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April 2020

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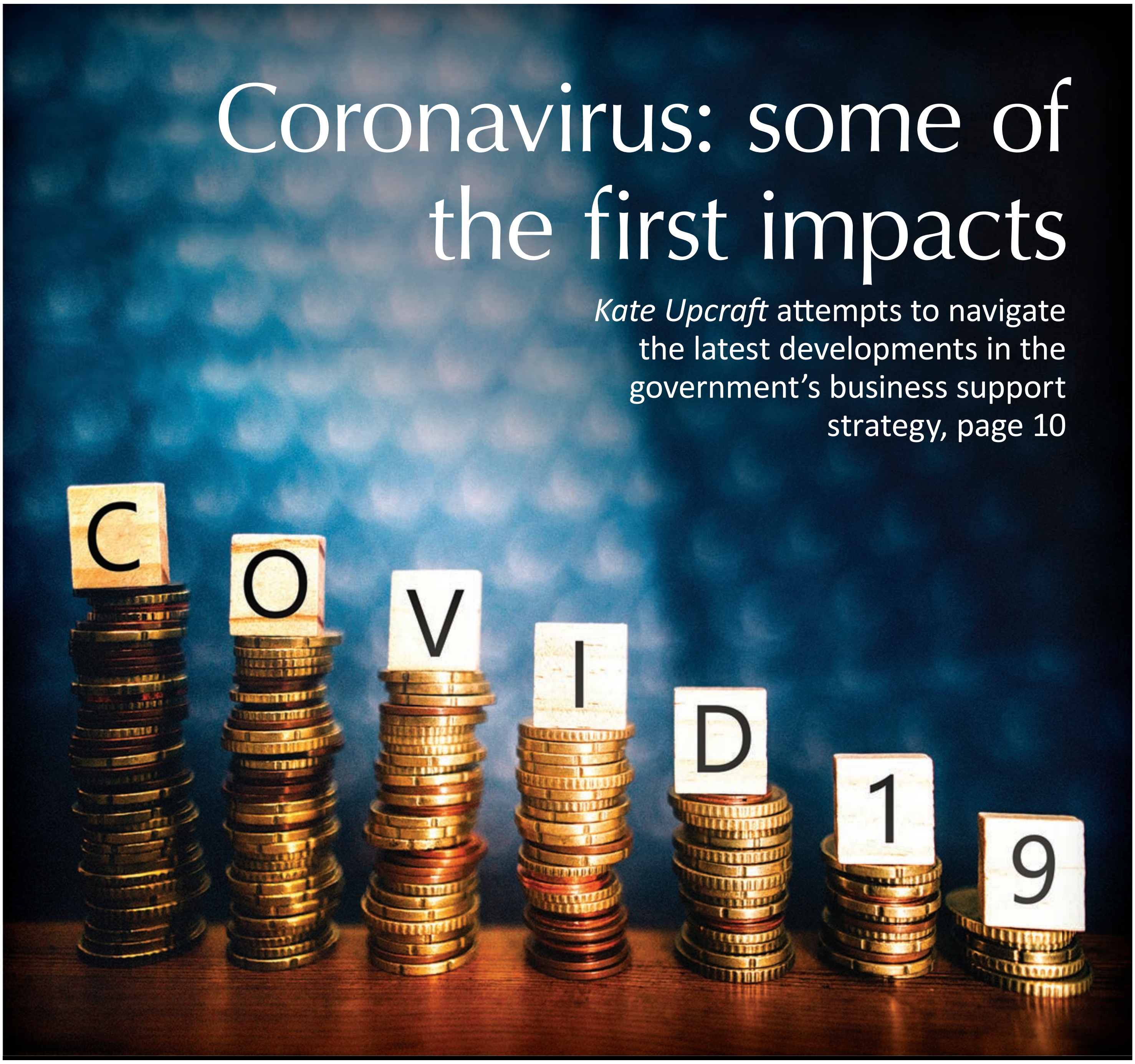

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MAGNETIC NORTH

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

IN-HOUSE GROUP TAX, PART-TIME

LEEDS Circa £70,000 FTE + benefits

Corporate & employment taxes, VAT, international tax and wider governance including SAO – make this a terrifically interesting, PART TIME opportunity. This role is ideal for a confident, broadly skilled, generalist tax professional who has experience of working in industry in a similar stand-alone position. You will work with senior finance colleagues and be encouraged to tackle inefficiencies and processes head on – taking ownership of the challenge. **REF: S3058**

CORPORATE TAX COMPLIANCE – SENIOR MANAGER

MANCHESTER To £75,000 + benefits

The specialist corporate tax compliance and reporting team at this big 4 firm is looking to recruit a Senior Manager with a wealth of experience in corporate tax compliance and tax accounting, gained either in practice or industry. Remote /flexible working and part time hours will be considered in this highly sought-after position. **REF: A3080**

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Ideal opportunity for a part or fully qualified CTA to join the finance team of a global group, in this UK / international, corporate and income tax role. You will be calculating and reviewing income tax; capital allowances, and deferred tax computations plus assisting with year-end reporting. You need engaging communication skills, will be a positive, motivated team member and willing to demonstrate flexibility in your approach to work. A fabulous opportunity on the path to longer term, progressive career development. **REF: S3072**

TAX ADVISORY MANAGER

LANCASHIRE To £50,000 dep on exp

Broad ranging advisory role at a growing, forward thinking independent firm in Lancashire. This varied and interesting role would suit a recently qualified CTA with a background in either corporate or personal tax. A great opportunity if you are looking to enhance and develop your tax advisory skills working as part of a friendly and dynamic team. **REF: A3081**

CORPORATE TAX DIRECTOR

MANCHESTER £Six figures

If you are an experienced Senior Manager frustrated by the lack of progression opportunities at your current firm, or an existing corporate tax director looking for a new challenge, then this could be just the opportunity you have been waiting for. You will play a key role at this international firm working as part of a growing and vibrant tax team with an exceptional client base. **REF: A3079**

IN-HOUSE CORPORATE TAX M'GER

LEEDS £60,000+ benefits

A great new role with a market leading brand, in a predominantly UK corporate tax compliance role (which will include some international tax project work.) This tax accounting and corporate tax position demands solid and robust reporting skills ideally gained within a top practice or in a similarly senior position in industry. Reporting to the group tax manager, this important position will stretch, challenge and reward a corporate tax professional looking for longer term progression. **REF: S3060**

TAX MANAGER IN-HOUSE

STOCKPORT £48,000-£55,000

In this hands-on role you will manage the regional direct tax accounting and compliance function and advise the business on a wide range of UK & international tax matters. The focus will be on UK compliance/advisory and US tax provision reporting, but given the range of countries the group operates in (20+) there is plenty of variety and lots of ad-hoc tax projects , such as developing the group's TP policy in terms of documentation and processes. **REF: R3064**

ASSISTANT TAX MANAGER

MID CHESHIRE c£46,000-£50,000

Reporting to the Group Tax Manager of this PLC, this varied role covers group tax compliance, UK CT computations & UK Group tax payments & year-end tax reporting, as well as assisting with M&A activities and transfer pricing projects. This opportunity provides lots of scope for career development as the business continues to grow. **REF: R3082**

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Mike Longman FCA CTA: mike@taxrecruit.co.uk; **Ian Riley ACA:** ian@taxrecruit.co.uk; **Alison Riordan:** alison@taxrecruit.co.uk; **Sally Wright:** sally@taxrecruit.co.uk

Meticulous, profound, smart. Andrew was a real pleasure to work with during the entire recruitment process. He offered pragmatic advice at every stage of the process which gave me reassurance in what can be a challenging moment in one's career.

Candidate placed into EY at Senior Manager level

Andrew has been absolutely amazing! I cannot thank him enough for his effort, consistency and the time he put in securing me a fantastic new opportunity in Dubai. Andrew understood my requirements and matched me with the most suitable company. He is responsive, personable and takes pride in achieving the best results for each and every candidate he engages with. The support I have received from him right from the start of my journey until the end has been phenomenal. I have no hesitation in recommending Andrew Vinell Tax Recruitment Ltd to any potential candidates seeking new opportunities. You will not be disappointed.

Candidate placed into EY at Senior Manager level

Andrew helped place me as a Senior Manager at PwC. From the start, Andrew took the time to understand me and provided me with a wide range of interesting and appropriate opportunities to explore. The fact Andrew is a former tax practitioner himself and has a strong industry knowledge as a result of this, differentiated him from other recruiters. His proactiveness, enthusiasm and accessibility meant that the whole process, from initial discussions to finding in my new role, went as smoothly as possible. All in all, Andrew was terrific in helping me find an excellent role for the next phase in my career.

Candidate placed into PwC at Senior Manager level

Andrew was focussed on what I wanted to achieve from our first meeting through to accepting my offer. He was incredibly responsive throughout the entire process and assisted me with thorough preparation and sound advice for all of the interview stages involved. Andrew's exceptional knowledge of the industry, gained through his personal experience of working in Tax makes his insight invaluable. I would recommend Andrew to anyone looking for a new opportunity!

Candidate placed into EY at Tax Manager level

I would like to thank Andrew for a smooth process. He managed everything pe… interview to … with EY. His p… attitude are se… highly recomm… tax professio…

Candidate … Qatar at Dir…

I was delighted that we found the right candidate and I think that it is due to no small part played by you in finding a good selection of profiles which you knew would match our company. Although there were administrative difficulties at the start of the process, you shrugged them aside and dealt with them in the background whilst retaining your focus on recruiting the right candidate. Your feedback to me on what was happening and when was timely and I appreciated being kept in the …

Director of Global Indirect Tax, FTSE100 company

Utterly invaluable, Andrew has successfully helped us find and hire high quality candidates. He listens, works tremendously hard, is committed, keeps you updated and delivers. Andrew is an extremely reliable and fruitful source. He is also very amiable, which makes the whole process a delight!

Big 4 Senior Partner

Tenacious and persistent, Andrew has proved exceptional when it comes to recruiting various positions for my team. His patience, loyalty, tremendous knowledge and experience of the industry serve him well. Beyond this, he is an all-round approachable, affable, and … work with; a … always rely …

…ding global …-commerce

…bout working …at he is very easy to get on with. It's clear to me that his pleasant nature is part of what makes him such a successful recruiter. He is a people person, but beyond this he also has an incredible and extensive knowledge and awareness of his field, it is very evident that he's worked in the tax profession himself earlier in his career. The combination of his fantastic personality and terrific business acumen are evidently a winning combination.

Candidate placed into EY at Assistant Manager level

I had a wonderful experience working with Andrew, all the way from the initial conversation, to the placement. Andrew could not have been more helpful and professional in his approach. Now, I've landed a job with one of the best firms in the industry and I am very happy in my new position. I am very grateful to Andrew for all the help and support, his excellent service and efficiency. I would highly recommend him to others.

Candidates placed into EY Saudi

Andrew was a pleasure to work with throughout the process. He was always responsive, reverting quickly on issues and questions and providing good practical advice. Andrew provides an excellent recruitment service in the specialised area of tax and I would strongly recommend him to anyone looking for that next career move in tax.

Tax Director placed into Top Ten Accountancy Firm, Saudi Arabia

Working with Andrew is always a pleasure. He's very friendly and approachable, and takes the time to understand what kind of role the candidate is after.
Andrew has a great understanding of the practice environment and was able to place me in the right team in the right firm for me to further my career.

Candidate placed into PwC at Tax Manager level

… meeting through to accepting my offer. He was incredibly responsive throughout the entire process and assisted me with thorough preparation and sound advice for all of the interview …

… patience, loyalty, tremendous knowledge and experience of the industry serve him well. Beyond this, he is an all-round approachable, affable, and attentive person to work with; a …

…ience … way …n, to …d not … and … his approach. Now, I've landed a job with one of the best firms in the industry and I am very happy in my new position. I am very grateful to Andrew for all the help and …

Interested in finding your next opportunity?

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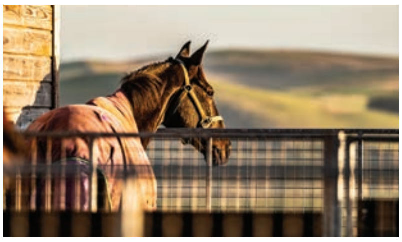

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GENERAL FEATURE

Vice President's page

president@ciot.org.uk
Susan Ball

With a little help from my friends

With coronavirus keeping our physical health at the top of the news agenda, we must not forget about another silent killer: our mental health. This is something I personally feel passionately about, having seen all too closely the devastating impact that mental health struggles can have on friends and their loved ones.

We all have times when life gets on top of us. Whatever the cause, the consequences can be horrible – both for us as individuals and for those we care about.

Initiatives, such as the national 'Time to Talk Day' and the CIOT/ATT's recent wellbeing workshop are helping to encourage everyone to be more open about mental health – to talk, to listen and to change lives.

Sir Winston Churchill, for all his superhuman strengths of courage and resilience, was prone to bouts of depression. He called it his 'Black Dog' and there was only one means by which he succeeded in chasing that Black Dog away, using the same therapy that lifts the spirits of millions of us – work.

We all know someone who, at some point, has thrown themselves into their work as a coping mechanism. But what happens if work is the problem?

Work is a massive part of our lives. We work an average of 37 hours per week (for many it is much more) and, when you factor in time spent commuting, it is an even more time consuming part of our lives. No matter how much you love your job, we all have bad days. None of us is immune from experiencing mental health challenges, just as none of us is immune from physical illness.

When we enjoy good mental health, we have a sense of purpose and direction, the energy to do the things we want to do, and the ability to deal with day to day challenges. Our mental wellbeing is something we all need to pay attention to. If you broke your arm, would you simply ignore it? Of course not. So why treat your mental health or that of your colleagues any differently?

The way we work has changed. The emergence of 24/7 email and mobile access has revolutionised working patterns, but also created new pressures. There are times we all need to switch off and recharge our batteries. How we do this is different for everyone but there have been some great suggestions in recent *Tax Adviser* articles.

What does this all mean for the accountancy profession? Research by AAT found that 90% of people who work in accountancy have been stressed out by work, with 43% having to take time off as a result of stress. Recent research by CABA, the wellbeing charity for accountants, found that just 2% of accountants are unaffected by stress. Undoubtedly, the accountancy profession is one of the most stressful industries to work in.

Perhaps more worrying is a significant generational divide. CABA found that nearly half of all 18 to 44 year-olds feel stressed every day, compared to just 15% of those over 55. This may be because stressful life events such as getting married, buying a house and having children are more likely for this age cohort. Equally, it could be because older people learn how to cope more effectively and when to ask for help.

One of the most important ways to keep yourself mentally healthy is to recognise when you're not feeling good and to know when – and who – to ask for help. There should be no shame in asking someone for support if you're feeling low or stressed. Speaking personally, I can pinpoint key moments in my life which have impacted my mental health. Thankfully, friends and colleagues were always there for me when I asked. To all of them a big thank you for listening and helping me cope. There was never one answer and help can take many forms, whether a cup of coffee and a sympathetic ear or taking a report and tidying it up because I couldn't see the wood for the trees.

This year, Mental Health Awareness Week will take place from 18-24 May 2020. The theme for 2020 is 'sleep'. The week will focus on the connections between our sleep – or lack of it – and mental health.

I am convinced about the importance of talking about our mental health at work. But we also know that it is sometimes easier said than done. Based on my own experience and that of friends and colleagues, my advice is to consult (inside and outside of work), think about what you need, what might help and find the right time and place. Above all, however, try and look after your whole self.

Susan Ball
Vice-President, CIOT
president@ciot.org

> **"If you broke your arm, would you simply ignore it? Of course not. So why treat your mental health any differently?**

ATT welcome

page@att.org.uk
Richard Todd

A new year begins

What are the highlights of the coming months that affect us? I can think of three.

First, the revelations of last month's Budget, the first one since October 2018 – we missed one in 2019 because of the general election. By now the ink has dried on the commentary and is being followed by close inspection, line by line, of the detail. The tax lecturers are working to update their lectures to keep us all abreast of the changes and how those changes affect our clients. That translates into providing a better service to our clients.

We were warned that there would be changes around entrepreneurs' relief, the rate of corporation tax would not reduce to 17%, and there would be an increase to the employment allowance, and to expect some announcement about pension tax relief. You may recall the latter came about because of the ongoing crisis in healthcare as doctors were reducing their working hours to avoid incurring a tax bill on excess pension savings. Time will tell if this announcement has been successful.

The second must be coronavirus (COVID-19) and how it has affected, and continues to affect, daily life and the UK economy. With this in mind, we should now be thinking about how we can best service our clients. For farmers, of course, I think immediately of farmers' averaging elections and reviewing future payments on account. For other unincorporated businesses, is it about time we considered a possible change of accounting date, especially if there is a lot of overlap relief being carried forward annually?

The third continues to be Brexit. The transition period is due to end this December. Although it may seem like ages away, it is now less than nine months. Our clients have had two false starts so far. Have they now taken stock of how Brexit may affect their business and taken whatever steps possible to be ready? As a tax practitioner, it falls on us to be able to guide our clients in relation to tax matters, be they direct or indirect taxes.

I only suggested three items. If I had been pushed for a fourth answer, I would have said Making Tax Digital as that could be 12 months away. But anyway….

To those of us who have attended the annual Branches Conference at Scarman House Warwick University, you will understand my next comment. The staff at Monck Street make this event an opportunity for the Officers of each Branch up and down the country to meet and discuss their successes at local Branch level. I find the staff who organise the event are dedicated and resourceful, making the event into the success that it is. Each and every one deserves praise.

I have not been at Branches Conference since I was the Chair over 10 years ago, but I am still impressed how smoothly everything seems to flow. I am hoping that I am invited back next year.

I was particularly interested to hear Helen Whiteman discuss the new Safeguarding Policy, which is to protect people that we, as tax professionals, may come into contact with during our career as a tax professional.

I must confess that I am not tech-savvy and acknowledge being a bit of a dinosaur with social media. Head of ATT Jane Ashton's presentation on the Social Media Guidelines makes for interesting reading. Although aimed specifically at volunteers, it does make one realise that a post on social media is forever. Delete does not necessarily delete all traces. Well done, Jane.

I was hoping that I could have added my sincerest congratulations to all those prize winners who attended our luncheon to celebrate their success but unfortunately, due to the health situation, this event has been postponed until a future date.

We are currently reviewing all our events in line with government guidance and will update you as soon as we can. I hope the worst of coronavirus is behind us soon so we can get back to doing what we do best – being tax practitioners providing an excellent client service.

Richard Todd
ATT Vice President
page@att.org.uk

"The tax lecturers are working to update their lectures to keep us all abreast of the changes and how those changes affect our clients.

An update for our

The COVID-19 outbreak has caused all of us all to change how we live and work, and this includes the CIOT and ATT

Impact on members and students

We know COVID-19 is having a huge impact on our members, students and volunteers. Things are moving fast and official government guidance is obviously the first place to look for advice on managing your business and working life in the face of COVID-19 related challenges.

Please be assured that we are working incredibly hard to continue to support you all at this difficult time. If you have work-related personal problems, please contact our Members Support Service on 0845 744 6611 to be put in touch with a volunteer member of the Support Service. An independent, sympathetic fellow practitioner will listen in strictest confidence and give support, but they cannot offer advice of a technical nature.

Additionally, the Charity Committee of the Worshipful Company of Tax Advisers considers applications for hardship grants from CIOT and ATT members in financial need. Please email almoner@tabf.org.uk for an application form. There is a piece with further information about the Tax Advisers' Benevolent Fund on page 50 of this issue.

Public information and support

We are both very aware of our public benefit obligations at a time like this. Our Low Incomes Tax Reform Group (LITRG) has already published guidance on tax and related benefits in the context of COVID-19. Areas covered include tax bills, sick pay and benefit entitlement for the self-employed during the pandemic, and tax credit and universal credit impacts. Do help us publicise this if you can.

LITRG's guidance is aimed at the general public, but ATT and CIOT technical teams are also publishing updates on our websites for members and other tax professionals. At time of writing (18 March), a number of tax changes and relaxations have already been made by government in response to COVID-19 and we are in the process of writing to the government identifying more that our members have suggested could be done to help businesses and other taxpayers get through this challenging time.

Our staff and offices

The wellbeing of our staff, members, students, volunteers, business partners and stakeholders remains our utmost priority. As such, all our employees are now working from home until further notice, in line with the latest government advice. Our offices in Monck Street, Westminster are now closed for the duration of the outbreak.

We are trying to maintain as normal a service as possible, however response times may be longer than usual. There may be limitations on our ability to manage phone calls so if you wish to contact us, please do so by email in the first instance.

We will be replacing our face to face meetings that would have taken place in Monck Street by online alternatives or conference calls until further notice.

Our events

The latest government advice is to avoid large gatherings and non-essential contact more generally so we have taken the difficult and unprecedented decision to cancel the CIOT's Spring Residential Conference in Cambridge on 27-29 March. This is a huge disappointment as we know how many people look forward to it, and how much work our presenters in particular have put into preparing for it.

We have also cancelled the CTA and ATT Admission Ceremonies that would have taken place in April and May, and our latest debate held jointly with the Institute for Fiscal Studies, which was to have taken place on 30 March.

The CIOT AGM was scheduled for 19 May but, as set out elsewhere in the Briefings section of this issue of *Tax Adviser*, we are postponing it by up to three months. Members will be contacted at least 21 days before the new date, once it has been set. The CTA Address and reception, which normally take place on the same day as the AGM, are being rescheduled.

We will be replacing our face to face ATT Conferences in May and June with online alternatives. Details for specific events will be issued as soon as we have them. Please look out for updates on our website and social media channels.

By the time you read this, a decision will have been taken on whether the May ATT and CTA exams will go ahead as planned.

Our computer based exams are continuing, though some test centres have been closed and candidates booked in to these are having to rearrange. All the test centres have put in place rigorous hygiene procedures.

For regular updates on all our events, please visit both of our websites.

Branches and CPD

Our branch programme has been hit hard by this situation too. We are postponing all face to face branch events unless there are very compelling reasons to proceed. This is until further notice.

We are making every effort to ensure CPD for our members continues and wherever we can, we intend to replace cancelled face to face meetings with digital content to help our members to stay apprised of important technical issues.

members and students

Members and non-members who have booked and paid for face to face CPD will be credited where an online provision can be found, and refunded where a digital equivalent is not available.

We are working through these plans. Please bear with us whilst we adapt and do get in touch if you have any questions. Email us at branches@tax.org.uk providing your telephone number and the nature of your enquiry, and a member of the team will call you back as soon as possible.

We have no doubt we will get through this together and come back better than ever. There are a lot of exciting things on the horizon for both ATT and CIOT. We are all about promoting education and improving the UK tax system and seeking to ensure that, for the general public, it is workable and as fair as possible and that is what we will continue to do.

As this situation evolves, we will continue to keep you updated through our weekly newsletter, social media channels and website. Please take care of yourselves, your family and friends.

Helen Whiteman
Chief Executive, CIOT

Jane Ashton
Chief Executive, ATT

Helen Whiteman
Chief Executive, CIOT

Jane Ashton
Chief Executive, ATT

> We know COVID-19 is having a huge impact on our members, students and volunteers. Please be assured that we are working incredibly hard to continue to support you at this difficult time.

CONTACTS AND LINKS

During the coronavirus outbreak, while our staff work remotely, all communication should be directed to one of the following email addresses:

Education (CTA):
education@ciot.org.uk
Education (ATT):
education@att.org.uk
Education (ADIT):
education@adit.org
Membership:
membership@ciot.org.uk
membership@att.org.uk
Technical:
technical@tax.org.uk
atttechnical@att.org.uk
Marketing & Business Development:
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Technical news:
twitter.com/CIOTNews
twitter.com/ourATT

For further information

Government COVID-19 advice (including for businesses and employers):
bit.ly/3a1BC9T
HMRC tax helpline to support businesses affected by COVID-19:
Tel: 0800 0159 559
bit.ly/2IUlf31
LITRG guidance for the public:
www.litrg.org.uk
Updates from technical teams:
www.tax.org.uk/policy-technical/technical-news
www.att.org.uk/news
Branches news:
www.tax.org.uk/members/local-branch-meetings-events
www.att.org.uk/branch-network

Meeting a major challenge

Bill Dodwell reports on the first Budget of the Johnson government

Chancellor Rishi Sunak delivered his first Budget on 11 March in challenging circumstances. Appointed less than a month earlier, he faced the major challenge of responding economically and financially to the coronavirus pandemic. Without any introductory remarks, he immediately moved into the government's response, noting that the virus would have a sharp economic impact on the UK, and indeed globally.

Response to coronavirus pandemic

The government's response at the Budget was to offer substantial additional finance to the NHS and improved financial support to individuals and to businesses. For individuals, waiting periods for benefits will be removed so that benefits are paid from the first day of sickness and indeed for a 14 day period of quarantine without symptoms. Businesses will receive 'time to pay' help if needed. Details of the support package are available on the Low Incomes Tax Reform Group website at bit.ly/2WqF8Xr. The Budget support package is expected to cost £12 billion.

