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Complicating PAYE Settlement Agreements

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CONTENTS

President's page

president@ciot.org.uk
Glyn Fullelove

Social media guidance

'Already this morning I have killed a fox with a baseball bat. How's your Boxing Day going?' With that tweet, one well known member of the tax community found themselves not only receiving a huge amount of 'coverage' on social media, but also in more conventional media. It is fair to say that most of the coverage was not particularly positive. This was a salient reminder of how easy it is to damage your reputation – or that of an organisation you represent – through inappropriate use of social media.

This is something the CIOT has been aware of for quite some time. At the January Council, a social media policy covering volunteers using social media was adopted. This policy carries guidance which is important for all volunteers when using social media, whether in a personal capacity or a CIOT capacity. There is specific guidance for when social media is used in the course of a member's role as a volunteer. This guidance will be rolled out to volunteers through the branches and committees with which you are involved, and I would encourage all volunteers to study the guidance when you receive it and ensure you follow it.

As some of you may know, I am active on Twitter personally, though many of my tax followers are probably confused by my tweets on 'The Archers' and vice versa. There is an active #TaxTwitter community, and many lively debates, which I think would be improved if everybody participating followed the CIOT guidelines. There are many excellent commentators; my favourites include @DanNeidle, @JudithFreedman, @iaincampbell07 and @hselftax. However, many other contributors on Twitter also demonstrate that knowledge about how tax actually works is remarkably thin, despite the impact it has on all our lives. One can also see how social media acts not as a forum for discussion but as an echo chamber; it is too easy to simply follow people you agree with and ignore those you don't.

Over the last year in particular I have tried to make sure I follow a wide range of tax opinion, including academics, think tanks, government departments, politicians and journalists, as well as practitioners. I am sure there are many more I could be following, but my timeline seems very active as it is. I do, of course, follow @CIOTNews and @ourATT for excellent and quality tax coverage!

Twitter is not the only platform, of course, and LinkedIn also has a substantial amount of tax content; it is a platform more for information and networking than debate, and I have found it useful for both during my Presidential year.

Campaigners against the loan charge have been very active on social media. Some campaigners have resorted to unacceptable levels of personal abuse of those who disagree with them, which has led to some counterblasts that would fail the guidelines referred to above – and indeed the debate around the loan charge has been one of the reasons the new policy has been introduced. However, in my view, without the concerted social media campaign, I doubt the review by Sir Amyas Morse would have taken place, even if that campaign could have been conducted in a much better manner. This demonstrates the power of social media. I would, though, say to any campaigners reading this that I am highly suspicious of accounts that are set up anonymously, have no discernible following other than other campaigners and 'target' figures such as myself or Ray McCann by mentioning us in their opening tweets. That is not the way to win friends in bodies you may wish to support you.

Overuse or misuse of social media can lead to mental health problems, and I am delighted that Helen Whiteman, our Chief Executive, has put mental health wellbeing at the top of her agenda since joining us. I was pleased to see CIOT and ATT partnering with F=@#! Mental Health and Serenity Therapies to deliver the first wellbeing event for UK tax professionals through our New Tax Professionals committee in February. Friends of mine in tax are no longer with us due to mental health issues – I don't want to lose more tax colleagues that way, and anything the Institute can do to prevent that will have my total support.

Until next month – don't be afraid to use social media – #TaxTwitter is generally a very civilised part of the online universe! But do take care when using it, and in particular, take care of yourselves.

Glyn Fullelove
President, CIOT
president@ciot.org.uk

"There is specific guidance for when social media is used in the course of a member's role as a volunteer.

ATT welcome

page@att.org.uk
Richard Todd

Growing speculation…

This is a very busy month for tax practitioners; not only do we have a Budget on 11 March, but it is the last month of the tax year. This means that all that year-end planning, which has been the subject of meetings and conversations over the past number of months, is even more important.

I congratulate all our ATT Students who were successful in the November 2019 sittings. I am looking forward to meeting many of the prizewinners from both the May and November 2019 sittings this month.

By the time you read this Welcome page, it is likely that the Chancellor has stepped down from delivering his Budget at the despatch box. All the speculation about what the government is planning to do will cease, and we will begin to review the draft text and decide which clients may be affected and how so. One of the best ways to learn about and understand the impact of the Budget is through attendance at a CPD seminar organised by your local ATT/CIOT branch.

We already understand that the proposed reduction in corporation tax from 19% to 17% from next month will not now take place. One wonders now that, as we have Ministers back at work in Stormont, will they agree to implement the Corporation Tax (Northern Ireland) Act 2015 and introduce their own reduced rate? While it may be too soon to make any decisions, now might be the time for us tax practitioners to dust off our original advice and update as appropriate – a lot has happened in five years, after all!

Back in 2015, the standard rate of tax was 20% and the Ministers at Stormont could, subject to satisfying certain conditions, reduce the rate of corporation tax payable locally. At the time, it was mooted this could be as low as 12.5%, the same as the trading rate applicable in the Republic of Ireland. There was no mention of increasing the rate applicable to other income, rentals income, interest income, etc. to 25%, the same rate applicable in Ireland.

Will this be the only Budget prior to the end of the Brexit transition period (that is the 11 month period ending 31 December 2020, by which time one might hope there will be a trading deal in place between the UK and the EU 27)?

I read recently that there has been a degree of renewed interest in the possibility of building a bridge between Northern Ireland and Scotland at a cost running into several billions, which would rank as a substantial infrastructure project.

An area that seems to draw a lot of attention is in relation to pensions. Whether it is the change to the age at which a person can claim their state pension, or the unexpected consequences of tapering the pension annual allowance for high earners or reducing tax relief on pension contributions, this is always seen as a difficult and sensitive matter. A government must weigh up the cost of encouraging people to make their own pension provision with the financial benefits for the individual.

On a separate matter, if you have not already completed and submitted your annual return, please do so as soon as possible. You will be aware that, as part of the rules of membership, you are required to file the annual return by the end of January.

And finally, may I wish you all a very happy St Patrick's Day.

Richard Todd
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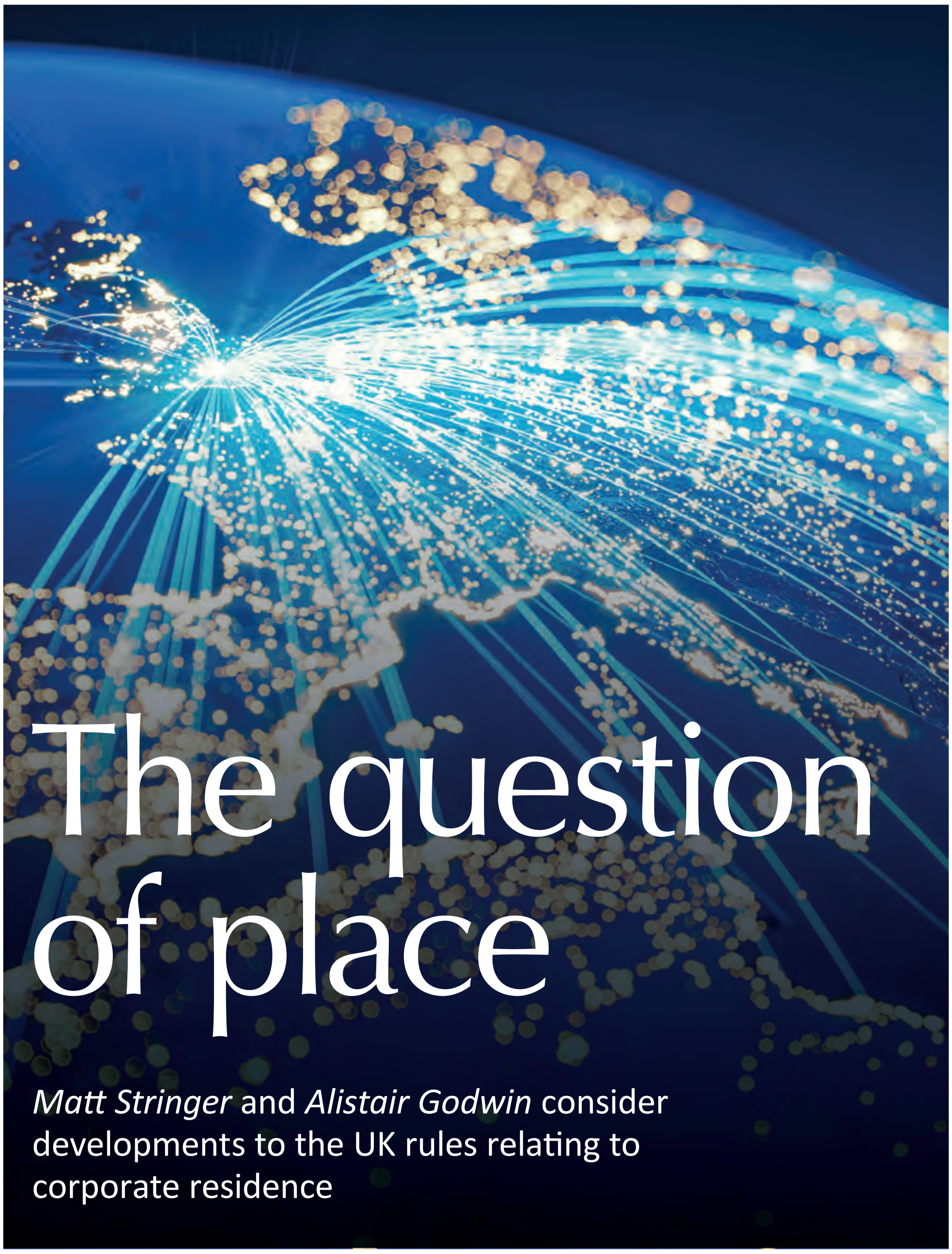
"One of the best ways to understand the impact of the Budget is through attendance at a CPD seminar organised by your local ATT/CIOT branch.



The question of place

Matt Stringer and *Alistair Godwin* consider developments to the UK rules relating to corporate residence

KEY POINTS

- **What's the issue?**
A company is UK tax resident if it is incorporated in the UK, or if its central management and control actually abides in the UK. Several recent changes in the UK legal framework have made corporate residence a key feature of the tax landscape faced by multinationals doing business in the UK.
- **What can I take away?**
The introduction of the multilateral instrument is likely to mean that more dual residence cases will be resolved (or attempted to be resolved) with the involvement of the competent authorities than was the case previously. Other tax treaties may resolve dual residence in other ways; for example, via the 'place of effective management' tiebreaker.
- **What does it mean to me?**
There have been several recent changes to the UK corporate residence rules that multinationals should be aware of and review where appropriate. It is worth reflecting on whether residence will continue to be as important as it currently is in determining the scope of the UK's taxing rights over companies.

Several recent changes in the UK legal framework have made corporate residence a key feature of the tax landscape faced by multinationals doing business in the UK. This article summarises some of those changes, and key practical areas to look out for.

The basic rules of UK corporate residence

It is worth starting with a recap on the basic rules of UK corporate residence. A company is UK tax resident if it is incorporated in the UK, or if its central management and control actually abides in the UK.

Residence then determines the extent of the UK's taxing rights over the company. UK tax resident companies are generally subject to UK corporation tax on their worldwide income and gains. In contrast, non-UK tax resident companies are generally subject to UK corporation tax on profits attributable to a UK permanent establishment, as well as UK income tax on certain UK-source income.

Case law update: *Development Securities*

The 'central management and control' test derives from the famous case of *De Beers Consolidated Mines v Howe (Surveyor of Taxes)* [1906] AC 455. A line of cases then developed from *De Beers*, the latest of which is the Upper Tribunal decision in *Development Securities and others v HMRC* [2019] UKUT 169.

The case concerned the incorporation of various Jersey subsidiaries of Development Securities plc, a property development and investment company, as part of a tax planning scheme dating back to 2004.

It was essential to the operation of the scheme that the subsidiaries were not only incorporated, but also tax resident in Jersey, and not the UK. The First-tier Tribunal found that the subsidiaries were UK tax resident, and the taxpayer appealed to the Upper Tribunal, where that decision was reversed.

A number of practical points can be drawn from the case. The first is to summarise the case law on central management and control:

- A 'substance over form' approach should be taken, which will cause the courts to see through 'shams'.
- The question as to where central management and control abides is one of fact; i.e. where central management and control actually is and not where it ought to be.
- Central management and control abides where the company's 'paramount authority' is exercised (which is normally exercised by the board).
- Influencing the board is different to controlling it.
- The courts must be alive to the board 'rubber stamping' decisions taken by others.

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- It is possible for a company to be dual tax resident.

The case also indicates that incorporating a subsidiary for a specific purpose (i.e. to act as a 'special purpose vehicle') does not in itself determine where central management and control abides.

This is encapsulated in the following quote from the judgment (at para 17): 'The mere fact that a 100% owned subsidiary carries out the purpose for which it was set up, in accordance with the intentions, desires and even instructions of its parent, does not mean that central management and control vests in the parent.'

Finally, the case also considered key indicators of the board 'rubber stamping' decisions taken by the company's shareholders so that central management and control is really being exercised by the shareholders. In the Upper Tribunal's view, these indicators are:

- where the board ignores its statutory duties when taking decisions; and
- knowingly acting without sufficient information.

This sets a high bar for 'rubber stamping'. While this may be good news for advisers wishing to incorporate overseas 'special purpose vehicles' for use in specific transactions, it may be prudent to treat the case with an element of caution – in particular, because there is speculation that the decision may be appealed in due course.

Gains arising from disposals of UK real estate from April 2019

As already mentioned, non-resident companies are generally subject only to UK corporation tax on profits attributable to a UK permanent establishment, as well as income tax on certain UK-source income. However, from April 2013 onwards non-UK tax resident companies that held certain high value UK residential real estate came within the scope of the then new annual tax on enveloped dwellings (ATED) on an ongoing basis, and of ATED-related CGT on exit.

The rules for disposals of UK property have continued to evolve since then, culminating in new rules that came into effect in April 2019. Now, chargeable gains arising to non-resident companies on the disposal of UK real estate (both residential and non-residential) are subject to UK corporation tax at the prevailing rate.

While a detailed summary of these rules is beyond the scope of this article, it is fair to say that they are far reaching. This is illustrated by the way in which, broadly, gains arising on disposals of assets that derive at least 75% of their value from UK real estate are within the scope of charge. This could catch disposals of shares in 'property rich' overseas corporate vehicles, making it important to understand the composition of a corporate vehicle's balance sheet before advising on the tax impact of disposal of shares in it.

Anti-hybrids

The anti-hybrid rules were introduced in the UK with effect from 1 January 2017, replacing the previous anti-arbitrage provisions (TIOPA 2010 Part 6A, replacing Part 6). Catalysed by the OECD's base erosion and profit shifting (BEPS) Action 2 proposals on this topic, the UK's anti-hybrid rules are far-reaching and complex, providing mechanical adjustments to 'deduction/non-inclusion' or 'double deduction' mismatches of tax treatment resulting from hybridity. Separate chapters address mismatches arising as a result of hybrid entities, hybrid instruments, and dual resident or multinational companies. A full summary of the rules is outside the scope of this article.

However, in brief and insofar as they relate to dual tax resident companies, Chapter 10 of the anti-hybrid rules seeks to prohibit dual resident companies from obtaining tax advantages that are perceived to be unjustified economically. By virtue of its dual residence status, a dual tax resident company is taxable in two territories. Prima facie, such a company would have both income and expenses recognised in each of those territories (subject to differences in calculation of the tax base). Simply put, the anti-hybrid rules ensure that a company that is resident in both the UK and in a foreign jurisdiction cannot claim double deductions for its expenses, unless such expenses are offset by doubly taxed (or 'dual inclusion') income.

Historically, a dual tax resident company may have benefited from the ability to utilise a tax loss in two jurisdictions. The anti-hybrid rules effectively prohibit such action from 2017 onwards.

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS

Otherwise known as the 'multilateral instrument' (MLI), this was introduced to ensure that the treaty network of BEPS participants reflected certain minimum standards. The MLI took effect in relation to UK corporation tax on 1 April 2019, and the UK's existing tax treaties will be altered once the counterparty jurisdiction has implemented the MLI and to the extent that the UK and that jurisdiction have each not made any reservations against the relevant articles.

Article 4 deals with dual resident entities. It provides a 'treaty tiebreaker' that will replace the existing tiebreakers in covered tax treaties where the counterparty jurisdiction has not made any reservations. Article 4(2) reads (with emphasis added) as follows:

> 'Where by reason of the provisions of a Covered Tax Agreement a person other than an individual is a resident of more than one Contracting Jurisdiction, the *competent authorities* of the Contracting Jurisdictions shall endeavour to determine by *mutual agreement* the Contracting Jurisdiction of which such person shall be deemed to be a resident for the purposes of the Covered Tax Agreement, *having regard to its place of effective management*, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Covered Tax Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting Jurisdictions.'

The main difference is that many treaties previously contained a 'place of effective management' tiebreaker, which has now been replaced with a mutual agreement procedure between competent authorities for covered treaties. While the place of effective management is still a relevant factor that should be taken into account, it is now just one factor of many. Moreover – and this is the key practical point – the test requires the active involvement of the competent authorities in determining the company's place of residence. Treaty benefits are also denied until such time as that process is completed (absent any specific agreement from the competent authorities). This is in marked contrast to the 'place of effective management test', which applied automatically and which companies could interpret without recourse to the competent authorities.

In practice, the competent authorities' involvement in resolving dual residence is likely to slow the process down. It is also not entirely clear whether the taxpayer has to take the initiative and commence the process with the respective competent authorities under the mutual agreement procedure. Literally construed, the competent authorities are responsible for taking the initiative without any commencement being required on the taxpayer's part. Clarification from HMRC on this point would be welcomed, given the likely increase in the volume of cases now needing competent authority input.

Resolving dual residence

The introduction of the multilateral instrument is likely to mean that more dual residence cases will be resolved (or attempted to be resolved) with the involvement of the competent authorities than was the case previously. Other tax treaties may resolve dual residence in other ways; for example, via the 'place of effective management' tiebreaker.

A dual resident company could, of course, shift its residence to a single jurisdiction by removing some of the levers that leads to the assertion of residence by a second jurisdiction.

As outlined above, a company is UK tax resident if its central management and control actually abides in the UK. A dual resident company with UK central management and control could take positive action to shift that central management and control from the UK to the second jurisdiction. Of course, the same could be said of a dual resident company incorporated in the UK but centrally managed and controlled overseas, by shifting management and control to the UK. It may also be possible in certain jurisdictions to shift the legal seat of a company, thereby moving residence on the basis of an incorporation based test. However, it is understood that a shift of legal seat is not possible in the UK.

It should be noted that any action taken unilaterally or via a treaty tiebreaker provision to move from being a dual tax resident (UK and overseas) company to solely resident overseas is treated as an emigration from the UK for UK tax purposes. The treatment of such an event would be broadly similar to a solely UK tax resident company shifting its residence overseas. Advance notice must be provided to HMRC, and HMRC's approval obtained for the company's arrangements to pay any outstanding tax liabilities. This can take time and should be factored into any emigration plan.

In addition, the company's assets are, broadly, deemed to have been disposed of and reacquired for market value on the day of exit, which may give rise to a so-called 'exit charge'. The policy intention behind this is to bring into charge any 'latent profits' represented in the company's assets. There are specific rules that apply to each category of asset from a tax perspective (chargeable gains assets, stock, capital allowance pools, etc.), which are similar but often subtly different to each other. In practice, it is advisable to review these rules carefully, as unexpected exit charges may derail an emigration.

Action taken unilaterally or via a treaty tiebreaker provision to move from a dual tax resident (UK and overseas) company to a solely UK tax resident company should involve a much simpler UK tax analysis. The company would retain its UK tax residence status with limited changes; namely, that the UK rules relating to dual residents (e.g. the anti-hybrid provisions discussed above) would no longer be relevant.

Conclusion

As can be seen, there have been several recent changes to the UK corporate residence rules that multinationals should be aware of and review where appropriate. As a concluding remark, it is worth reflecting on whether residence will continue to be as important as it currently is in determining the scope of the UK's taxing rights over companies. The UK is increasingly looking beyond residence in this regard, one example being the new regime for chargeable gains arising to non-resident companies mentioned above. This trend is set to continue with the proposed introduction of a new tax in April 2020, the digital services tax, as a new means of collecting tax from large multinationals based on revenues derived from UK customers as opposed to a profits-based test linked to tax residence.

Making things simpler

Bill Dodwell explains the role of the Office of Tax Simplification

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PROFILE

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

The Office of Tax Simplification (OTS) celebrates its tenth anniversary later this year. The initial task of building the Office was taken on by its first Tax Director, John Whiting, supported by Michael Jack as chair. In 2015, the OTS was made an independent office of the Treasury and in 2016 was given statutory authority. The statute provides that the OTS shall have a majority of independent board members (four), as well as the chair and the tax director. The board is completed by senior officials from HM Treasury and HMRC.

Statutory authority coincided with the OTS getting a larger staff budget, so that it was no longer reliant on free secondments from large firms. The team is led by the Head of Office (David Halsey, who succeeded Jeremy Sherwood) and is made up of a great mix of private and public sector policy advisers with a wide range of different experience. There are about 12 to 14 people in the team and as some work part time, we've got about nine full-time equivalents. Today, while the OTS may appoint individuals with specific expertise on particular projects, most are part of a permanent team.

I joined the OTS in July 2018, in response to an advert for four policy advisers. In January 2019, I was appointed Tax Director in succession to Paul Morton, after a public appointment process. One year in, it seemed a good time to talk about how the OTS works.

How reviews work in practice

Some of our reviews are commissioned by the chancellor and others are undertaken on our own initiative. However, in all cases, before any review is launched the OTS will debate the merits with Treasury and HMRC officials. The OTS is indeed independent of government but the most productive reviews are those where the review has been developed with the support of the exchequer departments. The OTS makes recommendations but decisions on tax policy remain very much the province of ministers, advised by the Treasury. Tax administration is entrusted by law to HMRC, which is generally supportive of our recommendations, but necessarily needs to fit change into other work.

Once the basic idea has been agreed, the OTS team will commonly draft a scoping document, taking account of feedback from Treasury and HMRC specialists to make sure that the review is properly focused. In all cases, the scoping document will be published on the OTS website – following a letter of instruction from the chancellor where relevant. The scoping document is then followed by a call for evidence and often a public survey.

Gathering evidence

From the start, the OTS made a big effort to seek ideas and feedback from as wide a range of taxpayers, advisers, business organisations and professional bodies as possible. It's vital to leave London! Local branches of the CIOT/ATT, and the accountancy bodies (the ICAEW, ICAS and CAI) and business organisations (such as the FSB) often facilitate meetings with the OTS team. Other bodies, such as the AAT and CBI, meet us in London, often inviting volunteers to travel to give their feedback. The tax charities and the Low Incomes Tax Reform Group give important evidence often not available anywhere else.

Right at the start of any review, the OTS will set up a meeting with HMRC's data unit, KAI – Knowledge, Analysis and Intelligence. Good data is a vital part of any form of policy making. The OTS has several times published previously unpublished data – sometimes because it hadn't been gathered or compiled before. One of the best recent examples of this is the Inheritance Tax review, where KAI gathered data about a wide range of claims and exemptions. For example, there was no data gathered before about claims for taper relief, or for normal expenditure out of income. The data supports the recommendations in the review, as well as enabling others to develop their own policy ideas.

There are also a range of meetings with HMRC and Treasury operational and policy teams. They will be able to discuss the general issues they see, whether in non-statutory clearance applications or in compliance activities.

