, Andrada has risen to the role of Senior Manager at KPMG in Romania, where she delivers international financial services in tax for their global client base. Alongside this, as an ADIT Champion she has been busy supporting ADIT students in Romania and organising events, the first of which will take place early November.

Andrada is developing the first webinar on international tax aimed specifically aimed at Romanian ADIT students and affiliates. A global expert, Raluca Enache from KPMG will speak at this event, amongst others.

She explains: 'We will be discussing relevant international tax topics and also tackling the impact on the Romanian business environment. I was also privileged to co-facilitate a discussion panel during the Virtual Awards Ceremony in 2021. Around 100 new graduates participated, during which I received valuable feedback on the student experience.'

Following the most recent ADIT results, Andrada wrote to encourage all candidates in Romania, offering congratulations to successful candidates and pastoral support for those who were unsuccessful in their exams.

Andrada says that being an ADIT Champion has given her 'the opportunity to interact with a number of people, speak at events and promote vital training for all those who want to study ADIT'.

We recognise Andrada's entrepreneurialism and hope that she continues to enjoy success. She is one of a growing number of ADIT Champions that play a key role in promoting ADIT learning in their countries, in liaison with the CIOT's head office in London.

To find out more about events being planned in Romania or around the world and to contact your nearest ADIT Champion, visit: www.tax.org.uk/adit/champions

Andrada Goriță

Join our ADIT community

Our ADIT LinkedIn groups offer a great way to debate emerging international tax issues and opportunities, or to seek discussion on relevant tax subjects – including ADIT in your area. Join Andrada and others in the 'ADIT Professional Group' on LinkedIn and hear the latest on events for Romania. Visit www.tax.org.uk/adit/social-media and join your local group today.

Marie-Eloise Hurley
mhurley@adit.org

Information
Upcoming Annual Return Submissions information

The important membership requirements of the Annual Return 2022 submission and 2023 subscription.

From mid-November, the CIOT and ATT 2022 Annual Return submissions will be available on the member portals. Notices will be going out requesting completion of the returns and the payment of subscriptions.

All members (except for students and those who have updated their membership status to fully retired) are required to submit an Annual Return. Those who are employed must provide details of their employer. Members who are in practice (whether self-employed, in partnership or a company director) must provide their firm or business details and provide confirmation of their AML supervisor, compliance with PII requirements and their PII provider. All members are required to answer a number of conduct questions and indicate compliance with the continuing professional development (CPD) regulations (or provide a reason why they have not met the requirements).

The returns must be completed accurately and members need to provide all details requested. For example, if you are a sole trader as well as an employee you must provide full details of both. We are aware that members can find certain questions (for example, those on CPD or PII) more difficult to answer so we have provided guidance on how to complete the form in our Annual Return FAQs available on the CIOT website: www.tax.org.uk/annual-return-guidance and the ATT website: www.att.org.uk/annual-return-guidance.

The annual return must be submitted and the subscriptions paid by 31 January 2023. Members failing to submit their returns are failing to meet membership obligations and will be referred to the Taxation Disciplinary Board.

We will be sending emails and reminders to all members starting from mid-November onwards to notify them that submissions are open. At this point you can submit your return online. Log on to the Members Portal: pilot-portal.tax.org.uk and navigate to 'Secure area/Members Area/Compliance/Annual Return' where the 2022 form will be located. If you have any difficulty accessing your portal account or completing the return please get in touch with member services membership@tax.org.uk who will be happy to help.

A MEMBERS VIEW

Matt Boggis

Associate Director, Creaseys

This month we are excited to shine the spotlight on Matt Boggis, Associate Director at Creaseys, and a CTA.

How did you find out about a career in tax?
I joined Creaseys in 2012 as a graduate trainee and initially started in audit and accounts. However, I got the chance to work in the tax team during a busy December and January and really enjoyed the variety of work and problem solving to find solutions for clients. The opportunity to work across a wide range of clients was really interesting. I asked to stay in the tax team and the rest is history.

Why is the CTA qualification important?
The CTA qualification was invaluable in consolidating my existing knowledge and strengthening my technical knowledge in areas that I hadn't often come across. It has made me a better rounded tax adviser and given me more confidence, particularly in identifying opportunities and risk areas for clients. It is also great to be a member of the Institute and all this avails in terms of technical training, networking, etc.

What do you enjoy the most about being an Associate Director in tax?
Working with a wide range of clients on a daily basis, developing relationships and supporting them to achieve their goals. I specialise in advising non-residents and non-doms and head up this service line at Creaseys. This involves liaising with advisers in overseas jurisdictions to provide advice to our clients on their global tax position, which I find really interesting.

I also enjoy working collaboratively with the rest of the team here at Creaseys, drawing on our specialisms to provide a holistic service to my clients.