Within a week, it was clear that further support for individuals and businesses is needed, as activity in the UK and indeed globally is substantially reduced. On 17 March, the chancellor announced support in the form of guarantees and loans for smaller businesses (up to £5 million, interest free for six months), together with 12 month business rate holidays for those in the retail, hospitality or leisure sector. Smaller businesses in that sector with a rateable value of less than £51,000 will now get a cash grant of up to £25,000. 700,000 of the smallest businesses (those which currently get small business rate relief, in any sector) will get a cash grant of £10,000. This support package is worth £20 billion, on top of the original £12 billion. The chancellor said that he would be working with business and trade unions to 'develop new forms of employment support to help protect people's jobs and incomes'. No doubt support will also be needed for self-employed people – and it's also clear the businesses in all sectors will need more financial support.

As a further response to the pandemic, the government also announced that the extension of the off-payroll working rules to the private sector would be delayed a year. The CIOT has also asked the chancellor to consider deferring the introduction of the 30 day reporting and payment arrangements for capital gains tax on the sale of residential property.

Manifesto changes

The increase in the national insurance threshold for individuals to £9,500 (and £8,788 for employers) had already been announced. The upper earnings limit remains at £50,000.

The announcement of the chancellor's review of entrepreneurs' relief had been well trailed in advance of the Budget, with proponents and opponents making their views clear. The relief was introduced in 2008, as the then Labour government announced the end of the effective 10% capital gains tax rate on business assets. The initial level of the relief was £1 million – and that's where the relief now returns, after having been increased to £5 million and £10 million by George Osborne. To many, the relief now becomes a retirement relief. There are some quite draconian anti-forestalling provisions worth noting in case of contracts before Budget Day, with the disposal afterwards. The cut in the level of the relief is expected to bring in about £1.5 billion annually and will affect about 45,000 people.

The other well-trailed change is the removal of the reduction in corporation tax to 17%, from 1 April 2020. This was confirmed in the Budget and brings in some £6-7 billion annually. This change will affect the valuation of deferred tax assets and liabilities, once substantively enacted (which means once the Finance Bill has finished the House of Commons stages).

Business tax changes

The structures and buildings allowance was introduced from 29 October 2018, with an annual allowance of 2% for businesses incurring qualifying expenditure on newly constructed or renovated non-residential structures and buildings. The chancellor announced a new rate of relief of 3% per year from 1 or 6 April 2020, not just for new buildings but for existing ones already receiving the allowance. This reduces the time it will take to relieve qualifying expenditure from 50 years to just over 33 years. There will also be technical changes, to ensure that the legislation: allows relief for the first day of qualifying use; allows simplified calculations for all qualifying non-residential structures or buildings; prevents double relief where research and development allowances are available; includes oral construction contracts; and clarifies apportionment of allowances and allowances on contributions towards another person's costs.

The topic of business rates is raised constantly by retailers. There have been a number of recent reviews, but the chancellor has decided to commission a new one, ideally to report in time for the autumn Budget. This time it will be a 'fundamental review of business rates with the objective of reducing the overall burden on businesses; improving the current business rates system; and considering more fundamental changes in the medium-to-long term'.

The review will focus on four main areas:

1. Short-term improvements that could be made from April 2021, alongside the

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forthcoming revaluation including the Transitional Relief Scheme.

2. Medium-term reforms to put the tax on a more sustainable basis.
   This will include:
   - whether a tax on open market rental values remains the best base for commercial property, how such rental values are determined, and how often;
   - the effectiveness and operation of different reliefs;
   - how to minimise the impact of business rates on investment and growth, including the treatment of plant and machinery;
   - how the business rates multiplier(s) should be set; and
   - who pays the tax (the owner or the occupier).
3. Administration of business rates, covering the valuation and appeals process, billing and compliance with the tax.
4. Exploring alternatives to business rates, particularly within the taxation of land and property. This last element may consider a land value tax, where the tax is supposed to be based on the best possible use of the land. It is unlikely that any proposal put together so quickly could propose the introduction of a land value tax, as there is no detailed information available on the potential impact of such a tax in the UK.

PROFILE

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Unexpectedly, the Budget includes a new proposal on intangible assets. Enhancements to the regime were introduced in Budget 2018, which concluded that there would be no changes to the pre-2002 assets rules. However, from 1 July 2020, companies which acquire assets from related parties will qualify for tax relief under the intangibles regime, whether or not the asset dated back before 2002. The impact note suggests this could benefit 1,000 companies at a cost rising to £185 million by 2024/25. Assets already within the scope of corporation tax before 1 July won't have their status changed, though.

Employment and pensions changes

After much furore over NHS pension tax charges for higher-paid doctors, the government decided to reduce the impact substantially by increasing the income limits used in calculating a tapered annual allowance. The threshold income, which is broadly net income before tax (excluding pension contributions), is increased from £110,000 to £200,000. Adjusted income, which adds on the pension accrual, is increased from £150,000 to £240,000. At the same time, the minimum tapered annual allowance is decreased from £10,000 to £4,000. This change affects about 250,000 individuals; those earning up to £300,000 will be better off than under the current rules.

At the same time as the restriction on the employment allowance commences, the amount payable is going up to £4,000. The allowance will be paid to employers whose National Insurance liability in the prior year did not exceed £100,000. Apparently, 590,000 businesses have no current National Insurance liability under the current £3,000 allowance. 510,000 businesses will benefit from the additional £1,000 relief, of which 65,000 will have no National Insurance liability.

The Office of Tax Simplification is pleased to see that the government will launch a Call for evidence on pension tax administration, which will look at the different treatment of low-paid individuals contributing to a pension scheme under so-called net pay arrangements and those where the employer uses relief at source. The issue was highlighted in the October 2019 Taxation and Life Events report (see bit.ly/2vxxPIQ). Those earning around or below the level of the personal allowance and saving into a pension may benefit from a top-up on their pension savings equivalent to the basic rate of tax, even if they pay no tax, provided the relief at source method of pension administration is used. The OTS report highlighted that over 1 million workers didn't receive the top-up, as the net pay arrangement was used. The government has committed to reviewing options for addressing these differences.

Individual tax changes

One out of the blue measure was a large increase in the amount that can be contributed to a Junior ISA. This goes up to £9,000 from the current level of £4,368. Investment advisers AJ Bell pointed out that no one had called for this big increase – and that the average amount contributed to a junior ISA is less than £1,000. The main ISA limits remain unchanged, though,

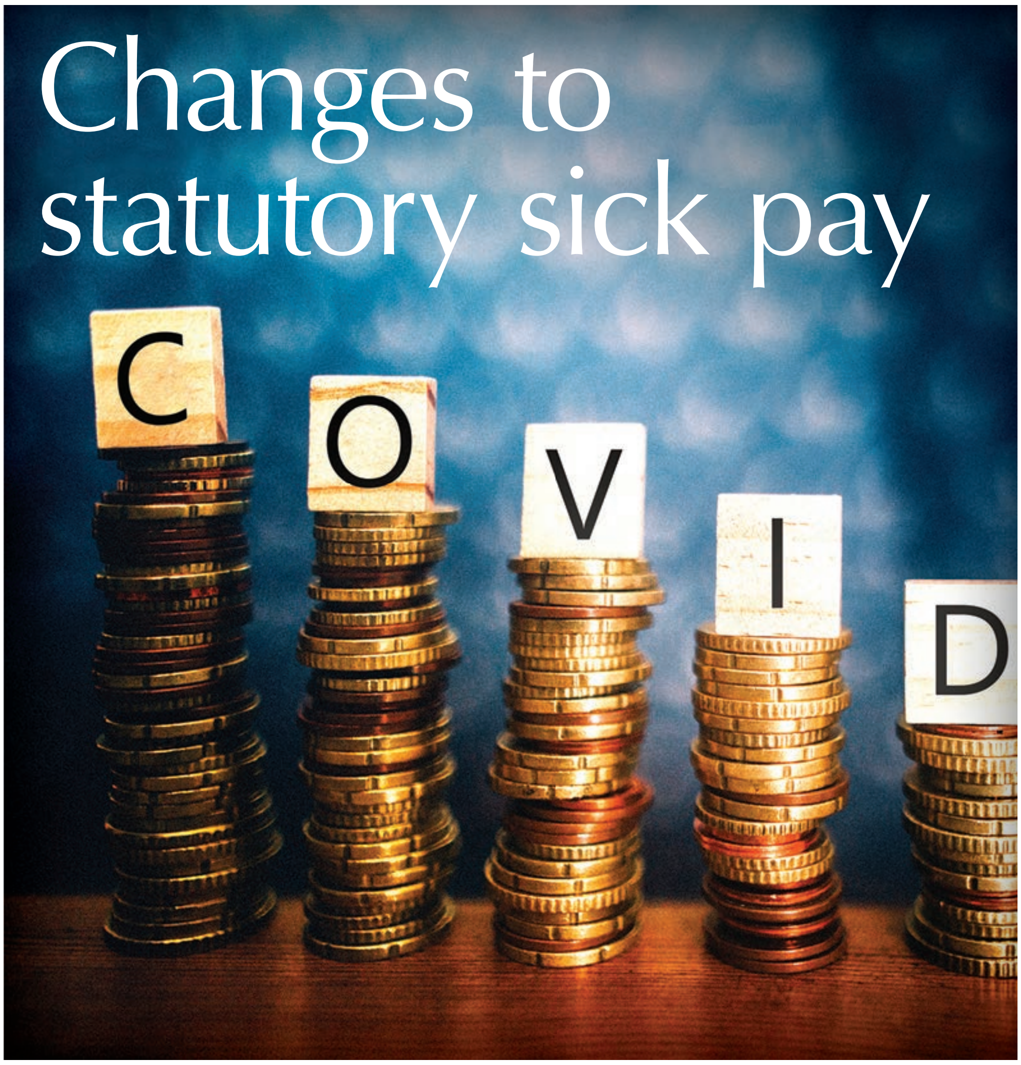
There's a small change to top slicing relief, which is intended to reduce the impact of including taxable life assurance gains in an individual's income, following a recent tribunal case. HMRC's note says the measure will partially impact around 2,000 of the 45,000 individuals who return gains annually. These individuals will benefit from the reinstatement of personal allowances.

Indirect tax

The government will legislate to apply a zero rate of VAT to e-publications, to make it clear that e-books, e-newspapers, e-magazines and academic e-journals are entitled to the same VAT treatment as their physical counterparts. This change will take effect from 1 December 2020. This issue has been litigated in the EU and domestically; the Upper Tribunal recently held that electronic newspapers were entitled to zero-rating.

Finally, one of the big revenue raisers in the Budget 2020 is the removal of the entitlement to use red diesel (officially, rebated heavy oil) and rebated biofuels from all sectors that currently use it from April 2022, apart from the agriculture (including pisciculture, forestry and horticulture) and rail sectors and for use in non-commercial heating. The government will consult later this year on whether the entitlement to use red diesel and rebated biofuels is justified for any other users, and whether to align the proposed treatment of these rebated fuels with fuel oil and non-aviation kerosene.

Changes to statutory sick pay



We're all aware that things are changing daily in respect to COVID-19. This article was correct at the time of writing on 18 March.

On 11 March, newly appointed chancellor Rishi Sunak in his first Budget announced a range of measures intended to counter the effects of coronavirus with a three-point plan to provide support for public services, individuals and businesses. Since then, the coronavirus crisis both in the UK and internationally has continued to develop with alarming rapidity, and the government is now issuing daily updates.

Less than a week after the Budget, on 17 March, the chancellor announced further measures of government support (see Box 1). He stresses that the government's measures will continue to be increased when needed by as much as necessary.

However, these measures need to be implemented. Given the immediacy of the implementation dates, it is unsurprising that obtaining clarity about the details and practicalities of implementation are proving challenging in some areas. Kate Upcraft, who is a member of the cross-government statutory payments' forum, shares her experiences of the changes to statutory sick pay (SSP).

The government announced that changes in respect to the payment of SSP would be effective on 13 March. Regulations have been laid down in The Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020, confirming that for the next eight months COVID-19 would be treated as a deemed incapacity. You should note that this legislation only applies in Great Britain and at the time of writing no corresponding legislation has been laid in Northern Ireland, although it is expected to be.

SSP rules before 13 March 2020

SSP is an inappropriate title. It implies to employees that this is funded by the government, as other statutory payments are. This isn't the case and it hasn't been funded, even for the smallest employers, since 2014. It is instead essentially a floor to company sick pay (and perhaps would be better referred to as a national minimum sick pay). SSP is £94.25 per week for 2019/20 and will be increased to £95.85 per week from 6 April 2020. There is no need to show it as SSP on payslips as long as the statutory minimum is paid.

SSP is not payable for the first three days of absence, known as waiting days. These must be qualifying days, which are set by the employer to reflect the employee's work pattern (i.e. whether five days a week, seven days a week or shift patterns). It is vital to record all days of absence, including non-working days, so that a continuous period of absence is recorded which enables payroll software to calculate the first three qualifying days as waiting days.

Employees are not required to provide any medical evidence for the first seven calendar days of absence, and can instead self-certify.

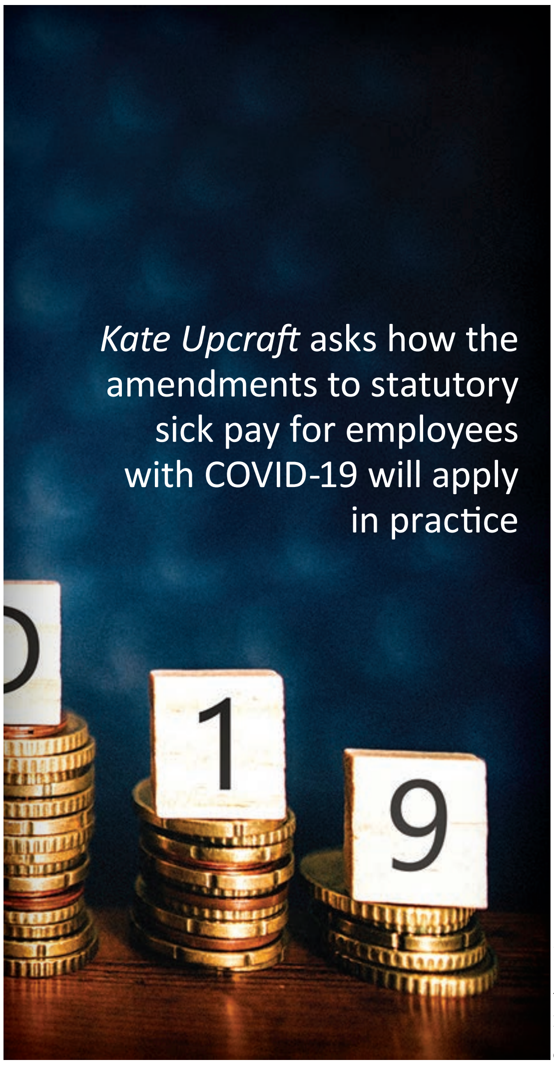
Employees who have 56 days or less after the last day of an absence and before the first day of the next absence are treated as being continuously sick, known as 'linked absence'. Employers only have to pay SSP for 28 weeks in one period, or linked periods, of absence. An employee must then return to work for more than 56 days for a new entitlement to 28 weeks' SSP to begin.

SSP rules after 13 March 2020

A week before the Budget, the prime minister announced that employers would be required to pay employees affected by coronavirus from day one of sickness. On 14 March 2020, DWP announced that emergency legislation would be effective retrospectively from the 13 March 2020. Businesses are now required to pay eligible employees a minimum of SSP from day one of absence due to coronavirus, rather than from the standard fourth day of absence. Of course, employers can choose to pay SSP or full pay from day one of sickness at any time, but there was no requirement to do so until 13 March. These are statutory rules for minimum SSP payments.

Companies with fewer than 250 employees will also be reimbursed for up to 14 days of SSP payments made to each eligible employee unable to work because of COVID-19. Eligible businesses which pay higher rates of sick pay to employees will be able to claim reimbursement for the SSP element of that pay.

These new measures will apply to all companies with fewer than 250 employees on 28 February 2020. However, it has not yet been determined how the size of a company will be assessed but it seems most likely that the connected companies/charities rules will be used, which advisers will be familiar with in respect to eligibility for employment allowance. It will certainly not be calculated upon the basis of individual PAYE schemes; i.e. if a company



Kate Upcraft asks how the amendments to statutory sick pay for employees with COVID-19 will apply in practice

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OTHER BUDGET MEASURES TO SUPPORT BUSINESSES

A number of other measures to support businesses were announced in the Budget 2020 and have been subsequently amended to increase their reach:

- a 12 month business rates holiday for all retail, hospitality and leisure businesses in England;
- small business grant funding of £10,000 for all businesses in receipt of small business rate relief or rural rate relief;
- grant funding of £25,000 for retail, hospitality and leisure businesses with property with a rateable value between £15,000 and £51,000;
- the Coronavirus Business Interruption Loan Scheme to support long-term viable businesses which may need to respond to cash-flow pressures by seeking additional finance; and
- the HMRC Time To Pay Scheme.

runs multiple PAYE schemes each for under 250 employees.

Which employees are eligible?

This applies to all those who are not working due to COVID-19 following government advice. It refers both to employees being told to self-isolate, and also to anyone who is self-isolating to care for someone who has COVID-19. However, employees are only eligible if they have any SSP allowance left in a current period of absence. This is not an additional entitlement. This applies to everyone who is impacted by the requirement to remain at home due to coronavirus; therefore, eligible employees aged over 70 and those with underlying health conditions will qualify for these rules, as these groups are now required to stay at home for 12 weeks (see bit.ly/2IYkmqp). This will clearly mean that a much larger group of employees is impacted.

How will businesses secure reimbursement?

There appears to be no quick fix at time of writing in terms of how businesses will secure reimbursement under these new rules.

Many very small businesses qualify for Small Employers' Relief, which means they can reclaim reimbursement for 103% of statutory maternity pay, statutory paternity pay and shared parental pay through the RTI system. Such businesses can also apply to HMRC to pay them in advance if they need to secure advanced funding for these payments (see bit.ly/2x83QBi).

You would think it would be relatively straightforward for HMRC to deploy a similar system for SSP reimbursements, but it seems this is not the case so isn't likely to be adopted for these purposes. Instead, government has concluded that it will be easier to develop a separate method and is exploring the development of a standalone system to allow eligible businesses to reclaim the relevant SSP. This is a work in progress.

Other circumstances for absence

The above only deals with the statutory obligation to pay SSP. However, there are other situations where the employee might not come in or be asked to refrain from coming to work:

- If the employee voluntarily chooses not to perform work under their contract of employment, there is no obligation to pay SSP, salary or any occupational sick pay.
- However, if the employer imposes a restriction on people performing work under their contract of employment, i.e. by asking them not to come into work, the employer should pay full pay. This would be the same if the employer wanted employees to perform their work under a contract of employment but from home.

Other tax issues

With more employees working at home, employers may be asked about additional costs and equipment. From 6 April 2020, the homeworking allowance provided for in ITEPA 2003 s 316A goes up to £6 per week/£26 per month (up from £4 per week/£18 per month in 2019/20). This can be paid tax and NI free for anyone with a 'homeworking arrangement' and doesn't need to be pro-rated for part-time staff or those not working at home full time. The requirement to work at home at the employer's behest due to COVID-19 will meet the terms of the exemption. If an employer does not reimburse such costs, an employee can keep records of expenses incurred such as heating, lighting or business telephone calls and make a s 336 claim for tax relief.

Allowing an employee to take home employer owned equipment such as a laptop is not a benefit in kind (as per ITEPA 2003 s 316) as long as any private use is insignificant. For any employees without a company mobile phone, it may make sense to provide one to all staff working remotely as this can be provided for both business and personal use, whereas reimbursing a personal mobile phone requires the employer to establish the costs of business calls, as rental and private calls cannot be covered. This would also apply to providing a taxi to work for employees who don't want to use public transport. HMRC has not announced any relaxation on such reimbursement being taxable expenses.

Old school or new school?

Tom Klouda and *Daniel Andreca* consider how to make the choice between a family trust and a family investment company

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KEY POINTS

- **What is the issue?**
In passing wealth between generations, it is important for the appropriate vehicle (i.e. family trust or family investment company) to be implemented in order to ensure that the family's objectives around control, flexibility and tax efficiency are met.
- **What does it mean to me?**
Advisers need to be able to guide on the implementation of a structure which facilitates the transfer of wealth between generations, while considering each family's specific requirements.
- **What can I take away?**
Choosing the appropriate vehicle to facilitate wealth succession can be a complex decision which depends upon many factors. Tailored advice and guidance should be sought.

Historically, trusts have been the 'go to' for passing wealth between generations as they provide a well-trodden and very flexible path for separating the legal and beneficial ownership of assets. However, the potential inheritance tax charges arising on the initial funding (as explained below), combined with more stringent reporting requirements and increasing professional fees of dealing with these requirements, have led families to consider using alternative structures to pass down wealth between generations.

One alternative model is the family investment company (FIC) which represents a bespoke vehicle, normally in the form of a private company whose shareholders are the various family members, and which would be used to hold and build the family's investments. Although FICs will never be as flexible as a trust, due to their ability to build capital value in a tax efficient manner the popularity of FICs has significantly increased in recent times.

Initial funding

If an individual contributes funds into a trust, this will represent a chargeable lifetime transfer for inheritance tax purposes. A 20% inheritance tax rate would be payable on the amount of funds which exceed an individual's nil rate band available (£325,000 in respect of the 2019/20 tax year). In essence, this means that a couple can only tax-efficiently contribute assets up to a maximum of £650,000 into a trust every seven years, unless any of the relevant inheritance tax reliefs (such as business property relief) is available.

Conversely, funds can be invested into a FIC either via the provision of a loan or by subscribing for shares. Neither of these funding options would normally be perceived as a transfer of value for inheritance tax purposes (subject to the ownership of the shares at the time); and therefore the potential 20% inheritance tax charge (as mentioned above) would not arise, regardless of the value of the funds contributed.

Distribution of funds

Depending upon the nature of any investment income received by the trust, income tax at the rates of up to 45% on non-savings and savings income and 38.1% on dividend income would be paid by the trustees before the net income can be distributed to the beneficiaries. Any distributions to beneficiaries will carry a tax credit equal to the amounts of income tax paid by the trustees.

Alternatively, assuming that the FIC is a company tax resident in the UK, dividends received by the FIC would normally benefit from the dividend exemption, while other income would be subject to the more beneficial corporation tax rate (currently 19%). At this point, the directors and shareholders of the FIC have the flexibility to decide whether to distribute any income to the shareholders or to reinvest the net amount once any corporation tax due has been paid.

Should income need to be extracted from the FIC, the repayment of initial loan funding normally takes precedence before any additional income required is paid out as a dividend, in which case income tax at a rate of up to 38.1% would be payable by the shareholders on the dividend income, excluding the dividend allowance (£2,000 in the 2019/20 tax year).

Capital growth of investments

Any newly established trust is likely to qualify as a relevant property trust, meaning that inheritance tax charges would arise on each ten year anniversary based upon the value of the assets held, as well as each time an asset leaves the trust based upon the value of the asset transferred out.

The capital value of the assets, as well as any unextracted investment income (e.g. dividend), can be accumulated in the FIC without triggering a 'ten year' charge, making FICs a compelling alternative for the families who do not require a regular income stream.

Control and flexibility

Depending upon its nature, a trust could offer total flexibility of income and capital allocation between the beneficiaries. Subject to the provisions of the trust deed, when new family members are born, they can automatically form part of a class of beneficiaries.

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FICs are more restrictive in the sense that shares in a FIC would need to be transferred or allotted to new members. Once transferred, the shares in the FIC cannot practically be recalled. Some flexibility could be added to shares in a FIC by varying the rights attached to them. For example, with the use of different share classes, parents could retain voting control with or without equivalent capital rights. On the other hand, their children may hold share classes with different dividend entitlements, meaning that dividends can be paid in different amounts at different times. Children could also hold a 'hurdle' share class, entitling them to value above a certain threshold so they are incentivised to grow the family's wealth beyond the position at which they became shareholders in the FIC. However, when designing the rights attached to the various share classes, it is imperative for tax advice to be undertaken in order to avoid any unforeseen tax liabilities from arising. Transfers of value could trigger potential inheritance tax or capital gains tax liabilities.

Access to capital

Compared to a FIC, it may be off-putting to make a significant lifetime gift to a trust when the settlor cannot be sure they will not need access to their capital and the income it generates again. In addition, there are also significant anti-avoidance provisions prohibiting a settlor from accessing either the income generated and/or the capital assets once held by the trust.

From this perspective, a FIC can provide extra flexibility as it allows the initial founder to receive future income from the FIC either via a repayment of the original loan provided to the FIC and/or as dividend income, assuming that shares with dividend rights are retained by the founder.

Is there still a place for trusts?