Traditionally, the OTS has formed a consultative committee for chancellor reviews. The committee is made up of a range of private sector experts, as well as specialists from HMRC and the Treasury. Sometimes an academic or an economist is invited to bring a broader perspective. The committee can typically act as a sounding board – although the final report remains that of the OTS.

Final recommendations

After the initial evidence gathering, debate continues to make sure that the final recommendations are sound and capable of implementation. It's important to make sure that avoidance gaps are not opened up, or that a proposal has an unexpected exchequer cost. There's no longer a requirement for a set of recommendations to be revenue neutral but naturally the impact on the public finances remains important.

Finally, the report is published (and laid before Parliament by the chancellor, where commissioned by him). We will speak to journalists about the report, to help inform the wider public of the OTS' work. The chancellor is bound to respond to commissioned reports, although the question of adopting recommendations remains very much a matter for the government. The support of the advisory community in providing ideas and evidence makes a vital contribution to a simpler and better tax system.

Offshore assets: common myths

Dawn Register and *Dominic Hall* look at common myths surrounding the reporting of income and gains from offshore assets

KEY POINTS

- **What is the issue?**
HMRC statistics show that approximately one in ten people in the UK have an offshore financial interest. The taxation of income and gains arising from these interests can be complex.
- **What does it mean for me?**
HMRC now has access to unprecedented levels of overseas financial data. Alongside the data is HMRC's 'No Safe Havens' offshore strategy, renewed in 2019, as well as punitive penalties for offshore errors in tax returns. Identifying and dealing with offshore non-compliance is crucial for all professionals and individual taxpayers.
- **What can I take away?**
We highlight ten of the most common misconceptions surrounding offshore assets from our practical experience.

HMRC statistics show that approximately one in ten people in the UK have an offshore financial interest. The taxation of income and gains arising from these interests can be complex. Fundamental principles are often misunderstood and this leads to common myths and misconceptions.

HMRC now has access to unprecedented levels of overseas financial data. Alongside the data is HMRC's 'No Safe Havens' offshore strategy, renewed in 2019, and punitive penalties for offshore errors in tax returns. Identifying and dealing with offshore non-compliance is crucial for all professionals and individual taxpayers.

We highlight ten of the most common misconceptions surrounding offshore assets from our practical experience. This mythbuster will help taxpayers or any adviser to de-mystify the UK tax reporting of foreign assets. For further guidance refer to the Self Assessment Foreign Return notes (see bit.ly/2Ti3mSb), HMRC manuals and the relevant legislation.

1. Offshore assets do not need to be reported

A key principle of UK tax law is that individuals who reside in the UK must declare any income and gains arising from their worldwide assets, not just those which are owned in the UK. This does not always apply to those whose 'permanent home' or 'domicile' is outside of the UK (see below).

HMRC does risk assess the offshore element of tax returns (or lack thereof) and decide whether to open an enquiry. This risk analysis is based on the information it holds about an individual's offshore assets. Historically, data about offshore assets was scarce for HMRC. In recent years, however,

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there has been a momentous change in the amount of offshore information flowing to HMRC. Most notably, the Common Reporting Standard (CRS) is a global standard for the automatic exchange of financial account information that is overseen by the OECD. Over 100 countries have adopted CRS and HMRC received details of 5.7 million offshore accounts held by UK residents in 2018.

HMRC is now very much on the front foot in terms of challenging taxpayers who it suspects may have underdeclared or evaded tax altogether on offshore interests. This is a focus area for HMRC in identifying cases for routine enquiry and more serious civil and criminal investigations.

2. The foreign tax paid is enough

With increasingly globalised financial affairs, being taxed in two different countries on the same income is a more regular occurrence. Treaties and local tax laws to mitigate double taxation must be checked by advisers dealing with foreign assets.

The primary mechanism is a double tax treaty agreed bilaterally between jurisdictions. There are many treaties in place between the UK and other countries. Double taxation is eliminated either by way of exemption in one country, or a credit.

A common situation is, say, local tax in the foreign country deducted at source from bank interest for a UK resident. Irrespective of the fact that local tax is paid, the interest income is reportable in the UK. The self assessment tax return via the Foreign pages then includes a foreign tax credit (FTC) relief calculation.

There is also Taxation (International and Other Provisions) Act (TIOPA) 2010 s 18, which allows for unilateral tax credit relief to be given against UK taxes for foreign taxes imposed in a country with which the UK has no double taxation agreement. See TIOPA 2010 or HMRC International Manual for further details.

3. Money accumulated before moving to the UK is tax free

Individuals moving to the UK will become liable to UK tax on income and gains from their worldwide assets from the date they become UK tax resident. This is determined by tests that consider the number of days spent in the UK, amongst other factors such as property, work and family ties. Check the statutory residence test legislation in Finance Act 2013 Sch 45.

A frequent misconception is that funds earned or accumulated outside the UK while non-resident can be somehow 'ringfenced' upon moving to the UK. This will not be the case if those assets continue to generate foreign income or gains during the period of UK residence. Of course, the matter will be far more complex for non-UK domiciled individuals (see below).

4. Foreign pensions can be ignored

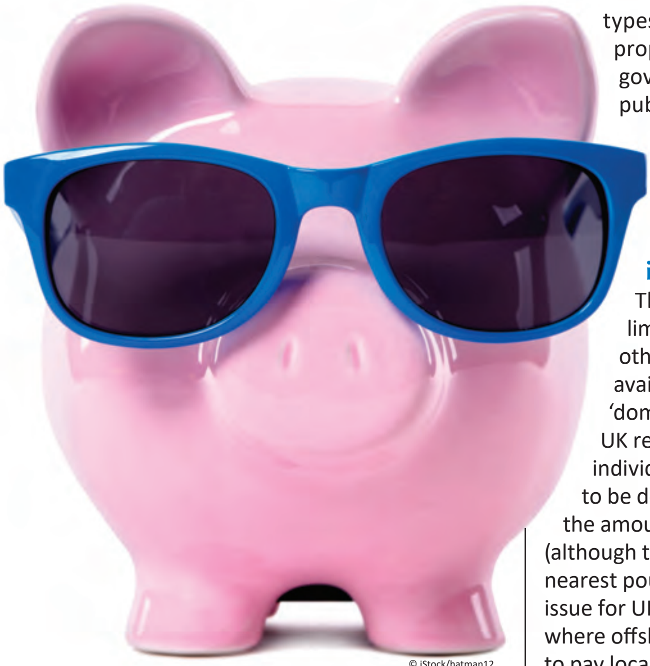
A current UK resident may have lived or worked abroad for several years and in multiple countries. Foreign state pensions and retirement savings plans in countries outside the UK are perfectly understandable with a globally mobile workforce. These foreign pensions are generally not exempt from UK tax (although a double tax treaty may apply). Tax free plans in an overseas country may in fact be taxable in the UK, which can lead to some unforeseen tax outcomes.

When pensions are drawn, there are complexities depending on how the pension income is derived and whether it is treated as a lump sum payment.

There are risks in transferring a pension offshore. Transactions can lead to an 'unauthorised payment' being made, which can attract a total tax rate of 55%. In addition, a scheme sanction charge can also apply under Finance Act 2004 ss 239 to 241.

5. Foreign investments mean you pay less tax

Tax is often not the primary reason for having an offshore bank account. Classic scenarios include foreign students, expatriates, holiday homes and family overseas. However, OECD statistics show that countries with lower rates of tax do typically attract greater volumes of financial activity and inward investment. For some foreign account holders, the local



rate of tax is lower in the country in which the account is located, compared to the UK. Once declared via self assessment, the overall tax paid will generally be the same as if the account were UK based.

It can also be the case that holding money offshore actually increases the total amount of tax payable. HMRC has a wide range of anti-avoidance tax measures which can prove punitive; for example, the transfer of assets abroad legislation.

6. Accounts which are not in my name do not need to be reported

UK tax is usually ultimately payable on income in the hands of the beneficial owner of an overseas account, rather than the named or legal owner. So if an overseas account is held by a nominee, or another entity, it can still be taxable on the individual who beneficially owns the asset and has a right to the income.

An interesting twist on this is the case of *Lily Tang v HMRC* [2019] UKFTT 81 (TC). The tribunal held that Mrs Tang was not the beneficial owner, and not taxable on funds in a Singapore account. The FTT cancelled the discovery assessments and all penalties despite HMRC arguing the contrary.

HMRC's ability to understand the beneficial ownership of an offshore account is sometimes masked by multi-layered ownership structures; for example, a bank account held by an overseas company or trust. The increased global information sharing will make this easier for HMRC, and a wide number of ownership registers are now being created and enforced globally.

The UK currently has beneficial ownership registers for three different types of assets: companies; properties and land; and trusts. The government is also planning a public beneficial ownership register in 2021 for properties owned by overseas companies and legal entities.

7. Only material amounts of income need to be reported

There is no published de minimis limit for reporting offshore income, other than a small threshold available to some individuals whose 'domicile' is outside of the UK. For a UK resident and UK domiciled individual, offshore income will need to be declared no matter how negligible the amount may appear in practice (although this can be rounded down to the nearest pound). This can frequently be an issue for UK residents with holiday homes, where offshore bank accounts are only held to pay local expenses.

For the sale of overseas assets, it is also commonly misconceived that a gain below the annual exemption (currently £12,000) would not need to be reported. Although no capital gains tax may ultimately be payable, this does still need to be reported on the tax return as it is a chargeable disposal.

For both of these points, the tax impact may be small, but overall costs of non-compliance could still be felt, especially as penalties can apply.

8. I was born abroad so I do not need to declare foreign assets

Much confusion surrounds the concept of 'domicile' and being a non-UK domiciliary for UK tax purposes, which is beyond the scope of this article. It is however clear that the taxation of 'non-doms' in the UK tax system has changed significantly with the 2008 changes and more recently the deemed domiciled provisions from 6 April 2017. Domicile status is increasingly being examined by HMRC, as seen in the recent FTT decision in *Embiricos v HMRC* [2019] UKFTT 236 (TC). As such, taxpayers are wise to avoid any assumptions on domicile, and to seek expert advice about disclosure of their foreign assets even if they were born outside the UK.

For those holding foreign bank accounts in what HMRC may view as a so-called 'tax haven', there are of course many 'non-tax' reasons for doing so. These are linked to personal and commercial drivers, depending on the nature of an individual's financial and business interests, and include:

- a foreign home, holiday home or family arrangement;
- offshore trustees;
- investment diversification;
- political and social differences; and
- international business.

9. I can pick the best exchange rates for me

Income from overseas accounts, which are denominated in a foreign currency, must be converted to pound sterling for the purposes of tax reporting in the UK. The HMRC website publishes yearly average and spot rates for exchange purposes (see bit.ly/2uIFmgR).

Where exchange rates are applied inconsistently, or from a range of sources, HMRC might suspect that these are being picked purposefully in favour of the taxpayer. Chargeable gains must also be calculated by converting the proceeds and costs incurred to pound sterling at the date of disposal and acquisition respectively.

10. Foreign rental profits and losses do not need to be declared

Rental profits incurred in respect of overseas properties are generally still taxable in the UK; however, relief for foreign taxes may be available.

We have seen examples in practice where a UK resident with a rental business declares a loss overseas based on the local laws, but generates a profit for UK tax purposes. This is because each tax authority has its own rules for the deduction of expenses, reliefs and allowances. It is important that a computational exercise is always undertaken to calculate the rental profits for UK tax purposes, even where accounting is complete overseas.

Many individuals believe they incurred a commercial loss based on total property costs (perhaps including mortgage capital payments) being deductible, when in fact they may have a taxable rental profit to declare in the UK.

Summary

These are just a few of the myths and misconceptions we come across in practice. The message for advisers is clear: it is always worth checking and double checking to make sure we have a full picture of a client's offshore assets.

The reporting of foreign assets is complex. Where mistakes are spotted, the Worldwide Disclosure Facility (WDF) remains open and voluntary disclosure is to be encouraged. A voluntary approach will generally reduce penalties. The Failure To Correct regime now in force since October 2018 makes mistakes on foreign asset reporting increasingly more expensive (see Finance Act (No. 2) 2017 s 67 and Sch 18). Therefore, advisers and taxpayers are wise to take great care in their returns, and when handling enquiries and disclosures.

Increasing the scope of R&D

Lindsey K Copland puts forward ideas to increase investment in research and development, by enhancing the tax relief rules

KEY POINTS

- **What is the issue?**
Since the inception of research and development (R&D) tax relief for SMEs in 2000 and for large companies in 2002, successive governments have enhanced the R&D tax relief and credit system on a piecemeal basis.
- **What does it mean for me?**
In a post Brexit world, the opportunities to enhance and extend the relief may provide the Treasury with far greater scope to be creative and inventive, ensuring that the relief fulfils the intention of attracting and encouraging investment in innovation in the UK.
- **What can I take away?**
There has never been a better time for the government to drive in enhanced investment for innovators than right now.

Since the inception of research and development (R&D) tax relief for SMEs in 2000 and for large companies in 2002, successive governments have enhanced the R&D tax relief and credit system on a piecemeal basis. Some changes have been pivotal, such as the transition to the R&D expenditure credit (RDEC) regime; others more simplistic, such as the one percentage point increases to RDEC. It must be said that other than the aim to increase the overall attractiveness and reward of the scheme, the changes have been unconnected and to a degree not part of any obvious strategy.

On prime minister Boris Johnson's first day, he announced on the steps of Downing Street that he intended to enhance and extend R&D tax relief; a welcome signpost from a new PM that his government remains committed to this valuable relief. Further, in the Conservative manifesto a 1% increase in the RDEC rate was signalled too, which may be a counter to the expected withdrawal of a 17% rate of corporation tax. This would of course increase the net RDEC amount, as the tax take would be less, but reduce the net SME tax benefit relief.

By contrast, and for the first time, Labour's manifesto indicated that they would remove the RDEC regime, whilst setting a target of 3% of GDP to be spent on R&D by 2030.

The impact of Brexit

In a post Brexit world, the opportunities to enhance and extend the relief may provide the Treasury with far greater scope to be creative and inventive, ensuring that the relief fulfils the intention of attracting and encouraging investment in innovation in the UK.

Whilst the RDEC scheme is a creature of solely domestic tax legislation, the SME scheme is an EU notified state aid and is subject to EU law. Much will depend on the trade terms agreed over the course of this year, as I'm sure the EU will want to retain as much of a level playing field as possible. With that as a backdrop (and polishing a very large crystal ball), a number of opportunities to enhance and extend the relief are possible.

If, post Brexit, we will no longer be bound by the EU definition of a small and medium size enterprise, this may present an opportunity to redefine what constitutes an SME. For example, if the thresholds were raised to more than 1,000 staff or more, to turnover of €200m (£187m) or to €172m (£153m) on 'A statement of financial position' (balance sheet), a tranche of smaller 'large' companies would be able to access the preferential higher SME tax relief rates. This would enhance the relief for companies that may have recently outgrown the existing SME limits or are 'small' large companies.

Currently, work funded either by notified state aid (impacting the whole of the project cost) or third-party funding (on a pound for pound matching basis) for SMEs can only be claimed under the RDEC scheme. Legislation in this regard is at present restricted as the SME scheme is a notified state aid and therefore no further aid may be given. After the Brexit transitional period, we may be presented with the opportunity to remove the funding restriction and SMEs will be able to claim funded project costs under the SME scheme, which would align with the RDEC as this has no such stipulation for funding.

Extending micro SME benefits

For all businesses, cash is king but for none more so than for micro SMEs. HMRC's Advanced Assurance scheme for SMEs was a welcome initiative to encourage small businesses to claim tax relief on their investments in innovation. This approach gives them confidence that their claim will be accepted for three accounting periods if it remains consistent with the initial discussion with HMRC.

Extending the Advanced Assurance scheme to the RDEC regime would also go some way to increase and encourage claimants to invest, safe in the knowledge that the tax credit will be approved. Given HMRC's R&D tax claims workload (where there have been complaints about the extended time to approve claims), assuring claimants in advance would mean only a light touch would be required at audit.

To further enhance and extend the relief, the introduction of a tiered approach to the tax relief available to micro SMEs could be considered. This would mean that start-ups, incubators and

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accelerators can access a higher rate of return, and coupled with the Advanced Assurance programme this would create a world class R&D scheme.

Like most of these examples, the precise amount of change is moot. What's important is the principle. As an example, however, a micro SME rate of 300% uplift for businesses with over 100 full time equivalents (FTEs) would drive investment into the incubator/accelerator market. Further, increasing the 'cash out' percentage for loss making companies where they surrender losses for cash will provide much needed additional cash for SMEs to re-invest in staff and technology.

Corporation tax rates

Although the much trailed 17% rate of corporation tax (CT) is expected to be withdrawn in the Budget, any reduction of the rate has a positive effect on RDEC claimants as it reduces the net tax take from the gross RDEC credit, but has the opposite effect on the SME rate.

Some may argue that the SME rate at 230% is generous enough and that increases in the super deduction multiplier have largely offset falling CT rates. However, there is an opportunity to ensure the benefit remains unchecked by rate movement by linking the super deduction multiplier to the tax relief benefit.

The same argument applies to the patent box scheme, where falling CT rates have eroded the tax benefit. This could be simply remedied either by maintaining a 50% patent box rate benefit against the prevailing CT rate or by locking and tracking a ten percentage point differential, resulting in a consistent benefit for claimants.

With the drive to simplify tax in mind, the SME tax relief scheme and the RDEC could be combined into a single enhanced tax credit of 20% for businesses with over 100 FTEs. This would simplify the eligibility criteria and the tax benefit calculation, and consequently the attractiveness of the scheme.

Investment support

Currently, the legislation and guidance are clear that eligible software costs relate to licence costs alone, but companies now use and pay for software in very different ways, such as monthly hosting charges. Whilst conversations have been held at a policy level regarding changing this criteria, HMRC's treatment of costs other than licence costs is currently inconsistent nationally. A change in the legislation would provide much needed clarity for claiming companies and advisors alike.

When you consider the full project lifecycle from idea generation to monetisation, it would make sense if the incentive to invest in innovation and the subsequent profits generated by the developed IP fell into one single, simple scheme. The SME and RDEC schemes are front end reliefs, while the patent box scheme is a back end relief. They work in very different ways. Merging them into a single innovation relief scheme could provide greater clarity and simplification of the claiming process.

Claiming tax relief

There are large variances in how claiming companies submit an R&D claim. The minimum requirement is a number in the tax return, which is all that some claimants provide. This is often a short cut to an enquiry, as the inspector has no evidence that the claim has been properly made. Conversely, reports running to hundreds of pages are sometimes produced to support a claim, which often results in only testing an inspector's reading stamina.

To provide a level playing field and to aid audit, HMRC could mandate the content of the supporting documentation provided by claiming companies, similar to the Canadian R&D scheme. This would provide a nationally consistent approach and clarify the expected shape and form of claim submission documentation, removing the uncertainty about HMRC views as appropriate content and length.

Externally provided workers

The redefinition of IR35 may lead employers to attempt to convert externally provided workers to full time employees, thus removing the risk of a charge of disguised employment. As a further incentive, the rate at which staff costs are included in an R&D claim could be enhanced by, say, 10%. Currently eligible staff costs are included in a claim at 100%. Providing a 10% uplift to the staff cost element claimed will incentivise staff cost over any other cost type in an R&D claim. This would support skills and talent and encourage companies to employ staff rather than engage temporary labour. The PAYE/NIC cap would, of course, need to remain in place.

Current externally provider worker legislation requires a minimum of three parties to be a potentially eligible cost, ruling out many people who are engaged directly with claiming companies. This requirement is often ignored, and its removal would simplify the process and allow the cost of self-employed consultants engaging directly to be included in a claim.

Conclusion

Many of these ideas are mutually exclusive and recent conversations with the R&D policy unit and the Treasury have indicated that any changes to the relief must be cost neutral. Whether that means cost neutral in terms of the R&D budget or the overall budget remains to be seen. Nonetheless, there has never been a better time for government to drive in enhanced investment for innovators than right now.

Complicating PAYE Settlement Agreements

KEY POINTS

- **What is the issue?**
Income tax has been partially devolved to Scotland since April 2016 and to Wales since April 2019. This can create complexity for employers using PAYE Settlement Agreements, where they have employees resident in more than one UK jurisdiction.
- **What does it mean for me?**
It is important for employers to identify carefully employees to whom PAYE Settlement Agreements apply and their tax status, so that they can calculate their tax and NIC liability correctly.
- **What can I take away?**
How to ensure employers and payroll providers calculate tax and NIC liabilities correctly in respect of PAYE Settlement Agreements.

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Justine Riccomini and *Joanne Walker* explain the implications of partially devolving income tax to Scotland and Wales for UK employers when preparing PSAs

PAYE Settlement Agreements (PSAs) were first introduced in 1996 to replace the non-statutory 'voluntary agreements' which employers could agree with their local PAYE inspector at the tax district. The original method was used as an administrative easement for employers that wished to settle the tax liability of their employees for items which would otherwise have to be declared on Form P11D as benefits in kind, or payrolled. Typically, items which could be settled with HMRC were staff entertaining, achievement related rewards, and gifts.

These arrangements worked well for some employers but not for others due to their informality.

This situation gave rise to the PSA, which was placed on a statutory footing under what is now ITEPA 2003 ss 703 to 707 and the Income Tax (PAYE) Regulations 2003 Reg 105, which require the employer to agree to become liable for the income tax due on amounts which are otherwise chargeable on the employee. The National Insurance legislation at Social Security Contributions and Benefits Act (SSCBA) 1992 s 10A prescribes the Class 1B employer's NICs liability on benefits included in a PSA which was introduced from 6 April 1999.

PSAs were renewable annually. Employers had to sign up to the PSA using Form P626 prior to the P11D submission deadline of 6 July following the tax year in which the payments were made.

The benefits in kind which could be included in a PSA had to fall into all the following categories to qualify for inclusion:

- **Minor:** not substantial in nature, but not items qualifying as trivial benefits, which are exempt;
- **Irregular:** not expected by way of the employment contract and not paid at regular intervals; and
- **Impracticable:** not possible to apportion between beneficiaries or difficult to value.

Items such as beneficial loans, company cars, bonuses and round sum allowances were specifically excluded from inclusion in a PSA under the legislation.

Items which can typically be included in a PSA

Calculating and paying the tax payable
Regulation 108 of the PAYE Regulations sets out how the tax liability on the benefits should be calculated, requiring only that the number of employees in receipt of qualifying benefits within each marginal rate tax banding be used to compute the liability.

Prior to partial devolution of income tax to Scotland in April 2016, no individual calculations or exact figures were required – it was sufficient to say, for example, that a benefit of £300,000 had been provided, and that approximately 20% of the recipients were higher rate taxpayers,

ITEMS WHICH CAN TYPICALLY BE INCLUDED IN A PSA

Minor

- Incentive awards, e.g. for long service
- Telephone bills
- Small gifts and vouchers
- Staff entertainment, e.g. a ticket to an event
- Non-business expenses while travelling overnight on business that are over the daily limit

Irregular

- Relocation expenses over £8,000 (these are tax-free below £8,000)
- The cost of attending overseas conferences
- Expenses of a spouse accompanying an employee abroad
- Use of a company holiday flat

Impractical

- Staff entertainment that is not exempt from tax or NICs
- Shared cars
- Personal care expenses, e.g. hairdressing

the remainder being basic rate. This was a relatively simple way for employers to pay over what was due and proved successful at generating revenues. If an employer is certain that they do not have any employees who are Scottish or Welsh taxpayers (see below), this remains true.

The PSA liability is calculated using a prescribed Form PSA1. This is generally requested by HMRC to be sent in and agreed over the course of July and August, so that the liability can be settled by 19 October (postal payments) or 22 October (electronic payments) following the tax year in which the benefits were provided. Note that for higher and additional rate (top rate in Scotland) taxpayers, settling the tax and NICs using a PSA can be expensive due to the grossing up process, which can almost double the cost of providing the original benefit.