How would you describe yourself in three words?
Approachable, driven and organised.

Who has influenced your career?
I have been really lucky to have worked within a brilliant team at Creaseys throughout my career. We are a training firm and from day one I have felt supported and been given opportunities to stretch myself and improve my skills as a tax adviser.

I have been able to learn from a variety of different people at the firm. There is something I have taken on board from everyone, which has helped to shape me into the adviser I am today – whether that is managing client relationships, developing technical knowledge or helping to develop other team members.

What advice would you give to someone starting their career?
Tax isn't all about the numbers! It is really important to be able to apply your communication skills to explain complicated subjects in simplified terms to clients. Also, don't put pressure on yourself that you should immediately know the answer to every question posed by a client. Tax legislation is far too wide for anyone to know everything.

What are your predictions for tax in the future?
If the last few weeks are anything to go by, tax will continue to be ever-changing! We are continuing to take steps towards 'Making Tax Digital'. I don't believe, though, that technology will be able to replace the importance and value in having an adviser who knows their client, what they are trying to achieve, and their worries and concerns. The best tax answer may not always be the best answer for the client.

Tell me something about yourself that others may not know about you.
I am a long-suffering Tottenham fan!

Contact

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

The ATT is recruiting a Lay Public Interest Council Observer

The Association of Taxation Technicians wish to appoint a Lay Public Interest Council Observer to succeed the current appointee whose term of office will shortly expire.

The Lay Observer will advise Council on the public interest and support the Association's pursuit of its charitable objects which include the study of, and education in, taxation.

As well as being Trustees of the Charity, members of Council are also Directors of the Association which is a company limited by guarantee. Council currently comprises 17 Trustees.

The Association has over 9,300 members and Fellows, as well as 4,500 students and is the leading professional body for those involved in tax compliance work.

Ideally, applicants should have significant relevant experience of a 'public interest' role. However, applications from suitably experienced individuals from other disciplines are also welcome. Applicants should not be members of the Association of Taxation Technicians or the Chartered Institute of Taxation.

For further details, please visit our website at: www.att.org.uk/about-us/vacancies

Applications should be emailed to sfraser@att.org.uk by 30 November 2022.

The ATT seeks new Trustees – could you be one of them?

If you would like to play a part in influencing the future of the tax profession, have you considered applying to join ATT Council? If you are a member or Fellow of the Association, and have at least three years' post-qualification experience, we would love to hear from you.

As an educational charity all our Council members are trustees who work as a team to ensure that the ATT fulfils its charitable objects: to advance public education in, and promote the study of, the administration and practice of taxation; together with promoting and maintaining the highest professional standards among the membership.

There are four Council meetings a year, two of which are held at our offices in London and two are virtual. All members of Council also serve on a Steering Group. We are particularly interested in applications from tax professionals who have an interest in education and/or professional standards. Serving on Council will give you strategic experience, enabling you to develop and hone your critical thinking, problem solving and analytical skills, as well as developing team working skills.

Council members are unremunerated (with the exception of travel expenses).

An application pack and further details of the trustee role can be found on our website at: www.att.org.uk/about-us/vacancies.

All applications must be received by 17:00 on Tuesday 3 January 2023.

If you would like to apply, or find out more about what being a Council member involves, please contact Sue Fraser: sfraser@att.org.uk

GEORGIANA HEAD

Taxation Recruitment

GEORGIANA HEAD

Director

Tel: 0113 426 6672
Mob: 07957 842 402

georgiana@ghrtax.com

In-house Tax Manager
Manchester – £excellent

International group seeks a Group Tax Manager, reporting to the Head of Tax and Treasury. Day to day, your role will be to manage tax matters across all taxes and territories. You'll help manage the relationship with HMRC and improve tax systems. You'll liaise with advisors, provide technical support and advice and, where appropriate, get involved in projects including tax due diligence and related structuring for M&A activity. This role would suit a UK qualified ACA, ICAS or CTA with proven large group corporate tax experience. You may currently work in practice or in industry. Full time or 4 day week considered. A classic in-house role. Great benefits package. **Call Georgiana Ref:3293**

Tax Manager
Newcastle-under-Lyme – £38,000 to £45,000

Independent accountancy firm with offices in Cheshire and Newcastle-under-Lyme seeks a tax manager to help oversee and run tax compliance. In this role, you will supervise more junior staff and help train them. About 90% of your time will be spent dealing with tax compliance for HNW individuals, owner managers and their businesses. This firm is looking for someone who wants to build long term relationships with their clients, who can liaise with the IFA team and offer a good all round tax service. There will also be the opportunity to get involved in some planning work. Good benefits package and friendly team. Flexible working and hybrid working available. Ideally you will be ATT qualified or equivalent. **Call Georgiana Ref: 3294**