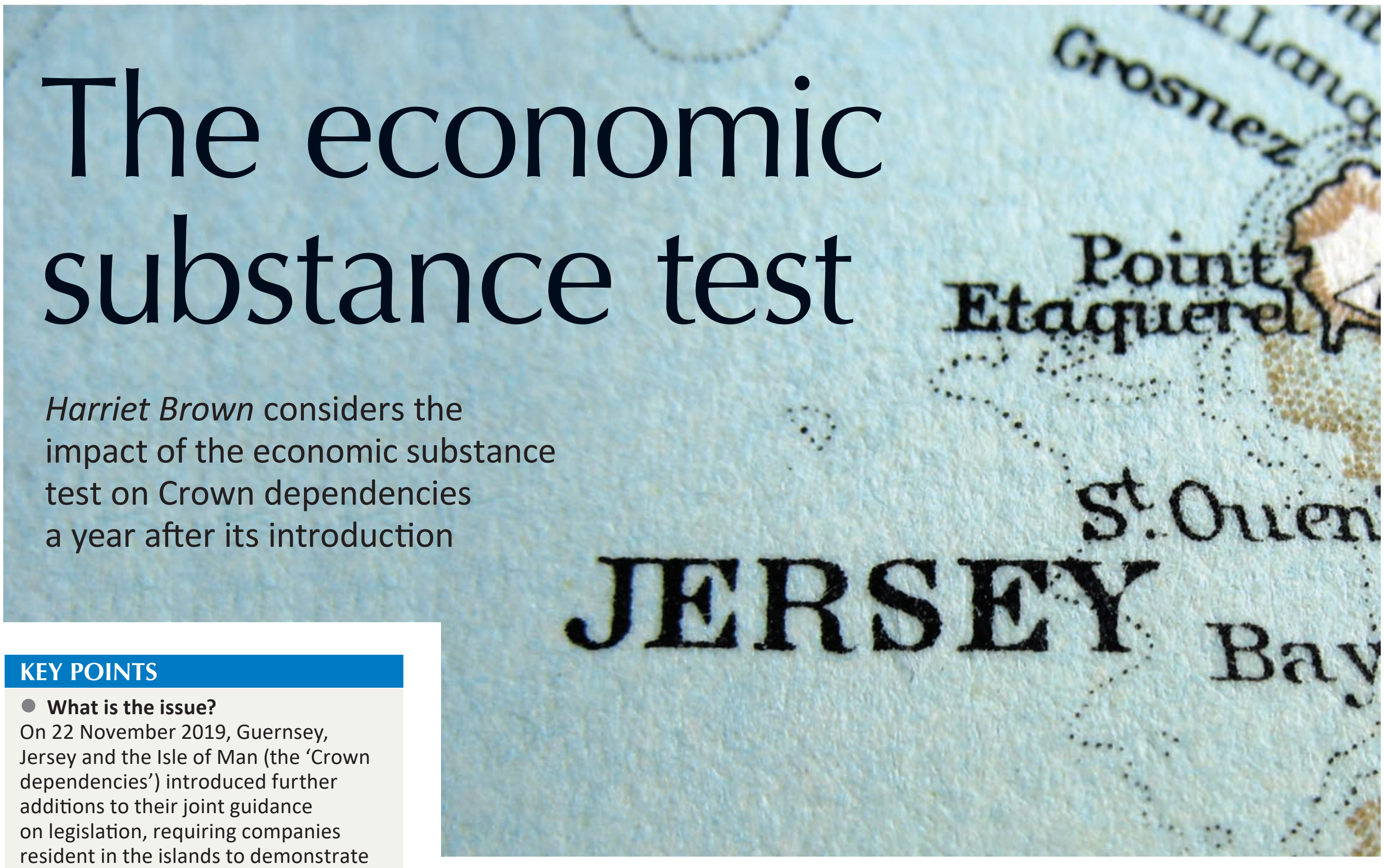
Irrespective of the benefits of a FIC, there is definitely a place for the continued use of trusts. If the periodic charges are dealt with appropriately, a trust can help to mitigate many generations' worth of inheritance tax charges. A FIC protects a single generation (i.e. the parents) and their exposure to a 40% inheritance tax liability. This is because FIC shares will be IHT taxable assets in the hands of the shareholders, who tend to be the next generation. It is worth noting, though, recent publicity about investigations by HMRC on the use of FICs, especially to save inheritance tax.

FICs are not necessarily cheap to run and for relatively smaller amounts of wealth, the set up cost and ongoing maintenance is likely to outweigh the potential benefits, notwithstanding the added complexity and ongoing time required to manage them.

Conclusion

Despite the increasing use of FICs, ultimately there is no right or wrong answer and choosing between a family trust and a FIC will depend upon the priorities of the family, the amount of wealth to be passed and individual circumstances. In many cases, an appropriate solution might be to implement both a family trust and a FIC to blend the balance of control, flexibility and tax efficiency.

This article highlights some of the key tax matters that should be considered when choosing between a family trust and a FIC, and does not cover all the tax considerations that might be relevant. We strongly recommend that individuals considering a trust or a FIC for their family take advice tailored to their personal circumstances.



The economic substance test

Harriet Brown considers the impact of the economic substance test on Crown dependencies a year after its introduction

KEY POINTS

- **What is the issue?**
On 22 November 2019, Guernsey, Jersey and the Isle of Man (the 'Crown dependencies') introduced further additions to their joint guidance on legislation, requiring companies resident in the islands to demonstrate 'economic substance' sufficient to comply with EU rules.
- **What does it mean for me?**
These substance requirements have now been in effect since 1 January 2019 and, a year on, the guidance issued by the Crown dependencies has been updated on a number of occasions.
- **What can I take away?**
Financial penalties will be charged in respect of each period in which the company fails to meet the economic substance requirements, and will increase in cases of repeated periods of failure. Striking off is the ultimate sanction and is only applied in cases of repeated failure.

THE broader background to the economic substance test is the Inclusive Forum Project to tackle base erosion and profit shifting (BEPS), supported by the OECD secretariat, which resulted in the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ('MLI'). The BEPS Action Plan identified 15 actions to address BEPS in a comprehensive manner, and set out deadlines to implement those actions. BEPS Action 5 addressed 'Countering harmful tax practices more effectively, taking into account transparency and substance'.

This included ensuring that – in accordance with the second pillar of the BEPS project – taxation is actually aligned with substance; i.e. the aim is that it should no longer be possible for taxable profits to be artificially shifted away from the countries where value is created.

On 22 November 2019, Guernsey, Jersey and the Isle of Man (the 'Crown dependencies') introduced further additions to their joint guidance on legislation, requiring companies resident in the islands to demonstrate 'economic substance' sufficient to comply with EU rules. The guidance was previously last updated in April 2019.

In 2016, the EU Council committed to coordinated policy efforts in the fight against tax fraud, evasion and avoidance; and adopted the 'Conclusions on criteria and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes'. The Code of Conduct Group was then instructed by the EU Council to undertake a screening process whereby jurisdictions (including the Crown dependencies) were assessed against three standards in respect of:

- tax transparency;
- fair taxation; and
- compliance with anti-base erosion and profit shifting (BEPS) measures.

A concern was raised that the lack of a substance requirement 'increases the risk that profits registered in a jurisdiction are not commensurate with economic activities and substantial economic presence'.

Identical concerns were raised in relation to all of the Crown dependencies. Consequently, they worked together to develop legislation to address the concern of the Code of Conduct Group. They also developed the common guidance.

The legislation in each jurisdiction requires companies tax resident therein to demonstrate that they have sufficient substance (to be shown by undertaking certain activities). The legislation in each case is:

- Income Tax (Substance Requirements) (Implementation) Regulations 2018 (Guernsey);
- Income Tax (Substance Requirements) Order 2018 (Isle of Man); and
- Taxation (Companies – Economic Substance) (Jersey) Law 2019.

These substance requirements have now been in effect since 1 January 2019 and, a year on, the guidance issued by the Crown dependencies has been updated on a number of occasions. It is a good time to reflect on their implementation in practice.

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PROFILE

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The essence of the economic substance test in the Crown dependencies

The substance test is relevant to all companies resident for tax purposes in the Crown dependencies and for accounting periods commencing on or after 1 January 2019.

The legislation addresses the concern that companies could be used to shift profits to the Crown dependencies that are not commensurate with their economic activities and substantial economic presence there. With the aim of counteracting this, companies are required to demonstrate that they have substance in the relevant Crown dependency by:

- being directed and managed in the island;
- conducting core income generating activities in the island; and
- having adequate people, premises and expenditure in the island.

Substance requirements do not apply to all companies, but are required for companies with income from ‘geographically mobile financial and other service activities’.

All the activities to which the requirement applies are identified by the OECD’s Forum on Harmful Tax Practices, and include:

- banking;
- insurance;
- shipping;
- fund management (except collective investment vehicles);
- financing and leasing;
- headquarters;
- distribution and service centres;
- holding companies; and
- intellectual property (where there are additional requirements in scenarios considered ‘high risk’).

Directed and managed in the island

Being ‘directed and managed in the island’ is distinct from the residency test of ‘management and control’. The aim of the directed and managed test is to ensure that there are an adequate number of board meetings held and attended in the relevant Crown dependency to show that the company has substance. This requirement does not need all meetings to be held in the relevant Crown dependency, however.

There is no specific number of meetings that will constitute an ‘adequate number’ (adequate number is not defined – see further below). This may vary, depending on which of the relevant activities a company undertakes. As a general rule, a majority of board meetings should be held in the relevant Crown dependency. Companies with a minimal level of activity (e.g. holding companies) should hold at least one meeting of the board of directors in the relevant Crown dependency to meet the standard recommended by the guidance.

Another element of the directed and managed test is record keeping. This part of the test ensures that a company’s minutes and records are kept in the island, but also (and perhaps more importantly) that the board is both a genuine decision-taking body and that the board members have the necessary knowledge and experience. While this test is not the same as the managed and controlled test for residency, there is a clear analogy with UK case law on residence, where the board of directors has not genuinely taken decisions.

Core income generating activities

These are the essential and valuable activities that generate the income of the company. For each sector subject to the substance test, the legislation in each Crown dependency provides a list of the core activities a company operating in such a sector could carry on. This does not mean that it is necessary for a company to undertake all of those activities; however, it seems probable that some of them must be being undertaken in the relevant Crown dependency.

The guidance contains extensive guidance on this area, including a large number of examples. While examples are, of course, helpful, these should be adopted with caution. Where the fact pattern is similar but different, it is probable that the example cannot be relied upon. Where a company has corporate directors, the requirements will apply to the officers of the corporate director who actually perform the duties of a director in relation to the company in question.

This requirement does not mean that a company cannot outsource some or all of its activities, which can include outsourcing, contracting or delegating to third parties or group companies. There are stringent requirements for outsourcing, however. If some or all core income generating activities are outsourced, it must be demonstrated that the company has ‘adequate’ supervision of the outsourced activities and that those activities are undertaken in the island.

For a core activity that is outsourced, the resources of the service provider in the island are ‘counted’ when determining whether the people and premises test (see below) is met, but there must be no ‘double counting’ of those resources; for example, where the services are provided to more than one company.

In the context of outsourcing, the company remains responsible for accurate reporting. This includes precise details of the resources employed by its service providers (consequently timesheets should be used by any outsourced service provider).

People, premises and expenditure

Unfortunately, the guidance does not address this element of the test in any detail.

Updated guidance

The guidance was updated on 22 November 2019. The updated guidance addresses the following issues. First, collective investment vehicles (CIVs) regulated in the territories are out of scope of the legislation. The guidance now explains: 'CIVs are out of scope if they are subject to regulation in the island. However, subsidiaries of a CIV will have to ensure they meet the substance requirements in relation to any relevant activities.'

The guidance also now deals with cell companies. Cell companies are either protected cell companies (PCCs) or incorporated cell companies (ICCs). Whilst both are subject to the economic substance requirements (when they have income from a relevant activity), due to the different nature and structure of the two types of entity the application of the regime to each is slightly different.

A PCC is a single legal entity (as opposed to an ICC, where the cells are separate entities to the cell company itself – see below). The tax treatment in the relevant Crown dependency will reflect these differences and consequently the substance test applies differently. Thus, a PCC is required to satisfy the economic substance requirements at what the guidance refers to as a 'whole entity level'. This includes the activities and resources of all its protected cells, so that each cell must demonstrate that it conducts core income generating activities in the island.

A protected cell is not a corporate body and so each cell's activities and resources form part of the overall substance information to be reported by the PCC. A protected cell is not required to report any economic substance requirements on its own account.

In relation to ICCs, both the ICC and each of its cells is a separate legal entity (an ICC cell is itself incorporated). The ICC only has to satisfy the economic substance test in relation to any activities it conducts itself; it does not have to satisfy, or report, in relation to each of its cells. However, each cell will have to satisfy the economic substance test in its own right and in relation to its own resources without reference to those of the other cells or the cell company.

The updated guidance also contains further details on insurance, shipping, intellectual property companies and high-risk intellectual property companies.

Perhaps most importantly, it gives further guidance on sanctions for failing to meet the economic substance requirement in an accounting period. These sanctions include exchange of information with competent authorities in other jurisdictions, financial penalties and, ultimately, being struck off the companies register. Exchange of information with competent authorities in other jurisdictions will take place in respect of each period that the company fails to meet the economic substance requirement. This is a potentially significant sanction, because it could result in a change of residency status in the other jurisdiction, and consequently significant tax charges and penalties (for the company, its parent or ultimate beneficial owners).

Financial penalties will also be charged in respect of each period in which the company fails to meet the economic substance requirements, and will increase in cases of repeated periods of failure. Striking off is the ultimate sanction and is only applied in cases of repeated failure.

The economic substance test is here to stay. The guidance is a helpful tool in interpreting it and note should be taken of the guidance and any updates to it, particularly in light of the serious nature, and repercussions, of the sanctions available within the Crown dependencies.

A stable proposition?

Rebecca Sheldon considers the differences between residential and mixed use property in light of the *Goodfellow* judgment

KEY POINTS

- **What is the issue?**
Advertisements encouraging claims for stamp duty land tax (SDLT) refunds based on the difference in rates between properties classified as 'mixed use' and 'residential' have become increasingly common.
- **What does it mean to me?**
The *Goodfellow* case highlights the risks in making 'mixed use' property refund claims where the facts are arguably weak.
- **What can I take away?**
It would be prudent (subject to a successful appeal to the Upper Tribunal) not to seek to rely on capital gains tax case law when considering the availability of refunds under Finance Act 2003 Sch 10 para 34.

Advertisements encouraging claims for stamp duty land tax (SDLT) refunds based on the difference in rates between properties classified as 'mixed use' and 'residential' under the Finance Act 2003 Sch 10 para 34 have become increasingly common.

However, *Goodfellow and another v HMRC* [2019] UKFTT 750 is an important recent case. Following *Hyman v HMRC* [2019] UKFTT 469, it further highlights the risks in making 'mixed use' property refund claims where the facts are arguably weak.

Goodfellow: the facts

Mr and Mrs Goodfellow appealed against HMRC's decision on 22 June 2018 to refuse their claim for an SDLT refund of £48,500.

They were the registered proprietors of Heathermore House, which had been described in the estate agent's particulars as a 'fantastic family home set in about 4.5 acres' with six bedrooms, gardens, swimming pool, stable yard and paddocks.

Mr and Mrs Goodfellow completed the purchase of the property on 21 March 2016, having entered the property as 'residential' on their SDLT1 return. A year later, their tax agents submitted a claim for relief under Finance Act 2003 Sch 10 para 34, seeking relief of £48,500, as it was asserted that the property should instead have been classified as 'mixed use'.

At the FTT hearing, HMRC submitted that the 'detached garage, stable yard and paddocks formed part of the grounds of the residential property and were correctly classified as residential under section 116 of FA 2003'.

In contrast, Mr and Mrs Goodfellow submitted that the space above the garage was used as an office and that their vendor had done the same (which was non-residential use); the stable yard and paddocks were non-residential as they were used by a third party for grazing horses; and the paddocks were undeveloped and were therefore by definition non-residential.

It was consequently submitted that the property was 'mixed-use'.

Legal definitions

SDLT rates for different types of property are set out at Finance Act 2003 s 55.

Table A sets out the higher rates which apply to properties which are wholly residential, whilst Table B sets out the lower rates which apply to mixed-use properties.

The key provision in this appeal was consequently FA 2003 s 116(1), which defines the meaning of 'residential property' for these purposes:

> 'In this Part, "residential property" means:
>
> a. a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use; and
> b. land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or structure on such land); or
> c. an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b); and
>
> "non-residential" means any property that is not residential property.'

In interpreting this section, *Hyman* was referred to; in particular, para 6 of the judgment, where Judge McKeever held that:

> 'Section 116 provides an exhaustive definition. If the property falls within any of paragraphs (a), (b) or (c) of subsection (1), the property is residential property. If the property falls outside those paragraphs, it is not residential property.'

First-tier Tribunal analysis

Judge John Manuell agreed with the submissions of HMRC, finding that the arguments advanced on behalf of the taxpayer were 'artificial, strained and contrary to common sense' (para 15).

In coming to this conclusion, Judge Manuell held that although classification of properties for SDLT purposes should not be determined solely by reference to an estate agent's particulars of sale, the particulars in this case were prepared by 'reputable agents, and clearly they must have had some bearing on the appellant's decision to purchase the property'.

Judge Manuell described these particulars as the fullest description available, and emphasised that they were not challenged. 'They describe an equestrian property. There is no reference to current commercial activity or the prospect of future development in the particulars. There is no suggestion that the property is anything other than a country residence. This was also plainly the view of the appellant's solicitors.' (para 16)

The judge went on to find that despite the above (which was not conclusive), looking at the character of the property as a whole:

- The land surrounding the property was essential to its character.
- The detached garage, being connected to the house by a walkway and equipped with its own bathroom, was 'plainly and obviously' suitable for domestic use.
- The use of the room as an office is wholly residential in character, as it is in principle no different to working from home and 'home working is hardly new'.
- The paddocks are an adjunct to the stables, without which keeping horses would be impractical, and there was no evidence that 'anything approaching a commercial arrangement was made at any material time for the use of the paddocks'.
- The stables and stable yard had no evidence of a livery business or similar in operation at the time of purchase.

It was therefore held at para 24 that: '*None of the arguments* raised by the appellants long after they had agreed the purchase of the property (prior to which point the SDLT payable on the purchase must have been known to them, as the SDLT was payable on completion) *has any substance*. For SDLT purposes, applying FA 2003 s 116, the tribunal finds that the whole of the property is residential with no non-residential element. It follows that the appeal must be dismissed.' (para 24, emphasis added)

Comment

Goodfellow is the second recent case where the FTT has found against a taxpayer who had submitted a claim for a refund on the basis that a property they had previously considered to be 'residential' was in fact 'mixed-use'.

Although capital gains tax case law on the concept of 'grounds' was referred to both in *Goodfellow* and *Hyman* by counsel for the taxpayer, the judges in each case declined to give these cases weight in an SDLT context. It would therefore be prudent (subject to a successful appeal of these cases on this point to the Upper Tribunal) to not seek to rely on capital gains tax case law when considering the availability of refunds under Finance Act 2003 Sch 10 para 34.

It is also notable (and perhaps unsurprising) that the judgment gave short thrift to the idea of homeworking being an indicator that a property is 'mixed-use'. The sheer prevalence of homeworking in the modern employment era would significantly expand the availability of the lower SDLT rates if taken to alter the character of an otherwise wholly residential property.

From a practical perspective, although it is always worth considering whether the lower 'mixed-use' rates can apply when purchasing a property (and submitting a claim for a refund in appropriate circumstances), what both *Goodfellow* and *Hyman* before it show is that a holistic approach will be taken by the tribunal, which considers the entire property and its grounds as a whole.

Commercial activity

Whilst third party grazing may in some contexts undoubtedly render a property 'mixed-use', the judgment in *Goodfellow* is useful in that it gives an idea of the fact pattern for when this might be so. In this case, the peppercorn rent of £1 per month for the third party grazing rights did not alter the tribunal's view that the property remained wholly residential. This indicates that when considering whether a commercial activity carried out on a property renders it 'mixed-use', the activities should not only be strictly commercial in nature but also commercial in terms of the spirit of the transaction itself.

It must also be remembered, however, that commercial activity is not the test under s 116, and that commercial activity (or lack thereof) is only one potential factor in ascertaining whether a property has non-residential aspects to it.

Character of a property

Secondly, what is clear from *Goodfellow* is that although an estate agent's prospectus is not considered to be definitive, it may be taken into account and given weight by a tribunal in later determining the true character of a property at the time of purchase. Real caution should be taken here, as s 116 refers to the nature of the land and *not* how it is marketed. The reality of the nature of the land may not correspond at all with the marketing material used in attempts to sell it and the two potentially distinct realities should not be automatically conflated.

However, this factor should still be taken seriously when questioning the likelihood of success on appeal. This applies especially if the taxpayer does not intend to challenge the way in which the property was originally described in its marketing material, as it may (as happened in this case) be construed as evidencing the true nature of the land at the time of purchase.

In conclusion, particularly where the tax at stake is relatively low, strong consideration (and in suitable cases, legal advice) should therefore be taken prior to undertaking the expense and time of an appeal to the First-tier (Tax) Tribunal – even if an adviser is offering a contingent fee basis.

PROFILE

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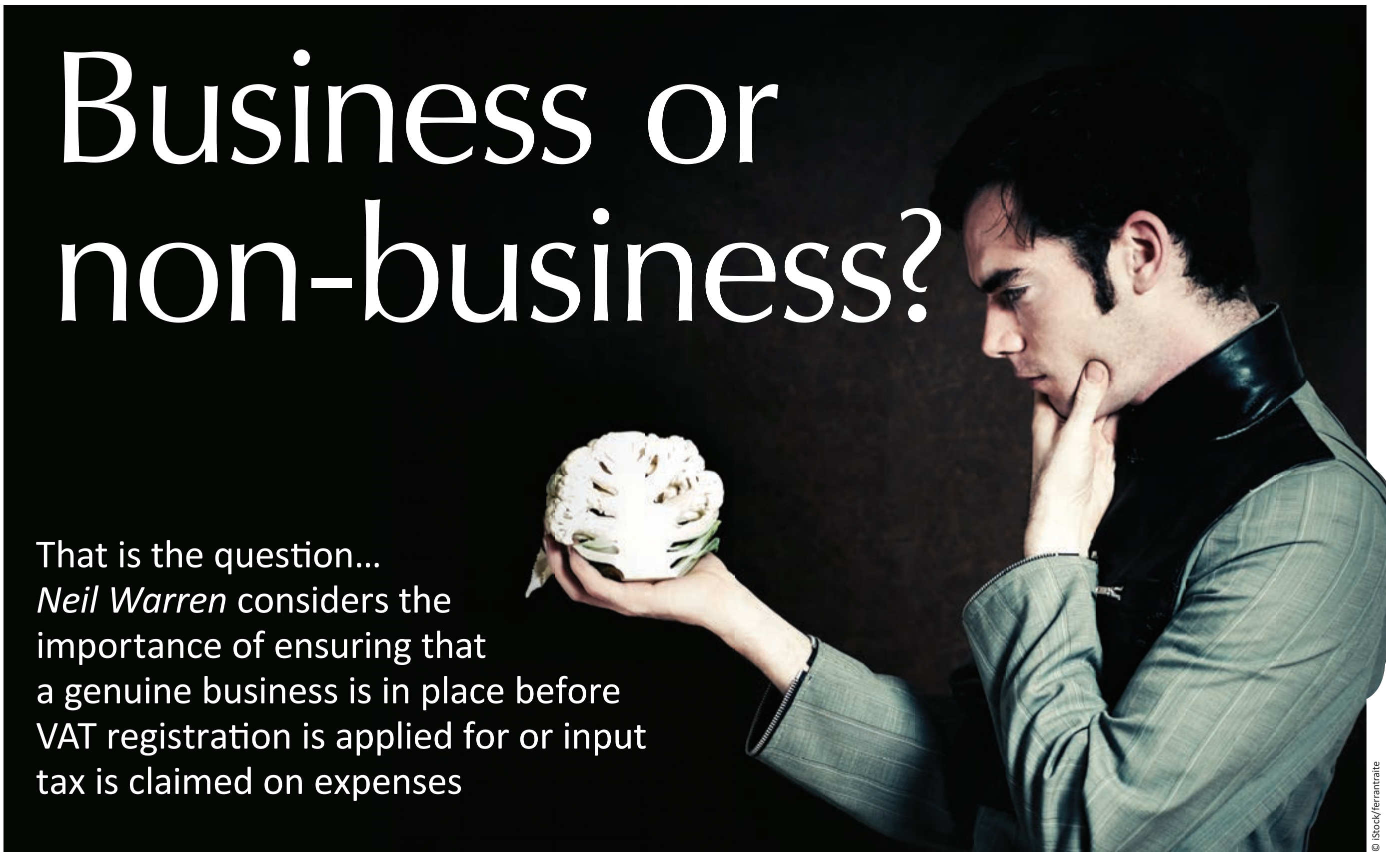

Business or non-business?