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Reviews and changes

Almost 20 years after the introduction of the PSA, in 2014 the Office of Tax Simplification (OTS) carried out a review of employee benefits and expenses. It concluded in its (second) 2014 report that any benefit in kind of any value should be capable of being included in a PSA; and also that the PSA annual renewal process should be abolished as it was time consuming and largely unnecessary. The government accepted the latter recommendation but not the former, saying that it would keep this under review.

HMRC launched a consultation in August 2016, following which some revisions were made to the PSA process. The main change from 2018/19 onwards was that PSAs are now an 'enduring agreement'; i.e. they do not need to be renewed each year for as long as they are needed or unless HMRC cancels them. Changes made to the benefits listed will require a new agreement.

HOW A DEVOLVED PSA WORKS IN PRACTICE

In 2019/20, an employer has 140 employees who are resident in all four countries within the UK – England (50), Scotland (56), Wales (28) and NI (6).

The employer provides three types of benefit in kind which need to be included in the PSA so they are not assessed to the employees as benefits in kind via their P11Ds.

These benefits are:

1) Gifts (wedding gifts and hospital flowers):
Total cost £350 (2 x £100; 1 x £150) (all three in Scotland)

2) Staff entertaining (excluding trivial benefits and qualifying annual functions):
Total cost £10,250 (all 140 staff benefited at a cost of £73.21 per head); and

3) Long service awards – cash (non-qualifying):
Total cost £2,000 (two basic rate employees in Scotland)

The affected employees are analysed as follows:

Tax band (marginal rate)	Scottish Taxpayers	Welsh Taxpayers	RUK (England; NI)	Benefit value (£)
Starter rate (19%)	8	0	0	100 + (73.21 x 8) = **685.68**
Basic rate (20%)	24	23	47	2,000 (2 Scottish employees) + (73.21 x 94) = **8,881.74**
Intermediate rate (21%)	15	0	0	100 + (73.21 x 15) = **1,198.15**
Higher rate (40%)	0	5	9	(73.21 x 14) = **1,024.94**
Scottish higher rate (41%)	9	0	0	150 + (73.21 x 9) = **808.89**

THE COMPUTATION

Using the format of the PSA 1, the calculations must be carried out separately for England & NI, Scotland and Wales:

ENGLAND AND NORTHERN IRELAND (RUK)

Tax calculation	£
Value of benefits provided to BR employees	73.21 x 47 = **3,440.87**
Tax due at 20%	688.17
Grossed up tax	**860.21**
Value of benefits provided to HR employees	(73.21 x 9) = **658.89**
Tax due at 40%	263.55
Grossed up tax	**439.26**
Total tax payable	**1,299.47**

Class 1B NICs calculation	£
Value of items attracting Class 1A NICs	4,099.76
Add grossed up tax payable	1,299.47
Total liable to Class 1B NICs	5,399.23
Class 1B NICs payable at 13.8%	**745.09**
Total payable in the PSA	**2,044.56**

SCOTLAND

Tax calculation	£
Value of benefits provided to SR employees	**685.68**
Tax due at 19%	130.27
Grossed up tax	**160.82**
Value of benefits provided to Scottish BR employees	2000 + (73.21 x 24) = **3,757.04**
Tax due at 20%	751.40
Grossed up tax	**939.25**
Value of benefits provided to IR employees	**1198.15**
Tax due at 21%	251.61
Grossed up tax	**318.49**
Value of benefits provided to Scottish HR employees	**808.89**
Tax due at 41%	331.64
Grossed up tax	**562.11**
Total tax payable	**1,980 67**

Class 1B NICs calculation	£
Value of items attracting Class 1A NICs	6,449.76
Add grossed up tax payable	1,980.67
Total liable to Class 1B NICs	8,430.43
Class 1B NICs payable at 13.8%	**1,163.39**
Total payable in the PSA	**3,144.06**

Partial devolution of income tax powers in a PSA context

The ongoing devolution programme of taxes within the UK from Westminster to Scotland, Wales and Northern Ireland (NI) has to date included the partial devolution of income tax to Scotland and Wales from 2016 and 2019 respectively. Income tax rates have not been devolved to NI.

As far as the partial devolution of income tax to Scotland goes, under the Scotland Act 1998 as amended by the Scotland Act 2016, Scotland now has powers over the rates and bands of Scottish income tax. The Wales Act 2014 provides powers over income tax rates of Welsh income tax. Both Scottish and Welsh income tax is chargeable on income defined as 'non-savings, non-dividend' income; broadly, this includes employment income, self-employment profits, pension income and income from property received by those qualifying as Scottish or Welsh taxpayers in a tax year.

It is in the interests of both Scotland and Wales to ensure that income tax receipts are maximised

It is in the interests of both Scotland and Wales to ensure that income tax receipts are maximised to fund public services in those jurisdictions. In this context, it is vital that PSA calculations are performed as accurately as possible depending on the residential status of the employees. From April 2016, employers should have been calculating the portion of the PSA which applies to Scottish taxpayers using Scottish income tax rates (and bands from April 2017). If the employer has employees who reside in Scotland for tax purposes as well as employees resident in the rest of the UK, two separate PSA computations should be set out – one for Scottish taxpayers and the other for Rest of UK (RUK) taxpayers.

In Wales, the Welsh rate of income tax applies from 2019/20 but it was not varied from that of the rest of the UK. However, HMRC has stated in its October 2019 Employer Bulletin that a separate computation for Welsh taxpayers is required to be set out in the same way as employers already have to do for Scottish taxpayers.

The instruction in the Employer Bulletin is to identify employees by way of their tax code; i.e. Scottish taxpayers are identified by an S prefix and Welsh by a C (Cymru) prefix. This means that employers will need to monitor the provision of all benefits in kind designated for PSA inclusion by jurisdiction from the beginning of each tax

WALES

Tax calculation	£
Value of benefits provided to BR employees	73.21 x 23 = **1,683.83**
Tax due at 20%	336.76
Grossed up tax	**420.95**
Value of benefits provided to HR employees	(73.21 x 5) = **366.05**
Tax due at 40%	146.42
Grossed up tax	**244.03**
Total tax payable	**664.98**

Class 1B NICs calculation	£
Value of items attracting Class 1A NICs	2,049.88
Add grossed up tax payable	664.98
Total liable to Class 1B NICs	**2,714.86**
Class 1B NICs payable at 13.8%	**374.65**
Total payable in the PSA	**1,039.63**
Total tax and Class 1B NICs payable across all jurisdictions	**6,228.25**

year and identify all the employees in that jurisdiction by tax band. Different PSA1 forms are available for each jurisdiction to be completed online.

There is no legislative requirement for employees to be included by name in the actual PSA computation but it would be wise to ensure that a robust audit trail for this process is in place to defend the accuracy of the computations and to ensure that each country is receiving its respective devolved funding.

It should also be noted that individuals are Scottish (or Welsh) taxpayers for a full tax year. Therefore, if the code prefix changes mid-year because someone has moved, then it is generally the year-end code prefix that should be followed, as this should reflect the status of the individual for the tax year. Employers may wish to check the position with employees whose code prefix has changed during the year prior to finalising the PSA(s) for that tax year.

Conclusion

The simplified process for performing PSA calculations has become more complicated due to devolution. Employers now need to keep more detailed records than ever before in order to ensure that the tax liability is correct and the funding reaches the right jurisdiction. Care and attention to detail are required.

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Building savings

William Sweeney and *Natasha Spicer* ask whether you are claiming enough tax relief on your construction costs

The recent introduction of the Structures and Buildings Allowance (SBA) has focused considerable attention on the neglected area of buildings and structures. The promise of an annual 2% tax relief on construction expenditure was an attractive prospect to companies carrying out such work.

Regrettably, many advisers have noted that all does not shine as brightly as it might with SBAs, even at the increased 3% rate expected from April. It may therefore be in a client's interest to identify whether all or part of their building or structure qualifies for capital allowances by other means.

On the surface, expenditure on buildings, structures, assets and land works will not be regarded as plant or machinery and so won't qualify for capital allowances. In truth, however, the rules are considerably more nuanced. With plant and machinery expenditure attracting the generous Annual Investment Allowance (currently £1m per annum) and an 18% writing down allowance for expenditure over this limit, significant savings may be realised by ensuring you understand what may be claimed.

Plant vs premises: does the expenditure qualify as plant?

The first question to ask is whether the building or structure should be regarded as

KEY POINTS

- **What is the issue?**
Plant and machinery expenditure attracts the Annual Investment Allowance (currently £1m a year) and an 18% writing down allowance for expenditure over this limit.
- **What does it mean for me?**
In practice, it is not always clear whether an item will qualify as plant, as the legislation does not specifically define the term but merely states that buildings and structures are not plant or machinery.
- **What can I take away?**
It is important to analyse any costs of construction by paying particular attention to CAA 2001 s 21 to 23. There may be fewer items disqualified than you would expect, which could provide valuable tax relief.

PROFILE

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Profile William is a Senior Tax Manager at Menzies. His focus is on developing Menzies' own tax team, where his role encompasses technical support and internal training, developing tax strategy and promoting the tax team. Prior to forming the Tax Technical team, William spent more then eight years advising corporate groups and owner managed businesses on a wide range of UK and international tax issues.

Name **Natasha Spicer**
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Tel +44 (0)1252 894 934
Profile Natasha is a corporate tax manager at Menzies. She works in the Corporation Tax Team at Menzies LLP and is a member of the firm's Hospitality and Leisure team. She provides tax compliance and planning advice to small and medium sized businesses. She specialises in capital allowances and has been involved in many claims which have saved clients significant amounts of tax.

the 'provision of plant or machinery wholly or partly for the purposes of the qualifying activity' (Capital Allowances Act (CAA) 2001 s 11), the prerequisite for claiming plant and machinery allowances.

In practice, it is not always clear whether an item will qualify as plant, as the legislation does not specifically define the term but merely states that buildings and structures are not plant or machinery (CAA 2001 ss 21 and 22). For this, we must refer back to case law.

In *Yarmouth v France* (1887) 19 QDB 647, plant was held to include 'whatever apparatus is used by a businessman for carrying on his business – not his stock in trade, which he buys or makes for sale – but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business'.

In *J Lyons* [1944] CH 281, the principle of 'setting vs function' emerged, with the court ruling that 'a distinction has to be drawn between property which is part of the setting in which the business is carried on (in which case it is not plant) or as part of the apparatus used for carrying on the business'.

These two cases have formed the basis for many subsequent judgments, codifying the requirement for an enduring benefit (taken to be two years) and use in the activities of the business. Setting vs function may prove contradictory where the setting has a function (*Fitch's Garage* [1975] STC 480)). This was clarified by *Jarrold v John Good* [1963] 40 TC 681, which ruled that plant and setting are not mutually exclusive, but the reasons for the expenditure can determine if it is more than mere setting.

This was elaborated by *Wimpy International Ltd v Warland* [1987] BTC 591, which created three tests to distinguish the nature of assets:

- Is the item stock in trade?
- Is the item the business premises or part of the premises?
- Is the item used for carrying on the business?

While the latter is broadly the same as the 'function test', HMRC considers passing this to be insufficient on its own. If an item is permanently attached to the premises, such that it is unlikely to be replaced or moved in the short term, and the premises would not appear complete without it, then it will not be plant.

To forestall this question, *Anduff Car Wash* [1997] EWCA Civ 2128 attempted to claim that an entire building containing plant for car washing was plant. The Court of Appeal disagreed, finding that a 'piecemeal approach' was more appropriate. This approach is the default position and is preferred by HMRC.

Finally, certain specific items, such as integral features (CAA 2001 s 33A) are automatically regarded as plant or machinery. This article does not, however, go into any more detail on this topic.

Having established that an item is plant (or machinery), one can consider capital allowances. The next question is whether the expenditure would be disqualified by CAA 2001 ss 21 to 23.

Buildings

Expenditure on plant does not include buildings. For this purpose, 'building' includes any item that is incorporated into the building, inside the building and of a type that is normally incorporated; or an item that is in or connected with the building and is within the categories of asset in List A in CAA 2001 s 21. These include, but are not limited to:

- walls, floors, ceilings, doors, gates, shutters, windows and stairs; and
- mains services and systems for water, electricity and gas.

Expenditure on these items will be disqualified from claiming capital allowances unless saved by s 23, which includes categories such as integral features.

Structures

CAA 2001 s 22 states that expenditure on the provision of plant or machinery does not include expenditure on:

a) the provision of a structure or other asset in List B; and
b) any works involving the alteration of land.

List B includes expenditure on:

1. tunnels, bridges, viaducts, aqueducts, etc.;
2. pavements, roads, railways, etc.;
3. canals, basins, rivers;
4. dams, reservoir or barrages;
5. docks, harbours, wharfs, etc.;
6. dikes, sea walls, weirs or drainage ditches; and
7. any structure not within items 1 to 6, except for structures within the meaning of 'industrial buildings' and those in use for industries including gas extraction and distribution, telecoms, television and radio.

As with those items of expenditure in List A, these will not qualify as plant unless included within the exceptions in s 23 and so no allowances would be available.

The Upper Tribunal recently ruled in *SSE Generation* that ss 22 (1)(a) and 22(1)(b) are mutually exclusive, such that any structures or assets dealt with under List B may not also be considered under s 22(1)(b) even if their construction involves the alteration of land. The logical conclusion of this line of reasoning is that works involving the alteration of land may only be taken to consider works whose primary objective is the alteration of that land, rather than the incidental result of any other construction.

Expenditure unaffected by the above exclusions

The exclusions in ss 21 and 22 do not apply to certain items for which plant and machinery allowances are provided by specific provisions (CAA 2001 s 23(2)). These include integral features and thermal insulation of buildings.

In addition, s 23(4) contains List C, a comprehensive list of items drawn from historical case law to which the above exclusions do not apply. Note that inclusion on this list is not a guarantee that an item of that type will qualify for capital allowances, merely that it will not be disqualified by ss 21 and 22. Thus, it remains of primary importance to establish whether a building or structure should be treated as plant.

Examples of expenditure in List C include:

- cookers, washing machines, dishwashers, refrigerators and similar equipment;
- washbasins, sinks, baths, showers, sanitary ware and similar equipment;
- furniture and furnishings;
- partition walls, where movable and intended to be moved in the course of the qualifying activity; and
- advertising hoardings, signs, display and similar assets.

As mentioned, the list is long and covers many specific types of expenditure. Of particular interest in many cases is 'the alteration of land for the purpose only of installing plant or machinery' (List C item 22). For claims made before 29 October 2018, this enabled capital allowances to be claimed regardless of whether the plant was excluded by Lists A or B. References in List C to plant have now been changed to exclude any expenditure disqualified by ss 21 and 22 but the scope of this item remains broad.

The case of *SSE Generation*

SSE Generation undertook a £300m hydroelectric power generation project in Scotland. The company claimed capital allowances on £260m; however, while not disputing that that the expenditure was plant HMRC accepted only £34m of this claim, stating that the majority of costs were not allowed under CAA 2001 ss 21 and 22.

As would be expected with a project of this nature, a large portion of the work related to civil engineering works which were necessary to adjust the landscape and allow the water to be routed to and from the turbine and generation equipment.

Initially, in *HMRC v SSE Generation* [2018] UKFTT 416, the FTT ruled that while there was little question that the pipes were plant, much of the remaining expenditure fell under List B item 1. Where this case was remarkable, however, was that the judge stretched the definition of 'install' in List C item 22 to include manufacture or assembly onsite, so that the alteration of land involved in the creation of an item of plant may be regarded as having been done for the purpose of installing the plant.

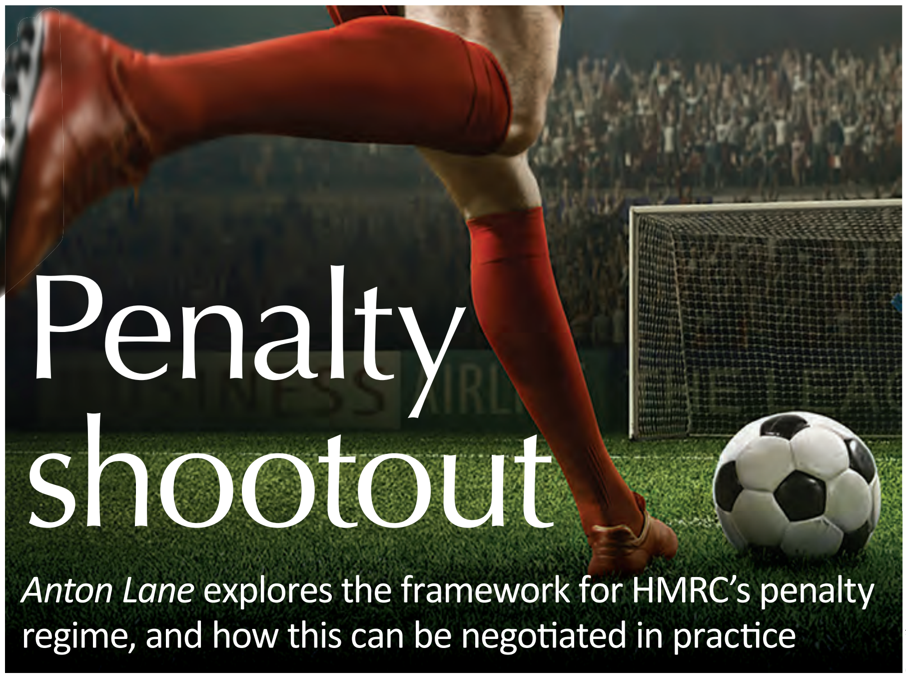
Unsurprisingly, HMRC appealed and the Upper Tribunal did not support this construction. However, in an interesting twist, it reviewed List B item 1 and decided on a far narrower interpretation of tunnel and aqueduct, which excluded the underground water conduits and structures. All of the works were therefore considered under item 7, where they were excluded as the definition of industrial buildings includes those for carrying on a trade of electrical generation. Hence, none of the appealed expenditure was disqualified under s 22 and was held to be allowable.

Although no longer required, the Upper Tribunal also clarified that installation means the setting in place of an item rather than its creation *in situ*.

Summary

In summary, it is important to analyse out any costs of construction by paying particular attention to CAA 2001 ss 21 to 23. There may be fewer items disqualified than you would expect, which could provide valuable tax relief, particularly when you take into account the £1m Annual Investment Allowance that will be in place until 31 December 2020.

The case of *SSE Generation* is significant as it demonstrates the potential value of 'alterations of land' and provides further clarity on its scope. This could have application where we carry out capital allowance analyses and see costs such as 'ground works', etc. In this case, it could well be worth 'digging' deeper to see if this involves a structure relating to plant.



Penalty shootout

Anton Lane explores the framework for HMRC's penalty regime, and how this can be negotiated in practice

Dmytro Aksonov

KEY POINTS

- **What is the issue?**
Whilst the penalty regime provides a framework for penalties, there is still the risk of inequality between treatment of taxpayers.
- **What does it mean to me?**
Negotiating penalties is not straightforward and may take time to prepare considered representations.
- **What can I take away?**
Being aware of HMRC guidance and having experience of other negotiations may prove valuable.

The legislative framework for penalties was intended to provide fixed parameters so that penalties became more standard for all taxpayers; i.e. treating taxpayers equally. However, whether a penalty is on equal footing for taxpayers is still at the mercy of discussions between the taxpayer and/or their agent and an HMRC officer.

Taxpayers often believe an HMRC officer has targets that include maximising revenue and charging higher penalties. According to the official voice, that is not the case. So, what considerations might an HMRC officer take into account in agreeing to mitigate a penalty? In this article, I consider the mitigation of tax geared penalties and unusual circumstances faced in practice.

Broadly, tax geared penalties can arise for:

- errors (Finance Act 2007 Sch 24);
- failure to notify (Finance Act 2008 Sch 41);
- failure to make returns (Finance Act 2009 Sch 55); and
- failure to make payment on time (Finance Act 2009 Sch 56).

The tax geared penalties for errors and failing to notify are based on the potential lost revenue (PLR), whereas those for failure to make returns and make payment on time are based on any liability to tax which would have been shown in the return.

Potential lost revenue

The first area for a disagreement may therefore be what constitutes PLR. The normal rule for PLR relating to errors is: 'The "potential lost revenue" in respect of an inaccuracy in a document (including an inaccuracy attributable to a supply of false information or withholding of information) or a failure to notify an under-assessment is the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment.' (FA 2007 Sch 24 para 5)

The treatment of an error therefore needs to be 'agreed' if the PLR is to be determined. For example, the tax due on a payment to a shareholder/director needs to be agreed as either subject to PAYE or treated as a director's loan. Both treatments also have an impact for corporation tax and this needs to be considered when arriving at the PLR.

The calculation of PLR is more problematic where there are multiple errors. PLR in respect of each inaccuracy may depend on the order in which they are corrected. The legislation deems the order in which the inaccuracies are to be corrected as: careless inaccuracies; then deliberate but not concealed inaccuracies; and finally deliberate and concealed. Overstatements are offset against understatements following the same order.

A penalty can still arise where an inaccuracy results in a loss being wrongly recorded and not wholly used. The PLR is calculated under the normal rule in respect of the used loss, plus 10% of any unused loss.

The penalty regime applies to the difference between the amount recorded and the true amount. Where an inaccuracy has the effect of creating or increasing an aggregate loss recorded for a group of companies, group relief may be taken into account. In circumstances where there is no prospect of the loss being used to reduce a tax liability, the PLR in respect of a loss is nil.

The PLR where an inaccuracy resulting in tax being declared later than it should have been is 5% of the delayed tax for each year of the delay, or proportionate amount thereon.

The definition of PLR for failures to notify is different than that for errors:

- The PLR for income tax and CGT purposes is that which the individual is liable to and which is unpaid on 31 January following the tax year.
- The PLR for corporation tax purposes is that which the company is liable to in respect of the accounting period and which remains unpaid 12 months after the end of the accounting period.
- The position is similar for VAT.

Prompted or unprompted

HMRC guidance broadly follows the statutory definition of an unprompted disclosure [FA 2007 Sch 24 para 9(2), FA 2008 Sch 41 para 12(3) and FA 2009 Sch 55 para 14(3)]: 'A disclosure is unprompted if it is made at a time when the person making it has no reason to believe that we have discovered or are about to discover the inaccuracy or under-assessment. Otherwise it is a prompted disclosure.'

The legislative test is to consider whether the taxpayer has no reason to believe. It is an objective test – it is not based on or influenced by personal feelings or opinions. The legislation requires consideration where a person has 'no reason to believe' rather than their 'believing'. For example, a person may have received a self-assessment reminder from HMRC, which made them feel that they were being targeted and HMRC knew of their undisclosed income. That belief is irrelevant. The fact that a reminder was sent would not give a reason to believe the undisclosed income would be identified by HMRC.

Guidance states that HMRC want to encourage unprompted disclosures and includes the following advice to HMRC officers:

- A disclosure can be unprompted even if, at the time it is made, the full extent of the disclosure is not known, as long as the full details are provided within a reasonable time.

- There can be no halfway house between an unprompted and prompted disclosure. It is either one or the other.
- All the facts need to be considered before deciding if a disclosure is unprompted or prompted. A common sense approach is needed. Hasty judgments should be avoided.
- An HMRC campaign highlighting an area of the trading community on which HMRC will be concentrating would not stop a disclosure from being unprompted.
- A disclosure would be prompted if made after specific contact from HMRC to advise of a compliance check or a visit to premises.
- It will be exceptional for a disclosure to be unprompted if a compliance check is in progress. The disclosure will be unprompted only if it is about something the compliance officer has not discovered or is not about to discover.