Corporate Tax Manager
Harrogate – £excellent

Looking for a local corporate tax role? This well regarded practice seeks a qualified corporate tax specialist to join a friendly team based in the centre of Harrogate. You may be looking to relocate to Harrogate or may currently commute to Leeds. Lovely offices with a mix of home and office working available. Great client base ranging from local OMBs to dynamic international groups. Mix of compliance review and advisory work. Plenty of client contact. Will consider part-time. Great benefits package. Also plenty of scope for promotion – means this role ticks all the boxes. **Call Georgiana Ref: 3276**

Senior Tax Analyst/Assistant Manager
Bradford – £50,000 to £55,000 + bens

In-house tax team of global chemical distribution group seeks a qualified corporate tax professional. In this role, you will deal with all round corporate tax compliance and reporting work, and you will assist tax directors with advisory work including getting involved in transfer pricing. This role can be worked on a hybrid basis, ideally with 3 days a week in Bradford. There is plenty of parking available and a great salary and benefits package. You'll be involved in the nitty gritty, including preparation of monthly and quarterly reporting under US GAAP as well as helping the finance team with tax disclosures. **Call Georgiana Ref: 3282**

Private Client Manager
Harrogate – £excellent

Looking for a local personal tax role? This well regarded practice seeks a qualified private client tax specialist to join a friendly team based in the centre of Harrogate. You may be looking to relocate to Harrogate or may currently commute to Leeds. Lovely offices with a mix of home and office working available. Would really value someone with strong compliance management skills. Plenty of client contact. Will consider part-time. Great benefits package and the opportunity for hybrid working mean this role can help work life balance. **Call Georgiana Ref: 3276**

Corporate Tax Private Business
Leeds or Manchester – £excellent

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

www.georgianaheadrecruitment.com

Group Tax Manager
Hull – £excellent

Large international group is expanding its tax team and looking for an experienced corporate tax professional who can help run compliance and reporting. In this role, you will business partner with overseas entities and tax advisers to ensure compliance deadlines are met. You will be a focal point for corporate tax compliance on a global basis. There is also the opportunity to deal with project work such as R&D tax and assisting the head of tax with transaction work. Would consider someone remote working who could travel to Hull once a week. Would also consider a part time hire for a more experienced candidate. **Call Georgiana Ref: 3285**

Tax Analyst or Tax Accountant
Liverpool – £36,000 to £45,000 + bens

Large international group seeks a qualified corporate tax professional to join their in-house team based in a shared service centre in the heart of Liverpool. In this role, you will gain valuable experience of VAT and employment taxes, which will help you to progress in industry. This is an ideal first move into an in-house position. Would consider someone more experienced on a part time basis. For full time, this business works c. 3–4 days in the office and 1 from home. You will get the opportunity to report to and learn from experienced in-house tax professionals. **Call Georgiana Ref: 3283**

VAT Accountant or Manager
Manchester – £35,000 to £50,000 + bens

Newly created role in a growing in-house tax team. Reporting to a senior VAT manager and a Head of Tax, you will help run the day-to-day VAT compliance and reporting for this international group. You will liaise with the business and the finance team to ensure timely preparation of VAT returns. You will help with forecasting and will also deal with advisors in the UK and overseas. Would consider someone looking for a step up to manager. Based in the Trafford Park area of Manchester. Hybrid working available – and a really great team. **Call Georgiana Ref: 3278**

Corporate Tax Manager
Huddersfield – £excellent

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

VAT Senior Manager – In-house
Manchester – £65,000 to £75,000 + bens

Our client is an international group headquartered in Old Trafford in Manchester. They seek an experienced indirect tax professional to manage their VAT on a worldwide basis. This will include management of a more junior member of staff, review of VAT returns, liaison with external advisors and overseas accountants, dealing with the relationship with HMRC and overseas revenue authorities, dealing with queries from the business and helping educate teams within the business. An excellent in-house opportunity, this would suit an experienced manager or senior manager, and reports to a Head of Tax. **Call Georgiana Ref: 3277**

In-house Assistant Tax Manager
Blackburn – £excellent

Based in Blackburn, this role is office based in a busy finance team. This role provides an opportunity to join one of the fastest growing businesses in the UK, giving the candidate exposure to a broad range of UK and international corporate tax matters within a supportive and dynamic team, with excellent opportunities for future progression. The ideal candidate will be ACA/CTA qualified or part qualified, with compliance and reporting experience gained in a large accountancy firm, as well as some knowledge of international groups. Good mix of project work too. **Call Georgiana Ref: 3286**

WE'RE HERE TO BE YOUR MATCHMAKER

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

Chartered Institute of Taxation.

Opportunity to be an examiner for the CIOT

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

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

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

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

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

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

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

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

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

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

SCAN ME