That is the question... *Neil Warren* considers the importance of ensuring that a genuine business is in place before VAT registration is applied for or input tax is claimed on expenses

KEY POINTS

- **What is the issue?**
Deciding if a source of income is 'business' or 'non-business' could determine if a business or organisation is either able to register for VAT on a voluntary basis or, in many cases, must register on a compulsory basis. The article considers the *Lord Fisher* tests which help this process.
- **What does it mean to me?**
Input tax can only be claimed on expenses if firstly they relate to a business activity, and secondly they relate to taxable sales. This issue is particularly important if only zero-rated sales are being made; i.e. where repayment VAT returns will be submitted each period.
- **What can I take away?**
In most cases, it will be clear if business supplies are being made. This outcome often depends on the motives and intentions of the owner. But in cases of doubt (e.g. charities), it is worth consulting HMRC's policy manuals for more guidance.

Why is it important to be clear about what is a business activity? The reason is that because as far as VAT is concerned, if a source of income is non-business, then it cannot be subject to output tax (VATA 1994 s 4). And if an expense is not for the purpose of a business, then input tax cannot be claimed (VATA 1994 s 24).

In this article, I will analyse the key issues to consider on the business or non-business question, including a review of two recent tribunal cases, both lost by the taxpayer.

A one-off sale can be business

The legislation gives guidance about 'what is a business'. For example, VATA 1994 s 94 confirms that it includes any 'trade, profession or vacation', as well as the supply of facilities or advantages provided by a 'club, association or organisation' for the payment of a subscription or other monies. But a business can also apply to a one-off project or deal. See **Example 1: Building and selling a house.**

Lord Fisher case: six business tests

VAT enthusiasts will be familiar with the historic tribunal case of *Lord Fisher* [1981] STC 238, which has stood the test of time. The case considered if certain activities on Lord Fisher's estate qualified as 'business'; e.g. farming shoots organised between a group of friends where fees were collected from the participants. The case led to six key questions being asked in order to determine if a business is evident. See **Box 1: The six business tests**.

The approach with the six tests is that you must not expect all six to be passed in order to tick the business box; they are not a checklist. For example, in Example 1 which addresses Jane's house sale, regular quarterly or annual supplies are not being made so it would fail the third test. It is a case of standing back and looking at the bigger picture as to whether a business is in place. See **Example 2: Is Potter Pete in business?**

Case law: church social club

An example of how things can go wrong was highlighted in the recent First-tier Tribunal (FTT) case of *Marites Salabit* [2019] UKFTT 675, when HMRC decided that Ms Salabit was in business on her own account, operating the social club at St Pius X Roman Catholic Church.

The turnover from bar sales exceeded the registration threshold and she was liable to register for VAT between April 2014 and December 2015, with net VAT owed of £10,617. In her opinion, she was doing the church a favour (she and her mother were both involved as active members) and she was not running a business. However, the deciding factor was that Ms Salabit signed and agreed a contract with the church in February 2013, with the following terms and conditions:

- She paid rent of £625 per week to the church. This was a fixed cost and payable irrespective of how much money the bar took. (Note that the rent was subsequently reduced to £500 per week because the bar was not profitable.)
- She was also responsible for staff costs and paying suppliers, as well as rates and insurance overheads.

BOX 1: THE SIX BUSINESS TESTS

1. Is the activity a serious undertaking earnestly pursued?
2. Is the activity an occupation or function, which is actively pursued with reasonable or recognisable continuity?
3. Does the activity have a certain measure of substance in terms of the quarterly or annual value of taxable supplies made?
4. Is the activity conducted in a regular manner and on sound and recognised business principles?
5. Is the activity predominantly concerned with the making of taxable supplies for a consideration?
6. Are the taxable supplies that are being made of a kind which, subject to differences of detail, are commonly made by those who seek to profit from them?

- She could retain any profits herself and bar takings were banked into her personal bank account rather than any church account.

The basis of Ms Salabit's appeal was that she was a 'manager of the social club' and not running a business. Her accountant argued that the church should have been registered instead. However, the commercial arrangements and contract clearly showed that she was in business on her own account and liable to register for VAT. The appeal was dismissed.

Case law: input tax on a farm

The case of Potter Pete in Example 2 highlighted when and why a taxpayer would argue against being in business. So as to balance the books, I will now consider a case where the taxpayer argued that his company was making business (taxable) sales and was therefore entitled to claim input tax but HMRC disagreed.

In *Babylon Farm Ltd* [2019] UKFTT 562, the taxpayer registered for VAT in 2014 and claimed input tax of £19,765 in the three years up to 2017, with no output tax declared in this period. The only income earned by the company, apart from an exempt property sale (a capital disposal), was about £500 each year for selling hay to a connected business (hay sales being zero-rated).

HMRC disallowed all input tax on the basis that there was 'a negligible level of substance to the business activity' and it was 'not conducted on sound and recognisable business principles'. The input tax claims mainly related to the construction of a new barn, supposedly used to store the equipment and machinery used to make the hay. However, the reality is that a commercially driven business would not spend £100,000 in order to earn an annual income of £500 – it would take 200 years to recover the outlay.

The tribunal considered the *Lord Fisher* tests and agreed with HMRC that the company was 'not predominantly concerned with the making of taxable supplies for consideration'. The appeal was dismissed.

Charities

One of the most controversial aspects of VAT can often be about whether a charity is making business supplies or otherwise. The argument is often clouded by the fact that charges for certain supplies of goods or services are often made by a charity at a rate that is below market value.

It is a well-accepted fact that a business arrangement does not necessarily involve making a profit, as the *Salabit* case showed. And in most cases, the charging of a fee by a charity means that business supplies are being made.

For more guidance, it is worth consulting HMRC's internal policy manual for charities and the series of notes in the VCHAR3000 series. There is also a separate HMRC manual for Business/Non-business issues, with the reference series here starting at VBNB10000.

Final thoughts

I was chatting to an accountant recently who said that it was very unfair that a sole trader registered for VAT has to account for output tax on all income earned in his own name if the income is VATable. This is partly true – a sole trader must account for VAT on all 'business income' earned in his own name. For example, if a VAT registered builder has an interest in historic stamps, and buys and sells stamps as part of his hobby, the stamp sales would not be business income subject to VAT. But if he retired as a builder, and became a full-time stamp trader, the goalposts could move.

In summary, when it comes to looking at whether an arrangement is business or non-business, there is no clear cut answer and it is often a case of weighing up all of the relevant facts to arrive at a sensible outcome. And needless to say, HMRC will sometimes disagree with our conclusions.

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EXAMPLE 1: BUILDING AND SELLING A HOUSE

Jane has purchased a plot of land and intends to build a new house on it, hopefully selling it for a decent profit. This is her only business venture. Although there will only be one source of income (the eventual house sale) and it could be two or three years before it is made, this is still a 'business' activity for VAT purposes with the following strategy giving the best outcome:

- **Voluntary registration:** It will be sensible for Jane to register for VAT as an 'intending trader' as soon as the project starts so that she can claim input tax on the cost of building materials and professional fees. Builder services will be zero-rated, so there is no input tax to claim on these costs.
- **Repayment VAT returns:** The final sale of the house will be zero-rated as long as it is sold on either a freehold basis or with a lease exceeding 21 years (20 years in Scotland). Therefore, all VAT returns submitted to HMRC will be for net repayments.
- **Deregistration:** Once the house is sold, Jane should deregister unless she intends to make future taxable supplies where she must either be registered for VAT or wants to continue to be registered on a voluntary basis.

EXAMPLE 2: IS POTTER PETE IN BUSINESS?

Pete is VAT registered as a management consultant but also sells pottery on the internet. He is a bit of an expert on pottery – it has always been a hobby of general interest but he has an eye for a good deal. His strategy is to buy cheaply from car boot sales, and then sell online at a very good profit margin. The bad news is that it is almost certainly a 'business' because there is a clear profit motive.

A practical solution would be to make the pottery activity a different legal entity from his management consulting business, perhaps a partnership with a spouse or friend, so that he doesn't need to worry about VAT until the pottery sales have exceeded £85,000 in any rolling 12 month period, or are expected to exceed £85,000 in the next 30 days (the registration thresholds).

Partners in tax

Keith Gordon looks at a case which considers the statutory processes governing the opening and closure of partnership enquiries

KEY POINTS

- **What is the issue?**
In the 2004/05 tax year, Mr Reid and Dr Emblin participated in two separate arrangements which sought to generate losses for tax purposes. One set of arrangements was via membership of a loss-making partnership; the other was entered into by each of them on an individual basis.
- **What does it mean to me?**
Enquiries into partnership tax returns are opened under s 12AC and closed under s 28B. Partnerships themselves do not pay tax; instead, the partners have to pay tax on their share of the partnership's profits. As a result, a typical enquiry into a partnership's tax return will deal with matters that impact on the partners themselves.
- **What can I take away?**
The legislation gives the very strong impression that s 28B(4) notices are *not* closure notices. On that basis, it considered that HMRC was fully entitled to remove the non-partnership losses via s 28A closure notices. However, it went on to make some comments about anomalies arising from the legislation.

As I noted in my January 2020 article 'What a carry-back!', there remain a number of unresolved questions concerning the operation of the Self Assessment code, with one of the problem areas being enquiries into partnerships.

The background

Leaving aside the relatively new concept of partial closure notices, an enquiry into a tax return is usually quite straightforward. Focusing on individuals for the time being, enquiries may be opened by notice under the Taxes Management Act 1970 s 9A and, in due course, are closed by a further notice under s 28A. Under s 9A(3), a return that has been subject to one enquiry may not be subject to a further enquiry (except in certain cases where the original return has since been amended). As implicit from s 28A (and since confirmed by case law), an enquiry (once opened) remains open until such time as it is formally closed.

A similar set of provisions applies in relation to partnership tax returns. Enquiries are opened under s 12AC and closed under s 28B. However, it will be remembered that partnerships themselves do not pay tax; instead, the partners have to pay tax on their share of the partnership's profits. As a result, a typical enquiry into a partnership's tax return will deal with matters that impact on the partners themselves.

The legislation has addressed this point by determining that any notice commencing an enquiry into a partnership's tax return is deemed to amount to an enquiry notice under s 9A to each partner 'who at the time has made a return … or at any subsequent time makes such a return' (s 12AC(6)).

Although not spelled out in the legislation, it is implicit that this 'deemed notice of enquiry' into a partner's own tax return can be given, even if it would ordinarily be too late for HMRC to enquire into the partner's own tax return. It is also implicit that the deemed notice of enquiry relates only to the tax return for the same tax year as covered by the partnership tax return under enquiry. However, even if those gaps in the legislation can be overcome by implication, some questions remain:

- What is the scope of the deemed enquiry?
- Does it cover the entirety of the partner's own tax return or just those aspects of the return that pertain to the partner's membership of the partnership?
- Given that there can be only one enquiry into an individual's return, what is the status of a deemed enquiry if the partner's own return has already been subject to an enquiry which has since been closed down?

The complexities are compounded when one considers the provision in s 28B(4) which requires HMRC, when amending a partnership tax return, to consequentially amend each partner's

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tax return and to give the partners notice of such amendments. Partners have no right of appeal against s 28B(4) notices, even though this is effectively a closure notice into the partnership aspects of the partners' own returns. Of course, the partnership can appeal against the closure notice given to the partnership.

Some of these issues came to the fore in the recent case of *Reid & Emblin v HMRC* [2020] UKUT 61 (TCC).

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The facts of the case

In the 2004/05 tax year, Mr Reid and Dr Emblin participated in two separate arrangements which sought to generate losses for tax purposes. One set of arrangements was via membership of a loss-making partnership; the other was entered into by each of them on an individual basis.

The losses thought to have arisen from the various arrangements were then claimed by Mr Reid and Dr Emblin on their respective tax returns for the 2004/05 tax year. The partnership similarly filed a tax return for the 2004/05 tax year claiming the partnership's losses and allocating those losses to the various partners.

HMRC opened an enquiry into the partnership tax return on 7 September 2006. Although this notice also amounted to opening enquiries into the tax returns of each of the partners, including Mr Reid and Dr Emblin, HMRC proceeded to open enquiries into Mr Reid's and Dr Emblin's personal tax returns (on 25 September 2006 and 10 January 2007 respectively).

On 14 January 2013, HMRC issued a closure notice to the partnership under s 28B. This notice amended the partnership tax return by removing the aggregate losses previously claimed. In April 2014, HMRC wrote to each of the partners under s 28B(4) notifying them of the conclusions from the partnership enquiry and advising them of the consequential amendments to their own tax returns.

At the heart of the tribunal's decision was its analysis of the statutory code which gave the strong impression that s 28B(4) notices are *not* closure notices.

Later in April 2014, HMRC wrote to both Mr Reid and Dr Emblin purporting to close down the enquiries into their personal tax returns, removing the losses claimed from the non-partnership arrangements.

Mr Reid and Dr Emblin consider that the late April 2014 notices are invalid closure notices. They believe that the enquiries into their personal tax returns had already been closed down, by the s 28B(4) notices they received earlier in the month. As a result, they argued, HMRC had lost the chance to remove the non-partnership losses from their tax returns.

HMRC's core argument was that a s 28B(4) notice does not amount to a closure notice. Instead, it provides a freestanding amendment to the partners' own returns, irrespective of the status of any actual s 9A enquiry into those returns. Furthermore, the deemed enquiry under s 12AC(6) is not an enquiry into the whole of a partner's tax return, but only into 'penumbral matters relating to a taxpayer's participation in the partnership whose corresponding partnership return is the subject of an enquiry'. Of course, nothing in s 12AC(6) states this explicitly.

The taxpayers appealed to the First-tier Tribunal which dismissed their appeals. The taxpayers duly appealed against the decision to the Upper Tribunal.

The tribunal's decision

The Upper Tribunal (Mr Justice Nugee and Judge Jonathan Richards) recognised that the legislation led to anomalies, but ultimately dismissed the taxpayers' appeals.

At the heart of the tribunal's decision was its analysis of the statutory code which gave the very strong impression that s 28B(4) notices are ***not*** closure notices. On that basis, the tribunal considered that HMRC was fully entitled to remove the non-partnership losses via s 28A closure notices in late April 2014. Having reached this conclusion, however, the tribunal then made some comments about some of the anomalies arising from the legislation.

Although the tribunal considered that the legislation made it clear that individuals could not appeal against s 28B(4) notices (and, therefore, any challenge to HMRC's conclusions in relation to the partnership enquiry must be conducted at the partnership level), it recognised that this led to potential difficulties if the s 28B(4) notice contained minor errors not present on the partnership's own closure notice. Such errors, the tribunal recognised, could be challenged only by way of judicial review.

The Upper Tribunal also acknowledged that a deemed s 9A enquiry (i.e. one that has been opened because of s 12A(6)), once open, could then remain open indefinitely, although the tribunal concluded that such an anomaly could be rectified by the taxpayer seeking a closure notice under the procedure in s 28A(4).

Commentary

The tribunal's conclusion accords with my initial views as to the effect of the legislation. If one focused on HMRC's rights to open and close an enquiry into tax returns (whether from individuals or from partnerships), the Upper Tribunal's decision makes full sense. Furthermore, I have no problem with s 28B(4) providing no more than that consequential amendments to partners' own tax returns should be notified to the partners upon the closure of the partnership enquiry. (I am a little concerned, however, that HMRC frequently delays issuing such notices to the partners so that any decision by the partnership as to whether to challenge the partnership's closure notice will often be made without the partners being formally advised as to the impact of the closure notice on their personal tax liabilities. In the present case, there was a delay of almost 15 months. However, that is a separate point but something that might be worth addressing by the professional bodies in due course.)

Had the legislation stopped there, it would in my view be clear that s 28B(4) notices do not amount to closure notices. However, the deemed enquiry provision in s 12AC(6) casts a very different light on matters.

What is the point of s 12AC(6)? It cannot be to notify the partners of the existence of a partnership enquiry because the legislation does not actually require the partners to be told of the partnership enquiry. It must therefore be to deem there to be an open enquiry. However, if that is the case, there must be a way to close it. If the deemed enquiry extends to the whole return (as the wording of s 12AC(6) seems to suggest), then s 28A clearly achieves that objective. However, if that is the case, then s 28B(4) is of limited purpose (particularly now we have the concept of partial closure notices).

It is unclear whether the case will proceed to the Court of Appeal, although some further clarity would be helpful.

Conversely, on HMRC's argument, where the deemed enquiry is more limited, then s 28B(4) is Parliament's equivalent to a closure notice in respect of that more limited enquiry, albeit without appeal rights. But, as I have said, this effect could have been achieved more neatly without s 12AC(6) being enacted.

I hope that this can be considered further, either by a further appeal to the Court of Appeal or by an overhaul of the legislation. If the latter, I wonder whether there would be any objections to the simple repeal of s 12AC(6).

Finally, it should be noted that the partnership at the centre of this case was in fact a limited liability partnership (LLP). Last year, the First-tier Tribunal held that enquiries into LLPs are not governed by the same rules as ordinary partnerships (*Inverclyde Property Renovation LLP & Clackmannanshire Regeneration LLP v HMRC* [2019] UKFTT 408 (TC)). HMRC's appeal against that decision is due to be heard by the Upper Tribunal later this month, as well as being addressed in the Finance Bill. The principles deriving from the *Reid & Emblin* case are nevertheless applicable to ordinary partnerships.

In the course of its decision, the Upper Tribunal also raised the question as to its jurisdiction. The taxpayers were arguing, on their appeal, that the late April 2014 closure notices were invalid. However, the tribunal was concerned that the logical conclusion of the taxpayers' argument was that the tribunal ought not to have any jurisdiction to hear the appeal because its jurisdiction is dependent on there being a valid closure notice. In the end, the tribunal chose to gloss over this existential question and focused on the fact that it was exercising its jurisdiction in an appeal from the First-tier Tribunal (where the point was not raised). In my view, however, there is nothing wrong with a tribunal considering whether or not it has jurisdiction and, as Dr John Avery Jones once held, a tribunal always has jurisdiction over such matters.

Furthermore, last year's *Inverclyde* decision addressed the point: by agreeing with the taxpayers in that case that the closure notice was invalid, it struck out the taxpayers' appeal. Although the strike out of an appeal is usually something that taxpayers do not want to happen, in cases such as this, it amounts to an acceptance by the tribunal that a closure notice is invalid which is the outcome that can be wanted by the taxpayers. Finally, it should be noted that the case also considered a challenge to accelerated payment notices received by Mr Reid and Dr Emblin. However, that part of the case is beyond the scope of this article.

What to do next

It is unclear whether the case will proceed to the Court of Appeal, although it would be helpful if some further clarity could be brought to this area. However, I believe that there are cases where HMRC considers the deemed enquiry under s 12AC(6) to extend to the entirety of a partner's personal tax return and not merely those matters penumbral to the partnership return. If HMRC's argument before the Upper Tribunal is correct, then HMRC may not use a deemed enquiry to look at wider aspects of the taxpayer's return.

It might also be appropriate for anyone who has been subject to a deemed s 12AC(6) enquiry to seek a formal closure notice of that enquiry so that there is no risk of matters being reviewed afresh several years down the line.

Record review

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KEY POINTS

- **What is the issue?**
From 1 January 2017, the CPD requirements for CIOT and ATT members and ADIT affiliates changed. The first review of records under the new regulations has just been completed, so it is an ideal opportunity to feed back to members on themes identified during the review.
- **What does it mean for me?**
The CIOT and ATT will be continuing the annual programme of reviewing records. All members coming within the scope of the regulations should be prepared to provide their records on a timely basis if requested.
- **What can I take away?**
This article reminds members of the requirements under the regulations and also sets out tips on how to ensure appropriate CPD is undertaken and recorded.

Jane Mellor considers the updated 2017 CPD requirements for CIOT and ATT members, and reports on the review of 2018 records

Updated continuing professional development (CPD) regulations and guidance notes (bit.ly/2P220Iv) came into force on 1 January 2017. As a reminder, the regulations apply to members who:

- 1.2.1: provide tax compliance services, advice, consultancy or guidance in tax including, without limitation, those in private practice, the public sector, commerce, industry or not for profit sector;
- 1.2.2: do not fall in para 1 above but who use the designation CTA, CTA (Fellow), ATII, FTII, Chartered Tax Adviser, ATT, Taxation Technician, ATT (Fellow), Taxation Technician (Fellow), ADIT affiliate or International Tax Affiliate of the Chartered Institute of Taxation.

There was therefore a major change in terms of the members who came within the scope of the CPD regulations, as those not working in a tax related role but holding themselves out to the public as a CTA, ATT or ADIT affiliate have been required to consider the extent, if any, of their CPD need.

The CPD requirement for those coming within the scope of the regulations is: 'Members are required to perform such CPD as is appropriate to their duties.' CPD requirements must be met over the calendar year and the first records reviewed since the change have been those for the year to 31 December 2018.

A previous article ('A new approach', *Tax Adviser*, December 2016) set out the changes and the reasons why the CIOT and ATT decided to move away from the previous hours based approach.

What is the CIOT/ATT process for reviewing CPD records?

In early summer 2019, the CIOT and ATT wrote to a selection of members requesting their CPD records and they were initially given six weeks to email those records to us.

Once records had been received, a review was then undertaken by the Professional Standards team. Where appropriate, anonymised records were also considered by the team of tax professionals who volunteer to take part in the CPD working party.

Where the records were satisfactory, an acknowledgement email was sent confirming that nothing further was required from the member. In some cases, follow up emails or telephone calls were undertaken to obtain further information from the member or to provide guidance on how records could be improved going forward.

Note that members are required to reply to correspondence from the CIOT and ATT. Therefore, even where members consider that they do not come within the requirements of the regulations, they must respond and advise us why they do not think they are within the scope of the requirements. Members not replying to correspondence are referred to the Taxation Disciplinary Board (TDB) for disciplinary action, and this is a referral which is distinct from any referral for not meeting the CPD requirements.

What were the findings?

The working party were pleased to see that in general members had a good understanding of CPD requirements and good records in support of what they had done to meet those requirements. Good practice points and certain themes arising from the review are set out below and a checklist is supplied at the end of the article for members to use when considering their own CPD.

Familiarity with the requirements

As you would expect, members working in tax were familiar with the requirement to undertake CPD. Many of the records provided made it clear that members had kept up to date with the latest regulations and guidance and were aware of the 2017 changes. Members had set out what their role was, the particular areas they needed to focus on, and the CPD planned and undertaken to meet this requirement. Whilst it is acceptable to record hours of CPD undertaken based on the previous regulations, it is important that records make it clear how the CPD that is planned and undertaken is appropriate to the member's duties.

Members working in areas other than tax should consider carefully whether they are now within the scope of the regulations because they use the designations (with the exception of honorary members). Not all members appeared to be fully aware of the change in the regulations. Members could confirm that CPD had been undertaken but their records were not always maintained in a structured way, which meant it was harder for the member to demonstrate they had planned their CPD and complied with the regulations.

The CIOT/ATT CPD record form is not mandatory but it provides a guide as to the information which the CIOT and ATT would find helpful to see during a review.

Those members not working in tax and not holding themselves out as members through use of the designations should be able to clearly articulate their reason for not undertaking and recording CPD if their records are requested. When completing their annual membership return, they will be asked the question: 'Have you completed your continuing professional development in accordance with CIOT/ATT regulations?' Members who do not work in tax **and** do not use their designations should answer 'yes' when asked if they meet the requirements of the regulations.

Recording

Having planned and undertaken CPD, it is important that it is recorded. Members should be aware that:

- The CIOT/ATT CPD record form is not mandatory but where used it provides a guide as to the information which the CIOT and ATT would find helpful to see during a review. It provides a structured approach which helps to identify whether requirements have been met.
- Where members retain records in other formats (excel, timesheet records, etc.), these are acceptable for submission; however, it is good practice to ensure that records include broadly the same information as would be provided on the CIOT/ATT record form. When sending these records, members need to supply details of their job title and a brief description of their role to assist with the review.
- Good records seen during the review included the whole range of different types of CPD undertaken. Some members understated what they had done by only providing a list of the structured courses or webinars attended. The wide range of activities which counts as CPD is set out in the CPD guidance but some members omitted to include details such as reading technical journals, coaching and mentoring within their firm, technical research and attendance at branch events.
- Records do need to be submitted and it is never sufficient for members to respond to a request by stating that they meet the requirements of their firm or another professional body without supplying the supporting record.

Ideally, the record will include a consideration of the outcome of CPD undertaken so the plan and CPD activities can be updated if required.

Voluntary work

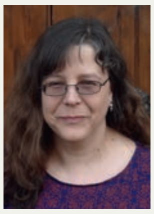
Members selected for review included those who are undertaking voluntary and pro bono work, often using their tax skills. It was helpful to receive records showing that members had undertaken CPD of relevance to these roles, as well as in relation to paid roles.

What next?

Members should continue to look out for further guidance in relation to CPD on the CIOT and ATT websites, including a brief film setting out points in relation to compliance with CPD requirements.