It is therefore accepted (albeit exceptionally) that a disclosure may be unprompted even if a compliance check is in progress. In one case, HMRC had opened an enquiry into the husband's tax return and no information had at that time been provided to HMRC. The husband had undeclared income although it appeared that the husband and wife were acting in partnership, one being responsible for administration of the business and the other for undertaking services to clients. The husband had received cash payments, which he had not disclosed to HMRC. Did the wife have reason to believe that HMRC were about to discover that the wife had an inaccuracy?

The facts for the wife were that HMRC did not have information and were not in possession of information for the husband's tax affairs. Would HMRC, during their enquiries, identify that the spouse had undeclared income? Should it be assumed that husband and wife communicate openly, although as many married couples will know, communication between them is a belief and not a fact? It is acknowledged that the situation is a difficult one, although given that HMRC want to encourage unprompted disclosure, it would appear counterproductive to penalise the wife in these circumstances.

Consider the situation of friends, one of whom has received an enquiry letter and one whom has not. Both have undisclosed rental income from flats within the same block. Following a conversation in the pub, the friend without an enquiry approached HMRC to disclose irregularities. This is an unprompted disclosure, is it not? Would the position be different if the two friends owned one rental flat between them and divided the income?

PROFILE

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HMRC guidance clearly states that 'a disclosure can be unprompted even if at the time it is made the full extent of the disclosure is not known, as long as the full details are provided within a reasonable time'. The disclosure is of the facts and not necessarily quantifying the tax liabilities. Often during an enquiry, an officer and adviser will debate whether an irregularity is taxed one way or another. However, in one case, an HMRC officer refused to accept that an unprompted disclosure had been made where, after the basic facts had been disclosed, HMRC argued that the profits should be taxed in a company and not in a partnership. The adviser recommended that the taxpayer agreed with HMRC's contention to settle the matter – but HMRC then refused to accept that the disclosure was unprompted.

Behaviour

For penalties arising under FA 2007 Sch 24, the three 'behaviours' for which standard levels of penalty are set are:

- careless action;
- deliberate but not concealed action; and
- deliberate and concealed action.

For penalties arising under FA 2008 Sch 41, the three 'behaviours' for which standard levels of penalty are set are:

- non-deliberate failures;
- deliberate but not concealed failure; and
- deliberate and concealed failure.

Assuming the PLR can be agreed, the behaviour of the taxpayer needs to be considered. This is where it is more likely that one officer's view will differ from another's. Maybe one officer will hold a belief that any taxpayer who has made an error has done so deliberately, whereas another may empathise with the personal circumstances of the taxpayer.

The personal circumstances of the taxpayer are important when considering behaviour because, when determining the type of behaviour, it is necessary to sit in the shoes of the taxpayer. A simple illustration is that of a practising accountant who continually underdeclares income or overstates expenses. An accountant is considered more knowledgeable than someone who is not trained to complete accounts and prepare tax returns. Therefore, to demonstrate that the behaviour of a knowledgeable person is careless has a much higher benchmark. HMRC's Compliance Handbook clarifies the point as follows:

> 'Every person must take reasonable care, but reasonable care cannot be identified without consideration of the particular person's abilities and circumstances. HMRC recognises the wide range of abilities and circumstances of those persons completing returns or claims. So whilst each person has a responsibility to take reasonable care, what is necessary for each person to discharge that responsibility has to be viewed in light of that person's abilities and circumstances.
>
> 'For example, we do not expect the same level of knowledge or expertise from a self-employed unrepresented individual as we do from a large multinational company. We would expect a higher degree of care to be taken over large and complex matters than simple straightforward ones.'

It is thus important that the adviser helps the HMRC officer with information about the taxpayer's academic level, including literacy and numeracy. Disabilities such as dyslexia or dyscalculia should also be considered, as medical advice may consider that an individual's ability to keep and understand business records could be impaired by their condition.

Conclusions

No two penalty negotiations are the same and that is probably because no two officers (and perhaps no two advisers) are the same. Maybe there is a motivation to penalise but not driven by HMRC leadership. I think the reality is no one knows what motivates the inconsistencies applied by different officers. Whilst it's important that HMRC should work on being consistent to remain fair to all taxpayers, advisers have a part to play in ensuring that all relevant facts are properly drawn to the officer's attention.

ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

Chartered Institute of Taxation

Awards, Distinctions and Overall Pass List **December 2019 – 20 February 2020**

The Chartered Institute of Taxation (CIOT), the principal body in the United Kingdom concerned solely with taxation, announced today the results of its ADIT examinations held on 10, 11 and 12 December 2019. A total of 640 students sat exams in December, in 53 cities around the world, including the first ever ADIT exam sittings in Botswana and Iceland.

359 students passed at least one December 2019 ADIT exam. A total of 46 students (four of whom have achieved a distinction) have completed ADIT in the last six months, including the first ADIT graduate in Armenia.

The ADIT qualification is now held by 1,171 tax practitioners in 84 countries and territories; 185 students have successfully completed the qualification over the last 12 months.

CIOT President Glyn Fullelove, commenting on the results, said:

'I congratulate ADIT students who passed their exams in December. The exams set a demanding benchmark for international tax practitioners to meet. ADIT provides a mark of high quality for professionals and is recognised as such by their employers. More international tax professionals are realising that ADIT equips students with a means to develop their careers with every passing year.

'The continued success of our ADIT students around the world, most of whom combine their studies with full-time jobs, reflects their hard work and commitment to excellence. We are pleased that 2019 saw both a record number of new ADIT students registering for the qualification and a record number of exam sittings.

'We have introduced recently a number of important new benefits to our International Tax Affiliate package, which is available only to individuals who have completed the ADIT qualification. We look forward to welcoming many of our newest cohort of ADIT holders to the Affiliate ranks.

'We celebrate especially the achievements of those students who gained a distinction grade for their exams, and to the winners of our awards for the best performance in the various exam papers. We look forward to welcoming our award winners, Affiliates and new ADIT graduates to the next ADIT awards ceremony, which will take place on 17 March, and to supporting them in their continued growth within the international tax field.'

Awards

The Heather Self Medal for the best overall performance in Module 1 Principles of International Taxation

The medal has been jointly awarded to Mrs Flora Barnes of Bath, United Kingdom, who is employed by Future plc, and Miss Kathryn Miles of Birmingham, United Kingdom, who is employed by HMRC.

The Raymond Kelly Medal for the best overall performance in Module 2 United Kingdom option

The medal has been awarded to Mr James Carpenter of London, United Kingdom, who is employed by Deloitte.

The Croner-i Prize for the best overall performance in Module 3 Transfer Pricing option

The prize has been awarded to Mr Jonathan Hinchcliffe of Nottingham, United Kingdom, who is employed by HMRC.

The Worshipful Company of Tax Advisers Medal for the highest mark in Module 3 (All other options)

The medal has been awarded to Mr Adrian Cloer of Falkensee, Germany, who sat Module 3.01: EU Direct Tax option.

Distinctions were awarded for excellence in three examinations, or two examinations and an extended essay, to the following successful candidates:

Mrs Flora Barnes of Bath, United Kingdom, who is employed by Future plc;

Dr Tobias Hagemann of Berlin, Germany, who is employed by Mazars;

Mr Mohammad Qasim Javid of Neath, United Kingdom, who is employed by KPMG; and

Mr Nyall Sharp of London, United Kingdom.

As a result of the December 2019 examinations, the following 45 individuals have now completed all the components to be awarded the ADIT qualification and may now use the designatory letters 'ADIT':

Andreou, E (Nicosia, Cyprus)
Arram, M (Cairo, Egypt)
Bajaj, R (Delhi, India)
Barnes, F (Bath, United Kingdom) + *
Calinovici, E (Bucharest, Romania)
Charalambous, A K (Nicosia, Cyprus)
Charitonos, M (Limassol, Cyprus)
Cherkasov, P (London, United Kingdom)
Constanta, N (Nicosia, Cyprus)
Deptula, B (Pervolia, Cyprus)

+ = Award Winner
* = Distinction for overall performance in three examinations, or two examinations and an extended essay

Economou, C (Athens, Greece)
Evdokimov, P (Dubai, United Arab Emirates)
Ferguson, R (Dublin, Ireland)
Gonzalez Puga, M M (Monaco)
Graci, E (Madrid, Spain)
Hagemann, T (Berlin, Germany) *
Hargreaves, V (Twickenham, United Kingdom)
Hawkins, C D (Hanoi, Vietnam)
Howell, A (London, United Kingdom)
Hunter, D J (London, United Kingdom)
Ioannou, M (Nicosia, Cyprus)
Ioannou, S (Limassol, Cyprus)
Ionascu, A (Luxembourg)
Iordache, M (Bucharest, Romania)
Ismail, M (Prestwich, United Kingdom)
Javid, M Q (London, United Kingdom) *
Juli Asyir, R (Jakarta, Indonesia)
Kennedy, M (Portarlington, Ireland)
Malai, R (Limassol, Cyprus)
Malekkidou, M (Nicosia, Cyprus)
Manousakis, N (Nicosia, Cyprus)
Mbowe, V E (Dar es Salaam, Tanzania)
Metti, K (Limassol, Cyprus)
Nistor, A (Bucharest, Romania)
Nyakairu, R H K (Kampala, Uganda)
Rees, A R A (London, United Kingdom)
Sargsyan, K (Yerevan, Armenia)
Scott, M (London, United Kingdom)
Sharp, N P O (London, United Kingdom) *
Shrimal, N (Jaipur, India)
Strati, G (Nicosia, Cyprus)
Tsitouras, C (Athens, Greece)
Wiklund, A (Wembley, Australia)
Wolosiuk, E (London, United Kingdom)
Zammit, T (Gudja, Malta)

Candidates may present an extended essay in place of either Module 2 or Module 3. The following candidate successfully completed an extended essay in the period between August 2019 and January 2020 and completed the required examinations prior to the December 2019 sitting. Therefore, they have now completed all the components to be awarded the ADIT qualification and may use the designatory letters 'ADIT':

McCleane, J (Dublin, Ireland)

The following 24 candidates have met the ACA CTA Joint Programme examination requirements of the Chartered Institute of Taxation and the Institute of Chartered Accountants in England and Wales as a result of the ADIT December 2019 examination session:

Benjamin, J (Wembley, United Kingdom)
Bird, D (London, United Kingdom)
Bode, P (London, United Kingdom)
Braithwaite, T (Wakefield, United Kingdom)
Brown, P (St. Albans, United Kingdom)
Burge, E I B (London, United Kingdom)
Cameron, J (Tunbridge Wells, United Kingdom)
Carpenter, J (London, United Kingdom) +
Chiam, Q H (London, United Kingdom)
Dickenson, M (London, United Kingdom)
Gowrisunkur, A P T (London, United Kingdom)
Hailstone, G (North Berwick, United Kingdom)
Jamnik, E (Birmingham, United Kingdom)
Kemp, E (Oxford, United Kingdom)
Kneafsey, G A (London, United Kingdom)
Lemon, H (Banbury, United Kingdom)
Nakarja, S S (Pinner, United Kingdom)
Parascandolo, T (Nottingham, United Kingdom)
Parsons, S (Reading, United Kingdom)
Redhead, E (Wirral, United Kingdom)
Roper, L S (Reading, United Kingdom)
Trent, O B M (London, United Kingdom)
Tulley, A (London, United Kingdom)
York, R (Reading, United Kingdom)

Candidates who have passed individual examination papers are listed in the December 2019 Module Pass List, available at www.adit.org/results.

+ = Award Winner
* = Distinction for overall performance in three examinations, or two examinations and an extended essay

Module Pass List

Individual module passes are as follows (for details of awards, distinctions and overall passes, please see the separate **December 2019 Awards, Distinctions and Overall Pass List**, available at www.adit.org/results):

Results statistics

	Module 1	Module 2.03 Cyprus	Module 2.09 UK	Module 3.01 EU Direct Tax	Module 3.02 EU VAT	Module 3.03 Transfer pricing
Pass	170	11	27	14	9	141
Fail	101	10	41	16	20	114
Total number of candidates	271	21	68	30	29	255
Pass rate	63%	52%	40%	47%	31%	55%

Module 1 Principles of International Taxation

Abbasi, O (Doha, Qatar)
Abbu, S (St. Julien d'Hotman, Mauritius)
Abdulla, A (Muharraq, Bahrain)
Abdulla, S (Hamad Town, Bahrain)
Agrawal, A (Singapore)
Ahmed, S (London, United Kingdom)
Akbar, M I (Dubai, United Arab Emirates)
Akligo, M (Accra, Ghana)
Akullo, F (Kampala, Uganda)
Amadi, E A (Lagos, Nigeria)
Andlaw, O (Gibraltar)
Andreades, G (Strovolos, Cyprus)
Andreou, A (Nicosia, Cyprus)
Antoniou, A (Nicosia, Cyprus)
Aranibar Barreda, J C (Limassol, Cyprus)
Athman, K J (Mombasa, Kenya)
Atiq, M H (Riyadh, Saudi Arabia)
Azmi, F (Manama, Bahrain)
Bainvel, S (Baku, Azerbaijan)
Balasubramanian, N (Chennai, India)
Barnes, F (Bath, United Kingdom) + *
Beridze, G (Tbilisi, Georgia)
Bhagwat, S R (Dubai, United Arab Emirates)
Borisov, V E (Sofia, Bulgaria)
Brindley, G L (Gloucester, United Kingdom)
Burahee, B A (London, United Kingdom)
Burrows, E M (Peterborough, United Kingdom)
Camilleri, B (Attard, Malta)
Carter, R (Uxbridge, United Kingdom)
Cervellati, T (Luxembourg)
Charitonos, M (Limassol, Cyprus)
Chellew, E S (Bearsden, United Kingdom)
Chen, L (London, United Kingdom)
Chereches-But, L (Bucharest, Romania)
Clayton, S (London, United Kingdom)
Collender, N M (Dublin, Ireland)
Coyne, L (Dublin, Ireland)
da Silva Filho, M A (London, United Kingdom)
Dalton, S L (Bingley, United Kingdom)
de Campos, L F (São Paulo, Brazil)
Desai, R D (Dubai, United Arab Emirates)
Dixon, J L (Whitley Bay, United Kingdom)
Doshi, A (Jaipur, India)
Doyley, L (York, United Kingdom)
Duric, A (London, United Kingdom)
Eastman, S (Pretoria, South Africa)
Ecobici, G (Bucharest, Romania)
El-Begawi, M K (Giza, Egypt)
Elnems, N A A M (Cairo, Egypt)
Fanara, F (Melissia, Greece)
Fenton, R J (Bristol, United Kingdom)
Flanagan, L (Dublin, Ireland)
Froggatt, J M (Hemel Hempstead, United Kingdom)
Froggatt, R (Basingstoke, United Kingdom)
Fulwani, P (Aurangabad, India)
Gage, G G (Mumbai, India)
Gallagher, B (Dublin, Ireland)
García Yárnoz, P L (Pamplona, Spain)
Garcia, N K P (Doha, Qatar)
Gheorghe, A (Frankfurt, Germany)
Gheorghiu, L (Bucharest, Romania)
Golani, J V (Pune, India)
Gonzalez Puga, M M (Monaco)
Gowero, R N (Harare, Zimbabwe)
Hadjichristoforou, T (Nicosia, Cyprus)
Hadjikyriakou, K (Strovolos, Cyprus)
Halaby, R (Wadi Essir, Jordan)
Halgekar, M M (Pune, India)
Hassan, O A (Giza, Egypt)
Hernandez, I M (Dubai, United Arab Emirates)
Hilgert, F D (Katowice, Poland)
Hodgson, S J (London, United Kingdom)
Hristev, L A (Bucharest, Romania)
Ilyine, D (Aberdeen, United Kingdom)
Ionascu, A (Luxembourg)
Ismail, M (Prestwich, United Kingdom)
Ismayilov, J (Baku, Azerbaijan)
Ivkova, O (Limassol, Cyprus)
Jain, N (Gurgaon, India)
Jankee Persand, B (Black River, Mauritius)
Jayasinghe, S D P (London, United Kingdom)
Kamangira, R (Harare, Zimbabwe)
Kamunyi, J M N (Nairobi, Kenya)
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Kirilova, S (Saar, Bahrain)
Korotkova, Y (Kyiv, Ukraine)
Koshmak, O (Egkomi, Cyprus)
Kraniou, A (Kifisia, Greece)
Kubesova, K (Poole, United Kingdom)
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Kyriakou, M (Limassol, Cyprus)
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Marden, J P R (Tunbridge Wells, United Kingdom)
Marzano, G (Castel Gandolfo, Italy)

Matandaware, T J (Harare, Zimbabwe)
Matundura, A (Nairobi, Kenya)
Matundura, A (Nairobi, Kenya)
Maxwell-Scott, S J (Bromley, United Kingdom)
Mbowe, V E (Dar es Salaam, Tanzania)
McClellan, G E (Leyland, United Kingdom)
Melnyk, Y (Dubai, United Arab Emirates)
Metti, K (Limassol, Cyprus)
Miles, K (Birmingham, United Kingdom) +
Militaru, A (Reading, United Kingdom)
Molchanova, T (Glasgow, United Kingdom)
Morcos, J (London, United Kingdom)
Mugabi, R (Kampala, Uganda)
Mugwambi, S C (Harare, Zimbabwe)
Mukarromah, A (Jakarta, Indonesia)
Munoz, R (Madrid, Spain)
Munuka, K M (Lusaka, Zambia)
Murray, S (Bangor, United Kingdom)
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Nemmara Venkatesh, R (Dubai, United Arab Emirates)
Niamut, M J (Arsenal, Mauritius)
Nkhoma, M (Lusaka, Zambia)
O'Connor, L (Cork, Ireland)
O'Loughlin, A (London, United Kingdom)
Ong, R H S (Singapore)
Parra, C (Bristol, United Kingdom)
Paul, N A (Dar es Salaam, Tanzania)
Petkova, D I (Sofia, Bulgaria)
Porwal, M (Bangalore, India)
Prodromou, M (Larnaca, Cyprus)
Raikar, K (Navi Mumbai, India)
Rajgaria, A (Noida, India)
Rajput, B B (Dubai, United Arab Emirates)
Rami, D (Chennai, India)
Ramsaib, A B (Curepipe, Mauritius)
Rannau, T (Tlokweng, Botswana)
Rekik, O (Tunis, Tunisia)
Rudko, A (Paphos, Cyprus)
Sagun, O (Limassol, Cyprus)
Sandu, A (New Malden, United Kingdom)
Sarbu, I R (Bucharest, Romania)
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Sethi, K R (London, United Kingdom)
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Shetty, C J (Bangalore, India)
Shields, F J (Belfast, United Kingdom)
Shrimal, N (Jaipur, India)
Someshwar, U H (Mumbai, India)
Soyoye, F (Chester, United Kingdom)
Ssenyomo, G (Kampala, Uganda)
Stoddart, K M (Leeds, United Kingdom)
Sustiyono, O D (Dubai, United Arab Emirates)
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Thakkar, H (Mumbai, India)
Theodorou, S (Nicosia, Cyprus)
Timothy, M (London, United Kingdom)
Tran, A (Hanoi, Vietnam)
Tsousis, H (Kesariani, Greece)
Tumuhaise, E (Kampala, Uganda)
Ulanenko, B (Krakow, Poland)
Verawaty, V (Jakarta, Indonesia)
Vilnis, E (London, United Kingdom)
Vissaro, D (Jakarta, Indonesia)
Vo, Q C (Hai Phong, Vietnam)
Vomo, T F (Harare, Zimbabwe)
Wesson, L M (Leicester, United Kingdom)
Widyaprathama, S (Jakarta, Indonesia)
Wolosiuk, E (London, United Kingdom)

Module 2.03 Cyprus option

Christodoulou, R (Limassol, Cyprus)
Economou, C (Athens, Greece)
Ioannou, M (Nicosia, Cyprus)
Komodromou, I (Limassol, Cyprus)
Lukashuk, S (Nicosia, Cyprus)
Malekkidou, M (Nicosia, Cyprus)
Manousakis, N (Nicosia, Cyprus)
Petlyakova, A (Limassol, Cyprus)
Spyrou, A (Limassol, Cyprus)
Strati, G (Nicosia, Cyprus)
Vasileva, A (Limassol, Cyprus)

Module 2.09 United Kingdom option

Benjamin, J (Wembley, United Kingdom)
Bester, L (Wembley, United Kingdom)
Bird, D (London, United Kingdom)
Bode, P (London, United Kingdom)
Braithwaite, T (Wakefield, United Kingdom)
Brown, P (St. Albans, United Kingdom)
Burge, E I B (London, United Kingdom)
Cameron, J (Tunbridge Wells, United Kingdom)
Carpenter, J (London, United Kingdom) +
Chiam, Q H (London, United Kingdom)
Dickenson, M (London, United Kingdom)
Gowrisunkur, A P T (London, United Kingdom)
Hailstone, G (North Berwick, United Kingdom)
Hargreaves, V (Twickenham, United Kingdom)
Hawkins, C D (Hanoi, Vietnam)
Jamnik, E (Birmingham, United Kingdom)
Kemp, E (Oxford, United Kingdom)
Kneafsey, G A (London, United Kingdom)
Lemon, H (Banbury, United Kingdom)
Nakarja, S S (Pinner, United Kingdom)
Parascandolo, T (Nottingham, United Kingdom)
Parsons, S (Reading, United Kingdom)
Redhead, E (Wirral, United Kingdom)
Roper, L S (Reading, United Kingdom)
Trent, O B M (London, United Kingdom)
Tulley, A (London, United Kingdom)
York, R (Reading, United Kingdom)

Module 3.01 EU Direct Tax option

Cafassi, A (Morges, Switzerland)
Cherkasov, P (London, United Kingdom)
Cloer, A (Falkensee, Germany) +
Dumitrana, D G (Craiova, Romania)
Ferguson, R (Dublin, Ireland)
Gonzalez Puga, M M (Monaco)
Graci, E (Madrid, Spain)
Hagemann, T (Berlin, Germany) *
Kouniaki, I (London, United Kingdom)
Mozgunova, N (Valencia, Spain)
Nistor, A (Bucharest, Romania)
Rees, A R A (London, United Kingdom)
Sargsyan, K (Yerevan, Armenia)
Scott, M (London, United Kingdom)

Module 3.02 EU VAT option

Anonuevo, L A T (Dubai, United Arab Emirates)
Comia, V M D (Doha, Qatar)
Deptula, B (Pervolia, Cyprus)
Gogoneata, E (Bucharest, Romania)
Ilea, E L (Focsani, Romania)
Ismaeel, M A (Sanad, Bahrain)
Moldovan-Dobre, M (Bucharest, Romania)
Rosculet, E L (Bucharest, Romania)
Sabiescu, A M (Bucharest, Romania)

Module 3.03 Transfer Pricing option

Abdallah, H (Cairo, Egypt)
Abdelgawad, R (Cairo, Egypt)
Abid, A M (Doha, Qatar)
Adamides, G (Nicosia, Cyprus)
Al Lawati, M M A (Muscat, Oman)
Alghathbar, A (Riyadh, Saudi Arabia)
Aliyev, J (Baku, Azerbaijan)
Almaskary, N S (Muscat, Oman)
Almoslim, H A (Al Khobar, Saudi Arabia)
Altukruni, R (Jeddah, Saudi Arabia)
Andreou, E (Nicosia, Cyprus)
Archer, S (Airdrie, United Kingdom)
Arnold, S M (Ipswich, United Kingdom)
Arram, M (Cairo, Egypt)
Asgarova, T (Baku, Azerbaijan)
Assaf, R (Amman, Jordan)
Baatab, B M (Jeddah, Saudi Arabia)
Baid, R K (Bangalore, India)
Bajaj, R (Delhi, India)
Bassett, R E (London, United Kingdom)
Bertol Roy, B (Vienna, Austria)
Bond, A (Antrim, United Kingdom)
Borisov, V E (Sofia, Bulgaria)
Brum, J M (Dunwoody, GA, United States)
Calinovici, E (Bucharest, Romania)
Chamroo, N M (Le Hochet, Mauritius)
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Chhabra, S (Cardiff, United Kingdom)
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Dabrai, R S (Bangalore, India)
Dalton, S L (Bingley, United Kingdom)
Darmawan, M A (Depok, Indonesia)
Dawjee, I M (Jeddah, Saudi Arabia)
Dina, R (Vacoas, Mauritius)
Dineen, J (Cork, Ireland)
Donneaux, J J (Nicosia, Cyprus)
Doolar, K (Moka, Mauritius)
Duquesnois, Q (Dublin, Ireland)
El Hefnawy, O (Doha, Qatar)
Evdokimov, P (Dubai, United Arab Emirates)
Fell, C (Rotherham, United Kingdom)
Flinders, C (Musselburgh, United Kingdom)
Foley, P (Kilkenny, Ireland)
Ganapathy, S (Chennai, India)
Gibbs, M L (Leeds, United Kingdom)

Ginting, R P (Karo, Indonesia)
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Gurin, V (Kyiv, Ukraine)
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Howell, A (London, United Kingdom)
Hu, S (Dubai, United Arab Emirates)
Hunter, D J (London, United Kingdom)
Hussein, A F (Cairo, Egypt)
Huxford, S J (London, United Kingdom)
Ioannou, S (Limassol, Cyprus)
Iordache, M (Bucharest, Romania)
Jakubowski, J (Siedlce, Poland)
Jauffur, F A (Phoenix, Mauritius)
Javid, M Q (London, United Kingdom) *
Johnston, C (Sunderland, United Kingdom)
Juli Asyir, R (Jakarta, Indonesia)
Kengaaju, A B (Kampala, Uganda)
Kennedy, M (Portarlington, Ireland)
Kiely, T (Dublin, Ireland)
Kingaby, D (Cardiff, United Kingdom)
Kozatenkova, K (Dubai, United Arab Emirates)
La Fontaine, C G (Cardiff, United Kingdom)
Laalj, A (Jeddah, Saudi Arabia)
Lam, L (New York City, NY, United States)
Le, N (Hanoi, Vietnam)
Ling, O Y N (London, United Kingdom)
Loizou, A (Limassol, Cyprus)
Macken, C (Croydon, United Kingdom)
Madzamba, L (Gaborone, Botswana)
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Malekkidou, M (Nicosia, Cyprus)
Malos, E (Bucharest, Romania)
Mandiopera, P (Harare, Zimbabwe)
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Marhani, A R (Jakarta, Indonesia)
Marinova, K (Sofia, Bulgaria)
Mawire, H T (Harare, Zimbabwe)
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Militaru, A (Reading, United Kingdom)
Mitchell, K (Carrickfergus, United Kingdom)
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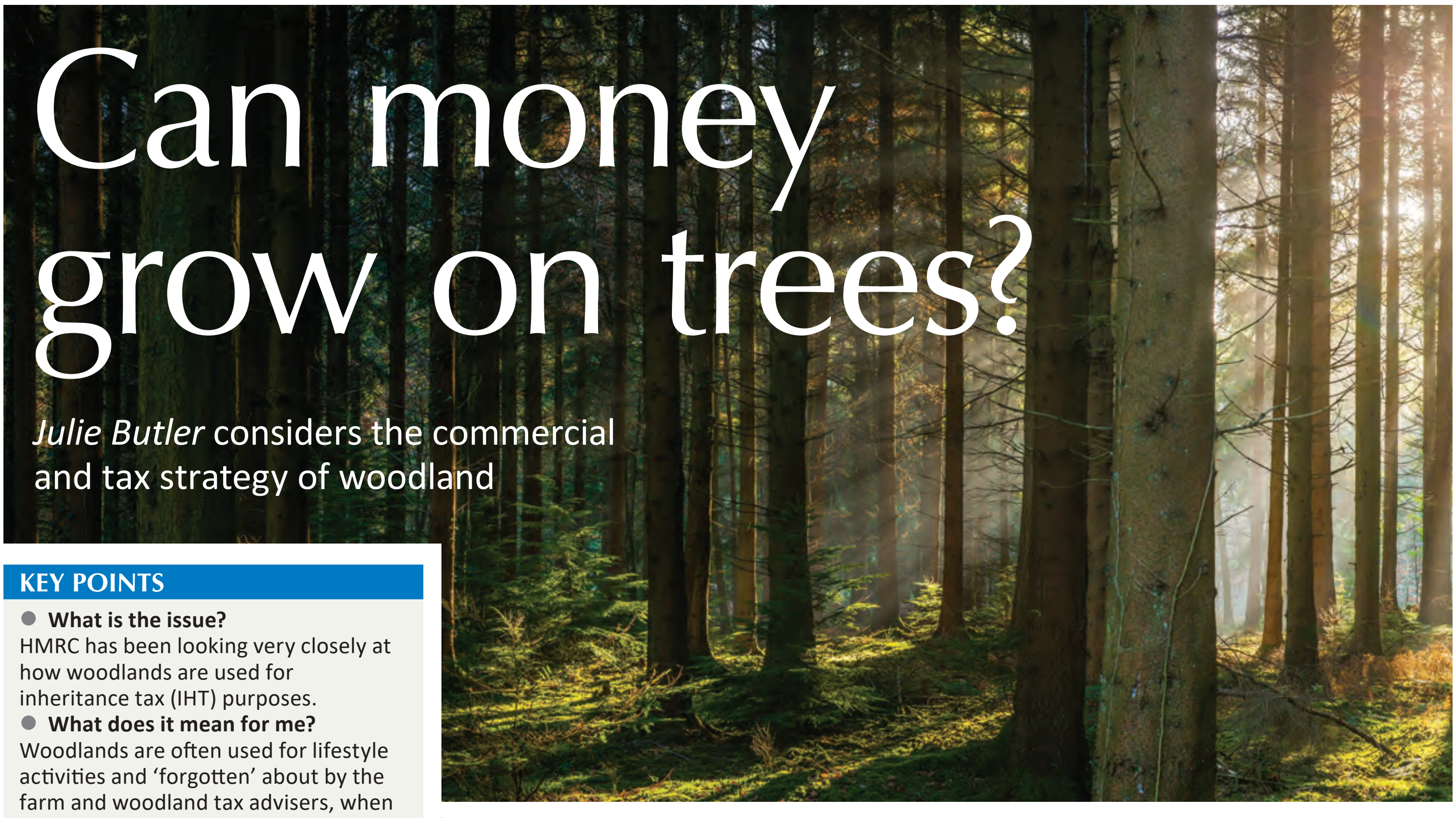
Moise, A M (Bucharest, Germany)
Molchanova, T (Glasgow, United Kingdom)
Mope, T N (London, United Kingdom)
Morales, J C (New York City, NY, United States)
Musa, S (London, United Kingdom)
Nicholas-Twining, T (Bristol, United Kingdom)
Nkhoma, M (Lusaka, Zambia)
Nyakairu, R H K (Kampala, Uganda)
Oakes, L J (Swansea, United Kingdom)
O'Connor, L (Cork, Ireland)
O'Hara, N (Belfast, United Kingdom)
Okorie, B (Lagos, Nigeria)
Olding, K (Godalming, United Kingdom)
Ooi, Z F (London, United Kingdom)
Ottoni, P (São Paulo, Brazil)
Pandy, V (Gurgaon, India)
Perikou, M (Limassol, Cyprus)
Petkova, D I (Sofia, Bulgaria)
Polyviou, N (Limassol, Cyprus)
Purslow, S (Cardiff, United Kingdom)
Reaveley, M L (Peterborough, United Kingdom)
Rehman, R (Rawalpindi, Pakistan)
Rekik, O (Tunis, Tunisia)
Rylewicz, M (Dublin, Ireland)
Sachdeva, S (Faridabad, India)
Samson, I L (Bucharest, Romania)
Schmit, K (Vienna, Austria)
Severs, I (Doha, Qatar)
Shabir, J (Islamabad, Pakistan)
Sharma, K (Ghaziabad, India)
Sharp, N P O (London, United Kingdom) *
Shi Shun, J J V M (Baie du Tombeau, Mauritius)
Sinai Curchorcar, A A (Dubai, United Arab Emirates)
Smith, M (Waterford, Ireland)
Someshwar, U H (Mumbai, India)
Spirescu, C (Bucharest, Romania)
Spyrou, A (Limassol, Cyprus)
Stefanescu, R (Râmnicu Vâlcea, Romania)
Torres, J (Madrid, Spain)
Tsangaridou, A I (Nicosia, Cyprus)
Tsitouras, C (Athens, Greece)
Uddin, A (Bristol, United Kingdom)
Udhin, D (Nouvelle France, Mauritius)
Ulfsson, O E (Kópavogur, Iceland)
V, H K (Erode, India)
Vernon, J (Edinburgh, United Kingdom)
Wiklund, A (Wembley, Australia)
Williams, K (Carle Place, NY, United States)
Wong, J Y (Petaling Jaya, Malaysia)
Zammit, T (Gudja, Malta)
Zayan, Y A W (Cairo, Egypt)
Zysk, K (Warsaw, Poland)



Can money grow on trees?

Julie Butler considers the commercial and tax strategy of woodland

KEY POINTS

- **What is the issue?** HMRC has been looking very closely at how woodlands are used for inheritance tax (IHT) purposes.
- **What does it mean for me?** Woodlands are often used for lifestyle activities and 'forgotten' about by the farm and woodland tax advisers, when they should be used to make a contribution to overall profitability.
- **What can I take away?** All farmers and landowners, together with their advisers, have to embrace the opportunities and ensure the correct recording in the accounts of both farmers and 'woodland investors'.

Woodlands are currently potentially more profitable than they have been previously, possibly more so than they have been in 'living memory'. It is essential therefore for all tax advisers to understand their tax position.

HMRC's approach to woodlands

HMRC has been looking very closely at how woodlands are used for inheritance tax (IHT) purposes at many levels. HMRC is perhaps taking advantage of the fact that woodlands are often used for lifestyle activities and are 'forgotten' about by the farm and woodland tax advisers at a time when farm woodland should be used to make a contribution to the overall farm's profitability, as well as being closely reviewed for tax purposes.

Woodlands are deemed commercial for tax purposes where trees are grown in order to sell as timber; i.e. with a profit motive. The commercial occupation of woodlands in some cases is not classed as a trade and so the owner does not receive tax relief, pay tax on the profits (ITTOIA 2005 s 11(1)), or claim tax relief on the losses. However, the traditional model of commercial woodlands has now progressed to much greater productivity through improved harvesting methods. Profits can be made from harvesting wood, as well as there being the future potential for improved subsidies.

The tax protection required for woodlands is to ensure there is forensic analysis of their use, especially where the woodland is combined with the farm or other trades. Whilst the sale of the timber can be 'outside the scope of income tax', the reality of the operation must be considered in tax terms. If the holding is, for example, woodland attached to a farm, then the overview of the operation must be understood to protect agricultural property relief (APR) and, where applicable, business property relief (BPR) for inheritance tax.

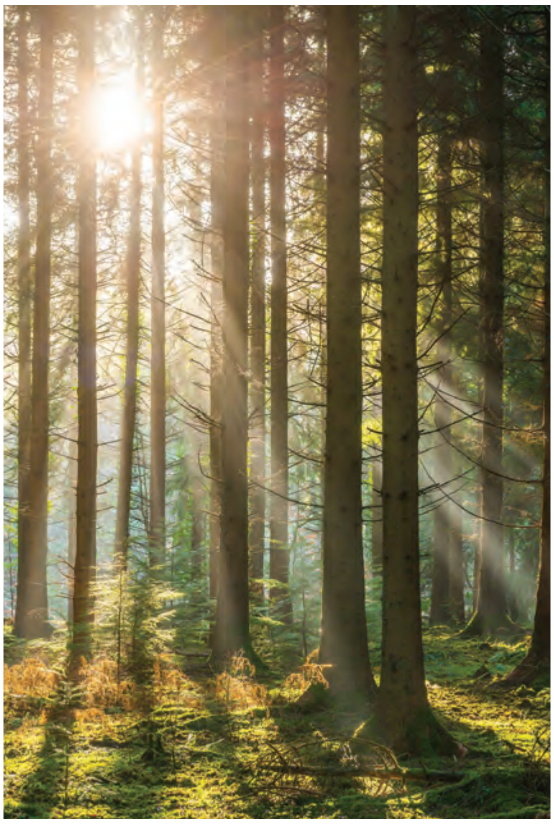
Inheritance tax: APR and BPR

Woodlands can benefit from APR where they are ancillary to farmland, such as 'shelter belts' (a protective barrier of trees and shrubs), and areas where firewood and fencing are taken or the activity of 'short rotation coppice' is carried out. However, once woodlands are managed on a commercial basis and have been owned for the two-year minimum time of ownership, they can benefit from 100% BPR. The reality is that on many farms, the woodland income has now become a positive part of diversification and profitability.

As part of tax protection and planning, the farm accounts must clearly reflect the exact nature of the business activity of any woodland and, furthermore, any 'barter' transactions involving the woodland must be accurately recorded. A large number of tree surgeons clear woodlands and fallen trees in return for the value of the wood, but both sides of such transactions are needed. Woodland maintenance can also be exchanged for woodland shooting rights.

In practice, HMRC will ask about the activities taking place in the woodland when it tries to verify APR (and BPR) and it will be necessary to provide evidence with detail from the farm books and accounts of any such transactions. Where barter of woodland activity is unrecorded and the accounts show no woodland income, it is more difficult to argue that the inheritance tax reliefs are due. A practical point is therefore to ensure that the trading activity around woodlands is correctly recorded in the accounts and tax returns.

Consideration should be given as to what inheritance tax relief needs to be claimed (APR or BPR) on the woodlands depending on the requirements of the landowner. If there is a greater need for relief on the farmhouse, then a claim for APR could be made on the woodland to increase the agricultural activity associated with the farmhouse. Alternatively, if there is a greater need for trading activity, then a claim for BPR could be made to improve the 'Balfour Matrix' (the relative value of trading and investment elements) by moving away from the investment line or the spectrum of investment. The Office of Tax Simplification's review of inheritance tax suggests that the trading mix should match with CGT; i.e. increase from 50% to 80%.



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Woodland goals

Tax advisers for both farm and woodland investors must consider all woodland tax strategy in terms of the short, medium and long term goals.

1. Short term goals

- Ensure that APR and BPR are protected for all potential probates.
- Protect tax reliefs by ensuring that barter is correctly disclosed in the accounts, and that the accounts show evidence of commercial and agricultural woodland.
- Assess the future subsidies and benefits under the Agriculture Bill.
- Take professional advice on both maximising income and overall tax relief.

2. Medium term goals

- Follow the short term strategy to continue to maximise income streams, especially subsidy eligibility, as more is understood about the Agriculture Bill.
- Consider opportunities of planting more trees on marginal farmland.
- Assess the agricultural value versus the woodland value of land as greater understanding of profitability and farmland values emerges following the recent election result and the impact of Brexit, and their impact on subsidies in the Agriculture Bill.

3. Long term goals

It is difficult to predict revenues with so many uncertainties. Advisers must keep monitoring income potential, subsidies and input on land values, and the interaction of succession planning. It is also important that advisers understand the latest developments in the woodland industry.

Environmental issues

Environmental campaigners have emphasised that the UK must 'plant more trees'. This statement is something farmers must embrace both from a farm strategy viewpoint and also to help the environment. The generic problem of tree planting can be that agricultural value of land has remained higher than woodland value. Planting trees on quality agricultural land can reduce the capital value of the land and therefore have an overall financial negative effect, despite the very attractive subsidies on offer.

Woodland Carbon Guarantee Scheme

The environment ethos is that farmers and landowners in England can currently plant trees to 'sequester' or capture carbon (carbon sequestration) and assist with climate change. The Woodland Carbon Guarantee Scheme (WCGS) gives successful land managers the option to sell their 'captured carbon dioxide' in the form of 'verified carbon credits', called woodland carbon units (WCUs), to the government for a guaranteed price every five or 10 years which continues up until 2055/56. The plan is that the government's guaranteed price will be set by auction and help to form the market; landowners are free to sell their credits privately as well. Subject to certain exceptions, it is possible for woodland managers to combine participation in the WCGS with other woodland grants, but more information is awaited.

Natural capital

Marginal land is farmland that does not produce strong agricultural returns, so that other uses need to be considered. 'Natural capital' is the stocks of natural assets that include geology, soil, air, water and all living things. It is from these assets that the UK derives what have been known as ecosystem services, such as carbon sequestration, water purification and soil fertility.

'Natural capital' opens up new earning opportunities for farmers through subsidies that may mitigate the loss of payments as a result of leaving the EU Common Agricultural Policy (CAP); for example, following Brexit the Basic Payment Scheme (BPS) is being phased out between now and the end of 2027 under the Agriculture Bill.

Ash dieback

Ash dieback (also known as Chalara or *Hymenoscyphus fraxineus*) was discovered in East Anglia and Kent in 2012 and has been causing irrecoverable damage to the UK's native ash trees. For many centuries, ash has been planted on a wide range of sites due to qualities such as fast growth, excellent timber and its form of growth. Due to the impact of this species specific disease, the UK will no longer see ash in the UK woodlands for many years to come. The woodland strategy can be to maintain a thinning programme for ash trees by focusing on their removal, while restocking with different species. The felling and removal of ash trees is needed not only to realise their economic value and ensure the species change process, but also to remove dying wood which can become the breeding stock for more deadly fungal infection, such as honey fungus. The tax position of these changes must be considered, and all tax advisers must understand the extent of the ash dieback problem.

Woodland changes

Current certainties for tax advisers are that woodland can no longer be 'forgotten' about. All farmers and landowners, together with their advisers, have to embrace the opportunities and ensure the correct recording in the accounts of both farmers and 'woodland investors'.

Many positive changes face the woodland industry, such as the WCGS, 'natural capital' and increased profit potential as hardwood and softwood prices increase, yet these rest against a background of problems such as ash dieback. In order to maximise the opportunities for more profit, the tax adviser *must* embrace and understand all woodland activity, whether as part of the farm or as a standalone 'woodland investment'. The tax reliefs can be very beneficial and decisions of 'inside' or 'outside' the scope of tax must be very clearly understood.

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An officer and an automaton

Keith Gordon looks at HMRC's appeal in two cases where the First-tier Tribunal held that HMRC had failed to prove that an officer had issued a notice to file a tax return

KEY POINTS

- **What is the issue?**
A penalty for the late submission of tax returns will be payable only if there has been a failure to comply with a notice under TMA 1970 s 8, and s 8 itself states that such a notice is one issued by an officer. The provisions that require an officer to carry out this function have increasingly been automated.
- **What can I take away?**
In the joint case of *Rogers* & Shaw, the Upper Tribunal sought evidence from HMRC as to the process that leads to the HMRC computer issuing notices requiring a tax return. The tribunal concluded that this satisfied the minimum requirements of s 8.
- **What does it mean to me?**
The Upper Tribunal's decision was keenly awaited because a number of other cases were also challenging the validity of automation of the s 8 process. HMRC will no doubt be delighted by the result.

Over the past few years, doubts have been raised about whether the Taxes Management Act (TMA) 1970 has kept up with HMRC's practices. In particular, the provisions that require an officer to carry out a particular routine function have, increasingly, been automated. HMRC's first public defeat on this matter came in the case of *Khan Properties Ltd* [2017] UKFTT 830 (TC), involving penalties under TMA 1970 s 100 (although I had previously had a string of successes in similar cases when HMRC suddenly decided to withdraw the penalties prior to the case reaching a tribunal).

The relevance of s 100 has reduced in recent years in the light of the more up to date penalty provisions (particularly in the Finance Act 2009). However, this issue has not gone away completely. Although the rules imposing penalties for late tax returns (Finance Act 2009 Sch 55) are drafted differently, they are still in part dependent on the provisions in TMA 1970. In particular, a penalty will be payable only if there has been a failure to comply with a notice under TMA 1970 s 8, and s 8 itself states that such a notice is one issued by an officer.

The facts of the case

In the (previously separate) cases of *Rogers v HMRC* [2018] UKFTT 312 and *Shaw v HMRC* [2018] UKFTT 381, HMRC issued the taxpayers with a penalty for the late submission of their tax returns. The taxpayers appealed, citing a reasonable excuse, and the cases proceeded to the tribunal. As is typical for such cases, they were allocated to the 'default paper' category, meaning that the tribunal would consider the written materials before it and decide the cases without an actual hearing.

The tribunal judge (the same in both cases) considered that before considering the question of reasonable excuse, it was necessary first for HMRC to demonstrate that the conditions for a penalty had in fact been met. One of those conditions was that there had been a s 8 notice which the taxpayers had failed to comply with. In both cases, the judge felt that the paperwork before him was inadequate to demonstrate that there had indeed been a notice issued by an officer requiring the submission of the tax return. He therefore summarily allowed both appeals.

HMRC was dissatisfied. It appealed against both decisions to the Upper Tribunal which heard the two cases together (*HMRC v Rogers & Shaw* [2019] UKUT 406 (TCC)).

The tribunal's decision

The case was heard by Mr Justice Zacaroli (President of the Upper Tribunal's Tax and Chancery Chamber) and Judge Jonathan Richards. HMRC had four grounds of appeal. The first was to argue that the tribunal could not even consider the validity of a s 8 notice. This argument amounted to the suggestion that as long as HMRC claims to have issued a s 8 notice, then (unless the taxpayer successfully argued otherwise in the course of judicial review proceedings, for which there is a very tight timetable) the validity of such a notice could not be questioned. The Upper Tribunal rejected that argument, and the tribunal was required to address HMRC's next three grounds of appeal.

Grounds 2 and 3 were addressed together. HMRC argued that the statutory words 'issued by an officer' could be satisfied by the actions of a computer. Furthermore, addressing one of the steps of the FTT's reasoning, HMRC argued that it was not necessary for the officer to be specifically identified on the s 8 notice.

Formally, the Upper Tribunal allowed the appeal on both of those grounds. However, the tribunal's explanations make it clear that the words 'issued by an officer' did not permit a fully automated process. In particular, the tribunal put it beyond doubt that 'the requirement is that whoever requires the notice to be given, whether identified or not, has the status of an officer'. Nevertheless, it remains the case that 'the giving of a notice must have been under the authority of an officer of HMRC'.

Validity of s 8 notices

The point then becomes clearer when one considers HMRC's fourth and final ground of appeal: that the FTT had deprived HMRC of the opportunity for a fair trial, as it was not under notice that it was required to demonstrate the validity of the s 8 notices.

In due course, the Upper Tribunal concluded that HMRC had indeed been denied this opportunity. This meant that the Upper Tribunal allowed HMRC's appeal and then had to decide whether to remit the cases back to the FTT or remake the decisions itself. The latter course of action, however, would require the Upper Tribunal to give HMRC a full opportunity to demonstrate the validity of the s 8 notices (so as not to repeat the FTT's error).

Anticipating this as a possible outcome, the tribunal had sought evidence from HMRC as to the process behind the scenes that leads to the HMRC computer issuing notices requiring a tax return. The tribunal was duly furnished with four witness statements which proceeded to explain:

- how HMRC officers choose criteria as to which taxpayers ought to be asked to prepare tax returns;
- how computers then scan the HMRC records to identify which taxpayers satisfy the chosen criteria;
- how the computers' output is then checked by using a sample of 200 taxpayers so identified; and
- how the actual sending function is then subcontracted to an external provider.