The CIOT and ATT will be contacting members in Spring 2020 to request records for the year to 31 December 2019. Members selected should ensure that they promptly provide complete records for the year. In the meantime, members may want to review their own CPD requirements and the records being maintained using the checklist in Box 1.

PROFILE



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Profile Jane Mellor is a professional standards officer at the Chartered Institute of Taxation and Association of Taxation Technicians where she helps produce member guidance on professional and ethical matters and assists with anti-money laundering issues. Before joining the CIOT/ATT she worked as a personal tax manager in a firm of Chartered Accountants.

BOX 1: CPD CHECKLIST

1. Am I familiar with the latest CPD regulations and guidance on the CIOT website (bit.ly/2HCnHL2) and the ATT website (bit.ly/39RyYmC)?
2. Remember that I have to meet the CPD requirements unless:
   (a) I am **NOT** working in tax; and
   (b) I am **NOT** using the designations.
3. Have I planned CPD based on my duties? If not, review and update my CPD plan, and arrange activities to meet this requirement.
4. Have I set up a system for recording CPD once undertaken?
5. Does my CPD record include all the information areas set out on the CIOT/ATT form? Include details such as:
   - job title;
   - description of role and responsibilities;
   - CPD goals/training needs, etc.;
   - CPD actually undertaken; and
   - outcome of CPD.
6. Have I considered and included in the record all CPD undertaken, including all the areas set out in section 10.1 of the CPD guidance?
7. Have I reviewed the outcome of CPD and taken any required actions?

ATT ANNUAL CONFERENCE 2020

Coronavirus (Covid-19) Update

We are currently monitoring the situation regarding Covid-19 (coronavirus) and taking sensible and proportionate measures in line with guidance from Public Health England. Accordingly, the ATT will be transferring our Spring Conferences – normally scheduled in May and June - to online events.

We will be offering all the same material that you would have received on the conference days in a series of webinars. We intend to offer a mix of recorded and live-streamed sessions during that period so that you still have the opportunity to interact with the presenters and receive flexible access to the remaining content when it is convenient to you.

All delegates registered on the existing conferences will be offered dates* on the new live sessions when we have finalised our new arrangements.

*Please note these may not follow the original dates. We will update the website with dates and times for the sessions in due course.

AT LEAST 5 HOURS OF CPD

REGISTER AT WWW.ATT.ORG.UK/ATTCONF2020

FOR MORE INFORMATION EMAIL EVENTS@ATT.ORG.UK

Topics will include:

- **Budget Update including devolved taxes**
- **Property tax review**
- **Capital tax issues in 2020**
- **Business tax update**
- **Employment taxes**
- **VAT, Customs Duties and Brexit - are we there yet?**
- **Digitalization of taxes - where are we now?**
- **Professional Standards update**

Speakers include:

Michael Steed

ATT Technical Officers

Further information:

Please visit **att.org.uk/attconf2020**
or email **events@att.org.uk**

Conference pricing:

- *ATT members and students:* **£185**
  The above reduced rate also applies to AAT, ACCA, ICAS, CIMA and Accounting Technician Ireland Member(s) or Student(s)
- *Non Members* **£255**

www.att.org.uk/attconf2020

A legislative flood

Helen McGhee asks whether the deluge of new legislation designed to prevent tax avoidance has really been necessary

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KEY POINTS

- **What's the issue?**
An ever increasing deluge of ink on the statute books is dedicated to quashing any perceived tax avoidance before it even sees the light of day. Over time, legislation has also been drafted to increase HMRC's powers and attempt to streamline the process of tax collection.
- **What can I take away?**
The legislation and case law are unambiguous, and it is commendable that in practice we have come such a long way towards closing the loopholes in tax law. But in analysing the rafts of new legislation, one must question whether it has all been necessary.
- **What does it mean to me?**
There has been a seismic shift in the field of tax avoidance. Government resources now ought properly to be directed at policing and enforcement.

PROFILE

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An ever increasing deluge of ink on the statute books is dedicated to quashing any perceived tax avoidance before it even sees the light of day.

The introduction of the DOTAS rules in Finance Act 2004, under which a scheme promoter or user is required to disclose the main elements of any avoidance scheme to HMRC, was groundbreaking. The government consultation 'Raising the stakes on tax avoidance' was published in August 2014, setting a clear pathway. In February 2016, the criteria for the DOTAS rules were broadened substantially. The legislation in Finance Act 2014 and 2015 complemented DOTAS in relation to tackling any promoters of tax avoidance schemes with the ability for HMRC to monitor promoters and issue conduct notices. The introduction of the GAAR from July 2013 to invalidate any abuse also sent a very clear message.

Sir Amyas Morse published his independent review of the controversial loan charge on 20 December 2019. Part of his remit was to consider whether the original 2016 policy was both necessary and proportionate. His report expressed deep concern that since the new legislation was introduced, there have been well over 20,000 new loan charge schemes, 8,000 of which have emerged since the start of the 2019/20 tax year. Sir Amyas concluded that the loan charge was a necessary piece of legislation, although he did not accept it was proportionate for it to go back for 20 years. He had a specific recommendation for promoters:

> 'The government must improve the market in tax advice and tackle the people who continue to promote the use of loan schemes, including by clarifying how taxpayers can challenge promoters and advisers that may be mis-selling loan schemes. The government should publish a new strategy within six months, addressing how the government will establish a more effective system of oversight, which may include formal regulation, for tax advisers.'

Over time, legislation has also been drafted to increase HMRC's powers and attempt to streamline the process of tax collection. Finance Act 2014 introduced follower notices (FNs) and accelerated payment notices (APNs) which essentially require a taxpayer to remove any tax advantage claimed and for any tax in dispute to sit with the Exchequer whilst a resolution is found. With only three months to act, the consequences of receiving a notice are very serious. Penalties for non-compliance are hefty and can easily amount to up to 50% of the value of the denied tax advantage.

More recently with a shift towards global tax transparency, cross border exchange of information and the Common Reporting Standard, the focus moved to offshore evasion.

Finance Act (No2) 2017 introduced the Requirement to Correct, requiring taxpayers with overseas assets to regularise their historic UK tax position. Non-compliance after 30 September 2018 triggers severe penalties of up to 200% of the potential lost revenue and potential naming and shaming. The legislation has become very robust and the penalties for non-compliance send a clear message.

Evolving precedent

In the past few years, we have also seen numerous cases occupying court and tribunal time to ensure that any perceived or actual abuse of the tax rules is simply no longer conceivable.

Elaborate or circular schemes, complete with a 'pre-ordained series of transactions into which there are inserted steps that have no commercial purpose except the avoidance of a liability to tax' (*IRC v Burmah Oil Co Ltd* 1982 STC 30) will not be tolerated; and anyone party to or promoting such arrangements will be punished harshly and rightly so. In many circumstances (notably in relation to FA 2003 s 75A), a tax avoidance motive is not even necessary to be deemed to have suppressed a scheme, as the Supreme Court set out in *Project Blue Limited v HMRC* [2018] UKSC 30.

It is abundantly clear (from *WT Ramsay Ltd v IRC* [1982] AC 300, *UBS AG v HMRC* [2016] UKSC 13 and *Hancock and another v HMRC* [2019] UKSC 24, to name but a few) that when it comes to analysing any potential exploitation of the legislation, there can no longer be a blinkered approach to the facts.

It is well established that the 'ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically' (*Collector of Stamp Revenue v Arrowtown Assets Ltd* [2003] HKCFA 46).

The view from the profession

The legislation and case law are unambiguous, and it is commendable that in practice we have come a long way since the days of dubious tax professionals marketing and implementing schemes to exploit loopholes in tax law against what must have been Parliamentary intent. Credit must be given to the 2017 edition of 'Professional conduct in relation to taxation' for ensuring that the tax profession takes the lead in upholding high ethical standards in relation to any potential facilitation of tax avoidance.

Over time, legislation has been drafted to increase HMRC's powers and attempt to streamline the process of tax collection.

In analysing the rafts of new legislation, one must question whether it has all been necessary. Arguably yes, but could Taxes Management Act 1970 s 55 (recovery of tax not postponed) have been used instead of the hundreds of pages of new statue introducing complex rules regarding FNs and APNs? And take Finance Act 2019 Sch 4 in relation to profit fragmentation arrangements. The legislation is designed to counter avoidance where UK traders and professionals arrange for their UK-taxable business profits to accrue to entities resident in territories where significantly lower tax is paid than in the UK. Does this not smack of the transfer of assets abroad rules with a hint of the transfer pricing and controlled foreign company rules thrown in?

Did we need Finance Act (No.2) 2017 Sch 16 in relation to enablers? Will the additional legislation really influence and promote behavioural change beyond which has already been achieved? Or did we need FA 2007 Sch 24 paras 3A and 3B, introducing a presumption of carelessness in avoidance cases and the concept of guilty until proven innocent?

Legislation that will never need to be employed is not helpful. Many commentators have questioned the potential superfluous nature of the GAAR sitting alongside the many TAARs. In the first GAAR ruling, the panel decided that a complex employee benefits trust scheme involving payment in gold bullion or platinum sponge was not a reasonable course of action. Even the most optimistic taxpayer having read the *Rangers* case (*RFC 2012 Plc (in liquidation) v AG for Scotland* [2017] UKSC 45) would have struggled to see how HMRC could possibly have lost the legal argument at tribunal so was a GAAR referral necessary? The vast majority of GAAR referrals have centred around employment taxes, and more specifically marketed schemes, so the role of the GAAR panel is significant in that the opinions will be of useful broader application.

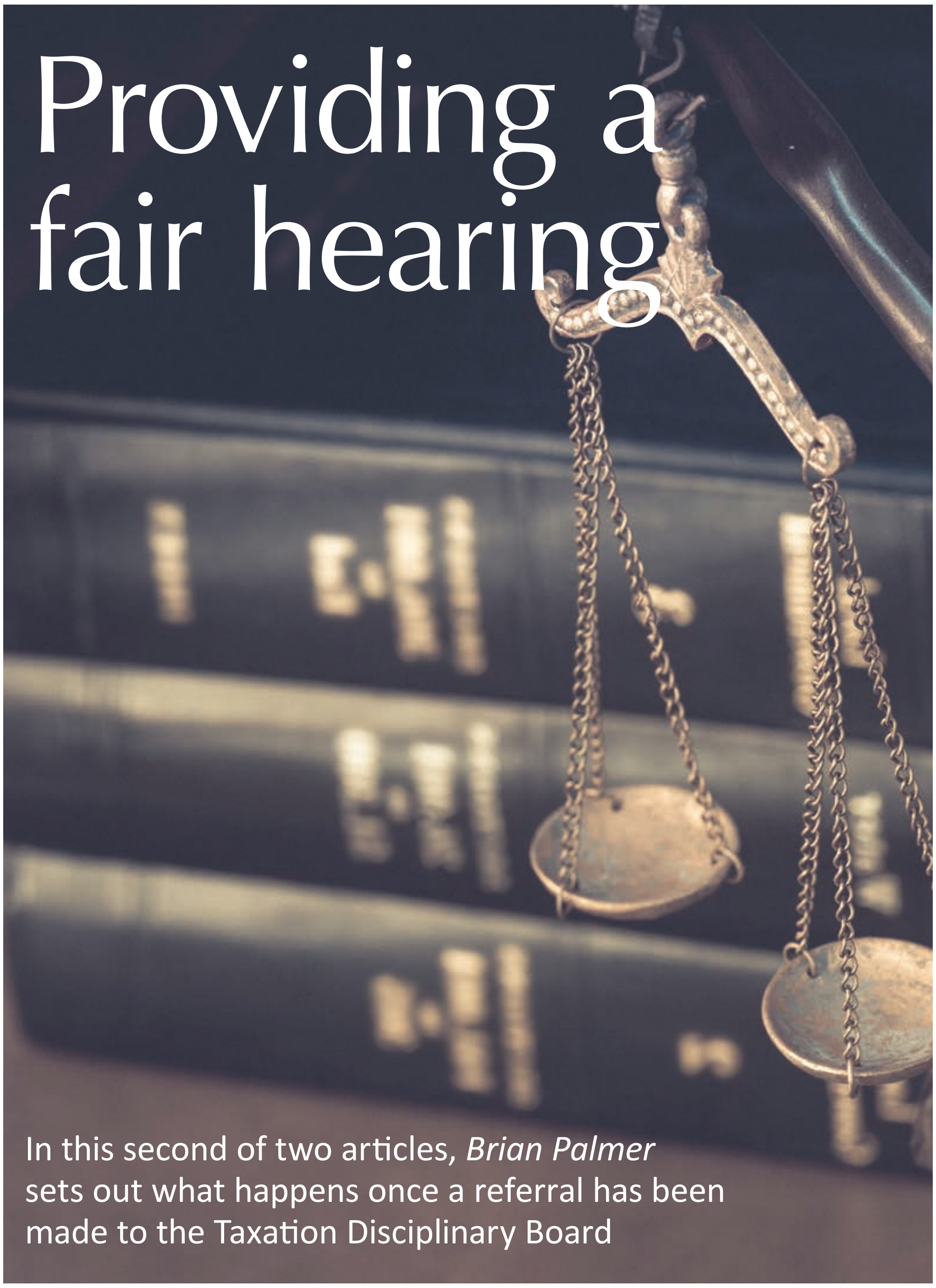
The GAAR Advisory Panel opinion of 7 August 2019 is potentially of wider interest. The specific issue concerned the extraction of value from a company by its directors and shareholders through the use of employee shareholder shares. The opinion recorded that the use of employee shareholder shares by existing shareholders was reasonable in the context of the legislation and additionally that a reorganisation of activities to ensure the legislative requirements were met was also reasonable. However, the specific terms of the shares used meant that value flowed out of existing taxable shares into new exempt shares, which was not considered reasonable. The panel gives credence to its role in plugging a gap where the legislative draftsman had not considered or anticipated the potential value shift. The opinion expressed the view that it was never the intention of Parliament for the law to be applied in the given manner. As a concept this works, as the GAAR is primary legislation; perhaps, though, one could rightly be concerned that it may make the draftsman less fastidious if he knows that he has a safety net in the GAAR panel. This will not aid our quest to make the legislation clear, unambiguous and all encompassing.

Direction of travel

We must acknowledge that there has been a seismic shift in the field of tax avoidance. Even simple structuring advice to clients is starting to require contingent counterarguments if anything is ever challenged. So, what next? Government resources now ought properly to be directed at policing and enforcement.

What we need now is to be sensible and we need fiscal honesty. When we analyse the tax gap figures, in 2019 the tax gap is estimated to be £35 million or 5.6% of tax liabilities. 37% of this is from income tax, NICs and capital gains tax. The biggest offenders are small businesses, which account for 40% of liabilities; individuals account for only 11%. Failure to take care and legal interpretation accounts for 18% of the gap, and evasion for 15%, while avoidance is a reassuring 5% (£1.8 billion). Non-payment is 11%. We need to focus on restoring public faith and be assured that the door has been closed on tax avoidance behaviours via legislation, judicial view and professional practices.

Providing a fair hearing



In this second of two articles, *Brian Palmer* sets out what happens once a referral has been made to the Taxation Disciplinary Board

KEY POINTS

- **What's the issue?**
The Taxation Disciplinary Board (TDB) is empowered to deal with complaints alleging breaches of professional standards and guidance, the provision of inadequate professional service, and conduct unbefitting a professional person.
- **What can I take away?**
Where it has been established that breach of discipline has occurred, a Disciplinary Tribunal may impose such penalties as it considers appropriate in accordance with powers given to it, after taking into account the gravity of the breach and the facts and arguments presented.
- **What does it mean to me?**
The TDB ensures that there is a fair and independent investigation of every complaint referred to it and also ensures the fair treatment of any member against whom a complaint is made.

The purpose of the Tax Disciplinary Board (TDB) is to ensure that tax advisers maintain the highest professional standards of conduct and to exercise professional discipline over those who fail to comply. It is empowered to deal with complaints alleging breaches of professional standards and guidance, the provision of inadequate professional service, and conduct unbefitting a professional person. After all, it is of paramount importance that public confidence in our profession is maintained.

The TDB is there to support and maintain the high professional standards of the CIOT and ATT; and to handle complaints quickly, impartially and effectively. It promises to:

- operate economically;
- have easy to understand policy and procedures; and
- publish simple guidance for complainants and members.

What happens when a complaint is received?

A complaint is normally received by the TDB's Executive Director. As a first stage, complainants are advised that bringing a complaint to the TDB is no substitute for initially seeking redress through the complaints procedure of the member or the member's firm. Complainants can also possibly seek redress through the courts, although it has to be recognised that for many a referral to TDB is a less stressful and more cost effective solution. While the Board can decide on whether a member has complied with professional conduct regulations relating to fees, it does not offer legal advice or intervene in fee disputes. In summary, there are three ways in which a member (or student) can be referred to the TDB:

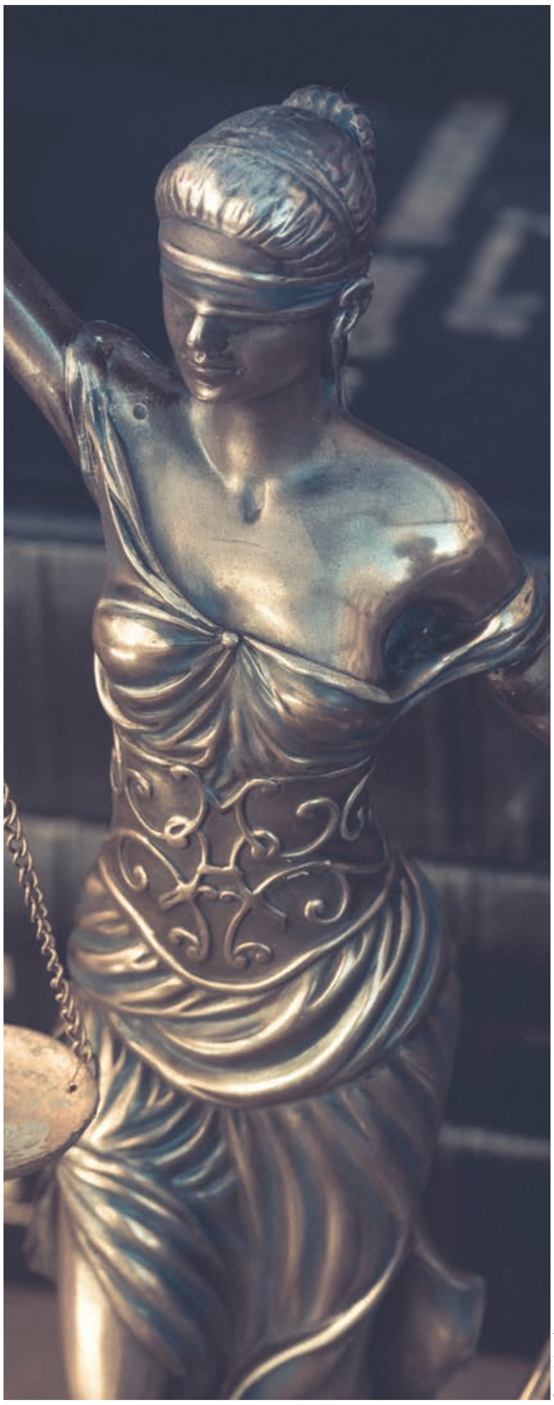
- a complaint by a member of the public;
- a referral by HMRC; and
- a referral by CIOT/ATT.

Review stage

At the outset, the complainant is sent a standard complaint form to complete. Once returned, it will be examined by a TDB officer (the reviewer), who is expected to consider whether the complaint falls within the Board's jurisdiction, and has been submitted within 24 months of the events which form the subject matter of the complaint.

Assuming these criteria have been met, the reviewer will forward the complaint, together with a full pack of related correspondence, to the member, inviting them to respond with any observations they might wish to make. The member's response is, in turn, forwarded to the complainant. The member is then given a further opportunity to comment.

While rare, there are occasions where the reviewer considers a matter to be trivial or vexatious and the complainant



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PROFILE

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FACING A COMPLAINT

In the unlikely event that a complaint is laid against you, remember the following points:

- You should acknowledge the complaint without delay.
- If it is impossible to give an immediate substantive response, you should inform the reviewer accordingly and state when it will be forthcoming.
- A failure to respond to an official communication may itself be considered a breach of professional discipline.
- If you are employed, you must consider advising your employer.
- You should consider the need for legal advice and the requirement to advise your professional indemnity insurers.

The detailed provisions of the Taxation Disciplinary Scheme and associated Regulations are available on the Board's website at www.tax-board.org.uk.

will be advised accordingly. If the complainant objects to that decision, they are entitled to request that the matter be considered by an investigatory assessor. The investigatory assessor is an independent person appointed by the Board. It is more common that the reviewer refers a complaint for examination by the Investigation Committee. Typically, it takes three or four months to reach the referral stage.

The Investigation Committee

An Investigation Committee is made up of three or five members recruited by the Board. They are drawn, in part, from the TDB's sponsoring bodies, with the balance being made up of lay members. All are required to preserve the TDB's independence. To ensure that this happens, lay members are always in the majority and usually include a legally qualified member.

The role of an Investigation Committee, which meets in private, is to consider the documentary evidence prepared and submitted to it by the reviewer in order to determine whether there is a prima facie case (an arguable case to answer) against a member. If deemed appropriate, the Investigation Committee will instruct the reviewer to undertake any further enquiries considered necessary in order for it to be apprised of the full facts relevant to the allegation.

Once the committee is satisfied with the material before it, it may either dismiss the complaint or find that there is a prima facie case to answer. Where it is considered that there is a prima facie case, the Investigation Committee may still decide to take no action, if the matter is not serious enough to merit a sanction. Otherwise, the case will be referred to the Disciplinary Tribunal.

Both parties will be advised of the Investigation Committee's decision and the reasons for it. They will also have the right of appeal to an investigatory assessor (if either party objects), whose decision is final. The assessor may either uphold the Investigation Committee's decision or ask for it to be considered by a new Investigation Committee panel.

Interim orders

While it is common for prima facie cases to go straight to the Disciplinary Tribunal, an interim order may be applied. These were introduced in 2016, as an additional layer of protection where it is considered to be in the public interest, or necessary for the protection of the public, that a member's membership should be suspended pending the full hearing of disciplinary charges by a Disciplinary Tribunal.

The Disciplinary Tribunal

The tribunal is composed of three members, two of whom are lay members and one of whom is a member of either of the sponsoring bodies. The chairman of the Disciplinary Tribunal is legally qualified.

The Disciplinary Tribunal's role is to consider the evidence presented to it by a lawyer (the presenter) acting on behalf of the Board and the member (who may also be legally represented), and to determine whether or not the alleged conduct is proven and to make a finding accordingly. However, a Disciplinary Tribunal, unlike an Investigation Committee, sits in public with both parties given an opportunity to attend, even if they do not wish to give evidence.

FIXED PENALTIES: A FAST TRACK PROCESS

As a way of streamlining the disciplinary process, where a member fails to comply with the administrative requirements of a sponsoring body, a reviewer has the power to impose a financial penalty up to a maximum of £500 (for each occasion). The key points are that:

- Penalties must be paid within 14 days, unless the reviewer grants an extension.
- Members have 14 days to request in writing that their matter be referred to a Disciplinary Tribunal.
- To be effective, the request must set out the grounds for the referral and can only be for one of two reasons:
  - the decision of the reviewer was unfair or unreasonable; or
  - there is new evidence, not previously available to the reviewer, of a nature that would materially have affected the decision has become available.

Where a case is referred to a Disciplinary Tribunal, there is a simplified procedure for taking the case forward.

Examples of referrals that can be considered administrative failures include:

- failure to submit a record of CPD when requested;
- failure to undertake or complete the required amount of CPD hours;
- a temporary lapse in professional indemnity insurance cover;
- a minor infringement of the rules governing the designation of firms as Chartered Tax Advisers;
- failure to have all the administrative procedures in place that are required to ensure compliance with anti-money laundering legislation; and
- failure to notify that disciplinary proceedings have been initiated or completed by another professional body to which the member belongs.

Recourse to fixed penalty arrangements is intended to provide a quick and effective remedy for what are essentially minor failings of an administrative character. It should not be construed that such failings are trivial. Each complaint will be examined on its merits. It is also important that complaints are dealt with proportionately. Detailed guidance on fixed penalties can be found at: bit.ly/2HBah1I.

A member will be advised if a complaint against them has been referred to a Disciplinary Tribunal and at the same time they will receive details of a proposed date, time and location for the hearing. This should be acknowledged as soon as practical and, where applicable, giving valid reasons preventing attendance.

Prior to the hearing, the member will be informed of the charges, invited to set out their response and to indicate what, if any, evidence they intend to rely upon. In addition, they are required to name any witnesses they might intend to call upon.

The Disciplinary Tribunal process and procedure, the right to be heard and to call witnesses, if required, are explained in the material issued by the clerk to tribunal. While a member may opt to present their case in person, it is for them to consider whether to appoint external advice and counsel.