This evidence was not challenged by the taxpayers and the Upper Tribunal concluded that it satisfied the minimum requirements of s 8. Having concluded that the taxpayers had been issued with s 8 notices, the tribunal then considered whether the taxpayers had a reasonable excuse for their late filing. In both cases, however, the tribunal concluded that no such excuse existed.

Accordingly, when remaking the decisions, the Upper Tribunal considered that the taxpayers' appeals would be dismissed.

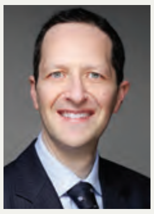
Commentary

The Upper Tribunal's decision was keenly awaited because a number of other cases were also challenging the validity of automation of the s 8 process. HMRC will no doubt be delighted by the result; otherwise we would have had the rather embarrassing situation of HMRC failing to observe its own legislation over a number of years. As to whether HMRC's actual adherence to the TMA 1970 was by design or by chance, we will perhaps never know.

In many ways, it is easy to see why the Upper Tribunal allowed HMRC's appeal. The FTT had unilaterally identified an argument (the validity of the s 8 notices) and failed to give HMRC the opportunity to respond. However, it is equally easy to understand why the FTT did not give HMRC the opportunity to respond.

In the context of discovery assessments, the Upper Tribunal has expressly ruled that HMRC is required to prove every component of the statutory tests, even if the taxpayer has not raised a challenge in relation to them; and also that the FTT is not required to give HMRC a second chance to put forward the appropriate evidence. It is not immediately obvious how these two decisions can be reconciled, although perhaps one can simply say that discovery assessments and penalties are different.

PROFILE



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Profile Keith M Gordon MA (Oxon), FCA CTA (Fellow) is a barrister, chartered accountant and tax adviser and was the winner in the Chartered Tax Adviser of the Year category at the 2009 Tolley Taxation awards. He was also awarded Tax Writer of the Year at the 2013 awards. He provides litigation support and advises on tax and related matters to accountants, tax advisers and lawyers.

I must, however, express some concern about the Upper Tribunal's approach to reasonable excuse on the facts of the two cases. As tax professionals, I think it is too easy for us to think that everyone must act with tax constantly on our minds. In the case of Mr Rogers, it appears that he had not fully appreciated the distinction between income tax and tax credits and the fact that they required the completion of separate forms (albeit containing very similar information being sent to the same organisation). Is it reasonable to expect the typical taxpayer to be aware of these distinctions?

Mr Shaw's principal error, it seems, was that he attempted to submit his tax return online long before the filing deadline of 31 January 2017 but did not appreciate that the final submission would require him to reconfirm his login details. Accordingly, his return remained in a draft state. Subsequent warning notices were detected as spam by his email system and went unread. The Upper Tribunal considered that the failure to enter his login details at the final submission stage was not reasonable on the basis that he had used online filing in the previous ten years. However, is it reasonable to expect individuals to remember precisely how HMRC software operates? Indeed, it is not clear to me whether the process has changed over the ten year period in question (or why this particular step in the process is something that the average taxpayer is expected to recall). Furthermore, Mr Shaw may have used different software (or an agent) in earlier years, meaning that he would not have had the relevant experience to guide him in relation to his 2016 return.

The tribunal was similarly unimpressed by Mr Shaw's failure to check his computer's spam settings. However, spam settings are often changed by external providers and HMRC often communicates using a range of different email addresses. Indeed, when signing up for MTD last year, I received an email purporting to be from HMRC but from a spurious looking address. When I queried it (on Twitter), HMRC responded by sending me a link to a webpage listing its legitimate addresses. I responded by pointing out that the address used by the MTD system did not feature on that list. It was only as a result of my tweets that the list was updated!

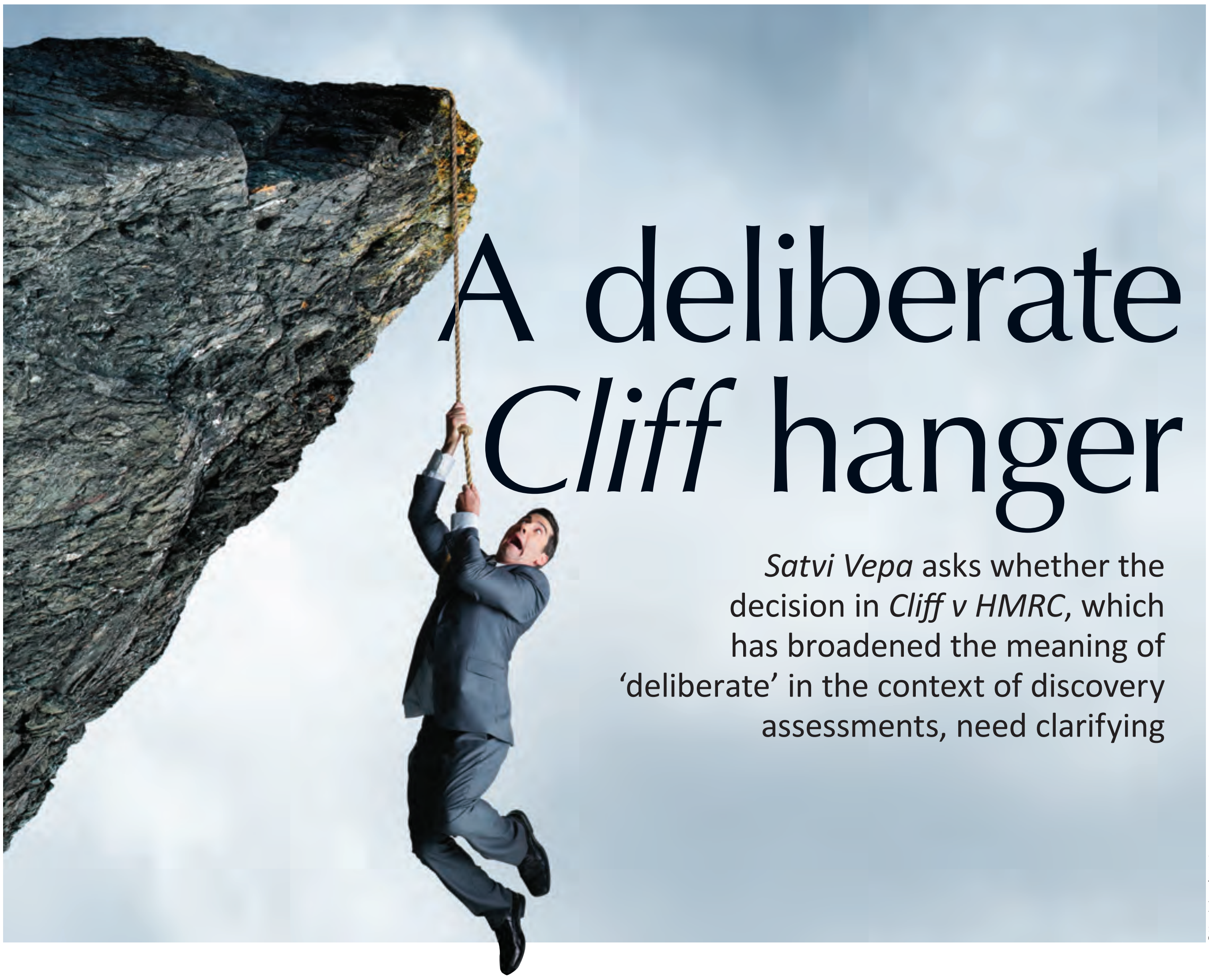
In my view, it is easy to say after the event what went wrong, but I am not sure that it is so easy to revisit what Mr Shaw actually did and where his actions or omissions meant that his excuse for late filing ceased to be reasonable.

Ultimately, each case will turn on its own specific facts. However, my concern is that the Upper Tribunal's decision might encourage the FTT to take a harsher line with taxpayers in similar cases.

What to do next

It should be noted that the Upper Tribunal was able to reach its findings on the s 8 process based on the unchallenged evidence latterly provided by HMRC, the details of which were not rehearsed in the Upper Tribunal's decision. Furthermore, it is well known that evidence in one case cannot be relied upon in litigation involving another party. This means that it is theoretically open for other taxpayers to continue to challenge the validity of s 8 notices and seek to challenge the evidence provided. Whilst that might prove to be administratively inconvenient, I am not sure (at least at present) that any adviser can confidently suggest to a client to do otherwise (at least without seeing the evidence at first hand).

In late October 2019, HMRC announced that it was seeking a change in the law so as to provide that the role of an officer can be delegated to a computer in order to avoid this kind of challenge. It is unclear whether the result of the *Rogers & Shaw* case means that it is less likely to do so. However, it is my firm view that the potential administrative difficulties of proving compliance with the law mean that a change in the law remains as appropriate as ever (although I remain uncomfortable about the idea of computers automatically issuing penalty notices without proper human supervision). However, because of the impact upon taxpayers' human rights, I would strongly urge any change in the law to be prospective (i.e. limited to notices issued after the change in the law).



A deliberate *Cliff* hanger

Satvi Vepa asks whether the decision in *Cliff v HMRC*, which has broadened the meaning of 'deliberate' in the context of discovery assessments, need clarifying

KEY POINTS

- **What is the issue?**
In 2019, a number of cases directly addressed the meaning of *deliberate* in the context of discovery assessments and the imposition of penalties for errors. A broader meaning of *deliberate* could have serious consequences for taxpayers, as it would give HMRC wide powers to raise discovery assessments and impose penalties.
- **What does it mean for me?**
The *Cliff* decision outcome is that to be acting deliberately, a taxpayer does not need to have an intention to deceive or to bring about a loss of tax (as required for fraud) or even, in the case of inaccuracies, actual knowledge of the inaccuracy or an intention to be inaccurate.
- **What can I take away?**
The *Cliff* decision casts doubt on whether the wider meaning of *deliberate* will be applied by HMRC to other areas of law, including FA 1998 Sch 18, which applies to companies filing corporation tax returns.

In 2019, we saw a number of cases directly addressing the culpability of taxpayers and, in particular, the meaning of *deliberate* in the context of discovery assessments (Taxes Management Act (TMA) 1970 ss 29(4) and 36) and the imposition of penalties for errors (Finance Act (FA) 2007 Sch 24).

A broader meaning of *deliberate* in the context of this legislation could have serious consequences for taxpayers, as it would give HMRC wide powers to raise discovery assessments, impose a higher percentage of non-suspendable penalties and extend the time limits available in which to raise such discovery assessments and impose such penalties.

The broader meaning may also affect the interpretation of the term in the context of other legislation, including the equivalent discovery assessment legislation for companies delivering corporation tax returns found at FA 1998 Sch 18 para 43, and the interpretation of certain clauses in contracts such as share purchase agreements and tax deeds. In addition, FA 2007 Sch 24 para 19 gives HMRC certain powers to recover penalties for deliberate inaccuracies from officers of the relevant tax paying company. Widening the meaning of *deliberate* could therefore also impact directors and secretaries of companies.

Degrees of culpability

HMRC mention degrees of culpability in their manuals at EM5101. In the context of direct taxes, these are:

- in the context of discovery assessments: fraudulent, deliberate, negligent or careless behaviour; and
- in the context of penalty assessments: fraudulent, deliberate, negligent, careless or non-deliberate behaviour.

Although *careless* has been defined in tax legislation as 'a failure to take reasonable care', thereby imposing an objective test of reasonableness, *fraudulent* and *deliberate* have not been so defined.

HMRC state that they consider *fraud* to include 'falsification with an intention to deceive', which supports the well-established view that the intention of the taxpayer to deceive, judged subjectively, is key to establishing fraud.

The meaning of *deliberate*, however, is less clear. It has always been the market view that the level of culpability associated with *deliberate* fell above the level of culpability associated with *carelessness* but was on the same level as that required for *fraud*. Prior to recent case law specifically addressing the meaning of the term, there were a few indicators in legislation and HMRC's manuals which supported this interpretation. These are discussed below.

The meaning of *deliberate*: HMRC manuals and legislation

Although *deliberate* has not been defined in the tax legislation, its use in TMA 1970 s 36 (and FA 1998 Sch 18 para 43) and in FA 1998 Sch 24 suggests that it is synonymous with *fraud*. These sections previously used the term 'fraudulent or negligent conduct' but were replaced in 2008 and 2007 respectively with 'deliberately or carelessly'. The explanatory notes to the changes in FA 2007 state that 'these definitions of behaviour are designed to replace the current concepts of ... fraudulent and negligent conduct'. Therefore, 'deliberate' replaces 'fraudulent', implying that in order to act deliberately, the taxpayer should have an intention to deceive.

However, HMRC's Compliance Handbook at CH81150 states that an example of a deliberate inaccuracy includes 'deliberately describing transactions inaccurately or in a way likely to mislead'. Under this definition, could a taxpayer deliberately describe a transaction in a specific way, honestly believing that description to be accurate, where such description is in fact inaccurate or likely to mislead? The manuals lack clarity on whether, in addition to the deliberate act, the taxpayer needs to have either:

- an intention to deceive (as would be required for fraud); or
- actual knowledge of the inaccuracy or an intention to be inaccurate.

The latter may be distinguished from cases of fraud, but still would mean the level of culpability associated with deliberate behaviour would fall above that required for carelessness.

The meaning of *deliberate*: case law

Case law has interpreted *deliberately* with similar inconsistency.

In *Cliff v HMRC* [2019] UKFTT 564, the taxpayer was a self-employed tax adviser who claimed to offset losses derived from his activity of being a 'dealer in thoroughbreds' from his other income. The taxpayer had made a considered and conscious choice to use the phrase 'dealer in thoroughbreds', which he asserted was

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an accurate description of his activities. However, the description of his activities was considered to be inaccurate by HMRC, which claimed that the losses should not have been allowed against the other income. Consequently, HMRC claimed there was a loss of tax and that this had been brought about deliberately because of the taxpayer's considered and conscious choice to use the phrase 'dealer in thoroughbreds'.

The taxpayer argued that he had made the claims for losses in good faith and without any deceitful or illicit intention, which he considered was required in order for his actions to be *deliberate*. (It is worth pointing out that the FTT noted the lack of documentary evidence to support the description 'dealer in thoroughbreds' and also cited ITTOIA 2005 s 50, which states that animals kept for racing are not to be treated as trading stock.)

Despite the taxpayer claiming to have acted in good faith and without an illicit intention, the FTT found that he had acted deliberately for the purposes of raising a discovery assessment under TMA 1970 and imposing penalties under FA 2007 Sch 24. The FTT considered that its views were supported by the Court of Appeal's comments in *Tooth v HMRC* [2019] EWCA 826, which dealt with discovery assessments under TMA 1970. This decision stated that it was not necessary to show that a taxpayer intended to bring about the loss of tax where a loss of tax is brought about by a deliberate inaccuracy, as TMA 1970 s 118(7) deems the intention to exist.

The wording in s 118(7) is limited to discovery assessments, and so does not lend support to the decision in *Cliff* in respect of penalties (which are imposed under FA 2007). In fact, the FTT in *Leach v HMRC* [2019] UKFTT 352 (decided prior to *Cliff*) explicitly stated that this wider meaning of *deliberate* should not apply to the penalty regime set out in FA 2007 Sch 24. However, the FTT in *Cliff* did not consider *Leach.* Instead, it sought to rely on the decision in *Clynes v HMRC* [2016] UKFTT 369 which dealt with the penalty regime under FA 2007 Sch 24, and stated that *deliberate* involves an element of conscious or purposeful choice and that this choice does not have to be accompanied by an intention not to pay tax or be made in good faith, as a loss of tax can be brought about by a taxpayer making a purposeful but poor decision.

Therefore, the outcome of the *Cliff* decision is that in order to be acting deliberately, a taxpayer does not need to have an intention to deceive or to bring about a loss of tax (as would be required for fraud) or even, in the case of inaccuracies, actual knowledge of the inaccuracy or an intention to be inaccurate. This interpretation of *deliberate* imposes a lower standard of culpability than that required for carelessness. The CIOT has submitted a Budget representation for the meaning of deliberate to be clarified in legislation, and so it will be interesting to see whether or not this interpretation is adopted going forwards.

Applying the wider interpretation of *deliberate*

The decisions in *Tooth* and *Leach* had provided some comfort that the wider meaning of *deliberate* would be limited to instances where wording substantially similar to that in TMA 1970 s 118(7) was present in the legislation being relied on by HMRC. However, the *Cliff* decision casts doubt on whether the wider meaning of *deliberate* will be applied by HMRC to other areas of law, including FA 1998 Sch 18, which applies to companies filing corporation tax returns and which does not contain wording substantially similar to that in s 118(7).

The decision may also have an effect in a transactional context. Usually, a seller provides tax indemnity and warranty protection to a purchaser. Such protection is subject to a number of limitations, which are usually disapplied where claims arise from a seller's fraud. From a tax perspective, it has been considered reasonable for a seller to lose its protections under this provision where HMRC can raise a discovery assessment within a 20 year period; and it was the market view that the meaning of *deliberate* was either equivalent to or lay close to the meaning of *fraud* so that essentially this was achieved. Given the wider interpretation of *deliberate* in *Cliff,* however, purchasers will need to think about whether they are happy for the disapplication of the seller limitations to only apply in cases of *fraud* or whether this provision should be widened.

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

Technical Team

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Welcome to the March Technical Newsdesk

Much of this month's Technical Newsdesk reports on the Budget representations that the CIOT, ATT and LITRG recently submitted. These set out our recommendations for action regarding particular areas of concern.

A Budget representation is a written representation from an interest group, individual or representative body to HM Treasury with the aim of commenting on government policy and suggesting new policy ideas for inclusion in the next Budget. HM Treasury welcomes representations as part of the policy making process.

The deadline for Budget representations was 7 February 2020. The ATT, CIOT and LITRG submitted a number of representations, which we report on below. None of these representations 'stand alone', but are part of a wider engagement we are having with HMRC and other policymakers on the relevant issues.

Some of the themes addressed within the Budget representations carry over into the other activities which we report on this month. Employment taxes continue to figure prominently, whether regarding the draft legislation covering the application of Class 1A NIC contributions on termination payments and sporting testimonials from April 2020, liaison with HMRC and others around the review of the proposed new off-payroll working rules, or the call for evidence on taxation issued by the Women's Budget Group and its Commission on a Gender-Equal Economy.

Our Welsh Technical Committee tackled the difficult question in the context of devolved taxes (I'm paraphrasing) of how much you can flex rates of income tax before there is a significant behavioural shift, as well as how to make Welsh law more accessible, clear and straightforward to use.

How many of us glaze over a little when we hear words such as cryptoassets, blockchain and AI? We continue our engagement with HMRC and others in this area, and as we report guidance has recently been published by HMRC. But this is still a niche area, and it would be wise to seek an expert opinion if you or your clients need advice.

Finally, returning to the theme of making representations to government and HMRC, there is something which is causing me increasing concern – and is in part borne out in the Budget representation we made on MTD.

The government typically consults on tax changes. Yes, the process might start later than it should, but we normally get some form of consultation on the proposed changes, and then an opportunity to comment on the draft legislation. This is all well and good in getting the wording of the legislation right, but what about the practical implementation of the measure? I am thinking in particular of those which will require software or systems to be changed, or even created from scratch, in order to enable compliance.

Let's take the forthcoming 30 day CGT reporting and payment period which comes in for disposals of certain residential properties this April (which is particularly on my mind as Helen Thornley and I are raising this at a Representative Bodies Steering Group meeting with HMRC this week). The changes are being implemented as a new, stand-alone 'property account', which is not integrated into the Personal Tax Account, and requires clients to be able to digitally authorise their agents. With two months to go, testing is still ongoing and, contrary to HMRC's 'API first' strategy, no API is available to allow agents to report directly from software. So, even if individuals know they have a disposal to report (and communications are a further concern, as there's limited information on GOV.UK at present), we have yet to see the finished reporting system, while the process for doing reporting will not be intuitive and seems to depart from HMRC's wider digital strategy.

This is not an isolated concern. The lack of sufficient time to develop and test new software and systems was one of the difficulties with the roll-out of MTD for VAT, and the same could be said for the VAT reverse charge for the construction sector, the off-payroll working rules, and 'DAC 6'. You can probably think of others.

We have highlighted this concern to the Tax Professionals Forum (see https://www.gov.uk/government/groups/tax-professionals-forum), and continue to raise it with HMRC and ministers. Let's hope the 11 March Budget does not give us more examples.

CIOT Budget representations

GENERAL FEATURE MANAGEMENT OF TAXES

The CIOT submitted a Budget representation on deliberate behaviour, as well as submitting a joint representation with the ATT on Making Tax Digital.

CIOT Budget representation on deliberate behaviour

There is no definition of 'deliberate' behaviour in Taxes Management Act (TMA) 1970 or any other similar legislation covering discovery/assessment time limits and penalties. In contrast, there is a definition of careless behaviour – an inaccuracy in a document given by a taxpayer to HMRC is 'careless' if the inaccuracy is due to failure by the taxpayer to take reasonable care (Finance Act (FA) 2007 Sch 24 para 3).

Deliberate behaviour, given its consequences in terms of extending the length of assessing time limits to 20 years, and the higher level of penalties compared to carelessness, logically must comprise more serious behaviour.

Recent tax cases (such as *R & C Commrs v Tooth* [2019] EWCA Civ 826 and *Cliff v HMRC* [2019] UKFTT 564) have the prospect to introduce confusion and unfairness into the tax regime by diluting the meaning of 'deliberate' so that it just means that a conscious decision was taken by the taxpayer – without any dishonest intent. We do not believe that is what Parliament intended when it specifically introduced different outcomes for different behaviours by taxpayers, increasing in seriousness as behaviour worsened, and this should be put beyond doubt.

We suggested that clarity is needed regarding the meaning of 'deliberate' behaviour in relation to tax matters; in particular, to put beyond doubt that deliberate behaviour requires that the person knew they were providing an inaccurate return or document to HMRC, or had deliberately chosen not to provide a return or document at all. Consideration of why a mistake arose needs to be undertaken based on the facts of each case and taking into account the taxpayer's knowledge, experience and situation (plus case law); however, given the discussions that our members indicate they are experiencing with HMRC on behaviours in practice, we consider that it is time for the legislation to encompass a definition as a starting point for such discussions.

We also suggested that the government should consider updating all relevant legislation to make it clear that, when deciding whether an error or failure which leads to a loss of tax is 'deliberate' for the purposes of TMA 1970 or equivalent legislation for other taxes, all relevant matters provided at the time the return is filed will be considered, including, for example, any wording in the 'additional information' box on a self-assessment tax return (or the equivalent for other taxes, e.g. corporation tax).

The representation can be found here: www.tax.org.uk/ref635.

Joint CIOT and ATT Budget representation on Making Tax Digital (MTD)

Readers will be aware that, during December and January, we undertook a comprehensive survey of MTD for VAT, and the future roll out of MTD. The survey results were discussed in last month's Technical Newsdesk, and we indicated that they would be used to prepare a Budget representation (as well as being shared with HMRC, which we have done).

The government promotes MTD as part of its plans to 'make it easier for individuals and businesses to get their tax right and keep on top of their affairs', while also claiming MTD will reduce the tax gap by minimising avoidable errors. The results of our survey indicate that MTD is so far neither reducing error, nor delivering benefits to businesses; yet it is costing businesses significantly more than HMRC estimated.

Whilst we enclosed the results of the survey and provided some narrative around the key findings, the Budget representation was quite straightforward. We urged the government to carry out a thorough review and evaluation of the roll-out of MTD for VAT (in accordance with stage 5 of the government's own tax consultation framework) and undertake further consultation around MTD, before making any commitments to the extension of MTD to other taxes or businesses.

The representation can be found on the CIOT website here: www.tax.org.uk/ref634 and on the ATT website here: www.att.org.uk/ref351.

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ATT Budget representations

PERSONAL TAX EMPLOYMENT TAX

The ATT has made representations to the government ahead of the Budget regarding proposed changes to private residence relief and the extension of the off-payroll working rules to the private sector.

Private residence relief – letting relief

On the basis that the ATT is expecting the government to proceed with changes to private residence relief for which draft legislation was published in July 2019, the ATT's representation reiterates concerns about the measures in respect of letting relief.

From April 2020, letting relief will only be available where the homeowner is in occupation at the same time as the landlord, and the letting is 'otherwise than in the course of a trade or business'. By applying the new test to lettings both before and after April 2020, the proposals have retrospective effect and the ATT has called for transitional measures to avoid a cliff-edge effect in which many homeowners could lose overnight the letting relief they have accrued for periods prior to April 2020.

The ATT is also concerned that relief will only be available in exceedingly narrow circumstances and that the proposals are practically difficult to operate – as determining if a trade or business exists is very fact specific.

Finally, the interaction of the new letting relief with the existing statement of practice 14/80 (SP14/80), which allows those letting to lodgers to benefit from private residence relief, is not clear. The ATT has called for SP14/80 to be updated to better reflect the modern lodgings market.

The representation can be found here: www.att.org.uk/ref341.

Off-payroll working

The representation on off-payroll working repeats the ATT's previous calls for the introduction of those rules in the private sector to be delayed by 12 months (that is until April 2021).

The representation notes that, at the time it was written, the rules were due to come into effect in less than three months, but final legislation and detailed guidance were still not available. The

ATT is concerned that the resulting lack of certainty means that businesses will find it difficult to make the necessary preparations.

Whilst the ATT welcomed the announcement by the Chancellor of a review of the implementation of the off-payroll working rules, this does not reduce the need for a delay. Rather, the fact that this review (which had not concluded at the time of writing) was announced so close to the intended commencement date strengthens the argument for such a delay.

The ATT submission sets out that delaying the introduction of the new rules by one year would allow extra time for preparation, and reduce the chances of problems arising for businesses, workers and HMRC. It would also demonstrate that lessons have been learned from the rushed introduction of the rules for the public sector in 2017.

The representation can be found here: www.att.org.uk/ref349.

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LITRG Budget representations

PERSONAL TAX

LITRG submitted a Budget representation building on LITRG's ongoing work on how pensions tax relief might be equalised for all low-income workers and a representation on the high-income child benefit charge.

Pensions tax relief: low-income workers

In September 2018's Technical Newsdesk, LITRG's Meredith McCammond reported on our work to investigate how tax relief might be given to all low-income workers, irrespective of whether their employer's scheme operates on a net pay arrangement (NPA) or relief at source (RAS) basis.

To recap, those workers earning around or beneath the personal allowance who contribute to an NPA pension scheme will not receive the tax relief that they otherwise would if their employer's scheme ran on a RAS basis. Under NPA, contributions are deducted from gross pay and income tax is then calculated – so someone already earning beneath the personal allowance will get no tax relief. By contrast, under a RAS scheme, the net-of-basic-rate tax amount is deducted from net pay after tax and the pension scheme then reclaims tax at the basic rate – meaning that even non-taxpayers get the benefit of basic rate relief. The net pay contributors will therefore pay up to 25% more for their pension contributions.

This has always been a problem, but it now affects increasing numbers due to pension auto-enrolment, with many schemes used to deliver auto-enrolment operating on an NPA basis.

Employers must automatically enrol qualifying staff into a pension scheme when they earn over £10,000 a year. Automatically enrolled staff may opt out, but opt out rates remain low. Staff not eligible to be automatically enrolled may opt in, or join, their employer's scheme. The worker usually has to contribute 5% of their 'qualifying earnings', from £118 up to £962 per week for 2019/20. (See box below.)

It is estimated that this flaw in the rules means around 1.75 million low-income workers earning below or just above the personal income tax allowance (mostly women) are being unfairly charged 25% more for their pensions as a result of the way their employer pension scheme operates.

LITRG has been working with a coalition of other interested parties – the Net Pay Action Group, made up of pension providers, lawyers, tax specialists, payroll specialists, employers, consumer groups and policy experts – to look at potential solutions to this issue.

A welcome step forward was that the 2019 General Election Conservative manifesto stated:

> 'A number of workers, disproportionately women, who earn between £10,000 and £12,500 have been missing out on pension benefits because of a loophole affecting people with net pay pension schemes. We will conduct a comprehensive review to look at how to fix this issue.'

In its Budget representation, the Net Pay Action Group is calling on the government to take forward the promised review as soon as possible and that the upcoming Budget will be an opportunity to provide an update on how addressing this issue will be taken forward. We would like the government to provide a firm timeline for its pledged review of the system and commit to implementing a solution. The representation urges the government to consider the action group's proposed solution of a system that would allow HMRC to identify which savers, earning below the income tax threshold, have contributed to a net pay scheme. HMRC could then provide that government savings incentive, worth 25% of each low-paid worker's pension contribution, through an existing process.

The representation can be found here: www.litrg.org.uk/ref375.

High-income child benefit charge (HICBC)

The HICBC was introduced in January 2013, imposing an income tax charge to claw back child benefit where the claimant or their partner has adjusted net income in excess of £50,000. The HICBC has been a controversial policy since its introduction. Questions have been raised about the fairness of the policy and whether it is cost effective. For these reasons, we think it is sensible for a review of the policy to be carried out to assess if it is working as intended and whether it meets its original objectives.

First, some families affected think that making a child benefit claim is not worthwhile if it will be clawed back in full (or even in part) via the tax charge, especially given the fact that liability to the HICBC requires the completion of a self-assessment tax return. But not to claim the child benefit in this scenario carries unforeseen consequences for the would-be claimant, as they might miss out on National Insurance (NI) credits for up to 12 years (or potentially longer if there is more than one child in respect of whom child

EXAMPLE

Penny's annual salary is £11,130. Her employer's scheme bases contributions on 'qualifying earnings', which is the auto-enrolment minimum.

Her **2019/20** pension contribution under each type of scheme would be:

Scheme type	Calculation of contribution	Amount Penny pays in	Tax relief added	Amount invested in pension
NPA	(11,130 – 6,136) x 5%	£250		£250
RAS	(11,130 – 6,136) x 4%	£200	£50	£250

The amount going into Penny's pension for the year is the same in both cases, but the cost to her of paying into the NPA scheme is £50 more than for the RAS scheme.

benefit may be claimed). This could have a serious impact on their future state pension entitlement. LITRG endorses the following recommendations made by the Office of Tax Simplification in their report, Taxation and life events, that: 'The government should review the administrative arrangements linked to the operation of child benefit, making clear the consequences of not claiming the benefit, with a view to ensuring that people cannot lose out on national insurance entitlements.' It also stated: 'The government should consider the potential for enabling national insurance credits to be restored to those people who have lost out through not claiming child benefit.' LITRG recommend that the government should allow claims for national insurance credits for years where a person (or their partner) would have been entitled to child benefit and they (or their partner) had adjusted net income over the HICBC threshold. There should be no time limit for such claims.

Second, given that the £50,000 threshold has remained static since the charge was introduced in 2013, it is affecting an increasing number of families. We therefore suggest that the £50,000 threshold should be uprated to £60,000 in order to minimise the impact of the charge and to ensure the policy works in the way originally intended. Thereafter, the threshold should be reviewed regularly, or preferably provision made to automatically uprate it annually in line with inflation.

Third, there is a particular issue which affects families in which child benefit is claimed where the higher income partner has adjusted net income of between £50,000 and £60,000 a year: the effective marginal rate applicable to that person. This is exacerbated when there are large numbers of children involved, which is not uncommon in families of certain origin, and so may be said to be discriminatory. For these families, finances are already likely to be stretched. Accordingly, we recommend that the point at which child benefit is fully withdrawn should be increased from £60,000 to at least £75,000. Alternatively, the child benefit could be withdrawn instead by a fixed amount for each £100 above the initial threshold, rather than a percentage of the total child benefit received.

The representation can be found here: www.litrg.org.uk/ref374.

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Class 1A NICs on termination payments and sporting testimonials

EMPLOYMENT TAXES

The ATT has responded to a HMRC consultation on draft legislation covering the application of Class 1A NIC contributions on termination payments and sporting testimonials from April 2020.

A key point raised in the ATT response is that it is currently unclear exactly when the draft legislation will take effect in relation to termination payments. Both the draft legislation and accompanying technical overview clearly state that the regulations have effect in relation to sporting testimonials which are announced on or after 6 April 2020. However, there is no corresponding clarification as to when they are intended to take effect in relation to termination payments.

As a result, it is unclear whether the draft legislation is intended to apply to any payments which are made on or after April 2020 in respect of termination, or only to payments in respect of terminations which take place on or after 6 April 2020. The ATT recommends that it be made clear in the final version of the legislation (or as a minimum in the accompanying documents and guidance) exactly how the provisions take effect in relation to termination payments. It would also be helpful for guidance to address how payment arrangements which span this commencement date are to be treated for Class 1A purposes.

The ATT response sets out a number of other comments on the format of the draft legislation and the terminology it uses. In particular, it recommends that further introductory signposting be included in the legislation to indicate which parts relate to termination payments and which to sporting testimonials, and highlights the need for more assistance in interpreting certain terms (including 'blood relative' and 'dependant').

The ATT also notes that, in order to ensure the smooth roll out of the changes introduced by the draft legislation, it will be important to issue comprehensive practical guidance to employers. This should cover issues including commencement of the rules and the treatment of non-cash benefits which continue post-termination.

The ATT response can be found here: www.att.org.uk/ref346.

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Review of off-payroll working rules: Meetings with HMRC

EMPLOYMENT TAXES

We summarise various meetings with HMRC arising from the review of the proposed new off-payroll working rules.

On 7 January 2020, the government announced that it was launching a review of changes to the off-payroll working (OPW) rules. The review is expected to be concluded by mid-February (after this article was written but before it is published). As part of the review, the CIOT has met HMRC, attended a couple of HMRC IR35 Forum meetings and participated in various HMRC roundtable events. We summarise these meetings below.

Off-payroll working review

The review was tasked with gathering evidence to 'ensure smooth implementation of the reforms', rather than to postpone the reforms. The aim is to consider what the government can do to support affected parties who rightly expressed various concerns with the new OPW rules due to be implemented with effect from 6 April 2020.

The CIOT met HMRC in mid-January to discuss the scope of the review, its priorities and timings. We understand that the main aim is to make HMRC's guidance and support for businesses and workers as good as it can be. We agreed that a key aspect to the implementation of the new OPW rules from April 2020 will be the publication of guidance and urged HMRC to publish their detailed technical guidance as soon as possible.

We raised with HMRC various technical concerns with the draft Finance Bill legislation that was published in Summer 2019, including:

- identification of end users as 'small';
- the status determination statement (SDS) and the requirement to issue the SDS to agencies;
- whether there is a requirement to issue the SDS to a worker if the OPW rules do not bite;
- status dispute resolution and the timescale to raise a dispute and whether notice has to be in writing; and
- what happens if a worker disagrees with the outcome of the status dispute.

We also discussed guidance requirements in respect of distinguishing between a supply of services and a supply of labour (outsourced services and statements of work, etc.), as well as procedures for recovery of PAYE where status is wrong (offset for taxes paid by personal service companies where OPW rules should have applied or recovery of PAYE and NICs deducted in error by the fee-payer, etc.). We also discussed how the rules are to apply in international situations, such as where the end client, agency or worker are not UK resident. For example, the draft legislation seems to suggest that if there is a non-UK engager and a UK worker, the non-UK engager would be treated as UK resident and therefore need to operate the OPW rules. How, though, do you enforce UK tax obligations on a non-UK entity and, absent a UK agency, how would PAYE and NICs be accounted for?

In addition, we discussed HMRC's Check Employment Status for Tax (CEST) tool which was updated in November 2019, how mutuality of obligation (MOO) is referenced within the tool, and various employment status tax cases, which specifically refer to MOO as a fundamental starting point when considering status.

Draft secondary legislation

Subsequent to our meeting, HMRC published on 22 January draft secondary legislation for technical comment by 19 February. The draft PAYE Regulations contain detailed provisions allowing for the recovery of PAYE income tax liabilities from a third party where a fee-payer has failed to make PAYE tax deductions and provide for the reporting of an OPW indicator on real time information returns. The draft Social Security Contributions Regulations make similar provisions for NICs purposes to those provided for in the draft Finance Bill legislation and in the draft PAYE regulations. See next month's Technical Newsdesk for a summary of our response!

IR35 Forum

The forum has met twice recently and the review of OPW was the main topic of discussion. HMRC advised that an educational package on the OPW changes for large and medium sized business was being rolled out. HMRC will write directly to those businesses it thinks are likely to be impacted by the new rules and signpost them to various HMRC resources and factsheets.

The transition from current IR35 and OPW in the public sector rules to the new OPW rules was discussed (for example, the need for public bodies to provide SDSs, and what happens where payment for work done in 2019/20 is delayed to after 5 April 2020, etc.).

HMRC's IR35 compliance work was also raised and it is understood that that there are around 200 HMRC staff working in this area. Forum representatives raised various unacceptable schemes they have seen that purport to circumvent the IR35/OPW rules and which undermine those businesses and agencies that comply with the rules. HMRC indicated that they are aware of these schemes and are taking action. Representatives urged HMRC to publicise this work as a deterrent.

Other developments

Ahead of the outcome of the government's review, in early February HMRC announced (see https://tinyurl.com/u7tbu2y) that the new rules will now apply only to payments made for services provided on or after 6 April 2020. (Previously, the rules would have applied to any payments made on or after 6 April 2020, regardless of when the services were carried out.)

Also in early February, The House of Lords Finance Bill Sub-Committee launched an inquiry (see https://tinyurl.com/sulaqsv) into the extension of the off-payroll working rules. CIOT and LITRG representatives gave oral evidence to the inquiry on 10 February.

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Cryptoassets: HMRC Roundtable Discussion Group

GENERAL FEATURE PERSONAL TAX LARGE CORPORATE

Representatives from the CIOT and ATT attended a meeting of HMRC's Cryptoasset Roundtable in February. HMRC's guidance in this area is generally welcomed, but discussions continue around the difficult question of situs, which is of particular importance for non-domiciled individuals.

The meeting began with a general discussion around the market activity in relation to cryptoassets, noting that the trend in relation to offerings was moving towards security token offerings, rather than utility tokens. It was also reported that there was an increasing level of interest in blockchain technology generally; the OECD Blockchain Policy Forum in September 2019 had attracted over 2,000 delegates. There is a Forum scheduled for October 2020 (https://tinyurl.com/wratnsp).

The output from HMRC over the recent months was welcomed, notably the guidance for businesses, which had been broadly well received. This guidance can be found on the cryptoassets 'landing page' at: https://tinyurl.com/y8rq89kv.

HMRC have also published their view on the situs of exchange tokens. This is included within the 'Cryptoassets for Individuals' paper (also found on the landing page), which has an updated section entitled 'The location of exchange tokens'.

Representatives at the meeting said that while they appreciated that HMRC had offered a clear view, they would have preferred to have seen more detail on the reasoning behind HMRC's view.

The statement from HMRC does not acknowledge the varying views as to how to determine situs of cryptoassets and it would have been more helpful to have had some discussion (or at least an acknowledgement) of the various other factors, besides beneficial ownership, which may be relevant when considering the situs of a cryptoasset.

It was noted that, while appreciating that HMRC intended to offer certainty for taxpayers, with no acknowledgement of the alternative views commonly held by advisers around the question of situs, the current position was not without difficulty for taxpayers and advisers arriving at a filing position.

The meeting discussed again whether, due to the innovative nature of cryptoassets, which makes determining situs by reference to the rules which apply to other assets very difficult, legislation on this point was the only way to provide clarity, at least for the future. However, it was also recognised that legislation which would provide clarity in all cases would be difficult to draft, particularly with regard to how to define and encompass the full range of cryptoassets. Future proofing any definitions and terminology used in legislation in this fast moving and continually evolving space will be a challenge.

HMRC will consider this point and what further guidance can be given to taxpayers. In the meantime, we suggest that taxpayers, and advisers without specific knowledge in this area, seek specialist advice and consider carefully their filing position, and related disclosures, in circumstances where the question of situs of cryptoassets is relevant to the tax position.

More generally, HMRC are intending to publish a Cryptoassets Manual. This will build on the guidance published so far and may be able to provide a further level of detail on some of the points of difficulty.

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Wales consults on behavioural tax changes and the future of Welsh law

PERSONAL TAX GENERAL FEATURE

The CIOT and LITRG have sent in comments on two recent Welsh consultations, on behavioural responses to income tax variations and the future of Welsh law.

The CIOT and LITRG have submitted joint responses to two recent Welsh consultations; firstly, to the Finance Committee's inquiry into the impact of variations in national and sub-national income tax; and secondly to the Welsh government consultation on 'The future of Welsh law: classification, consolidation, codification'.

The Finance Committee's inquiry into the effect of income tax variations on behaviour

The inquiry raises questions in respect of the possible impact of different income tax rates across the Wales-England border. The terms of reference of the inquiry are:

- to examine the effects of sub-national income tax variations in international tax systems on the behaviour of low, medium and high income earners, particularly migration and tax avoidance;
- to understand how low, medium and high income earners may respond to income tax rate divergence for each tax band between Wales and England;
- to understand the level of divergence in income tax rates that could trigger a behavioural change in low, medium and high income earners in Wales and England; and
- to assess the monetary impact on Welsh rates of income tax (WRIT) revenue with varying levels of tax rate divergence.

We thought that further research is needed, looking at different types of taxpayer and their attitude to paying more or less tax in return for increased or reduced social funding. It should take into account the effect of geographical differences (such as proximity to work, ease of travel across the Wales-England border, housing costs and the cost of living generally) on individual choice on where to live and work, and to what extent changes in tax rates may influence decisions (as compared to other factors).

Research should look at how much increases in income tax rates would actually increase the tax take (because the increase in revenue from taxpayers who remain in Wales and continue to report high incomes is offset, for example, by more Welsh taxpayers migrating to England to work because of the higher Welsh rates). It is even possible that such behavioural effects could exceed the direct increase from raising the rate; although this is an extreme possibility, it does highlight the importance of such research. For similar reasons, it should not be assumed that reductions in the rate would reduce revenue pro rata.

One of the difficulties identified in our response is that researchers tend (and are maybe constrained) to aggregate behavioural effects to produce a single composite estimate of the sensitivity of reported income to the tax rate, though in real life its different components call for very different responses; for example, increased under-reporting can be addressed by enforcement action. Other types of behavioural response such as tax-driven incorporation of businesses (or potentially in the future, migrating from Wales to escape a social care levy and migrating back later in life to benefit from better social care) can potentially be addressed by design features of the system. It is also possible that individuals will choose to extract more income that is not liable to the WRIT (such as investment income) or realise capital gains to meet their 'income' needs.

In addition, reactions to increased tax rates can be emotional as well as practical and this may be influenced by a perception of what the extra money is spent on and whether that commands support.

We pointed to the introduction of the additional rate of income tax of 50% for incomes over £150,000 in the UK in April 2010, subsequently reduced to 45% from April 2013. HMRC's report concluded that there was a considerable behavioural response to the rate change, including a substantial amount of short term forestalling.

However, determining the longer term underlying behavioural response to the additional rate was more challenging. This issue remains politically and academically controversial but one clear point is that short term effects, including forestalling and more enduring effects, can be very different in both their scale and nature.

The full response is at www.tax.org.uk/ref612.

The future of Welsh law: classification, consolidation, codification

The Welsh government consulted on the following issues:

- **A draft taxonomy for codes of Welsh law organised by subject matter:** We noted that the category of 'Taxation' would potentially encompass not only management and collection legislation, land transaction tax and landfill disposals tax but also the partial devolution of powers to set WRIT, potentially business rates and potentially new taxes such as a vacant land tax or a levy to support social care. There may be fine distinctions as to where boundaries lie between subject categories in the taxonomy. For example, in relation to taxation, would legislative mechanisms for tax appeals fall under 'Taxation' or 'Public administration'? The ability to link between categories by some form of tagging may be appropriate.
- **The consolidation of existing law, including modernising the form and drafting where necessary:** Devolved tax legislation is relatively new, drafted in a modern style and has only been in effect for a short period. Our response saw no obvious case for consolidation of existing devolved tax legislation. We pointed to the UK Tax Law Rewrite Project (TLRP), noting that whether professionals were positive or negative about the TLRP it was felt that the rewrite process had missed the opportunity to simplify. The fundamental issue in terms of accessibility was the inherent complexity of underlying tax concepts rather than language or structure.
- **The codification of Welsh law, that is, the process of adopting and maintaining a structure for Welsh law involving the designation of a principal Act in a particular code:** We recognise the advantages of this approach. However, it is not clear how it might operate in relation to the three current main devolved taxes Acts. Would all three be principal Acts?

We pointed also to the importance of explanatory notes accompanying devolved tax legislation setting out the intention of the measure, as opposed to simply re-stating the legislation. Our preference is that where the devolved legislation makes reference to or uses a term from a provision of a UK statute, the relevant words are re-stated rather than effected by cross reference.

It would assist the understanding of Welsh law if the legislation does not use a term that already has a commonly understood meaning, but then ascribe to it a different meaning. For example, in UK tax legislation, the personal savings allowance and dividend allowance are not allowances in the commonly understood sense of the term. Rather, they are 0% bands of tax.

Our full response is at www.tax.org.uk/ref613.

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Women's Budget group: Commission on a Gender-Equal Economy

GENERAL FEATURE

LITRG has made a written submission to a call for evidence on taxation issued by the Women's Budget Group.

The Women's Budget Group (WBG) are known for their analysis of the impact of UK government policy on women. In February 2019, they launched the WBG Commission on a Gender-Equal Economy, which is an expert-led project aiming to proactively develop alternative economic policies to promote gender equality across the UK. The WBG approached LITRG to let us know about their call for evidence on taxation. The Commission also published a call for evidence on social security, to which we did not respond; however, some of the points included in our submission cross over into the area of social security.

We used our response to highlight a few policy and operational changes that might have a positive impact on gender equality. In doing so, we noted that whenever changes are made to the tax system, it is important to give careful consideration to possible consequences and problems that might arise as a result of the new policy. Moreover, interactions with other aspects of the tax system and with non-tax systems also need to be considered and analysed.

We commented on the high income child benefit charge (HICBC), for which we think the thresholds need to be raised. Despite its name, the HICBC can affect the lower-earning partner (and child) in a household. We noted that the operation of the HICBC creates problems, which seem to affect women disproportionately. This is because the options available to those affected can be confusing, and the consequences of each are not transparent. For example, issues can arise in relation to the child receiving a National Insurance number when they turn 16 and the preservation of National Insurance credit entitlements for the claimant of child benefit.

Our response also looked at the issue that we have identified, whereby lower earners in net pay arrangement pension schemes are missing out on tax relief on their pension contributions. Over 75% of those affected by this issue are female. This issue is discussed in more detail in the article above on LITRG's Budget representations.

Other possible changes we mentioned in the response include changing the VAT rate on women's sanitary products from the reduced rate of 5% to the zero rate, the extension of bereavement support payment to unmarried partners, the annual uprating of the carer's allowance earnings threshold for the national living wage, and the introduction of the operation of PAYE on carer's allowance. We also highlighted the problematic way in which real time information for PAYE interacts with universal credit and suggested that HMRC consult on formalising the on or before easement that has been put in place to deal with the problems that arise when real time information data does not tie in with universal credit assessment periods.