Where it has been established that breach of discipline has occurred, a Disciplinary Tribunal may impose such penalties as it considers appropriate in accordance with powers given to it, after taking into account the gravity of the breach and the facts and arguments presented.

The tribunal has a wide range of sanctions available to it, including:

- a requirement to apologise;
- the ability to fine or issue an admonishment; and
- suspension or, in the most egregious instances, expulsion.

There is also a power to award compensation where the tribunal has made a finding of inadequate professional service. If a finding is made against a member, a Disciplinary Tribunal will normally make an award of costs.

The tribunal's decisions will be sent in writing to both the member and the complainant, with reasons given for its decisions. They will also normally be published; however, the member has a right of appeal.

The Appeal Tribunal

A member or the Board may apply for a hearing before the Appeal Tribunal following a decision by a Disciplinary Tribunal. Like a Disciplinary Tribunal, this body normally sits in panels of three: two lay members and a member of either sponsoring body. The chairman of the Appeal Tribunal is legally qualified. The Appeal Tribunal may uphold, modify or overturn any finding of a Disciplinary Tribunal. Its decision is final within the process. Members can only appeal on the grounds that:

- there has been a misapplication of the relevant rules and/or the relevant law;
- the findings or sanction(s) were unreasonable; or
- new evidence has become available which, had it been available earlier, would materially have affected the original findings.

The appeal request will first be considered by a Disciplinary Assessor to ensure that the appeal comes within the specified grounds. If permission to appeal is granted, the case will be heard by an Appeal Tribunal.

Conclusion

The TDB is there to ensure that there is a fair and independent investigation of every complaint referred to it and also to ensure the fair treatment of any member against whom a complaint is made.

The good news, as you would expect, is that the number of referrals to TDB is low. Therefore, if you conduct yourself in a professional manner you are unlikely to be exposed to the disciplinary process.

The disciplinary rules and procedures exist to protect the public. In so doing, they also protect members. Equally importantly, they enhance the standing and reputation of the tax profession and as a member of that profession this is advantageous to you and your fellow members.

The TDB aims to ensure that all complainants are treated fairly. If you are unhappy with the way your case has been handled, you may complain to the Board who will review the case.

Help and support

A referral to the TDB can be a stressful experience. Members can contact the Professional Standards team at standards@ciot.org.uk or standards@att.org.uk to discuss any aspect of the professional standards rules and guidance. While they cannot comment on the particulars of a case, they can explain how the rules should work in practice.

The Members Support Service (tel: 0845 744 6611), which aims to help those with work related personal problems, can also provide a listening ear. An independent, sympathetic fellow practitioner will listen in the strictest confidence and give support.

Part One of this series, 'Facing a complaint' by Heather Brehcist, was published in Tax Adviser in October 2019.

Get ready to renew your AML registration

Please note: 2020/21 registration fees have increased to £300.

It is a legal requirement for members in practice to be supervised for AML. Practising without supervision, such as being late in renewing, means you will be acting contrary to the law.

The fee has increased to £300 due to us having to contribute to the costs of The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) and the need to carry out an increased number of supervision visits and checks to meet their requirements. Our fee is in line with HMRC.

You will receive a pre renewal reminder this month. We will send you the link to your form in early May. This must be submitted by 31 May 2020. Failure to renew on time will result in a referral to the Taxation Disciplinary Board (TDB).

att

Chartered Institute of Taxation
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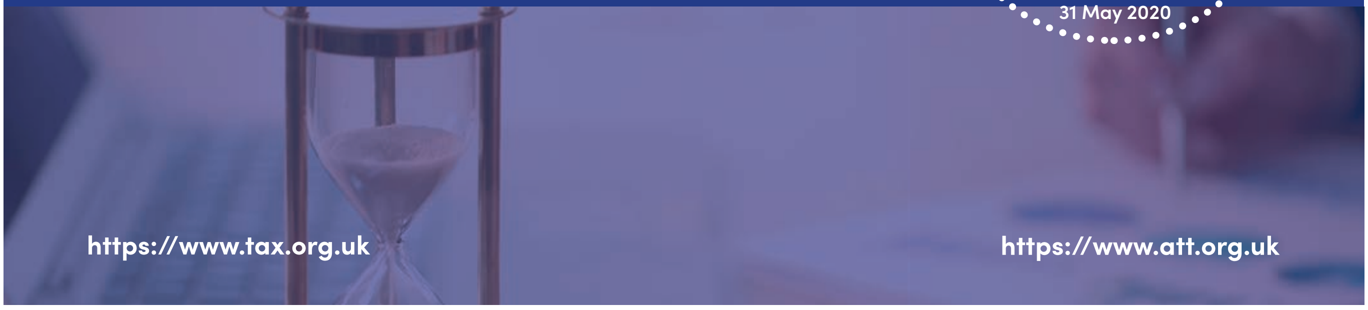
A pre renewal reminder will be issued this month

A link to the online form will be issued in early May

The form must be submitted by midnight on 31 May 2020



Thames Valley
Tax Planning Ideas for Owner-Managed Businesses

Monday 18 May 2020
Time: 14.00 – 17:15
Double Tree Hilton Sindleham, Reading RG41 5DG

att

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Although there are many favourable tax breaks for the owner-managed business, there has never been a time when practitioners have had to tread more carefully in giving advice to such clients. This course provides a current perspective on appropriate planning techniques as well as pitfalls.

Member Cost: £75 per delegate

A merger in a tale retold

John Snape, Penelope Tuck and *Dominic de Cogan* review the origins of HMRC, drawing on the memories of those most closely involved

KEY POINTS

- **What is the issue?**
The merger of the Revenue Departments (Inland Revenue and HM Customs and Excise) in the UK resulted in one of the biggest shake-ups in taxation in the last two decades, with important lessons for contemporary reforms in tax administration.
- **What does it mean for me?**
This CIOT-funded project seeks to obtain the human story of the merger and is a reminder that tax professionals must closely follow the processes by which institutional tax reform is effected.
- **What can I take away?**
There is nothing dry and dusty about institutional reform when it comes to taxation. The factors driving aspects of the merger were often surprising and it hardly needs emphasising how relevant these stories are to current events.

Fundamental reform of the political institutions responsible for tax policy was last attempted when HM Revenue and Customs was formed around 15 years ago. It is now firmly back in the realms of the possible. In future tax discussions of institutional reform, records of the background to that attempt will surely prove invaluable. In particular, it will be useful to have the human story of the merger of the revenue departments, straight from the mouths of those involved. The reader is strongly recommended to visit bit.ly/3cxDsRS for a free download of the full published discussion.

With the aid of a grant from the CIOT, the writers are engaged in a long-term project. This is designed to show how precious insights can be preserved that would otherwise be completely lost, simply by listening to the tales of some of those people closely involved in tax reform.

A 'major review'

Whatever happens over coming years, whether as regards HMRC or the UK civil service generally, policy makers should take account of the process by which HMRC emerged from the revenue departments in 2005. The process will be forever associated with the review chaired by Gus (now Lord) O'Donnell CB, published in March 2004, which recommended not only the revenue departments' merger into a single new department, but also that responsibility for making tax policy should be transferred away from the newly merged department and into HM Treasury. (A copy of the review can be found at bit.ly/2IGyG6x.) O'Donnell was then permanent secretary to the Treasury and was therefore in a good position to assess whether and, if so, how so great a transformation might be accomplished.

What is remarkable about the O'Donnell Review is not only that these proposals were promptly turned into reality but also that the process leading to the review had itself been a swift one. When, that early spring day in 2004, the O'Donnell Review was published, it was not even a year since the chancellor of the Exchequer, Gordon Brown, had announced a 'major review' of the institutional framework of tax policy. The timing was crucial because, just like the administration elected in December 2019, the New Labour government, of which Brown was one of the two most prominent figures, had big tax policy objectives and it needed the departmental vehicle to achieve them. At a time when public policy making is often disparaged as slow, the sheer speed with which the O'Donnell Review appeared remains impressive.

In the CIOT funded project, the findings of part of which are analysed here, the writers have sought to produce a systematic, pioneering study of this remarkably short process, not primarily by reference to documentation but by reference to the memories of some of those people most closely involved. A witness seminar took place at Birmingham Business School in late 2016, with Professor Penelope Tuck as chair. Key people from the practising professions, HMRC and HM Treasury debated a range of issues arising from the period between the O'Donnell Review's announcement and the merger. Two of the writers conducted a series of interviews (seven in total, each one recorded and transcribed) with individuals from the Inland Revenue and from Customs who had been closely involved. Interviewees were identified by number without indicating their role. Major themes from the seminar were coded and given different labels and, while these were used for the interviews, further codes came out of the data that the interviews produced. A third writer, meanwhile, focused on the published literature on both policy making and political ideas current around the turn of the millennium.

Background to the merger

Whilst the revenue departments were largely concerned with direct taxes (the Inland Revenue) and indirect taxes (Customs) respectively, their staff had historically been engaged in a much wider

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range of activities than this would suggest. Groundbreaking in a sense though the O'Donnell Review and the subsequent merger were, they were by no means the first attempt to impart a coherence to a centuries old, adaptable and indeed vast system of administration. Not only, historically, had the revenue departments' officials been involved in the creation of international organisations (such as what became the OECD and the GATT) but they had also dealt with, among other things, merchant shipping, copyright infringement, environmental protection and the Channel Tunnel.

The reasons for this wide-ranging involvement of officials were well-founded. First, tax officials naturally wanted to understand the range of commercial activities to which tax consequences were sought to be attached. Secondly, once civil servants were in post, there was a tendency to deploy them in roles related to, but not the same as, those prompting their original deployment. Our contemporary policy discussions of how government could learn from business and around reducing the cost of the public service could usefully draw on this precedent.

These practices helped both to promote good mutual understanding between the revenue departments and business, and also made effective use of scarce public resources. Moreover, it was not only the workload of the revenue departments that varied over the years; so too did their organisation. The Inland Revenue itself only dated from 1849, following the transfer of Excise to the amalgamated Board of Taxes and Office of Stamps. Even Customs, often traced back to the Stuart monarchy, in reality had only existed as such since 1909, when Excise was re-transferred to the Commissioners of Customs. What O'Donnell advocated, in context, was in an important sense yet another in a long line of reallocated responsibilities, underlining that the merger was arguably far less radical than might be imagined.

Connected reforms

Added to the element of continuity that the merger demonstrated was the fact that, because of its centrality to the delivery of New Labour tax policy, the merger took place in the context of a range of other initiatives that have had far-reaching effects. The end of the 20th century and the beginning of the 21 st century in the UK saw: the devolution of legislative and executive competences to Wales and Scotland; the Good Friday Agreement; the Human Rights Act 1998; and the devolution of certain competences to Northern Ireland.

All of this illustrated the fact that there was not only a certain continuity in O'Donnell's recommendations. There was also a continuity of ideas, in that New Labour continued to espouse the Conservative government's unfinished business of a New Public Management (NPM) approach to public policy, emphasising targets, managerialism and performance indicators.

In the context of the revenue departments, this had led to further incremental change, even before the O'Donnell Review was announced. 1998, for example, saw the beginning of the Inland Revenue's involvement with student loan repayment collection. 1999 was the year of the merger of the Contributions Agency with the Inland Revenue, a move that made explicit the innovative insight involved in the link that Brown held to exist between tax and welfare. There are other examples too, but these are enough to show that the merger of the Inland Revenue and Customs was not only part of tax policy but also of a much wider programme of radical reform. This point retains its relevance amid talk of the sweeping reorganisation of the Whitehall civil service to advance the current administration's objectives of 'levelling up' and to facilitate the secession of the UK from the EU.

New Labour's view of the world

What may differ today from the conditions of the first five years of the century is the fact that New Labour ideas – their ideology, one might say – were not only very well-informed and documented but also highly technical. As it turned out, they unfolded under not dissimilar parliamentary conditions to those of the present day. In 2005, following New Labour's landslide victory of 2001, a government bill would go through its various stages and become law without significant opposition. This, for so long not the case, is today once more the reality. There are opportunities for HM Government under such commanding circumstances, but there are also terrible dangers.

For New Labour, its majority eventually led to a kind of technical hubris, resulting not least in the massive problems arising from the introduction of tax credits in 2003. This politically damaging episode consisted of tax credit claimants being made awards greater than their entitlements, with the Inland Revenue trying to recover the excess amounts and poorer families being plunged into often severe financial hardship.

Where the current administration's large majority will lead is, of course, anyone's guess. At around 80 MPs, though, the Conservative majority does suggest a certain similarity of the circumstances then and now. In other respects, things are very different. In 2005, the fiscal and financial crises were in the future. Unlike now, Select Committee scrutiny of the government was relatively weak, with unelected committee chairs often (though not always) being placid New Labour admirers. The parliamentary expenses scandal was far in the future and, although politicians have never been popular, their unpopularity was perhaps not then as deep as it is now.

Government ministers today seem, at least temporarily, to recognise the fragility of their position, in a way that was not the case following the New Labour landslide of 2001. Something else is different too, and this relates to the ideas that informed the New Labour project. These were overwhelmingly expert-led, technocratic ideas, justified often by welfare economics theories. It was expected that tax changes had to be explained by arguments based on the need to correct 'market failures', both as regards corporate tax avoidance issues and in the area of environmental taxes. Even Brown, prior to taking office, had written a Fabian Society pamphlet in which he had asserted the validation of fairness on efficiency grounds, rather than appealing chiefly to the doyens of 20 th century Labour thought (such as Tawney and Cripps).

It was not all easy sailing for New Labour. There was the tax credits fiasco, as just mentioned, but the merger also took place in the aftermath of two hugely problematic scandals: the so-called 'Mapeley affair' (involving the transfer, indirectly, of title to Inland Revenue buildings to a company resident in Bermuda) and the re-assignment of Customs' prosecution functions to the Attorney General, following the failure of some high-profile VAT prosecutions.

Interviews

Coding the interviews, as mentioned above, focused attention on six areas, namely:

- the motivations for the merger;
- the allocation of responsibilities between the revenue departments;
- the fact that no extra funding was provided for the merger, the cost having to be met from savings in the revenue departments;
- the cautious welcome accorded to three special advisors (or SpAds) appointed by Brown: Chris Wales, Ed Miliband and Ed Balls;
- the distant relationship between ministers and civil servants, as mediated by the SpAds; and
- the divergent cultures of the Inland Revenue and Customs, producing a sense of the superiority of tax inspectors over customs officers, and generating the caricature that, according to one interviewee, Customs officials were seen by Inland Revenue officials as 'a bunch of gangsters', whilst Inland Revenue officials were seen by Customs as 'a bunch of effete liberals'!

It was very striking how the interviews revealed no one central motivation for the merger. One explanation was Brown's desire to control tax policy. Another was the concern of his SpAds to wrest control of the tax system from the specialist, narrowly focused intellects in the Inland Revenue and to transfer it to civil servants with a high-level overall sense of New Labour policy. Surprising was the fact that, whilst Mapeley and tax credits had raised anxieties about the division of responsibilities between the revenue departments, many interviewees were far from convinced that the outcome of the O'Donnell Review was a foregone conclusion.

A further explanation, though, appeared to be Customs' heavy handed litigation tactics. What was odd about this, however, was how different interviewees attached a divergent significance to it. Some took it as an indication that Customs needed greater supervision. Others saw Customs' aggressive stance as an exemplary modus operandi for an eventual merged department. Even so, the interviews did not disgorge a policy conviction that a single revenue department was better than two, except in the limited sense that there might be cost savings.

When it came to whether the old allocation of responsibilities between the revenue departments was illogical, no clear consensus emerged. The strong New Labour attachment to managerialism, together with a desire to avoid inconsistent and antagonistic policies, was certainly an important motor of the merger. What was clear was that a merged department would likely be a powerful way of assembling a toolkit of effective policy instruments. Some interviewees recollected that HM Treasury lacked the human resources needed to develop tax policy, so moving policy people from the revenue departments into HM Treasury seemed a pretty smart move. Others remembered matters from the opposite perspective, suggesting that Customs – especially – had shown itself to be woefully lacking in relation to policy making. Occasionally, interviewees were resistant to both perspectives, linking the merger to the presence of the SpAds and associating it with the incoherent 0% corporation tax starting rate in force between 2002 and 2006.

On this view, the separation of policy development from operational measures was a bad idea, not least because HMRC's policy involvement would be limited to the tediously named 'policy maintenance'. Whilst civil servants transferred to HM Treasury from the revenue departments were alert to the sensitivities of this, those left to deal with policy maintenance in the merged department felt that their professional worlds had disintegrated.

Conclusions

It hardly needs emphasising how relevant all of these stories are to current events. Personal recollections bring to life what would otherwise be rather dry accounts of administrative reform. Led by the interviewees, rather than by any preconceptions, certain surprising factors behind the merger have been revealed. The work has introduced a strong human element to discussions of the background to the merger. Differences of recollection have proved equally as interesting, if not more so, as the similarities. The writers feel certain it will evoke not only a wry smile, but also a strong sense of what it was really like to be involved in this remarkable tale.

Technical Team

Newsdesk Articles	Author(s)
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Welcome to the April Technical Newsdesk

1 April 2020 isn't just April Fools' Day. It is also the first day of what many are calling 'Phase 2' of Making Tax Digital for VAT (MTDV). Readers will be aware that, where a business became obliged to follow the MTDV rules, the requirement to digitally link software or spreadsheets along the VAT return 'journey' was deferred until the anniversary of its mandation date (VAT Notice 700/22, para 4.2.1.1). There are over half a million compulsorily VAT registered businesses which are on 'stagger one', and will therefore need to have digital links in place from 1 April 2020 (even if those businesses did not sign up to MTDV on time). Space here does not permit a full explanation of what comprises a digital link, or where in the VAT return journey the links must start. The VAT Notice provides more information, and we have been working with HMRC on further guidance to help improve understanding, so keep an eye out for this.

If your clients, or your own business, cannot meet the digital links requirement by the relevant date, all is not lost – but action must be taken. On expiry of the soft landing period, if digital links are not in place, then the business will not be meeting the record keeping requirements as set out in the regulations (SI 2018/261) and the VAT Notice. To remedy this, businesses (or their agent) can apply for an extension of time to put digital links in place. This will take the form of a specific direction from HMRC, which will relax the requirements for that business, in a similar way that some businesses received a specific direction deferring their entry into MTDV to their first VAT return period commencing on or after 1 October 2019.

The process for applying for an extension of time is set out in Notice 700/22, para 4.2.1.3 and this is worthy of close inspection, as is the form which should be used to apply for an extension (which can be found on the CIOT website at www.tax.org.uk/policy-and-technical/making-tax-digital#digital_links).

For existing businesses with complex or legacy IT systems, HMRC request applications be submitted by the end of the business's soft landing period (although we do not expect HMRC to reject applications solely for being made outside this deadline). Businesses that need more time due to acquisitions or reorganisations should apply as soon as is reasonably possible. Unlike applications for exemption from MTDV, businesses should continue to try and put digital links in place whilst awaiting a response.

The primary focus of most parties during 2019 has been to help get mandated businesses signed up to MTDV, and submitting their returns through compatible software, so some questions remain to be answered around digital links, such as:

- What if HMRC refuse an application for more time to put digital links in place? Can this be appealed?
- Must businesses which are compulsorily registered for VAT on or after 1 April 2020 have digital links in place from the outset?
- Can I apply for exemption from MTDV on the basis that the time and cost of putting digital links in place means that it is 'not reasonably practicable' to comply?

We are discussing the above issues with HMRC and will share more information as it becomes available. We would be particularly interested to hear your experiences of applying for more time to put digital links in place. Please send these to technical@ciot.org.uk or atttechnical@att.org.uk.

Of course, the key question for many is: where will MTD go next? However, as I am writing this the day before the Budget, I won't make any predictions, for fear of becoming an April fool myself!

HMRC Powers and Safeguards Evaluation Forum

MANAGEMENT OF TAXES GENERAL FEATURE

Back in July 2019, the financial secretary to the Treasury (FST) committed HMRC to undertaking an evaluation of the implementation of their additional statutory powers introduced since 2012 against the same powers and safeguards principles which underpinned the 2005 to 2012 powers review. In order to obtain external input, HMRC has set up the Powers and Customer Safeguards Implementation Evaluation Forum on which CIOT, LITRG and ATT are represented and which had its inaugural meeting at the end of October 2019.

Following a delay due to the General Election in December, the forum met again in January 2020 and identified eight specific post-2012 powers for detailed consideration. These eight powers, together with a list of all the relevant powers which are in scope for the review, are shown on both the CIOT (www.tax.org.uk/powers_safeguards) and ATT (www.att.org.uk/powers_safeguards) websites. Some additional information is included on the LITRG website (www.litrg.org.uk/certain_powers).

During February, CIOT and ATT asked members to share their experiences of how HMRC has implemented these powers by completing a questionnaire provided by HMRC. We did not receive many responses (fewer than 20), which was not entirely unexpected. We believe that this was predominantly because a lot of the powers in scope operate in relatively specialist areas of the tax code (such as offshore tax non-compliance and the general anti-abuse rule) and others are still in the very early days of being implemented by HMRC (such as the corporate criminal offence), so experience of them being used is inevitably limited. The timetable to collect responses from members was also very short.

At the time of writing, sessions of the forum are due to take place during March involving HMRC and experts from practice, including CIOT and ATT members and LITRG representatives, in order to take a closer look at the eight powers (mentioned above) and the feedback received on those particular powers.

The highest number of responses the CIOT and ATT received were about the requirement to correct (RTC) past offshore tax non-compliance (F(No 2)A 2017 Sch 18). In particular, the following concerns were raised:

- The publicity about the RTC failed to reach many taxpayers who as a consequence failed to come forward before the deadline of 30 September 2018.
- The level of the failure to correct (FTC) penalty is disproportionate, particularly as the cases seen have involved people who have failed to declare offshore income through ignorance of the correct tax treatment, rather than those who were deliberately trying to evade tax.
- HMRC's decision to apply a minimum of 150% FTC penalty in 'prompted' disclosure cases is arbitrary and unfair.
- HMRC are adopting an inflexible and inconsistent approach to reasonable excuse arguments put forward by taxpayers.
- The punitive nature of the FTC penalty risks discourage people to come forward and disclose in the future.

For taxpayers who were aware of the RTC and sought advice and contacted HMRC in time, the feedback we received was that the process was reasonably straightforward, and HMRC's guidance was practical and relatively clear on what needed to be done, and by when. However, due to the rushed implementation of the power, which was caused mainly by the unexpected general election in 2017 and so was outside of HMRC's control, this meant that insufficient consideration was given to the different situations taxpayers might find themselves in and a consistent approach/treatment was not adopted across HMRC.

We also received a few responses about accelerated payment notices, in particular around the governance process, and follower notices, especially how HMRC are applying the 50% penalty.

Given the limitations of the review, we are concerned that it is simply too early to draw any firm conclusions into how HMRC are implementing their post-2012 powers. For this reason, we think a further review should be conducted in a few years' time.

LITRG has also submitted evidence which discusses the impact on low-income taxpayers of HMRC's powers in relation to the collection of self-assessment debt (either by coding adjustment or by direct recovery from a taxpayer's bank account) – including the inappropriate use of threats to use certain powers. The submission also focuses on the impact of RTC on migrant taxpayers with small overseas pensions who were unaware of their obligations under RTC or even that the income is taxable in the UK, especially in cases where overseas tax had been deducted at source.

LITRG calls for HMRC to issue clearer guidance around the concept of reasonable excuse, with particular reference to taxpayers who understood that their overseas income was only taxable overseas and who were not aware of their obligations under RTC because of an insufficient communication effort by HMRC. It also points out the inequity of those taxpayers whom HMRC had approached prior to 30 September 2018 and who were therefore able to make a disclosure before the RTC deadline versus those who were first approached after 30 September 2018 and were therefore faced with minimum penalties of 150% of the unpaid tax.

The forum is due to publish its report at the end of May 2020.

Data and Transparency – a call for evidence

As a separate matter, forum members have been asked to identify:

- how understanding of HMRC's use of its powers and the operation of taxpayer safeguards might be improved by the publication of data which is currently not in the public domain; and
- what information it would be most important for HMRC to publish to improve trust and transparency in relation to powers and safeguards.

Unlike the evaluation referred to above, this request relates to all current powers and safeguards, regardless of their date of origin. More information can be found on the CIOT website (https://tinyurl.com/ufuh27p). Please email any comments on this topic by Friday 10 April to technical@ciot.org.uk or atttechnical@att.org.uk using the subject heading *Data and Transparency*.

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Office of Tax Simplification Claims and Elections Review: call for evidence

GENERAL FEATURE

CIOT, ATT and LITRG are meeting with the Office of Tax Simplification (OTS) to discuss its review of claims and elections announced in February and will be providing further input into this review in due course. We would also encourage our members to submit evidence of their experiences making claims and elections on behalf of taxpayers directly to the OTS.

In February 2020, the OTS published details of its review of claims and elections across different taxes in relation to individuals, businesses and partnerships, and requested evidence in the form of responses to questions set out in the Call for Evidence and/or general or specific comments on the areas covered by the review. Further information can be found at https://tinyurl.com/uwtsv4k.

The CIOT met with the OTS in March and had an initial discussion around the scope of the review and the particular claims and elections identified in the Call for Evidence. The ATT and LITRG are due to have meetings with the OTS in April. All three bodies will continue to gather evidence to submit to the OTS between now and the deadline for submitting responses, which is 8 May 2020.

However, we would like to also encourage you to contact the OTS and submit responses. As per the Call for Evidence: 'The OTS welcomes responses to all or any of the questions set out [in the document], as well as any general or specific comments on the areas covered by this review. There is no requirement to respond to all the questions; responses focusing on a particular area are equally welcome.'

Comments should be sent to ots@ots.gov.uk.

Sacha Dalton
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Disguised remuneration: independent loan charge review

EMPLOYMENT TAXES

The CIOT has met HMRC to discuss the draft Finance Bill legislation regarding the government's changes to the disguised remuneration loan charge following Sir Amyas Morse's report.

Following the government's response of 20 December 2019 to Sir Amyas Morse's independent review, HMRC published on 20 January 2020 and 27 February 2020 draft legislation making changes to the loan charge. The draft legislation and other supporting documents can be found at https://tinyurl.com/tumj226. The legislation will be included in the Finance Bill.

Draft legislation – 20 January

The draft legislation published on 20 January provides that the loan charge will now apply only to loans outstanding at 5 April 2019 that were made on, or after, 9 December 2010. Furthermore, the loan charge will not apply to loans outstanding at 5 April 2019 that were made before 6 April 2016 where the avoidance scheme use was disclosed to HMRC and HMRC did not act (for example, by opening an enquiry).

The legislation also introduces changes to allow taxpayers subject to the loan charge to elect to spread their outstanding loan balance evenly across three tax years (2018/19, 2019/20 and 2020/21) and provides for no interest to be charged on persons subject to the loan charge on *any* income tax and capital gains tax liabilities due in respect of 2018/19 and outstanding between 1 February 2020 and 30 September 2020, or in respect of 2019/20 prior to 31 January 2021, provided that certain conditions are met (i.e. that the tax is settled by 30 September or a time to pay arrangement is agreed by then).

The CIOT met with HMRC on 20 February to discuss the draft legislation published on 20 January 2020. The main area of concern was the draft legislation in respect of post 9 December 2010 years where an 'adequate disclosure' has been made. In particular, we were concerned with the meaning of 'reasonably disclosed' and what would be regarded as sufficient information. We considered that this could be a high bar to pass, especially given the standard discovery assessment rules relating to 'sufficient information'. It was suggested that HMRC need to apply the test on sufficient information differently in relation to the loan charge, given the circumstances relating to the loan charge changes. Taxpayers should be given the benefit of the doubt, otherwise few are likely to pass this test of reasonable disclosure. HMRC were, therefore, urged to take a practical approach in relation to what is a 'reasonable disclosure' and consider all the circumstances.

In addition, it was suggested that para 1B(1)(b) is amended from 'a tax return made by A for a qualifying tax year contained a reasonable disclosure of the loan or quasi-loan' to 'a reasonable disclosure of the loan or quasi-loan was made for a qualifying year', to allow HMRC to take account of all disclosures and not just those by the taxpayer now subject to the loan charge.

We also raised the following concerns:

- Taxpayers that had done nothing were in a better position as a result of the loan charge changes, as they now had until 30 September to submit their return, omitting years that are now outside the scope of the loan charge, and could pay the tax due (or agree time to pay, etc.) interest free.
- While taxpayers that had agreed voluntary settlements will be able to obtain refunds for years now outside of the loan charge, they will have to wait until the Finance Bill gets Royal Assent at the earliest.
- Taxpayers that had followed HMRC's advice and repaid their loans in order to avoid paying the loan charge would be in the worst position of all, as it appears that they will not be able to have their payments refunded to them without incurring a disguised remuneration tax charge.

HMRC were urged to raise with ministers the implications of this difference in treatment of the above populations which we felt was against the spirit of the proposals by Sir Amyas Morse.

Draft legislation – 27 February

The draft legislation published on 27 February provides for the government's commitment that HMRC will repay voluntary restitution that has been paid by individuals and employers since the loan charge was announced in March 2016, for years that would no longer be subject to the loan charge because the year was unprotected.

The legislation requires HMRC to establish a scheme to repay or waive all, or part, of an amount of voluntary restitution paid or due to be paid under an agreement made between 16 March 2016 and 11 March 2020 in respect of disguised remuneration loans or quasi-loans. The voluntary restitution must have been paid, or be due to be paid, in respect of a loan or quasi-loan for unprotected years that would no longer be subject to the loan charge. The legislation also enables HMRC to set out conditions that will apply to any applications for a repayment or waiver.

The draft legislation clarifies the changes to the loan charge and does appear to address some of the concerns raised in relation to refunds, etc. In particular, it appears that repayment of tax for a voluntary restitution year where the loan was written off will not attract an income tax charge under ITEPA 2003 Part 7A, as the amount of income for the voluntary restitution year will still attract relief under ITEPA 2003 s 554Z5.

At the same time, HMRC published a draft scheme document which sets out the eligibility criteria for claiming a refund, the claims process and how refunds will be calculated. This also provides for review requests where an applicant disagrees with HMRC's repayment decision, although it does not appear to make provision for an appeal to the Tax Tribunals. Detailed guidance on the claims process and how refunds will be calculated will be published by HMRC before the Finance Bill receives Royal Assent. Those who want to claim a refund should await this further guidance before taking any action. Refunds can only be issued after the Finance Bill has received Royal Assent.

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Agent authorisations

GENERAL FEATURE

At its last meeting, the newly formed Agents Digital Design Advisory Group discussed the process of agent authorisation and the digital handshake.

In January's edition, we advised readers of a new group which has been set up to help bridge the gap between tax policy and implementation. The Agents Digital Design and Advisory Group (ADDAG) has been created to look at the development of digital services from the agents' perspective.

The group's current priority is how clients will authorise their agents to act and at our last meeting we discussed HMRC's current plans for future agent authorisation processes.

From HMRC's perspective, any authorisation process must meet specific requirements to make sure that their staff are confident that they have a clear authority in place to release data to an agent in accordance with the General Data Protection Regulation rules. From the agent and client perspective, the process needs to be easy, efficient to manage and give the agent quick access to all required information.

As new services are developed, HMRC will be moving from a paper-based 64-8 system to a 'digital handshake' – similar in principle to the authorisation approach for clients in Making Tax Digital for VAT. Such a process is more secure from HMRC's perspective and should give more control to the taxpayer over what they appoint agents to do, and when. However, the current digital handshake requires a taxpayer to be able to set up a Government Gateway account and verify their identity online before they can confirm the agent's appointment – which is not something that all clients are able or willing to do. Addressing how both the digitally excluded – and the larger group of 'digitally challenged' or 'digitally unwilling' clients – will be able to appoint agents is vital.

The next service to go live using a digital handshake is the CGT Property Reporting Service. This is a newly developed, standalone portal to report UK residential property disposals from 6 April 2020 within 30 days of completion. The same service will also be used for non-resident capital gains tax reporting from that date. While HMRC do appreciate that some taxpayers will not be able to manage to report online and will be providing alternative routes for direct reporting to HMRC, at the time of writing we do not know the details of precisely how a digitally challenged client will be able to appoint their agent. ATT, CIOT and other bodies have raised concerns about this and are working with HMRC to identify alternatives.

Members of ADDAG also expressed concerns about the apparently piecemeal development of services like the Property Reporting Service, the Trust Registration Service, etc. To some extent we need to appreciate the challenge that HMRC have in co-ordinating a large number of legacy systems. Until all their services have been migrated to more modern platforms, it is impossible to pull the authorisation process together. Equally, HMRC do not have control over policy decisions or ministerial priorities which can disrupt timetables. However, it would be helpful if each new service at least followed the same steps and made the same provisions for the digitally challenged.

To inform our future feedback into this group, we ran a mini-survey in March to ask agents about their experiences of specific aspects of HMRC Online Services – thank you to those who took part. We are always happy to hear from members about their experiences of interacting with HMRC digitally. Please contact Helen Thornley directly on the email below or on atttechnical@att.org.uk.

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Off-payroll working in the private sector: draft legislation and House of Lords inquiry

EMPLOYMENT TAX

The ATT and CIOT have submitted comments on draft secondary legislation regarding the extension of the off-payroll working rules to the private sector and contributed evidence to the House of Lords Finance Bill Sub-Committee inquiry.

Draft secondary legislation

In January, HMRC released for consultation two pieces of draft secondary legislation relating to the off-payroll rules: the Income Tax (Pay As You Earn) (Amendment) Regulations 2020 ('the PAYE Regulations'); and the Social Security Contributions (Intermediaries)(Miscellaneous Amendments) Regulations 2020 ('the NIC Regulations') (see https://tinyurl.com/r7voate).

The PAYE Regulations set out when and how HMRC can seek to recover unpaid PAYE income tax and NIC liabilities from other parties where the deemed employer fails to make deductions. The NIC Regulations make similar provisions for NIC purposes to those provided for in the draft primary legislation previously released for PAYE purposes.

The ATT response focuses on the PAYE Regulations. The ATT's primary concern is the scope of these draft regulations, which leave HMRC with a high level of discretion as to when unpaid PAYE and NIC liabilities can be transferred within a labour supply chain. In particular, the ATT notes that the draft legislation does not reflect previous reassurances from HMRC that the rules will not apply in cases of genuine business failure where deliberate tax avoidance has not occurred. The ATT also has concerns over the repeated use of undefined, subjective and vague terms at important points in the draft legislation (for example, 'realistic prospect' and 'reasonable period of time') and the proposed grounds of appeal.

A clear understanding of how the transfer of liability rules could be applied by HMRC in practice will be key to the due diligence and other preparations of businesses that may be affected by the off-payroll rules. The ATT therefore urges HMRC to issue updated legislation and comprehensive guidance as soon as possible.

The full ATT response can be found at www.att.org.uk/ref348.

The CIOT response also raises concerns that the draft PAYE Regulations do not adequately reflect the government's intention that: 'The proposals are not intended to transfer liabilities in cases of genuine business failure, where deliberate tax avoidance has not occurred' (Off-Payroll Working consultation response, page 5 para 1.21, published on 11 July 2019).

We suggest that the draft legislation be amended to make it clear that a recovery notice cannot be issued in cases of genuine business failure of the deemed employer (or the first agency where debt would otherwise be transferred to the client). Also, for completeness, we recommend that the grounds for appeal against a recovery notice be expanded to include genuine business failure of the deemed employer.

In addition, the CIOT is concerned that HMRC could transfer liability up a supply chain in circumstances where the client and first agency have taken reasonable care to ensure compliance with the off-payroll working rules by the deemed employer, but nevertheless the deemed employer has failed to account for PAYE and NICs on the deemed employment earnings. We therefore suggest that the draft legislation is amended to prohibit the transfer of a tax debt to a third party that has taken reasonable care to ensure the integrity of their supply chain and compliance with the off-payroll working rules by other parties in that supply chain but where, notwithstanding this, the deemed employer has for some failed to pay the relevant tax debts.

The CIOT is also concerned over some of the terms used in the draft legislation, such as what 'no realistic prospect of recovery' and 'within a reasonable period of time' will mean in practice. For example, there is a risk that HMRC could seek to pursue a third party simply because it becomes too difficult to pursue the deemed employer (or other relevant party) and it is easier to pursue agency one (or the client). We therefore recommend that the legislation defines these terms and that HMRC's guidance clarifies when and how the transfer of debt provisions will be used.

The full CIOT response can be found at www.tax.org.uk/ref630.

House of Lords inquiry

In February, the House of Lords' Economic Affairs Finance Bill Sub-Committee issued a request for evidence on the extension of the off-payroll rules as part of its inquiry into draft Finance Bill 2019/20 (see https://tinyurl.com/sulaqsv).

The CIOT gave oral evidence to the Sub-Committee on 10 February 2020. The House of Lords asked whether the proposed rules for determining status as a deemed employee or self-employed is sufficiently clear and whether the Check Employment Status for Tax (CEST) tool is fit for purpose. The CIOT considers that while we have an updated version of the CEST tool (released in November 2019) and this can provide a safe harbour for businesses using the tool, it is a blunt instrument which cannot always provide an answer or may provide an answer you disagree with. In particular, the tool does not directly address mutuality of obligation (MOO). Although HMRC say that it is inherent in the questions being asked, the CIOT considers that there should be a separate section dealing with MOO.

The ATT submitted a short piece of written evidence by email. This repeated our previous calls for a 12 month delay to the introduction of the new rules (see www.att.org.uk/PR200107), noting that the current lack of final legislation results in a real lack of clarity as to how the off-payroll rules will operate in practice in the private sector, making it extremely difficult for businesses to make adequate preparations.

The ATT is concerned that pressing ahead with extending the off-payroll rules to the private sector from April 2020 risks repeating the mistakes made when the rules were introduced to the public sector in 2017, rather than learning from them.

The ATT submission also included a copy of our previous comments on the draft Finance Bill legislation released for consultation in July 2019 (see www.att.org.uk/ref340).

Review of changes to the off-payroll working rules

Lastly, HM Treasury published its report and conclusions from the government's review of off-payroll working on 27 February 2020 (https://tinyurl.com/yx3y933q). This confirms that the new rules will be introduced on 6 April 2020. The main changes to 'smooth' implementation are:

- There will be no penalties for errors relating to off-payroll working in the first year, except in cases of deliberate non-compliance.
- HMRC confirmed their previous commitment that information resulting from changes to the rules will not be used to open new investigations into personal service companies (PSCs) for tax years prior to 6 April 2020, unless there is reason to suspect fraud or criminal behaviour.
- As previously announced, the rules will only apply to services carried out from 6 April 2020 onwards.
- There will be a legal obligation on end clients to respond to a request for information about their size from the agency or worker.
- The legislation will be amended to exclude wholly overseas companies with no UK presence from the off-payroll working rules.

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Expansion of the Trust Register: consultation responses

INHERITANCE TAX GENERAL FEATURE

The ATT and CIOT have both responded to HMRC and HM Treasury's technical consultation on the Fifth Money Laundering Directive and Trust Registration Service.

ATT and CIOT have responded to the long-awaited consultation on the implementation of the provisions of the Fifth Money Laundering Directive (5MLD) as they affect the Trust Registration Service (TRS). The consultation period started at the end of January and we had a rather brief four-week window in which to respond to these complex provisions.

The stated objective of the transposition of 5MLD into UK law is to ensure that the UK's anti-money laundering and counter terrorist financing regime is up to date, effective and proportionate. The practical effect will be a significant expansion of the number of trusts which must register on the UK Trust Register via the TRS.

Under 5MLD, unless specifically excluded, all UK express trusts – and some overseas trusts – will be required to register regardless of whether or not they have incurred a UK tax liability. Currently, only trusts with a UK tax liability must register. A key part of the consultation is therefore precisely which express trusts will be in scope, and the consultation document and accompanying draft legislation propose a number of exclusions.

Both the ATT and CIOT welcomed the exclusion of the trusts arising from the joint ownership of land, but raised concerns about whether the exclusion as drafted would cover the position where joint owners made an express declaration to change their ownership after acquisition – a fairly common piece of tax planning. Clear guidance in this area will be needed.

It is proposed that some trusts containing insurance policies will be out of scope, based on the nature of the policy. The ATT and CIOT called for more of these trusts to be excluded on the grounds of simplicity and proportionality and suggested ways by which this could be achieved.

The position for the registration of bare trusts is unclear. Currently, these are not required to register and both bodies consider that, ideally, bare trusts should continue to be out of scope as they are low risk, particularly when they arise in family arrangements such as an adult child managing a bank account for an elderly parent.

The CIOT also highlighted concerns over 'Quistclose' trusts, which are commonly used in the UK to facilitate commercial transactions where a lender makes a loan for a specific and exclusive purpose. Similar arrangements also operate to safeguard the payments of millions of ordinary consumers: travel arrangements, funeral plans, energy supplies, gambling obligations and provision of certain types of healthcare are typical.

With a range of different exclusions, it is essential that clear guidance sets out what is in and what is out of scope – especially for the unrepresented trustee.

The CIOT raised concerns (endorsed by the ATT) about the proposed approach of requiring any overseas trust which enters into a business relationship with a UK adviser to register on the TRS. Previously, it was understood only that trusts administered in the EU or the UK would be required to register in this way. The current proposals run counter to effective anti-money laundering measures because they encourage overseas trusts to seek professional services from other, possibly less compliant jurisdictions which will result in a loss of business for UK trust practitioners.

In terms of deadlines, under the Directive, all trusts in existence on 10 March 2020 or created by 9 February 2022 which are in scope should be on the register by 10 March 2022. Trusts already on the register will have to add further detail about the residency and nationality of their beneficial owners by that date. From 9 February 2022, any trusts which come into existence must register within 30 days of 'set up'. In addition, changes to details of beneficial owners must be reported within 30 days on the TRS.

Both bodies consider that the requirement to register a trust within 30 days of 'set up' is impractical in many circumstances and the term 'set up' is itself poorly defined. We proposed that 'set up' should be taken to be the point at which assets are transferred into the hands of the trustees. This will be a more appropriate registration trigger for will trusts. We also called for more time for registration and updates. The ATT also raised a number of queries about how the deadlines in the draft legislation are intended to work, as the draft proposals are not clear.

The ATT considers that it would be simpler if the information requirements and deadline for updates for both taxable and non-taxable trusts were the same, and the requirement to gather NI numbers for trustees, settlors and beneficiaries was dropped.

Both bodies were pleased to see a proportionate approach to penalties, with trusts receiving a nudge letter to encourage compliance before penalties will be imposed. The CIOT highlighted concerns over a lack of clarity on the actual penalty process.

Under 5MLD, those with a *legitimate interest* will be entitled to request certain details about a trust's beneficial owners. We are pleased to see that those requesting data on the Register will be required to show that requests are being made in relation to specific instances of money laundering or terrorist financing.

The draft legislation also permits HMRC to withhold details of certain individuals for whom disclosure will put them 'at risk' of extortion, kidnapping, etc., but we are unclear how HMRC will identify such 'at risk' individuals and have called for trustees to be able to flag when they consider an individual is at risk during the registration process.

The ATT also highlighted concerns about how digitally challenged trustees will access the TRS. The current system requires information to be provided online, and trustees who wish their agent to supply updates will need to be able to set up a Government Gateway account to complete a 'digital handshake'. Our primary concern is ensuring there is a non-digital route for trustees to appoint their agents to act.

There remains a lot more work to be carried out by government and the professional bodies to ensure that 5MLD is implemented in a manner that is workable and comprehensible; comments from members are always welcome.

The ATT response can be found at www.att.org.uk/ref352 and CIOT's at www.tax.org.uk/ref633.

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Advance notification of UK VAT registrations for non-established EU businesses

INDIRECT TAX

In 2019, several hundred EU businesses, which are not established in the UK, applied for advance notification of UK VAT registration numbers. This would enable them to continue trading in the UK in the event of a 'no-deal' exit (see our article from May 2019 at www.taxadvisermagazine.com/190501). Typically, the obligation to be registered for VAT in the UK would have resulted from the withdrawal of an EU simplification of VAT rules; for example, call-off stock or triangulation intermediary rules. The anticipation of the loss of the relevant simplification led to the applications for advance notification of UK VAT registration numbers.

As agreement was reached between the UK and the EU on the UK's withdrawal, we are in the transition period, meaning that all VAT rules and simplifications that were in place pre-exit will continue to have effect to 31 December 2020 (subject to any date change as a result of future trade deal negotiations).

The rules for advance notification VAT registrations require the application to be made within three months of the effective date of registration, as set out in HMRC VAT manuals at VATREG18350 (https://tinyurl.com/wy9wunv), so the service is currently paused. It is anticipated that the advance notification facility for EU businesses will restart from 1 October 2020, ready for the end of the transition period on 31 December 2020 (subject to any date change from future trade deal negotiations).

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VAT: delays with HMRC error corrections processing

INDIRECT TAX

HMRC's VAT Error Correction team, which deals with processing VAT errors that do not fulfil the threshold tests to adjust the VAT account in the VAT return, is currently experiencing severe delays. This has arisen mainly due to an office move and IT systems issues. A recovery plan is in place and additional staff have been recruited, though it may be several months before the service returns to its target standards.

Taxpayers are required to notify errors to HMRC where the error exceeds the voluntary disclosure threshold tests set out in VAT notice 700/45 at paras 4.2 (Method 1) and 4.3 (Method 2) (https://tinyurl.com/y377rf82).

Taxpayers can also notify errors to HMRC where the value does not exceed the threshold tests but where the taxpayer considers that the error was due to careless or deliberate behaviour, so that the error may be agreed with HMRC as being 'unprompted', which can secure a lower penalty rate.

HMRC have informed the CIOT that until its service levels for the error correction team have recovered, taxpayers that have an urgent need to process their errors where any delay will cause financial hardship can label their submission as 'URGENT', and caseworkers and countersigning officers will prioritise these cases. Please note that taxpayers should provide additional evidence about their financial hardship position when sending in details about why the error occurred, otherwise the urgent status may not be accepted.

HMRC are currently unable to process error correction notifications to amend VAT returns that have been digitally submitted to HMRC under Making Tax Digital. This functionality is being worked on by HMRC and is still a work in progress.

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Anti-money laundering registration exemption widened

GENERAL FEATURE

HMRC have extended the Accountancy Service Provider exemption from anti-money laundering registration to also include those working for Financial Conduct Authority supervised banks.

To date, it has not been necessary for members to be registered for anti-money laundering (AML) supervision when providing all of their services to other accountancy service providers, provided certain requirements have been met. This is based on the exemption published by HMRC and adopted by the CIOT and ATT in relation to their members acting under the same arrangements.

In broad terms, accountancy service providers are auditors, accountants, tax advisers/consultants, payroll agents and customs practitioners, etc. providing accountancy or tax services. The original exemption applied only where the member worked solely for other AML supervised accountants and had an agreement in writing with each one confirming that they were included in the accountant's AML compliance and did not do business directly with the accountant's clients. The CIOT and ATT raised the possibility of this exemption being extended to those providing tax services on a subcontract basis to banks. We were aware that some members have been providing these subcontract services and were receiving significant AML training and meeting the bank's other AML requirements but still had to register with us for AML supervision because they were not providing services to an accountancy service provider. HMRC have worked with the Financial Conduct Authority (FCA) on this issue and have updated the exemption to include those working for FCA supervised banks. The CIOT and ATT will therefore also apply this exemption when determining whether a member needs to register for AML supervision. The full text of the exemption as published by HMRC (https://tinyurl.com/y2hfqz4v) is set out below:

'If all your customers are accountancy service providers supervised by HMRC or a professional body, or banks supervised by the FCA you do not need to register so long as:

- you do not do business directly with the supervised accountancy service providers or the banks' own customers;
- you're included in the supervised accountancy service providers or banks' anti-money laundering controls and procedures, suspicious activity reporting, and training programmes;
- you have a written contract with each of your customers confirming that every aspect of the relationship between you meets all anti-money laundering requirements.

'You need to meet all these conditions, otherwise you'll need to register.'

Any members currently registered for AML supervision with the CIOT or ATT who think they may now come within the exemption should email aml@tax.org.uk or aml@att.org.uk, setting out details of the arrangements you have in place and why you consider that you no longer need to register for AML supervision. We may ask you to supply copies of your written agreements with any accountancy service providers or banks. For most members, the extension to the exemption will make no difference to the requirement to be registered for AML supervision and all members are reminded of the need to meet all the statutory requirements placed on firms under the Money Laundering Regulations and associated legislation. Further guidance is available on the CIOT website (www.tax.org.uk/AMLCTF) and ATT website (www.att.org.uk/members/aml).

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CIOT	Date sent
Draft secondary legislation: off-payroll working rules from April 2020 www.tax.org.uk/ref630	19/02/2020
Technical consultation: Fifth Money Laundering Directive and Trust Registration Service www.tax.org.uk/ref633	21/02/2020
ATT	
Technical consultation: Fifth Money Laundering Directive and Trust Registration Service www.att.org.uk/ref352	20/02/2020

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CIOT & ATT

Report from Branches Conference

CONFERENCE

The Branches Conference 2020 leaves head of tax, Dipti Thakrar, in awe:

Dipti Thakrar is an experienced Head of Group Tax and currently working in the Power Grid division at ABB. She has an accounting qualification (FCA with ICAEW) and a UK tax qualification (CTA from CIOT). She is Vice Chair of the London Women in Tax committee and Chair of the East Midlands WIT Branch. As well as running her own Transfer Pricing forum in London, she is a committee member of the East Midlands CIOT. In this article, we share her insight and experience of this year's Branches conference at Warwick.

"This week was the Chartered Institute of Taxation (CIOT) and Association of Taxation Technicians (ATT) Branches Conference at Warwick University grounds. I attended with my colleagues to represent the East Midlands branch.