As well as highlighting these specific possible changes, we set out our seven principles that we think the tax system should try to adhere to, including that the tax system should be clear, simple, equitable, accessible and inclusive. We also suggested that more meaningful equality impact assessments are needed prior to making final policy decisions.

The submission is available on the LITRG website: www.litrg.org.uk/ref372.

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CIOT	Date sent
Impact of variations in national and sub-national income tax www.tax.org.uk/ref612	13/01/2020
The Independent Review of Legal Services Regulation 'Findings, Proposals and Consultation' www.tax.org.uk/ref638	17/01/2020
The future of Welsh law: classification, consolidation, codification www.tax.org.uk/ref613	30/01/2020
Budget representation on 'deliberate' behaviour www.tax.org.uk/ref635	06/02/2020
Budget representation on Making Tax Digital www.tax.org.uk/ref634	07/02/2020
ATT	
Draft legislation: The Social Security (Contributions)(Amendment No.X) Regulations 2020 www.att.org.uk/ref346	16/01/2020
The Independent Review of Legal Services Regulation 'Findings, Proposals and Consultation' www.att.org.uk/ref353	17/01/2020
Budget representation on Making Tax Digital www.att.org.uk/ref351	07/01/2020
LITRG	
Commission on a Gender-Equal Economy: Call for evidence – Taxation www.litrg.org.uk/ref372	15/01/2020
Budget Representation 2020: Net Pay Action Group www.litrg.org.uk/ref375	04/02/2020
Budget Representation 2020: High Income Child Benefit Charge (HICBC) www.litrg.org.uk/ref374	07/02/2020

COMING SOON...YOUR NEW INSTITUTE BADGE

Yes – that's right. New year and a new look.

As part of the Institute's 2020 rebrand strategy, we will be updating a range of marketing collateral. This means we will be changing the Institute badge.

So what do I do?
Not a lot, but if you have any printed material, we recommend you start running this down. We plan to launch the new badge this spring.

Don't worry!
We will contact you ahead of time to let you know what to do and help.

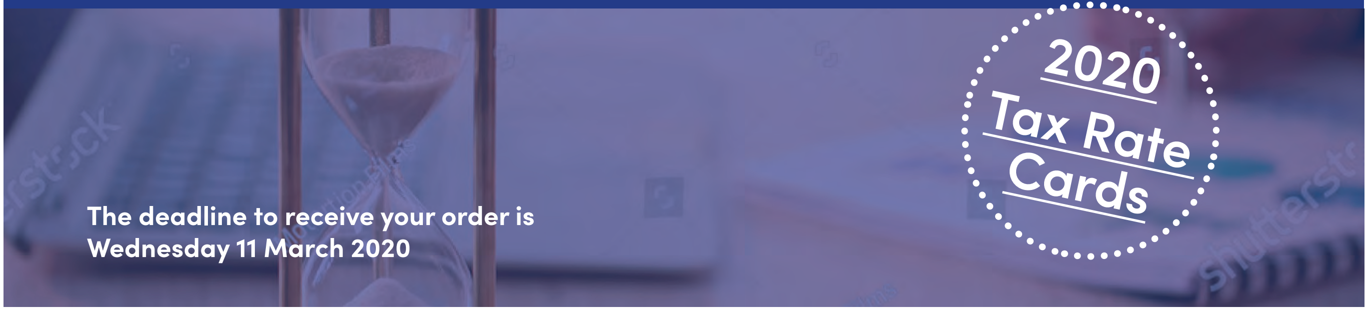
For now...watch this space.
Any queries please contact
membership@ciot.org.uk

Tax Rate Cards 2020

The 2020 Tax Rate Cards will be available following the March budget. To order some to distribute to clients or for use by staff please log on to the portal, (maximum 50 per organisation)

For CIOT Members
www.tax.org.uk/taxratecards

For ATT Members
www.att.org.uk/taxratecards



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CIOT

CIOT President's luncheon

Glyn Fullelove gave a short speech

EVENT

Senior figures from across the tax world gathered at Merchant Taylors' Hall in the City of London on 14 January for the Institute's annual President's Luncheon.

Those attending included former cabinet ministers Kenneth Clarke and Lord Mackay of Clashfern, MPs Craig Mackinlay and Nigel Mills and senior representatives of HM Treasury and HMRC. They were joined by representatives of other organisations active in tax policy development, including the Office of Tax Simplification, Institute for Fiscal Studies, Federation of Small Businesses and Tax Justice UK, and by senior representatives of other professional bodies and firms.

In a short speech at the event, CIOT President Glyn Fullelove praised the work of the CIOT's Low Incomes Tax Reform Group and encouraged those present to support the tax advice charities through the Bridge the Gap campaign. In particular, he highlighted the Kilimanjaro Challenge that he and a number of other guests at the event will be undertaking to raise funds for the charities.

He also noted that, as one outcome of the recent loan charge review, the government has confirmed there will be a review of the market for tax services. He said it was his view that building on Professional Conduct in Relation to Taxation was the key to any successful reform of the market. He welcomed the government's acceptance of another recommendation of the loan charge review – that HMRC should fund an independent body to provide advice to low income taxpayers who are discussing payment arrangements and debt collection.


Craig Mackinlay MP, Rt Hon Kenneth Clarke and Glyn Fullelove


Over 220 guests attended the CIOT President's Luncheon

WCOTA

Growing Underground

Alison Lovejoy provides news of a recent Worshipful Company of Tax Advisers event.

Mary Fraser, who organised this very unusual event, writes:

On a dank November evening, a group of tax advisers set forth on a novel experience. We visited Growing Underground, the world's first hydroponic farm, situated deep underneath the busy streets of Clapham Common, in tunnels constructed by London Underground (now owned by TfL) as an air raid shelter for residents during World War II. Unsurprisingly, it looks like an Underground station, although the tunnels do not connect to the train lines.

We were met by Richard Ballard, one of the founders of this ground-breaking enterprise (although hydroponic farms do not use soil), who gave us a talk on the origin and future expansion of the business. We then divested ourselves of jewellery, bags, etc. and the door was locked behind us. We descended the 180 steps down the spiral staircase to the 'factory', having stopped to shed our shoes and don Wellington boots, white coats and hairnets in the sterile environment. Having both washed and disinfected our hands, we were taken to the growing area.

Richard explained the production and distribution system. The crops are gathered and packed by 4pm and are distributed to customers on the same day. The seeds are scattered on offcuts of carpet surplus to manufacturers' requirements; plants grow and the crops are gathered before they are mature. They are nurtured under an LED system and the ambient temperature of the 'factory' is controlled by fans to ensure a stable environment. The crops, mainly small leafy vegetables, are stacked on shelves, according to the number of days to maturity and include pea shoots, salad rocket and garlic chive in the Italian mix; sweet pea shoots, spicy purple radish and fragrant coriander in the Asian mix; and pea shoots and fennel in the Indian mix. Mustard leaves and broccoli shoots also feature in the English mix and wasabi leaves in the Japanese mix. We were each offered a choice of box to take home.

We were able to taste some of the samples during the tour and they were deliciously fresh, having been harvested that day. Distribution is limited to the area within the M25, so that

the food is on the customers' shelves while still newly grown. It is packed in recyclable plastic containers, so that the venture has the least possible impact on the environment.

The customers include Sainsbury's, Marks & Spencer, Ocado and Waitrose and the venture is so successful that the farm is due to expand into adjacent tunnels. The factory is light and impeccably clean. The only clue to the fact that it is in central London is the rumble of Northern Line trains passing overhead. It sets the standard for future ventures and should be the foundation for other entrepreneurs to follow.

We climbed the 180 steps back to ground level and proceeded to a nearby restaurant where we enjoyed a very convivial meal.

Tours of Growing Underground are limited to parties of between 12 and 16 people, who must be fit enough to climb the steps in an emergency and who must wear sturdy shoes.

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

ATT

An online tax qualification for employees

TRAINING

Are you looking for an online tax qualification for your employees? The online ATT Foundation Qualifications can open up the door to a future career in tax or just broaden an employee's knowledge of tax in a specific area.

We offer Foundation Qualifications in four areas:

- Personal Taxation;
- Business Taxation;
- VAT Compliance; and
- Transfer Pricing.

Each qualification is split into four modules. Once the four modules and Final Certificate Examination have been successfully passed, employees will receive a Certificate of completion.

RSM Assistant Andrew Millington shares his experience of studying the Foundation Qualifications:

'As someone completely new to studying and working in tax, the ATT Foundation courses provided me with an interesting and manageable introduction to many different aspects of tax and were the perfect springboard to my ATT qualification.

'I quickly started to understand more of what I was dealing with at work and I began actively processing information regarding client's tax affairs, as opposed to simply inputting the information. I would highly recommend the courses for anyone looking for an introduction to personal or business taxation.'

The Foundation Qualifications are ideal for:

- anyone looking for the first step to the full ATT Qualification;
- accountants who wish to enable cross-department secondments;
- bookkeepers and other professional staff providing tax services; and
- junior members of staff looking to extend their knowledge and broaden the work they can do.

For more information about the qualifications, please visit: www.att.org.uk/foundation or call 020 7340 0550.

Disciplinary reports

Findings and orders of the Disciplinary Tribunal

TAXATION DISCIPLINARY BOARD

Mr Raja Bains

NOTIFICATION

At its hearing on 6 December 2019, the Disciplinary Tribunal of the Taxation Disciplinary Board considered complaints raised against Mr Raja Bains of West Bromwich, a member of CIOT.

The tribunal found that Mr Bains was guilty of breaches of the PRPG 2011 and of the PRPG 2018 in that:

1.1 On one or more occasions between 28 October 2018 and 3 February 2019, he sent emails ('the emails') from his work email address to his personal email address containing information that was acquired in the course of his employment, confidential to his employer and/or confidential to his employer's clients.

1.2 As a result of his actions he acted dishonestly and without integrity.

2.1. By sending the emails he did not comply with Article 5(1)(a) of the General Data Protection Regulation 2016.

The tribunal determined that Mr Bains be expelled from membership of the Chartered Institute of Taxation and pay costs in the sum of £4,924.12.

The full decision can be found on the TDB's website www.tax-board.org.uk.

Mr Gurgyan Kaley

NOTIFICATION

At its hearing on 19 December 2019, the Disciplinary Tribunal of the Taxation Disciplinary Board considered complaints raised against Mr Gurgyan Kaley of Gerrards Cross, a student member of CIOT.

The tribunal determined that Mr Kaley was guilty of the following Charges:

In breach of Rules 2.1, 2.2.2, and/or 2.6.2 of the PRPG 2011, Mr Kaley:

(a) failed to be straightforward and honest in all professional and business relationships;

(b) engaged in or was party to illegal activity; and

(c)(i) performed his professional work, or conducted his practice or business relationships, or performed the duties of his employment improperly, inefficiently, negligently or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to himself, to the CIOT or to the tax profession; and/or

(ii) breached the Laws of the CIOT or ATT.

In that:

1. On a number of occasions over a considerable period of time, and in respect of substantial sums of money, Mr Kaley falsified claims against his employer for reimbursement of costs which he had not in fact incurred.
2. On 13 May 2019, before Inner London Crown Court, Mr Kaley was convicted of two offences of fraud by abuse of position.
3. He was sentenced to four months' and 24 months' imprisonment (suspended for 24 months), a £75,000 compensation order, 300 days' unpaid work, electronic monitoring and 10 days' Rehabilitation Activity Requirement.

In breach of Rule 2.14.1 of the PRPG 2018, Mr Kaley failed to notify the CIOT in writing within two months if charged with or convicted of a criminal offence.

A link to the full decision of the Tribunal can be found on the Taxation Disciplinary Board's website www.tax-board.org.uk.

Branch events

Where do you get your CPD?

MAR – APR 2020

Know better

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 April 2020. However, please visit your local branch website as there may be some events which have been planned since this list was sent to print.

Cumbria & SW Scotland
Thursday 19 March
Budget update
Giles Mooney
14.00-17.00

East Anglia
Thursday 17 March
Professional Standards update
Heather Brehcist
14.00-17.00

Thursday 2 April
Day Conference
Giles Mooney
09.00-17.00

East Midlands
Tuesday 24 March
Construction Industry Taxes Update and their reporting obligations
Cathya Djanogly
16.00-19.30

Edinburgh
Thursday 26 March
Tax issues on importing and exporting
Matthew Paul Clark
17.00-18.30

Essex
Tuesday 17 March
Student Meeting: Using tax legislation
Chris Siddle
18.00-20.00

Glasgow
Tuesday 14 April
Employment Tax update
Rachel Chalmers
12.30-13.30

Harrow & North London
Thursday 19 March
How developments in Anti-Money Laundering affect your work as a Tax Professional
CIOT Professional Standards team
18.45-20.15

Kent
Tuesday 24 March
Business Funding
17.00-19.00

London
Monday 16 March
Indirect Tax meeting – VAT & Finance
Gabby Donald
18.00-19.00

Manchester
Monday 16 March
Reorganisations, reconstructions, etc.
Pete Miller
16.00-19.00

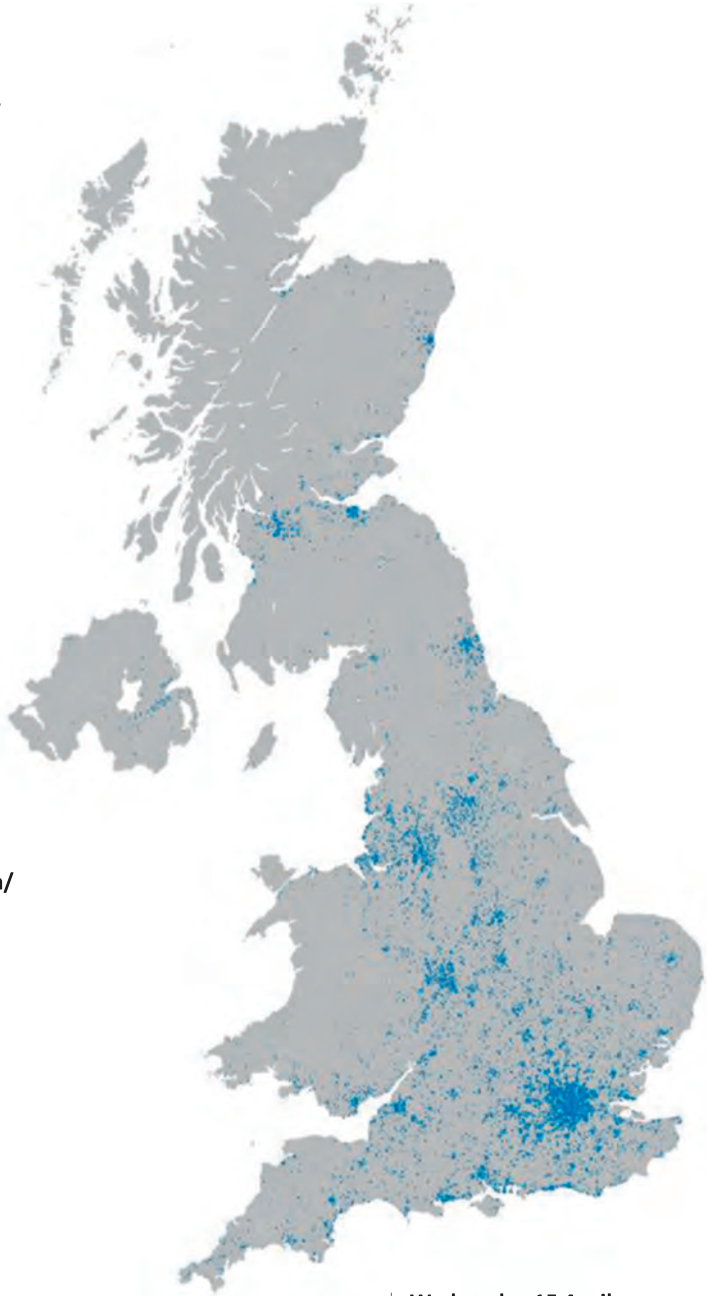
Merseyside
Tuesday 17 March
Residence update including taxation of commercial property for non-residents
16.00-18.00

North East England
Thursday 26 March
Demystifying Digital Assets
Kate Baucherel & Lorraine Ellison
18.00-19.30

Northern Ireland
Wednesday 8 April
Barriers to Capital Extraction/ Transactions in Securities
Pete Miller
17.15-19.15

Scottish Borders
Thursday 19 March
Scottish Taxes update
Carl Bayley
15.00-16.45

Sheffield
Thursday 26 March
Personal & Employment Tax update
Mark Morton
13.30-16.30



South London & Surrey
Monday 6 April
Complaints to HMRC
Simon Oakes
Guildford
18.30-20.00

Wednesday 8 April
HMRC – enquiries
Jeremy Johnson
Croydon
18.30-20.00

South Wales
Wednesday 8 April
Update on Trusts, Wills and Pre-owned assets
Robert Jamieson
14.00-17.00

South West England
Wednesday 18 March
General VAT update
Michael Steed
15.45-19.00

Wednesday 15 April
Finance Act 2020
Robert Jamieson
15.45-19.00

Thames Valley
Saturday 21 March
2020 Budget Conference
Robert Maas
09.30-12.30

Wednesday 1 April
Property Tax Conference
Lakshmi Narain
14.00-17.15

Georgiana Head Recruitment

MEET YOUR ADVISERS

GEORGIANA HEAD

Director

Tel: 0113 280 6766
Mob: 07957 842 402

georgiana@ghrtax.com

ALISON TAIT

Director

Tel: 0113 280 6764
Mob: 07971627 304

alison@ghrtax.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
Near Goole – to £60,000 + bens

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**

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**

In-house Transfer Pricing Tax Accountant
Lancashire – to £45,000 + car + bens

You will support the group companies in preparing transfer pricing documentation, maintain the OECD country-by-country reporting process and maintain the OECD Global Master file. You will also monitor the results of the group's various businesses to gauge compliance with the group transfer pricing policies/alignment with arm's length benchmarking, and identify possible areas of risk. You should be ATT or CTA qualified, with an understanding of OECD guidelines on transfer pricing and good communication skills. **Call Alison Ref: 2921**

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**

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

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**

www.georgianaheadrecruitment.com

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

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**

Corporate Tax Manager
Leeds – to £52,000 + bens

This Big 4 firm is looking for an ACA/ICAS/CTA qualified corporate tax manager to join their advisory team. Your client portfolio will include UK listed, PE backed, inbound and family owned groups, and you will work on technical areas such as tax due diligence, structuring, international tax, R&D and succession planning. You will liaise with other specialist teams in the firm, and will be involved in business development initiatives and coaching of junior team members. **Call Alison Ref: 2932**

In-house Tax Executives
Wimbledon, London – £market rate

Our client is looking for two junior tax specialists to join their in-house team. Ideally, someone with a couple of years indirect tax experience and someone with a couple of years corporate tax experience. It is likely that you will be ATT qualified. These are great opportunities – classic first moves in-house. You will be involved in both compliance and reporting and assisting more senior staff with project work. Would consider candidates from HMRC. Whatever your tax background, you will need a genuine passion for performing tasks effectively, efficiently and to a high standard. **Call Georgiana Ref: 3001**

Group Tax Manager – Manchester
£60,000 to £65,000 + car +bens + bonus

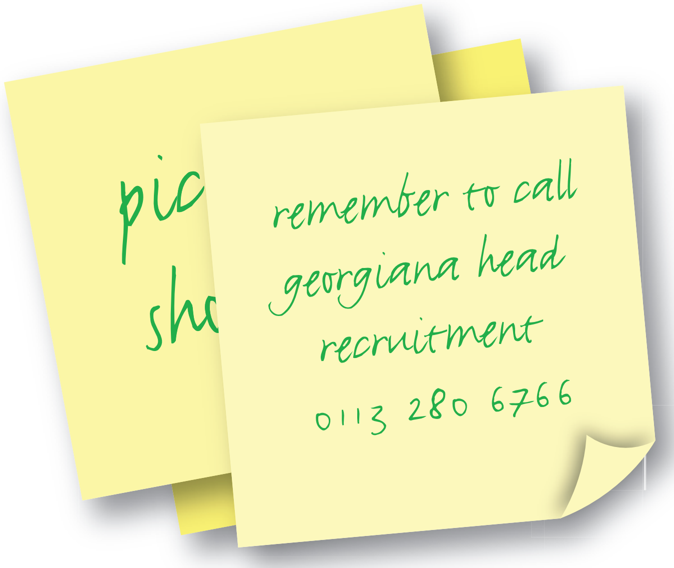
International group seeks a Group Tax Manager, reporting to the Head of Tax and Treasury. Day to day, your role will be to manage day-to-day tax matters across all taxes and territories. You'll create value through identification of opportunities and detailed analysis. You'll liaise with advisors, provide technical support and advice and, where appropriate, get involved in projects including tax due diligence and related structuring for M&A activity. Would suit a qualified (ACA, ICAS, CTA or equivalent) tax professional with large group experience. Excellent benefits package. **Call Georgiana Ref: 2924**

Expatriate Tax Manager
Leeds – to £52,000 + bens

This team has been winning lots of new work recently. They are therefore looking for a CTA/ACA qualified manager to look after a portfolio of clients and manage a team of juniors. Working with the senior management team, you will lead the client relationships and undertake a predominantly advisory focused role. You will be involved in all areas of cross border advisory work including tax, Social Security, process and policies, and will conduct arrival/departure briefings for senior assignees. **Call Alison Ref: 2931**

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**



YOUR TAXATION RECRUITMENT SPECIALISTS

Trust Director
London – £Six Figures

A strategic hire by one of London's premier Private Client firms, this role offers a Senior Manager or Director the opportunity to lead the London Trusts offering of a multi award-winning team. You will undertake ad hoc trust planning, supervise experienced Trusts advisers and play a key client relationship management role. **Ref 637**

Senior Manager, Private Client Tax
Reading – £75,000 – £85,000

Flexible and remote working is offered by this leading accountancy firm. Undertake high-end personal tax advisory work, for a HNW UK and international entrepreneurial private client base. Play a key role in a high-profile team and be supported in progression towards Director grade. Work from home 1-2 days a week. **Ref 4764**

Big 4 Private Client Tax Manager
London – To £70,000 + Bens + Bonus

Develop your career with one of London's leading Private Client Tax teams. Undertake ad hoc personal tax planning work for UHNW entrepreneurs and wealthy families, many of whom have international aspects to their affairs. Enjoy supported development towards Senior Manager and Director grades. Work from home one day a week. **Ref 4841**

Senior Tax Manager – Private Client Boutique
London – £80,000 – £90,000

A pure advisory role with a specialist, award-winning, private client advisory firm. Super client base of international UHNWIs. Broad range of income and capital taxes planning, structuring and trusts work on offer. Participate in networking and business development, as well as press, TV and radio commentary. **Ref 4831**

Private Client Tax Senior Manager / Manager
North Yorks. – £Excellent + Bens

High quality personal tax advisory work is on offer in this well-respected firm. They are growing and keen to appoint a Manager or Senior Manager to provide private client tax planning advice to an impressive client list of new-money entrepreneurs, business owners and landed wealth. Genuine scope for progression within a premier team. **Ref 4668**

Assistant Manager, Personal Tax
West End – To £54,000

A great opportunity for a CTA to undertake UK and international private client tax work with a premier London team. Super offices in the West End. Growing, thriving team offering scope for swift progression to Manager and Senior Manager grades. Modern, forward-thinking culture, embracing genuine work/life balance. **Ref 4842**

For details of these and similar opportunities visit our website:

www.howellsconsulting.co.uk

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