It was my first time and I was intrigued to see what it was all about. I made an effort to get round the room and have a personal chat with many of the volunteers. I left in awe. The people I met were amazing, giving and so good at their craft. They have a shared passion for the institute and did a good job of challenging head office. I aspire to be like them!

The attendees on the day have volunteered for many years and work very hard to promote the local branches. Please do get in touch with your local branches for the institutes that you are a member of. You'll be surprised what they do and maybe you'll find a calling to come and help."

Inspired? Want to get involved? Then get in touch. Email us today on: branches@tax.org.uk.


Branches Conference 2020

CIOT & ATT

2019 Annual Return: ACTION NEEDED!

REQUIREMENT

Many members of the CIOT and ATT have so far failed to submit their annual return. It is a requirement of membership to submit your return.

If you are one of the many, please complete and return it without further delay. You can find a link to the annual return on the home page of the websites www.tax.org.uk and www.att.org.uk.

CIOT

Annual General Meeting update

NOTICE

We had planned to hold the Annual General Meeting of Members of the Chartered Institute of Taxation on Tuesday 19 May 2020. Due to the outbreak of COVID-19, your Council has taken the decision that it is appropriate to postpone this by up to the maximum period permitted under the Byelaws, which is three months.

Whilst the accounts were ready in good time, we have been advised by our auditors that in light of COVID-19, there are additional disclosure requirements that we need to provide before the accounts can be formally approved by your Council.

We hope you will understand this approach in these unprecedented circumstances and we would like to thank you for your patience. We will contact Members at least 21 days before the new date for the AGM.

ATT

ATT promotes a career in tax to over 20,000 young people

EVENT

On Friday 28 and Saturday 29 February 2020, ATT proudly exhibited at What Career Live in Birmingham – a careers event for 15 to 24 year olds and their families.

Hosted at Birmingham's National Exhibition Centre, the event is an extremely busy exhibition with over 20,000 visitors, including school children, parents and career advisers.

The two-day event provides visitors with the opportunity to discover careers through interactive, inspirational activities and demonstrations, and helps young people to realise how they can bridge the gap between what they enjoy doing and what they could potentially do as a career. ATT Technical Officer Emma Rawson presented on a career in tax in the careers auditorium where attendees were given an insightful view of the tax profession.

Emma Rawson


Mark Hunt


Richard Freeman

We also had wonderful volunteers Richard Freeman (ATT Council Member) and Mark Hunt (CIOT and ATT Branch Member) sharing their experiences of working in tax to attendees over the two days. They really enjoyed meeting young people and their parents and answering many questions about aspiring career options.

We look forward to attending again in 2021.

ADIT

International tax: we are the Champions!

INTERNATIONAL

ADIT Champions have been appointed in select regions to work on activities that will build ADIT recognition, promote international tax learning, provide regional support to our International Tax Affiliates and students, and advocate for their interests. They will also manage our new local LinkedIn groups and help us to run events in their regions.

Our appointment of Champions will help us to develop and promote the Affiliate package in a way that is more responsive to local conditions. One of the key challenges in ensuring that ADIT remains relevant to an increasingly diverse global audience is building communities and empowering practitioners to share ideas and debate emerging tax issues. Local representatives can place ADIT at the heart of these networks.

Four of the Champions are based in Cyprus, India, Ireland and Romania, which are among the countries with the biggest ADIT populations. Our fifth Champion is based in Malaysia and will represent Southeast Asia, a key emerging area for ADIT. Each Champion is an ADIT holder and International Tax Affiliate, so they all have direct experience of ADIT within their region.

To find out more about ADIT Champions, visit: www.adit.org/champions.

CYPRUS

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'As an ADIT Champion my aim is to promote both the ADIT qualification and Affiliate subscription to fellow tax professionals. The emerging ADIT community provides more opportunities than ever before for tax professionals around the world to liaise with each other and learn from each other's experiences, and I look forward to participating in the Champions programme and contributing to this success.'

MALAYSIA

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'I will represent ADIT across Southeast Asia, and look forward to promoting international tax learning to practitioners from developing countries in the region who want to move forward in the tax world. The ADIT qualification and annual Affiliate certification offer many advantages to help you move ahead in your tax career, and fulfil your potential in a competitive business and international tax environment.'

WCOTA

Recent events

UPDATE

Alison Lovejoy reports on two Worshipful Company of Tax Advisers events.

History of Tax

Caroline Turnbull-Hall reports: There was a full house for the February History of Tax meeting on the subject of 'Landmark cases in revenue law'. The excellent session covered two of the 20 cases covered in the splendid book of the same title edited by John Snape and Dominic de Cogan (see their article 'A merger in a tale retold' on page 36 of this issue).

Professor Martin Daunton and Professor Michael Braddick covered *Thomas Gibson Bowles v The Bank of England* (1913) and *R v Hampden* (1637) respectively. These cases were separated by almost 300 years but the link between the cases was the legality of taxation. *R v Hampden* (the 'ship money' case) is often considered to deal with non-Parliamentary taxation. However, Michael explained that the case is more properly concerned with prerogative discretion in emergency conditions. Specifically, he addressed the move in the decades prior to the 1640s towards monetisation of services, which in the case of ship money meant the introduction of a national levy by the king to support the acquisition of fighting ships, as an alternative to requiring maritime towns to provide ships. John Hampden challenged ship money in court, questioning whether the king had the power to charge Buckinghamshire to fund ships, whether the sheriff had the power to assess the levy, and whether any unpaid assessed charges could be recovered as a debt. Although the case was found for the king, ship money was abolished in 1641.


Martin Daunton


Professor Michael Braddick

Thomas Gibson Bowles, a sometime politician remembered today as the founder of The Lady, challenged the right of the Bank of England to deduct supertax at source from government bonds, before the relevant legislation had been enacted. Whilst the bank relied on the resolution of the Committee of Ways and Means as authority to deduct tax, the court found that the resolution was insufficient authority for the collection of tax not yet imposed by statute. The government's response was to pass the Provisional Collection of Taxes Act 1913. Whether Gibson Bowles was a modern John Hampden was considered at the time, but whilst Hampden had acted on a fundamental principle to protect his property from the Crown, Gibson Bowles had deliberately bought stock liable to taxation, and used a procedural flaw for partisan purposes.

The next History of Tax event is on 27 October when Andrew Loader will speak on 'Paying for the Renaissance'.

College of Arms

Our second visit to the College of Arms was ably organised by Richard Citron. It was again fully subscribed – a popular event. The College of Arms was founded in 1484. Amongst other things, it is responsible for granting new coats of arms, the registration of family trees and advising on all aspects of heraldry. It is particularly useful in cases of intestacy and where heirs cannot be identified. Twenty members of the WCOTA and their guests were shown around the College by the Windsor Herald who then joined the party for dinner at the nearby Café Rouge.

For full details of events past and future, or if you would like to join WCOTA, please visit our website at: www.taxadvisers.org. Any further assistance from the Clerk, Stephen Henderson at: clerk@taxadvisers.org.uk.

INDIA

Siddharth Banwat
Company: TP Ostwal & Associates LLP
Email: india@adit.org

'The ADIT qualification, which I achieved in 2013, has helped me develop my expertise in topics that are key to the advice I give to my firm's Indian and multinational clients. As an ADIT Champion, my aim is to motivate young and experienced professionals alike, to take the next step in their tax careers and keep pace with the fast-changing world of international tax, in the era of Automatic Exchange, MLIs and BEPS.'

ROMANIA

Andrada Gorita
Company: KPMG
Email: romania@adit.org

'My goals as a Champion are to help develop the way in which ADIT is marketed in Romania, and to reach as many potential students and Affiliates as possible in order to raise awareness of the importance and utility of the ADIT exams and certification. I look forward to representing the ADIT community in Romania, and to helping future and existing students and Affiliates fulfil their potential as international tax professionals.'

IRELAND

Colm Mooney
Company: Pfizer
Email: ireland@adit.org

'I intend to build and grow a network of international tax professionals in Ireland, to support the changing needs of our business community. Our highly skilled workforce is key to Ireland's success in attracting leading multinationals like Pfizer. As the global tax environment continues to evolve through the work of the OECD, it is crucial for finance and tax professionals to continue learning with programmes such as ADIT.'

TABF

The Tax Advisers' Benevolent Fund

UPDATE

The Tax Advisers' Benevolent Fund (TABF) was established by trust deed by CIOT and ATT as a registered charity in 1995 principally to help members and former members and their dependants in need of financial assistance or advice. In addition, TABF has wider general purpose charitable objects. The Worshipful Company of Tax Advisers (WCOTA) is the Corporate Trustee.

Although TABF is a small charity run entirely by voluntary support, since its launch the charity has received over 40 applications for assistance from CIOT and ATT members and approved grants and loan grants totalling over £38,000. Ten years ago, the CIOT and ATT funded the Student Bursary Scheme managed by TABF to help disadvantaged students with training and other exam costs. Over the years, TABF has dealt with over 250 enquiries about funding from CIOT and ATT students and grants totalling over £82,000 have been paid.

All applications for assistance are reviewed by the Almoner, who reports directly to WCOTA Charities Committee. The Committee considers all applications for assistance on their merits on an anonymous basis throughout the year and meets four times a year to discuss financial performance, management, strategy and risk. Decisions on grants are made at the sole discretion of the Committee and on such terms as they see fit.

Some case histories

Typically, hardship grants are paid to members, students and their dependants because of illness or injury, unemployment, redundancy, low income, expensive disability aid or building modification requirements, and arrears of outstanding priority bills that pose a threat to the applicant. Some examples of grants to CIOT and ATT members include:

- a sole practitioner unable to work for several months after a serious accident: a grant was made to help with care, practice support and travel to hospital;
- an unemployed member suffering depression following job loss and divorce: a loan grant was made to cover rent arrears; and
- the daughter of a deceased member on low income and unable to work full time due to mobility problems: a grant was made to settle outstanding balance on her mother's funeral costs.

Examples of grants to students include:

- a divorced single parent with two children working for a very small accountancy practice on a low income with no career development prospects wanting to broaden her tax skills: a grant was made to cover training costs and exam fees;
- a sole practitioner on a low income recovering from a mental breakdown following family problems wanting to return to his studies to become a CTA: a grant was made to cover training and exam fee costs; and
- someone working in a small practice on a low income and paying child maintenance, where the employer will not pay for tax training and a student needed to sit one more paper to qualify: a grant was made for training and exam fee.

Who funds the TABF and how to help?

TABF is very grateful for the financial and administrative support from CIOT, ATT and their members and from members of the WCOTA. Readers who have any questions about TABF and making donations by bank transfers, standing orders, direct debits, gifts in wills or donations by cheque should email almoner@tabf.org.uk or call 020 7340 0561. TABF is only a small charity; please help us to grow and help more members and students.

Who can apply for help?

If you are a CIOT or ATT member, you can apply for help if your personal income is below the Minimum Income Standard (for 2019, £20,000 for single people but higher if there are dependants); and you can demonstrate hardship and the need for financial assistance.

If you are a CIOT or ATT student, you an apply for help if your personal income is below the Minimum Income Standard (for 2019, £20,000 for single people but higher if there are dependants); and can demonstrate the need for financial assistance towards training to become a chartered tax adviser or a taxation technician and have a commitment to undertake a course of preparation and to sit the examinations.

How to apply

Contact the Almoner by email, letter, telephone, or email the application form on the CIOT and ATT websites to the Almoner. There are separate forms for members and students.

Jonathan Crump is Almoner of the TABF. He is now a part-time consultant and for many years worked for CIOT and ATT in finance, administration, standards, discipline, membership, governance and in various roles for the other tax charities. Email: almoner@tabf.org.uk.

VOLUNTEERING WITH ATT

Do you want to help to shape the future of the Association and the tax profession?

Volunteering is a great way to enhance and develop new skills, gain valuable experience and make a contribution to the wider profession, government and public as a whole.

Whether you are a student, newly qualified, a long-standing or retired member, it's never too early or late in your career to volunteer and we have exciting opportunities for you to join our Steering Groups and Committees.

It's only with the support of our volunteers that we can truly represent our members to the wider profession, government and to the public as a whole.

For further information, on volunteering opportunities please visit our website: https://www.att.org.uk/volunteering , or to apply, please email your cv to our Chief Executive, Jane Ashton: jashton@att.org.uk , stating which Steering Group you are interested in joining. We are particdularly interested to hear from those of you with Corporate Tax experience who would like to join Technical Steering Group.

The Steering Groups are:

Technical Steering Group

- **Oversees the technical activities of the ATT**
- **Responds to consultations**
- **Represents ATT at meetings with HMRC & HM Treasury**

Business Development Steering Group

- **Oversees the marketing activities of the ATT, including the strategy for growth in student and member numbers and the employer engagement programme**

Examination Steering Group

- **Oversees the administration arrangements for the examinations**
- **Reviews the format of the examinations and the results**

Finance Steering Group

- **Oversees the financial activities of the ATT, including the safe management of ATT's assets**

Member Steering Group

- **Oversees the needs of current and future members and their employers**

Professional Standards Committee (joint with CIOT)

- **Sets and makes members and students aware of the high ethical standards expected of them**
- **Monitors developments in government and other professional bodies and benchmarks the requirements of ATT and CIOT against the same**
- **Supports the ATT and CIOT in their role as AML Supervisors**

Branch events

Where do you get your CPD?

Does your firm provide your CPD needs? Have you tried a local Branch event before? Would you like the opportunity to meet with CTAs, ATTs and other professionals in your local network? Why not go along to a local Branch event? Below we have listed branch events taking place up to 15 May 2020. However, these were planned before the major changes due to coronavirus. Please visit your local branch website for an update since this listing was sent to print.

Aberdeen
Monday 27 April
Finance Act 2020
12.30-13.45

Birmingham & W Midlands
Thursday 23 April
General tax update
Mark Morton
16.15-19.15

Bristol
Monday 4 May
Fast track your career without wasting your valuable time
Jo Maughan
18.00-19.15

Cumbria & SW Scotland
Thursday 23 April
VAT update
Neil Owen
14.00-17.00

Thursday 7 May
Capital allowances and property
Giles Mooney
14.00-17.00

East Anglia
Tuesday 12 May
Finance Act update
Mark Morton
14.00-17.00

East Midlands
Thursday 14 May
'Taxman Traumas': dealing with HMRC compliance
Mark Morton
15.15-18.30

Edinburgh
Thursday 23 April
Aspects of taxation + US revocable trusts and their interaction with IHT
Mark McKeown, Andrew Aldridge and Sarjul Patel
17.00-18.30

Thursday 30 April
Topical issues: personal tax
Alan Dean
17.00-18.30

Thursday 14 May
Update on Scottish taxes
17.00-18.30

Essex
Tuesday 21 April
Tax investigations
Richard Morley
18.00-20.00

Tuesday 12 May
How to win work
Panel Discussion
18.00-19.00

Glasgow
Tuesday 12 May
ICAS Spring update
Charlotte Barbour
12.30-13.30

Harrow & North London
Thursday 30 April
Engagement letters and liability caps
Karen Eckstein
18.45-20.15

Thursday 7 May
Tax cases update
Peter Vaines
18.45-20.15

Kent
Tuesday 21 April
Employment
17.00-19.00

Leeds
Wednesday 29 April
Corporation tax: essential update
Emma Rawson
12.30-13.30

London
Tuesday 21 April
Employment Taxes Conference
Ruth Punter
09.30-16.45

Wednesday 22 April
Penalties for you and your clients
Emma Rawson
18.00-19.00

Monday 27 April
VAT Cases to watch in 2020 (joint with VAT Practitioners Group)
18.00-19.00

Monday 11 May
Indirect Tax meeting
18.00-19.00

Mid-Anglia
Wednesday 22 April
Reconstructions for OMBs
Peter Rayney
14.00-17.00

Wednesday 13 May
Enterprise Investment Scheme: getting it right and avoiding the pitfalls
David Tait and Maria Sampson
14.00-17.00

Merseyside
Tuesday 21 April
Back to Basics: sole traders (in conjunction with LSCA)
16.00-18.00

North East England
Thursday 30 April
What to think about when winding up
Emma Rawson
18.00-19.30

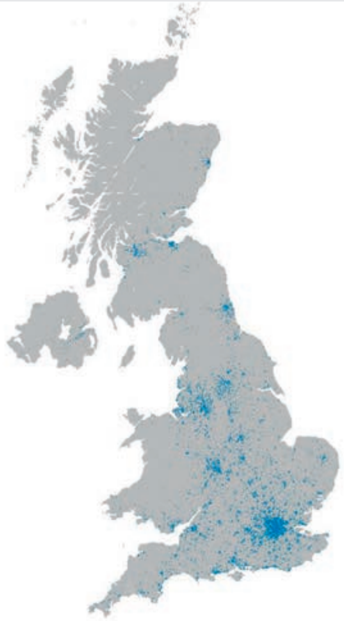
Northern Ireland
Wednesday 6 May
MTD: the latest news
Rebecca Benneyworth
17.15-19.15

Scottish Borders
Thursday 7 May
Spring update
Charlotte Barbour
15.00-16.45

Sheffield
Wednesday 22 April
IHT and trusts update
Helen Thornley
16.30-18.00

Tuesday 12 May
Professional standards update
Professional Standards team
16.30-18.00

Somerset & Dorset
Thursday 30 April
Corporation tax update
Pete Miller
16.00-19.00



South London & Surrey
Monday 11 May
VAT update
Less Howard
Guildford
18.30-20.00

Wednesday 13 May
Topical tax area
Croydon
18.30-20.00

South Wales
Wednesday 6 May
Share schemes
Andrew Evans and Ritchie Tout
14.00-17.00

South West England
Wednesday 13 May
Corporate restructures and demergers
Peter Rayney
15.45-19.00

Suffolk
Wednesday 13 May
Tax update
Michael Steed
14.00-17.00

Sussex
Thursday 23 April
Employment taxes
18.30-20.00

Thursday 14 May
Capital gains tax
18.30-20.00

Georgiana Head Recruitment

MEET YOUR ADVISERS

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Director

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ALISON TAIT

Director

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Tax Lecturer – CPD
Various locations with UK-wide travel

Our client is a training company. They seek a tax qualified individual (ACA, CTA, ICAS or equivalent) with a broad ranging technical background and ideally some lecturing experience. In this role, you will lecture on tax CPD both in person and in online seminars. You will keep up to date with technical changes across a range of taxes, and will present these in an interesting and engaging way. You will also be involved in writing and developing course material. Home based, but with frequent travel throughout the UK (Midlands or London base helpful). **Call Georgiana Ref: 2886**

Private Client Director (Trust & IHT Focus)
Leeds – £excellent + benefits

This independent firm is looking for a senior manager or director with a particular interest in trust and IHT work. This role has technical, man management and business development responsibilities and fantastic career progression prospects. You will provide tax planning advice to HNW individuals, including IHT, non-domicile and residence issues, the use of UK and offshore trusts and income tax planning. You will also provide probate services to appropriate clients and work alongside the Partner to grow this service. **Call Alison Ref: 2919**

Corporate Tax Senior or Manager
Leeds or Manchester

Growing team in a Big 4 firm seeks qualified tax professionals for advisory focused roles dealing with international tax work for financial services related businesses. Our client would consider candidates relocating to the North. Great flexible working arrangements, good opportunities for progression and 'London quality' work make these really interesting roles. FS experience not a pre-requisite, but you will need UK large corporate experience. In these roles, you will deal with a good mix of projects including transaction support and tax structuring. **Call Georgiana Ref: 2934**

In-house Tax Advisor – Leeds or Sheffield
£24,000 to £28,000 + bens

Our client is a large commercial law firm. They seek a tax specialist to join their in-house team. It is likely that you will be ATT qualified or part way through ACCA – study support is available for you to complete a relevant qualification. It is likely that you will have a background in either corporate tax or partnership tax, so could be an opportunity for someone with a more personal tax background to make a move in-house. There is the opportunity to get involved in international tax work, and there is clear scope for development in the role. **Call Georgiana Ref: 2935**

Personal Tax Assistant
Preston – to £28,000 + study support

You will prepare and submit the self-assessment tax returns for a portfolio of clients including HNW individuals, company directors, local entrepreneurs, sole traders and some partnerships. You will liaise with the client and prepare letters to them and HMRC for review by the manager. You will also get the opportunity to work on ad-hoc advisory work. You will ideally be AAT or ATT qualified, and study support can be provided. **Call Alison Ref: 2945**

Personal Tax Assistant
North Leeds – to £28,000 + benefits

As a Tax Senior you will work on your clients' tax compliance and tax planning. You will manage a portfolio of high net worth individuals, company directors and partnerships, and will be responsible for the completion of their tax returns. You will also assist with the corporation tax compliance, prepare P11Ds, PSAs and provide advice on Benefits in Kind. You will ideally be ATT or CTA qualified, but candidates who are qualified by experience will also be considered. **Call Alison Ref: 2946**

www.georgianaheadrecruitment.com

Mixed Tax Senior – full or part time Finchley Central, London – £excellent

Our client is a longstanding independent accountancy firm. They seek a tax senior to join a busy and sociable tax team. In this role, you will deal with a mix of compliance and advisory work for businesses and their owners. Initially, the role will focus on a mix of compliance work and ad-hoc advisory work, and the focus of the role will then progress towards more advisory work. Would consider someone more experienced looking for part time or flexible working. Study support available – minimum of 2 years' tax experience required. **Call Georgiana Ref: 2933**

In-house Tax Manager – Warrington £50,000 to £65,000 +bens + bonus

International group seeks a Tax Manager to join growing In-house tax team. Reporting to Directors, you will be involved In a wide range of corporate tax and transfer pricing work. You will help launch new products in new territories and will be actively involved in setting up new processes and procedures to help with the international growth of this large group. This role would suit someone who is ACA and CTA qualified, who has experience of working with large international groups; this may have been gained in practice or in industry. Part home working available. **Call Georgiana Ref: 3000**

Tax Investigations Manager Manchester – £42,000 to £53,000 + bens

Large accountancy firm seeks a tax investigations/tax disputes specialist. In this role, you will help clients through the challenges of planning financial accounting, tax compliance and maintaining effective relationships with the tax authorities. You will help clients mitigate risk and comply effectively with tax laws. You will help businesses to deal with full and aspect enquiries from HMRC, and will be involved in alternative dispute resolution and tax litigation. It is likely that you will be either an HMRC Inspector or an experienced tax practitioner. **Call Georgiana Ref: 2887**

Corporate Tax Manager – Real Estate Manchester – £excellent + benefits

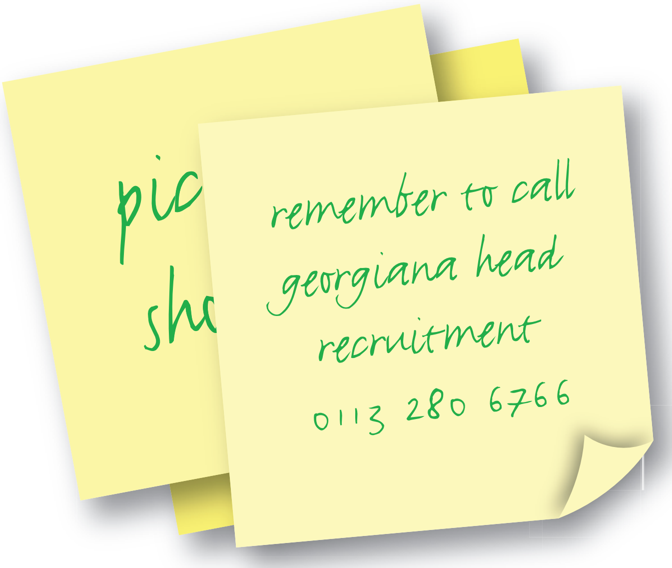
This team helps clients manage their property interests in a tax efficient manner. You will provide tax compliance and advisory services to your clients by building long term relationships and gaining a thorough understanding of their businesses. You should be ACA or CTA qualified, with a strong knowledge of UK corporate tax and an awareness of other tax and accounting areas. M&A tax, property tax and/or international tax experience would be advantageous but is not a requirement. **Call Alison Ref: 2922**

In-house Tax Manager Near Goole – to £60,000 + benefits

This is a new role in the in-house finance team at a large international company. You will be responsible for undertaking the more complex areas of the tax compliance and reporting for the group, country by country reporting, transfer pricing, managing the Tax Risk register and SAO reporting requirements. You will also support the Group Treasurer on strategic, operational and funding initiatives. You should be ACA/CTA qualified, with a background in corporate tax. **Call Alison Ref: 2912**

R&D Tax Senior Manager Manchester – to £65,000 + benefits

This mid-tier firm has a fantastic new opportunity for an experienced R&D Tax Specialist to take the lead in developing the service offering to both existing and new clients across the North West. The role will include the preparation and delivery of R&D Tax Relief and Patent Box claims, promoting the R&D Tax offering, reviewing claims prepared by other team members and negotiating with HMRC. Comes with great career progression prospects. **Call Alison Ref: 2932**



YOUR TAXATION RECRUITMENT SPECIALISTS